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July 31, 2003

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th St. SW
Washington, D.C. 20554

Re: CC Docket 01-92

Dear Ms. Dortch:

This is to notify you that on July 30, 2003 BellSouth met with Jennifer Manner, Legal Advisor to Commissioner Abernathy, to discuss issues raised in the above docket relating to interconnection and intercarrier compensation between CMRS carriers and independent local exchange carriers. Representing BellSouth at these meeting were Randy Ham, Parkey Jordan and the undersigned. The attached presentation formed the basis for this discussion.

Pursuant to Commission rules, please include this notice and attachments in the record of the proceeding identified above.

Sincerely,

Glenn Reynolds

cc: Jennifer Manner

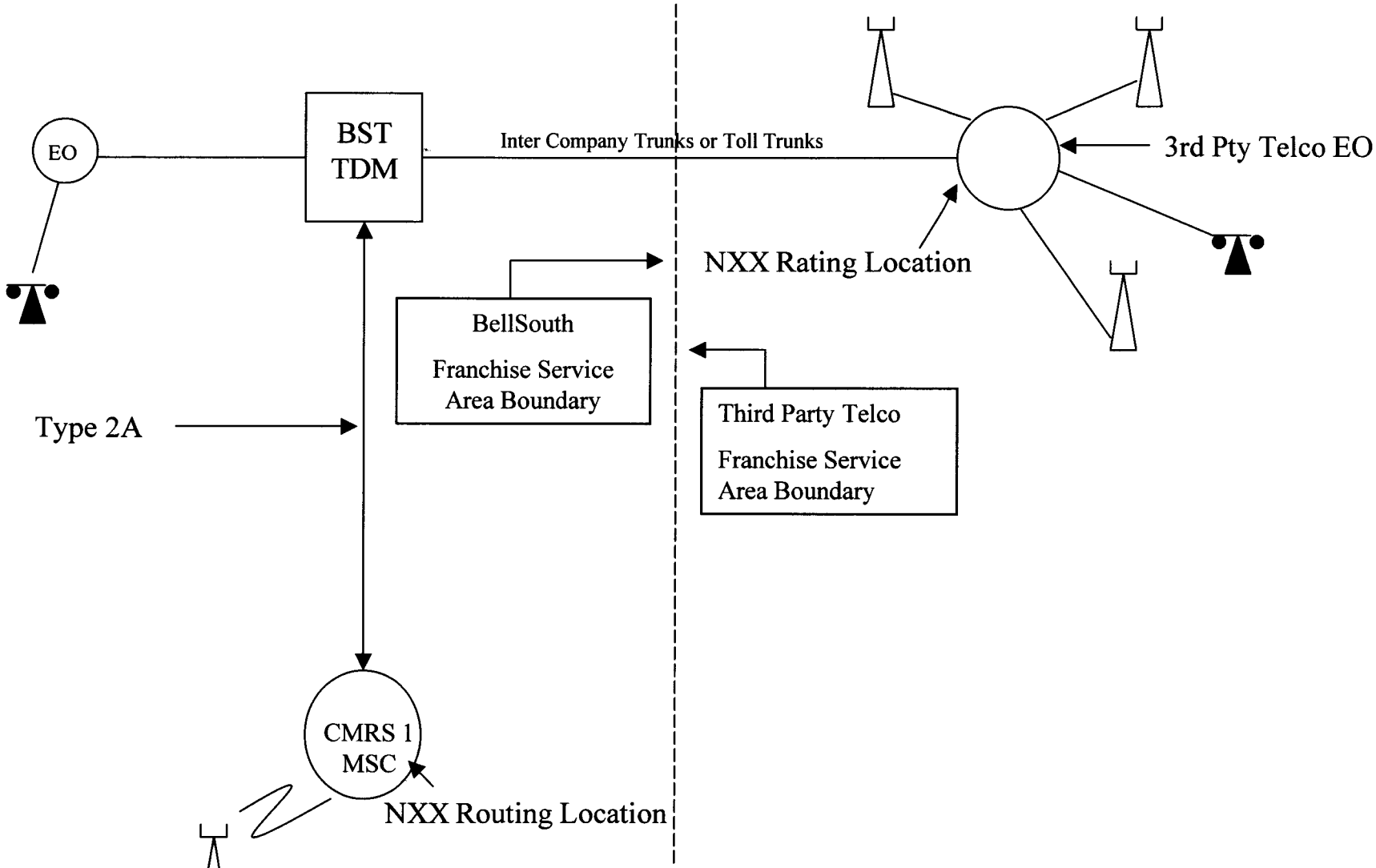
BELLSOUTH EX PARTE

JULY 30, 2003

CMRS NPA/NXX ARRANGEMENTS WITH THIRD PARTY ILEC RATE CENTERS

BELLSOUTH

NXX With 3rd Party Rate Center & Routing To BellSouth



>> SPRINT PCS ISSUE

Sprint and other CMRS providers obtain NPA/NXX codes and instruct carriers to ROUTE calls to those numbers to a BellSouth tandem but to RATE those calls in the rate center of an Independent ILEC.

