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October 28, 2003

Marlene R. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 01-92

Dear Ms. Dortch:

On behalf of US LEC Corp., RCN Telecom Services, Inc., Starpower Communications, LLC, Focal Communications Corporation, and Pac-West Telecomm, Inc., I am writing in response to the *ex parte* filing by Verizon dated September 4, 2003. Verizon's filing documents a presentation to the members of the Wireline Competition Bureau regarding two issues: Verizon's obligation to provide transit services to competitive local exchange carriers ("CLECs") through its tandem switches; and the regulatory treatment of Foreign Exchange services provided by CLECs, described as "Virtual NXX."

Incumbent Local Exchange Carrier Transit Traffic Obligations

Verizon makes three assertions regarding its transit traffic obligations under the Telecommunications Act of 1996: First, Verizon asserts that "nothing in the Act requires Verizon to accept and transport traffic destined for a third party carrier." Second, Verizon asserts that "an ILEC voluntarily offering transit service is not constrained by TELRIC pricing rules." And third, "an ILEC voluntarily offering transit service is not required to pay reciprocal compensation to a third party when delivering transit traffic." Verizon is wrong on all three counts.

Verizon places great reliance on the Wireline Competition Bureau's *Virginia Arbitration Order* for the notion that the Telecom Act does not require Verizon to provide tandem transit service for traffic between other local exchange carriers under section 251(c)(2). Yet that was not the issue presented or decided in the *Virginia Arbitration Order*. In that case, the only issue

presented to the Bureau for resolution was whether Verizon was required to provide tandem transit service at TELRIC rates.[1] Whether Verizon had an obligation to provide tandem transit under the Act was not an arbitrated issue.

In fact, section 251(c)(2) requires Verizon to provide interconnection with its network "for the transmission and routing of telephone exchange service and exchange access." This requirement is not limited only to the routing of traffic between Verizon and the requesting carrier. In order for a competitive carrier to transmit and route telephone exchange service to a third-party carrier, Verizon has an obligation under 251(c)(2) to provide tandem transit service.

Apart from that, Verizon's argument misses the obvious. Even if section 251(c)(2) were interpreted not to require Verizon to provide tandem transit service, the actual function provided by Verizon when it provides tandem transit—tandem switching—is a requirement of the Telecom Act. Rule 51.319(d) makes clear that the tandem switching capability is an unbundled network element that Verizon must provide pursuant to section 251(c)(3). CLECs that rely on Verizon to provide tandem transit service are simply invoking their rights to obtain the tandem switching UNE from Verizon in combination with their own facilities and facilities of other carriers.

The *Virginia Arbitration Order* made clear that its discussion of Verizon's rights under section 251(c)(2) in no way limited CLEC rights to obtain UNEs under section 251(c)(3):

> 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.)[2]

In response to Verizon's assertion that it had not yet established tandem switching UNE rates in any of the 14 states in its service territory, the Bureau responded:

> 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

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[1] *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*, Memorandum Opinion and Order, WCB Dkt. No. 00-218 et al., DA 02-1731 (rel. July 17, 2002) ("*Virginia Arbitration Order*") at ¶ 117.

[2] *Id.* at ¶ 121.

> petitioners' rights to access UNEs independent of Verizon's terms for transit service.[3]

The Commission's *Triennial Review Order* does not alter this analysis because the *Triennial Review Order* did not address stand-alone tandem switching.[4] Instead, it focused on the provision of local switching, including tandem switching, in connection with the use of local loops.[5] While a separate state commission impairment analysis may be required for stand-alone tandem switching under the terms of the *Triennial Review Order*, it has not been established that Verizon no longer has the obligation to provide tandem switching as a UNE on a stand-alone basis.

It follows that if a CLEC obtains tandem switching from Verizon as a UNE, tandem switching is available at rates using the Commission's forward-looking cost methodology.[6] Further, it is not correct that Verizon has not established tandem switching rates. The tandem switching rate is a component of Verizon's reciprocal compensation rate in the same way that end office switching is a component of Verizon's reciprocal compensation rate. Thus, Verizon's argument that it has no obligation under the Act to provide a tandem transit service at TELRIC is simply not credible.

Finally, in some interconnection agreements, Verizon has agreed to pay reciprocal compensation to the terminating party when it provides tandem transit service to the originating party.[7] The reason for this, of course, is that Verizon has the billing mechanisms with both parties in place, and Verizon can easily bill the originating carrier to recoup reciprocal compensation payments at the same time that it collects its tandem transit charges. Verizon's approach in its *ex parte* simply imposes additional burdens, and additional costs, on competitive carriers, and should be rejected.

CLEC Foreign Exchange Services

Verizon's second presentation addresses so-called "Virtual NXX Codes." Reading Verizon's presentation, one might think that CLECs have invented the practice of "assign[ing]

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3 *Id.*

4 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking CC Docket Nos. 01-338, 96-98 and 98-147, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*").

5 *See, e.g., Triennial Review Order* ¶ 431 ("Although in the past the Commission's rules required incumbent LECs to provide switching unbundled from other network elements, competitors widely use unbundled local circuit switching in combination with incumbent LEC loops and shared transport.")