Assigning an NPA/NXX code to different routing and rating points within the same ILEC's service area is acceptable and is permitted by ILECs. Assigning differing routing and rating points in differing ILEC service areas exacerbates existing problems relating to transit traffic and intercarrier compensation.

BellSouth has complied with Sprint's requests to load NPA/NXX codes with routing and rating points in different ILEC territories, but seeks the Commission's guidance regarding whether codes should be loaded in this manner and if so, how affected parties are to address resulting intercarrier compensation issues.

>> CMRS CARRIERS SHOULD INTERCONNECT DIRECTLY WHERE THEY ARE MARKETING A LOCAL PRESENCE

Sprint's intent in assigning a rating point in an independent ILEC's territory is to be able to maintain a local presence in the service area without establishing direct interconnection with the independent ILEC in the area where the local service is provided.

- Allows end users of the independent ILEC to dial a local number to reach end users of Sprint
- Assumes calls originating from and terminating to the particular NPA/NXX will be predominantly between the CMRS end user and the independent ILEC end user
- Does not support Sprint's claim that "a large portion of the traffic at issue is traffic originating on the BellSouth network"

Sprint's claim that traffic volumes do not justify the cost of direct interconnection with the independent ILEC is inconsistent with its desire to establish a local presence in the independent ILEC's territory. Sprint is marketing its wireless service to residents of the independent ILEC's territory and intends to assign the telephone numbers to end users located in that territory.

>> APPLICABLE LAW

Even where carriers choose to utilize indirect interconnection pursuant to Section 251(a) of the Act, nothing in the Act exempts interconnecting carriers from entering into negotiated interconnection agreements and paying each other for termination of local traffic.

By allowing CMRS providers to establish a local presence in a market merely by creative assignment of NPA/NXX codes, the Commission effectively eliminates the need or incentive for CMRS providers to request interconnection negotiations with independent ILECs. Chairman Powell expressed a similar policy concern in his concurring statement In the Matters of TSR Wireless, LLC, et al., FCC Docket No. 00-194 (released June 21, 2000).

>> VA ARBITRATION ORDER

- Emphasized that there is no existing requirement for ILECs to provide transit service—let alone at TELRIC prices (¶ 117)
- Also found that there is no existing rule requiring ILECs to serve as billing intermediaries between CLECs and 3rd-party carriers with which it exchanges traffic transiting the ILEC's network. (¶ 119)
  - CLEC arguments based upon the same "efficiency" considerations raised by CMRS carriers in this proceeding. Bureau rejected these concluding: "We are not persuaded by WorldCom's arguments that Verizon should incur the burdens of negotiating interconnection and compensation arrangements with third-party carriers. Indeed, we agree with Verizon that interconnection and reciprocal compensation are the duties of all local exchange carriers, including competitive entrants."
- The duty to interconnect pursuant to Section 251(a) of the Act applies equally to all carriers, including CMRS providers. Granting transiting "rights" to CMRS carriers will be used by CLECs to claim entitlement to same relief.
- In any event, FCC may not create new obligations in this Declaratory Ruling proceeding—a rulemaking is required. The record is also completely void of any basis to create new requirements for transiting, including requirements for billing or traffic information.

>> BELLSOUTH SHOULD NOT BE FORCED TO BEAR CMRS CARRIERS' COSTS

Sprint's assignment of routing points in BellSouth territory and rating points in an independent ILEC's territory in effect places on BellSouth an obligation to act as a transiting company.

BellSouth has no obligation pursuant to the Telecommunications Act of 1996 to provide transiting functions, but has agreed to do so for CMRS providers and CLECs in the interest of network and resource efficiency.

If Sprint and other carriers are permitted to force ILECs to load NPA/NXX codes as Sprint has requested, the ILEC owning the routing point tandem will necessarily be transiting calls that are clearly intended to be local to the ILEC owning the rating point. Thus, the majority of the traffic will be exchanged between Sprint and the independent ILEC, and it will all be routed through BellSouth's tandem, regardless of whether both originating and terminating carriers have established transit arrangements with BellSouth. This prevents BellSouth's ability to charge a reasonable rate for the use of its network, and in effect transfers the costs of competition from Sprint to BellSouth.

>> BELLSOUTH SHOULD NOT BE FORCED TO BEAR CMRS CARRIERS' COSTS

Although Sprint and other wireless carriers intend that independent ILECs and CMRS end users who have been assigned these NPA/NXX codes will be exchanging calls on a local basis, the wireless carriers have made no effort, either before or after such codes become operational, to negotiate interconnection agreements with the independent ILECs, leaving the tandem provider in the middle of billing disputes regarding the traffic.

Because the wireless carriers and independent ILECs have not negotiated interconnection agreements to govern reciprocal compensation for the exchange of local traffic, independent ILECs look to BellSouth – the tandem provider – for payment, regardless of the fact that BellSouth did not originate the traffic.

>> TRANSITING ISSUE

BellSouth agreed to provide a transiting function under the assumption that NPA/NXX codes would be both rated and routed within a single ILEC service area.

The assignment of a routing point in BellSouth's service area and a rating point in an independent ILEC's service area places BellSouth in the middle of disputes regarding intercarrier compensation that should be paid and collected between the originating and terminating carrier and not by BellSouth. As a transit provider, BellSouth should be paid for the use of its network in transiting traffic, and it should not be responsible to any other carrier for intercarrier compensation of any kind.

Most independent ILECs attempt to hold the transiting company responsible for such payments in even the most simple call flows where routing and rating points are not assigned in different locations. The assignment of routing and rating points as Sprint has requested will force the independent ILEC to treat the call as local and to use the tandem provider's network to transport the call, despite the fact that most independent ILECs have not entered into Agreements with BellSouth for BellSouth to provide transiting services to the independent ILEC.

>> TRANSITING ISSUE

Transit traffic generally is a major disputed issue between BellSouth and independent ILECs. Independent ILECs believe BellSouth should be liable for payment to the independent ILECs for termination of traffic, at access rates, regardless of whether BellSouth originated the traffic.

To further complicate the issue, independent ILECs blame BellSouth for "allowing" routing and rating points to be assigned in different ILEC territories, thus forcing the independent ILECs to create and exchange local traffic with CMRS providers (rather than routing such calls through toll providers). Thus, the independent ILECs again look to BellSouth for payment.

>> RELIEF REQUESTED

Regardless of the position the Commission takes with respect to whether it is appropriate for rating and routing points to be assigned in different ILEC service areas, the Commission should:

Clarify that a transiting company may charge market-based rates for the use of its network when performing a transit function for any originating carrier; and

Clarify that a transiting company is not responsible for payment of any intercarrier compensation to other involved carriers.

>> RELIEF REQUESTED

If the Commission finds Sprint's proposed NPA/NXX assignments to be permissible, then in addition to clarifying the role of the transiting carrier, the Commission should:

Clarify that originating and terminating carriers who interconnect indirectly are not relieved of their statutory obligations to negotiate interconnection agreements for the exchange of local traffic; and

Develop rules governing how intercarrier compensation will be paid to the appropriate carriers if NPA/NXX codes are assigned to establish a local presence prior to the wireless provider and the independent ILEC entering into an interconnection agreement.

Develop rules governing (1) the obligation of the independent ILEC to utilize the services of the transiting ILEC at the determination of the carrier opting for indirect interconnection, and (2) the terms under which the independent ILEC will compensate the transiting ILEC prior to establishment of a transiting arrangement.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL, CONCURRING

In the Matters of TSR Wireless, LLC, *et al.* v. U.S. WEST Communications, Inc., File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, *Memorandum Opinion and Order*

Although I support this enforcement action, I do so reluctantly. Section 51.703(b) of the Commission's rules is a current, enforceable rule, duly promulgated by the Commission and upheld in court. We have jurisdiction to enforce it and we should enforce it. However, I write separately to raise a concern that the Commission has set up, through this rule and ones like it, a scheme that tends to undermine the interconnection regime established by Congress in the Telecommunications Act of 1996. Our rules should be reexamined so that, in the future, all telecommunications carriers clearly understand their respective duties and obligations under the key interconnection provisions of the 1996 Act.

Specifically, under section 251(a) of the Communications Act, 47 U.S.C. § 251(a), interconnection is a duty of all telecommunications carriers, including paging carriers like the complainants in this case. Under section 251(b)(5), all local exchange carriers (LECs) have the duty to establish reciprocal compensation "arrangements" for transport and termination. These provisions are not by their terms simply discretionary or suggested conditions. Moreover, when dealing with incumbent local exchange carriers, like the defendants in this case, Congress imposed additional obligations, including the duty to negotiate in good faith interconnection terms and conditions in accordance with section 252 of the Communications Act. *See* 47 U.S.C. § 251(c)(1). Interestingly, the statute also places a duty on the requesting telecommunications carrier to negotiate in good faith the terms and conditions of interconnection agreements. Section 252 sets forth in some detail the negotiation process and the points in the process where negotiating carriers may request government intervention.

The rule we enforce by this Order allows certain telecommunications carriers to bypass this process. Section 51.703(b) was adopted "pursuant to section 251(b)(5)."[1] Undoubtedly, after *Iowa Utilities*, the Commission can establish rules to carry out the provisions of the Communications Act, including sections 251 and 252, at least for purposes of "guid[ing] the state-commission judgments."[2] In this case, LECs, by rule, were required to cease charging CMRS providers or other carriers for terminating LEC-originated traffic and must provide that traffic to CMRS providers or other carriers without charge. No negotiation or even a request to the LEC is necessary under the rule.