6 47 C.F.R. § 51.503.

7 *See, e.g.,* Sections 7.2.1 and 7.25, Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Dated as of November 1, 1998 by and between Bell Atlantic – New Hampshire and Global NAPs, Inc.

NXXs to ILEC rate centers for use by customers located in far-distant rate center [sic]." In fact, CLEC Foreign Exchange service is now, and always has been, a competitive response to Foreign Exchange services offered by ILECs like Verizon. The regulatory treatment of CLEC Foreign Exchange service can be no different than the regulatory treatment of ILEC Foreign Exchange service, and ILEC Foreign Exchange service has always been regulated as "local" traffic within the ILEC's Telephone Exchange Service tariffs.

As a preliminary matter, the elaborate diagrams showing the Verizon exchanges in which CLECs have assigned central office codes demonstrate very little. The diagrams show only the location of the CLEC switch—they show nothing of the location of the CLEC customers, or the transport arrangements the CLECs have put in place to deliver traffic to their customers once they receive the call from Verizon. US LEC, for example, is the subject of a Verizon diagram on page 15. What Verizon does not show is the SONET ring operated by US LEC throughout the Tampa-St. Petersburg metropolitan area. Starpower is represented on page 7, but Verizon does not show the extensive network facilities Starpower has deployed throughout the Washington Metropolitan area to serve its customer base comprised primarily of residential customers. Similarly, Focal's interconnection with Verizon in Southern California is depicted on page 13. Again, there is no depiction of the transport facilities deployed by Focal. At best, the Verizon diagrams illustrate that US LEC, Starpower, and Focal are in full compliance with the FCC requirement that a CLEC establish at least one point-of-interconnection in each LATA. US LEC, Starpower, and Focal can hardly be blamed for the size of the LATAs in which they provide service.

Moreover, the physical location of the CLEC customer has no bearing on the amount of transport Verizon is required to provide to complete a call. Verizon has acknowledged previously that its transport obligations to the point of interconnection with a CLEC do not vary based on the location of the CLEC customer.[8] Once Verizon hands off the call, the transport and termination of the call is the CLEC's responsibility.

Verizon also quotes marketing literature from Pac-West (page 5) and Focal (page 6) to illustrate that both of these carriers provide a Foreign Exchange service to ISPs. Verizon fails to mention that it provides services that are targeted directly at the ISP industry and provide similar, if not competitively identical, advantages to CLEC services. In addition to the traditional Foreign Exchange service found in its tariff, Verizon offers "CyberPOP" service, described as a "Remote Access Service" that allows subscribers to expand into new areas by utilizing Verizon's network infrastructure. Verizon's website literature for the service states as follows:

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[8] Rebuttal Testimony of Terry Haynes (Verizon) at 12, Petition of US LEC of Florida Inc. For Arbitration with Verizon-Florida, Inc. Pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Docket No. 020412-TP (Fla. P.S.C.).

> Verizon's CyberPOP™ Dedicated Dial Access platform gives you a virtual point of presence in a Verizon Central Office. CyberPOP enables ISPs to offer dial-up Internet access through Verizon Central Offices serving as remote access points . CyberPOP provides analog and digital dial-up modems which permit you to collect, concentrate and transport subscribers' service to your designated ISP location.[9]

Verizon also provides a service called "IPRS." Verizon's on-line literature for IPRS notes:

> IPRS assigns you ports into Verizon access servers. When your customer wants Internet connection, their calls go through the local telephone network to the IPRS hub. There, IPRS connects and aggregates your customer traffic and delivers it over a fast-packet connection to your POP.[10]

Verizon also provides a service known as Enhanced IntelliLinQ, which Verizon has described as a data-only, one-way service that is offered primarily to ISP providers. It allows ISPs to have local numbers in every local calling area in a LATA, giving the ISP a virtual presence in every local calling area. The service allows the ISP's customers to reach the ISP through dialing a local call and now that Verizon has received interLATA authority under section 271 of the Act, the ISP can be located outside of the LATA, even out of state.

Clearly, Verizon's CyberPOP, IPRS and Enhanced IntelliLinQ services provide the same functionality as CLEC services. CyberPOP, Enhanced IntelliLinQ and IPRS provide the ISP customer a local number in a local calling area where the ISP is not physically located, permitting the ISP to establish a "virtual" presence in that local calling area without incurring the expense of deploying additional facilities in that area. Verizon's service is functionally similar to service offered by CLECs, with hubbing service, aggregation of calls, and delivery to points of presence located in other places. As Verizon acknowledges, the clear benefit to the ISP industry is that an ISP may establish a local presence in numerous local calling areas without having to deploy facilities and modem banks in each and every one of those local calling areas. The ISP subscribers also benefit by being able to access their ISP by placing a local call.

Further, Verizon attempts to lump all CLEC Foreign Exchange traffic into one category when the law requires a different analysis. The primary issue presented by Verizon is intercarrier compensation, yet Verizon makes no attempt to explain how the Commission's *ISP*

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[9] http://www22.verizon.com/wholesale/isp/products/0,5747,1-7855-2-Applications-Description,00.html.