However, in their proper context, a better reading of section 251 and the negotiation provisions is that Congress wanted there to be a fair opportunity for parties, through negotiation, to work out the terms and conditions of their interconnection relationship in the market, rather than by regulatory mandate -- the section is entitled "Development of Competitive Markets." I

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1 *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, 16016 (1996).

2 *AT&T Corp. v. Iowa Utilities Board,* 119 S.Ct. 721, 733 (1999).

see the specific duties in 251(b) and (c) as general backstops should negotiations fail. Indeed, the preference for the "market" is revealed by the fact that the contract can supercede any and all these obligations.[3]

Therefore, the quandary in my mind is that, if the Commission, over time, develops its own rules and regulations about interconnection, why should a party have to slog through the statutory process to get what it is entitled to under the rule? If the rule is favorable to a requesting party, why would it ever concede that term to an ILEC in negotiation and, thus, isn't the process a waste? I think the answer is that ILECs have a right under the statute to try to bargain away those duties by offering something of greater value to the requesting carrier. Moreover, it is entirely conceivable that a requestor would forgo some "regulatory rights" in exchange for other things. Thus, it is at least plausible that the terms of the rule would not ultimately prevail in negotiation. In light of this, while section 51.703 of our rules should be enforced, we should expeditiously reexamine its effects on the market-based negotiation process and, based on the interconnection negotiations that *have* taken place and other circumstances, determine whether or not it should be modified to fit better within the statutory scheme.[4]

As a related matter, the complainants in this case have invoked Section 208 to complain *to this Commission* that ILECs have, *inter alia*, violated sections 251 and 252, and the rules promulgated thereunder. While this item properly applies the enforcement policy embodied in the *Local Competition Order*, I am concerned this approach all but swallows the carefully crafted mechanisms for dispute resolution set forth in the 1996 Act. I would suggest that the issue of our authority under section 208 to enforce the general provisions of sections 251 and 252 are now ripe for judicial review.[5]

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[3] *See* 47 U.S.C. 252(a)(1).

[4] I note that there are several long-pending reconsideration petitions and applications for review that address this and other reciprocal compensation rules. It would behoove us to act on these quickly.

[5] *See Iowa Utilities Bd. v. FCC,* 120 F.3d 753, 803 (8th Cir. 1997), *rev'd AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct 721, 733 (1999).

VIRGINIA ARBITRATION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	)	CC Docket No. 00-218
	)	
In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration	)	CC Docket No. 00-249
	)	
In the Matter of Petition of AT&T Communications of 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.	)	CC Docket No. 00-251

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2002 **Released: July 17, 2002**

By the Chief, Wireline Competition Bureau:

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6. Issues III-1/III-2/IV-1 (Tandem Transit Service)[335]

a. Introduction

107. AT&T and WorldCom seek to protect and solidify the transit service that they have been receiving from Verizon to ensure that they will be able to continue exchanging traffic with third-party carriers without having to interconnect directly with them. AT&T and WorldCom seek to include language requiring Verizon to provide transit over its network at TELRIC-based rates for traffic they exchange with third-party LECs.[336] WorldCom also proposes language requiring Verizon to bill and compensate WorldCom for transit traffic as though the traffic were exchanged between WorldCom and Verizon.[337] Verizon opposes inclusion of this language, arguing that it is not under any obligation to provide transit service. Verizon does, however, propose language voluntarily offering tandem transit service as an accommodation to competitive LECs.[338] Under Verizon's proposed terms, the petitioners would be allowed to purchase tandem transit from Verizon at TELRIC rates up to the level of one DS-1 of traffic exchanged with another carrier. With respect to WorldCom, once transit traffic volumes reached the DS-1 threshold, Verizon's terms would allow Verizon to terminate its tandem transit service. With respect to AT&T, once transit traffic volumes reached the DS-1 threshold, Verizon's terms would require AT&T to pay additional charges for Verizon's tandem transit service during a transition period, and would allow Verizon subsequently to terminate its tandem transit service. For both petitioners, we adopt, with slight modifications, the language that Verizon proposed to AT&T.

b. Positions of the Parties

108. AT&T states that tandem transit service consists of tandem switching and common transport that AT&T would use to send local and intraLATA toll traffic between itself and LECs other than Verizon.[339] AT&T argues that Verizon has a legal obligation to provide transit service to AT&T, regardless of the level of traffic. AT&T argues that Verizon's restrictions on tandem transit service above a DS-1 level of traffic unlawfully interfere with

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[335] Because these three issues present interrelated sets of contract language and disputes, we address them together. Issue III-1 concerns whether Verizon has a duty to provide transit service without regard to the level of traffic exchanged, and whether transit should be priced at TELRIC rates. Issue III-2 also concerns whether Verizon has a duty to provide transit service at TELRIC rates. Issue IV-1 concerns whether Verizon has a duty to bill and compensate WorldCom for transit traffic as though the traffic were exchanged between WorldCom and Verizon.

[336] *See* AT&T's November Proposed Agreement to Verizon, § 7.2; WorldCom's November Proposed Agreement to Verizon, Attach. IV, § 10.

[337] *See* WorldCom's November Proposed Agreement to Verizon, Attach. I, § 4.8.

[338] *See* Verizon's November Proposed Agreement to AT&T, §§ 7.2.1-7.2.3; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 11.

[339] *See* AT&T Brief at 34.

AT&T's right, pursuant to section 251(a)(1), to interconnect directly or indirectly with the facilities and equipment of other carriers.[340] In addition, according to AT&T, Verizon's duty to interconnect pursuant to section 251(c)(2)(A) is not limited solely to interconnection for the exchange of traffic between AT&T and Verizon.[341] AT&T argues that Verizon's proposed language also restricts AT&T's ability to interconnect at the trunk interconnection ports on a tandem switch, in violation of Verizon's obligation under section 251(c)(2)(B) to provide interconnection at any technically feasible point.[342] Finally, AT&T contends that Verizon's proposal discriminates in violation of section 251(c)(2)(D), because it would move competitive LEC local traffic off of tandem switches, but leave interexchange carriers' (IXCs) access traffic in place.[343]

109. In addition to being contrary to law, AT&T argues that Verizon's restrictions on tandem transit service would be highly inefficient and harmful to AT&T. AT&T reiterates its argument made with respect to Issue I-4 that the DS-1 threshold used by Verizon to determine whether to implement direct trunking is inappropriate to apply to competitive LECs.[344] AT&T further argues that any direct trunking arrangement displacing a tandem transit arrangement would require AT&T to negotiate and possibly arbitrate an interconnection agreement with any third-party carrier with which it seeks to exchange traffic. According to AT&T, the time and expense required to create such arrangements would be an impediment to efficient interconnection and unnecessary, given that Verizon already has such arrangements with third-party carriers.[345] AT&T questions the validity of Verizon's concerns about competitive LEC traffic causing tandem exhaustion, given Verizon's testimony that it does not know how much competitive LEC tandem-routed traffic is transit traffic.[346] Finally, AT&T contends that, contrary to Verizon's characterization, AT&T's witness did not testify that AT&T seeks to evade its responsibility to establish reciprocal compensation arrangements with other carriers. Rather, AT&T states that its testimony reflects the common practice among indirectly interconnected carriers of agreeing to exchange traffic on a bill and keep basis.[347]

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[340] *See* AT&T Reply at 13; 47 U.S.C. § 251(a)(1).

[341] *See* AT&T Brief at 35.

[342] *See id.* at 35.

[343] *See id.* at 37.

[344] *See id.* at 35-36. Under Issue I-4, AT&T argues that competitive carriers typically install new facilities operating at a higher capacity than DS-1, such as DS-3. *See id.* at 28-29; *supra,* Issue I-4.

[345] *See* AT&T Brief at 36.

[346] *See id.* at 37, citing Tr. at 2224.

[347] *See* AT&T Reply at 16. *See also* Tr. at 2191.

110. Like AT&T, WorldCom argues that Verizon's restrictions on transit service would frustrate the Act's requirement in section 251(a)(1) that carriers be allowed to use indirect interconnection, which WorldCom states necessarily involves the use of a third carrier's facilities.[348] WorldCom also echoes AT&T's arguments that Verizon's proposal discriminates between competitive LECs and other carriers, such as interexchange and wireless carriers, that interconnect at Verizon's tandem switches.[349] WorldCom states that Verizon has not demonstrated that transit traffic contributes in any meaningful way to tandem exhaustion.[350] WorldCom adds that Verizon's restrictions on transit service conflict with Verizon's obligation to provide UNE tandem switching, as required under section 251(c)(3) of the Act and section 51.319(c) of the Commission's rules.[351] WorldCom characterizes the provision of transit service as nothing more than the provision of tandem switching for the routing of traffic between carriers.[352]

111. WorldCom also argues that transit service is the most efficient form of interconnection for carriers that exchange only minimal amounts of traffic. Transit service, according to WorldCom, allows such carriers to avoid the fixed costs of an interconnection facility that would be used only minimally and the unnecessary expense of negotiating multiple interconnection arrangements.[353] WorldCom adds that the issue of direct interconnection between carriers exchanging transit traffic is markedly different from the issue of implementing direct trunks to Verizon end offices upon reaching a DS-1 level of traffic, to which WorldCom has agreed. According to WorldCom, direct interconnection between carriers in lieu of transiting arrangements would require the construction of new physical interconnection facilities, whereas direct trunks to Verizon end offices are established over existing transport facilities.[354] WorldCom states that, when it does choose to install new carrier class transport facilities, they operate at a transmission rate of OC-48, or sometimes OC-3 and OC-12, far greater than the DS-1 threshold that would apply under Verizon's proposed terms for transit traffic.[355] WorldCom states that there is simply no carrier class transmission equipment to transport a DS-1 level of traffic any significant distance between two points.[356] Furthermore, WorldCom states that Verizon's proposal would result in inefficiencies for the entire network, due to the number of

[348] *See* WorldCom Brief at 27.

[349] *See id.* at 30.

[350] *See id.* at 30.

[351] *See id.* at 27-28. *See also* 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.319(c).

[352] *See* WorldCom Brief at 28, citing Tr. at 2282.

[353] *See id.* at 28.

[354] *See id.* at 29.

[355] *See id.* at 29.

[356] *See id.* at 30.

additional trunks required of each carrier in order for it to be interconnected directly with other carriers.[357] WorldCom argues that its proposal, by contrast, would allow all subscribers of one carrier to call all subscribers of other carriers over an efficiently constructed network via transit arrangements.[358]

112. WorldCom also argues that its language requiring Verizon to act as a billing intermediary for WorldCom's transit traffic makes efficient use of Verizon's existing billing arrangements, and is consistent with industry billing guidelines.[359] WorldCom adds that Verizon has used such an approach for several years.[360] WorldCom states that its proposal reduces the number of records exchanged and the number of bills to render and to audit for all carriers. WorldCom argues that its proposal requires less effort of Verizon than would be required if Verizon excluded charges for transit traffic on its bills to third-party carriers.[361] According to WorldCom, its approach also ensures that all carriers along the route are compensated for the portion of the call that they carry.[362] According to WorldCom, under its proposal the originating carrier ultimately would be liable for any compensation owed for transit traffic.[363] WorldCom adds that Verizon included language in the November Decision Point List (DPL) making WorldCom a guarantor of Verizon's compensation for transit traffic from WorldCom. According WorldCom, this language belies any objections Verizon has to WorldCom's proposal.[364]

113. Verizon states that AT&T and WorldCom, like all telecommunications carriers, individually have the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[365] Verizon argues that both AT&T and WorldCom attempt to turn this *duty* into a *right* against Verizon as an incumbent LEC. According to Verizon, there is no requirement that incumbent LECs help competitive LECs satisfy their own interconnection obligations, including the obligation to interconnect

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[357] In WorldCom's example, ten carriers interconnected via Verizon's network would require a total of ten trunks to interconnect. According to WorldCom, for the same carriers to interconnect directly with each other, 50 trunks would be required. *See* WorldCom Brief at 29-30.

[358] *See id.* at 28.

[359] *See id.* at 44.

[360] *See id.* at 44.

[361] *See id.* at 45.

[362] *See id.* at 44.

[363] *See id.* at 41-42.

[364] *See id.* at 42.

[365] *See* Verizon NA Brief at 34, quoting 47 U.S.C. §251(a)(1).

"indirectly" with other carriers.[366] Instead, Verizon states that its tandem transit service is purely voluntary, and thus that its DS-1 traffic level limitation does not violate any part of section 251.[367] Under Verizon's proposal to AT&T, once AT&T's exchange of transit traffic with any carrier exceeds a DS-1 level, Verizon would be permitted to charge for that traffic non-usage sensitive charges for trunk ports and a billing fee reflecting the charges assessed by Verizon's billing vendor.[368] Verizon's trunking charge is a non-usage-sensitive port charge from Verizon's access tariff.[369] Verizon's billing charge is a pass-through of the charges Verizon pays its billing vendor to bill for Verizon's transit services.[370] Verizon's proposal to AT&T also allows Verizon to stop providing transit service for such traffic after a transition period of 60 days.[371] Under Verizon's proposal to WorldCom, Verizon would be permitted to stop providing WorldCom's transit service once it exchanges transit traffic with any carrier exceeding a DS-1 level.[372] Consistent with its position under Issue I-4, for direct end office trunking of tandem traffic exchanged between the petitioners and Verizon, Verizon contends that a DS-1 level of traffic is an appropriate threshold at which AT&T and WorldCom should implement direct trunks for traffic they exchange with third-party carriers. Verizon states that it needs to limit the amount of traffic at its tandems resulting from such transit traffic.[373] Furthermore, Verizon suggests that the petitioners merely seek to avoid the burdens of negotiating and implementing direct interconnection with third-party carriers. Verizon states that requiring the petitioners to interconnect directly with third-party carriers at the DS-1 level provides an appropriate incentive to begin interconnection negotiations with third-party carriers.[374]

114. Verizon also objects to WorldCom's proposed language requiring Verizon to act as billing intermediary for transit traffic WorldCom exchanges with third-party carriers.[375] According to Verizon, although AT&T did not propose similar language, its testimony indicates that it expects Verizon to perform similar billing functions for AT&T's transit traffic.[376] Verizon

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366 *See id.* at 34.

367 *See id.* at 34.

368 *See id.* at 37.

369 *See id.* at 37; Tr. at 2265.

370 Tr. at 2288-90.

371 *See* Verizon's November Proposed Agreement to AT&T, § 7.2.4.

372 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 11.4.

373 *See* Verizon NA Brief at 35.

374 *See id.* at 36-37.

375 *See id.* at 38.

376 *See id.* at 41, citing Tr. at 2191.

argues that nothing in the Act requires it to provide such a service.[377] Furthermore, Verizon argues that requiring it to provide such a billing function contravenes the petitioners' own duties to establish reciprocal compensation arrangements with other carriers.[378] Verizon adds that nothing in WorldCom's proposed contract language protects Verizon in the event a third-party carrier charges Verizon a reciprocal compensation rate that differs from the rate Verizon and WorldCom charge each other.[379] Verizon contends that, because no Verizon customer is involved when Verizon transits traffic, it is manifestly unfair for Verizon to become involved in disputes over compensation between WorldCom and third-party carriers, or for Verizon to bear any losses as a result of such disputes.[380] Verizon contends that its proposed contract language to both petitioners provides them with appropriate incentives to establish suitable business relationships with third-party carriers, and protects Verizon from acting as a billing and collection agent on their behalf.[381]

c. Discussion

115. We adopt Verizon's proposal to AT&T, with the following modifications.[382] For traffic above the DS-1 threshold, AT&T has not demonstrated that the additional charges Verizon may apply to this transit traffic are impermissible. Given the absence of Commission rules specifically governing transit service rates, we decline to find that Verizon's additional charges are unreasonable. We also find that Verizon's proposed 60-day transition period is reasonable, providing AT&T adequate time to arrange to remove its transit traffic from Verizon's tandem switch once the traffic meets the DS-1 threshold. We determine, however, that Verizon's language allowing it to terminate tandem transit service after this transition period at its "sole discretion" is not reasonable.[383] This provision creates too great a risk of service disruption to AT&T's end users. Moreover, we are concerned that Verizon's proposal creates uncertainty and would be unworkable, because it puts Verizon in the position of determining whether AT&T has used "best efforts" and whether it has been unable to reach an agreement "through no fault of its own." We are thus concerned that Verizon's proposed language could lead to further disputes between the parties. Furthermore, we decline to adopt Verizon's

[377] *See id.* at 39.

[378] *See id.* at 39.

[379] *See id.* at 40.

[380] *See id.* at 40.

[381] *See id.* at 41.

[382] Specifically, we adopt, without modification, Verizon's November Proposed Agreement to AT&T, §§ 5.7.5.5 and 7.2.1, 7.2.2, 7.2.3, 7.2.6, 7.2.8. We adopt § 7.2 4 with the modifications described herein. We do not address § 7.2.7 here, which is the subject of Issue V-16 below.

[383] *See* Verizon's November Proposed Agreement to AT&T, § 7.2.4.

proposal to the extent it envisions the Commission essentially arbitrating a competitive LEC-to-competitive LEC interconnection agreement.

116. We thus reject the sentence in section 7.2.4 beginning with "At the end of the Transition Period, Verizon may, in its sole discretion" and ending with "then Verizon will not terminate the Transit Traffic Service until the Commission has ruled on such petition." Instead, we direct the parties to insert language directing AT&T, as soon as it receives notice from Verizon that its traffic has exceeded the DS-1 cut-off (i.e., as soon as what Verizon calls the transition period begins),[384] to 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. This language should make clear that Verizon may use the dispute resolution process if it feels that AT&T has not exercised good faith efforts promptly to obtain such an agreement. We find that these modifications are not burdensome to Verizon. Verizon will be adequately compensated because it may levy its trunk and billing charges for the tandem transit service it provides during the time that AT&T negotiates with the other carrier. Moreover, any extension of Verizon's tandem transit offering would be limited, as Verizon would be able to terminate this offering if AT&T is ultimately found through the dispute resolution process not to be exercising its best efforts to obtain an agreement.

117. We reject AT&T's proposal because it would require Verizon to provide transit service at TELRIC rates without limitation.[385] While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's rules implementing section 251(c)(2),[386] the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty. In the absence of such a precedent or rule, we decline, 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.[387] Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.

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[384] To remove ambiguity in this language and to remain consistent with our determination for Issue I-4, we modify Verizon's language specifying the measurement of the DS-1 threshold of traffic. We amend Verizon's proposed threshold from "one (1) DS-1 and/or 200,000 combined minutes of use ... for any three (3) months in any consecutive six (6) month period or for any consecutive three (3) months" to "200,000 combined minutes of use ... for any consecutive three (3) months." *See* Verizon's November Proposed Agreement to AT&T, § 7.2.4. *See also supra*, Issue I-4.

[385] *See* AT&T's November Proposed Agreement to Verizon, § 7.2.1-7.2.3.

[386] *See Local Competition First Report and Order*, 11 FCC Rcd at 15844, para. 672; 47 C.F.R. §§ 51.501, 51.503(b)(1).

[387] *See supra*, Introduction (discussing the Commission's delegation of authority to the Bureau to conduct this arbitration).

118. For the reasons provided below, we reject Verizon's proposal to WorldCom.[388] Verizon's proposal to WorldCom allows Verizon to terminate transit service for transit traffic exceeding the level of 200,000 minutes of use in one month. Unlike Verizon's proposal to AT&T, its proposal to WorldCom does not provide a transition period during which WorldCom would be able to form an alternative interconnection arrangement before Verizon stopped providing transit service. Furthermore, Verizon's proposal to WorldCom does not suspend Verizon's ability to terminate transit service if WorldCom is unable, through no fault of its own, to form an alternative interconnection arrangement. We find that Verizon's proposal, which gives it unilateral authority to cease providing transit services to WorldCom, creates too great a risk that WorldCom's end users might be rendered unable to communicate through the public switched network. The Commission has held, in another context, that a "fundamental purpose" of section 251 is to "promote the interconnection of all telecommunications networks by ensuring that incumbent LECs are not the only carriers that are able to interconnect efficiently with other carriers."[389] In this instance, allowing Verizon to "terminate" transit service abruptly, with no transition period or consideration of whether WorldCom has an available alternative, would undermine WorldCom's ability to interconnect indirectly with other carriers in a manner that is inconsistent with the "fundamental purpose" identified above. Moreover, such a result would put new entrants at a severe competitive disadvantage in Virginia, and would undermine the interests of all end users in connectivity to the public switched network.[390] Thus, we decline to adopt Verizon's proposal to WorldCom.

119. We also reject WorldCom's proposal to Verizon.[391] Like AT&T's proposed language, WorldCom's proposal would require Verizon to provide transit service at TELRIC rates without limitation. WorldCom's proposal would also require Verizon to serve as a billing intermediary between WorldCom and third-party carriers with which it exchanges traffic transiting Verizon's network. We cannot find any clear precedent or Commission rule requiring Verizon to perform such a function. Although WorldCom states that Verizon has provided such a function in the past, this alone cannot create a continuing duty for Verizon to serve as a billing intermediary for the petitioners' transit traffic. We are not persuaded by WorldCom's arguments that Verizon should incur the burdens of negotiating interconnection and compensation arrangements with third-party carriers. Instead, we agree with Verizon that interconnection and

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[388] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 11 *et seq.*

[389] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, Fourth Report and Order, 16 FCC Rcd 15435, 15478, para. 84 (2001) (*Collocation Remand Order*), *aff'd sub nom. Verizon Telephone Cos. v. FCC*, Nos. 01-1371 *et al.* (D.C. Cir., decided June 18, 2002) (*Verizon v. FCC*).

[390] As the Commission has recognized, "increasing the number of people connected to the telecommunications network makes the network more valuable to all of its users." *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, 8783 para. 8 (1997).

[391] *See* WorldCom's November Proposed Agreement to Verizon, Attach. I, § 4.8 *et seq.*, and Attach. IV, § 10 *et seq.*

reciprocal compensation are the duties of all local exchange carriers, including competitive entrants.[392] Accordingly, we decline to adopt WorldCom's proposal for this issue.

120. Having rejected both the Verizon and WorldCom proposals to each other for this issue, we exercise our discretion under the Commission's rules to adopt language submitted by neither party.[393] We find that the language Verizon has proposed to AT&T, with the modifications discussed above, represents a reasonable approach for WorldCom's transit traffic as well. Indeed, during the hearing, Verizon's witness indicated that Verizon would be willing to offer its AT&T proposal to WorldCom as well.[394] For the reasons explained above, we find that this proposal allows WorldCom to exchange transit traffic with third-party carriers with some measure of protection against the service disruption that could result from Verizon's termination of its transit service. Verizon's proposed language is the most consistent with the Commission's rules and the Act. Accordingly, we adopt the modified Verizon proposal to AT&T with respect to WorldCom.[395]

121. Although we adopt Verizon's language, we emphasize that Verizon's proposed terms for transit service should not be interpreted or applied to restrict the petitioners' rights to access UNEs. (These network elements could include, for example, tandem switching and interoffice transport.[396]) Verizon's testimony indicates that there is currently no tandem switching UNE in service in Virginia, or for that matter in any of the 14 Verizon East states.[397] We note, however, that Verizon has not argued that competitive LECs should be prevented from using UNEs to exchange transit traffic with third-party carriers. To avoid such a result, we remind the parties of the petitioners' rights to access UNEs independent of Verizon's terms for transit service. Furthermore, we caution Verizon not to apply its terms for transit service as a restriction on the petitioners' rights to access UNEs for the provision of telecommunications services, including local exchange service involving the exchange of traffic with third-party carriers.

7. Issues III-3, III-3-A (Mid-Span Fiber Meet-Point Interconnection)

a. Introduction

[392] *See* Verizon NA Brief at 34, 39-40.

[393] *See* 47 C.F.R. § 51.807(f)(3).

[394] *See* Tr. at 2256.

[395] *See* Verizon's November Proposed Agreement to AT&T, § 7.2.

[396] *See* AT&T Brief at 34. *See also* 47 C.F.R. § 51.319(c) and (d).

[397] *See* Tr. at 2237, 2274. The Verizon East states include the 14 states served by Bell Atlantic prior to the merger of Bell Atlantic and GTE. *See id.* at 2274.