[10] http://www22.verizon.com/wholesale/isp/products/0,5747,1-7858--,00.html.

Remand Order resolves the compensation matters with respect to traffic to Internet service providers. [11]

ISP Remand Order and CLEC Foreign Exchange

Verizon's new views on intercarrier compensation for ISP-bound traffic certainly are not consistent with the approach Verizon has taken previously. Verizon asserts now that whether a call to an ISP should be rated as "local" or not depends on the physical location of the calling party and the ISP modem. In other words, a call to an ISP must be a toll call if the calling party and the ISP modem are not located in the same local calling area. Of course, this presupposes that the call to the ISP terminates at the modem, a position that Verizon assiduously avoided making prior to the *ISP Remand Order.*[12]

Verizon cannot have it both ways with respect to ISP-bound traffic. The *ISP Remand Order* does not apply only to "local" ISP-bound traffic.[13] The FCC did *not* distinguish "local" ISP-bound traffic from "non-local" ISP-bound traffic. In fact, the FCC repudiated its earlier distinction between "local" and "non-local" for *all* traffic:

> This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection [251](b)(5) as all "local" traffic. We also refrain from generally describing traffic as "local" traffic because the term "local," not being a statutorily defined category,

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[11] *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 (2001), remanded, WorldCom v. FCC, 288 F.3d 429 (D.C. Cir. 2002), cert. den. 538 U.S. ___ (May 5, 2003) ("*ISP Remand Order*") at ¶ 45. Although the U. S. Court of Appeals for the D.C. Circuit remanded the *ISP Remand Order* to the FCC for further consideration, the Court did not vacate the Order, leaving the federal compensation regime in place while the FCC deliberates the issue once again. Accordingly, even though the legal reasoning providing the authority for the FCC to promulgate its federal compensation regime has been rejected, the federal compensation regime itself remains intact and applies in this case.

[12] Actually, Verizon's latest argument constitutes a second reversal of course. In Bell Atlantic's Reply Comments in the 1996 Local Competition Order proceeding, Bell Atlantic argued that calls to "internet access providers" would be local calls subject to reciprocal compensation obligations; therefore, Bell Atlantic argued, it had a strong incentive not to set reciprocal compensation rates too high. Bell Atlantic Reply Comments, CC Dkt 96-98 (May 30, 1996). Eleven months later in April 1997, when it learned that the price of its successful advocacy before the Commission was owing millions of dollars to CLECs, Bell Atlantic adopted the new position that reciprocal compensation was not owed for ISP-bound traffic.

[13] *See* Comments of Focal Communications Corporation, Pac-West Telecomm, Inc., RCN Telecom Services, Inc., and US LEC Corp., CC Dkt 01-92 (Aug. 21, 2001) at 59-60.

> is particularly susceptible to varying meanings, and significantly, is not a term used in section 251(b)(5) or section 251(g).[14]

All ISP-bound traffic falls within the scope of the FCC's compensation regime, including traffic to ISPs using CLEC Foreign Exchange arrangements. The location of the ISP's modem banks is irrelevant to what the CLEC and the ILEC pay each other for exchanging traffic under the FCC's intercarrier compensation regime.

Further, the FCC was fully aware that CLECs were using virtual NXX arrangements to serve ISPs long before the *ISP Remand Order* was released. Several carriers—both ILECs and CLECs—consulted with the FCC about how virtual NXX needed to be considered prior to issuance of the order.[15] In fact, the *ISP Remand Order* makes clear that the new federal regime applies to *all* ISP-bound traffic even if it does not specifically address virtual NXX traffic: "We conclude that this definition of 'information access' was meant to include *all access traffic* that was routed by a LEC 'to or from' providers of information services, of which ISPs are a subset."[16] Nowhere does the *Order* limit its regime to "local" ISP-bound traffic.

In sum, in the *ISP Remand Order*, the Commission abandoned an intercarrier compensation regime based upon the origination and termination points of a communication to an information service provider. The FCC rejected the analytical framework that looked at whether a call terminated within a local calling area to decide whether it was subject to Section 251(b)(5) reciprocal compensation or intercarrier compensation.[17] Instead, the FCC focused on whether the traffic was terminated to an information service provider, such as an ISP.[18] Under the *ISP Remand Order,* all traffic to ISPs is considered interstate information access, whether the ISP and its customer are across the street from each other or across the state. Because all traffic terminated to an information service provider is subject to the federal compensation regime, it makes no difference whether the ISP is assigned a virtual NXX code to receive calls.

Other states

A number of state commissions have concluded that the federal compensation regime applies to all ISP-bound traffic, including CLEC Foreign Exchange ISP-bound traffic. The Public Utilities Commission of Ohio stated, "The Commission agrees ... that all calls to

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14 *ISP Remand Order* at ¶ 34.

15 *See* ex parte filings in FCC CC Docket No. 99-68: Letter dated March 28, 2001 from Gary L. Phillips, SBC Telecommunications, Inc., to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 3; Letter dated March 7, 2001 from Susanne Guyer, Verizon, to Dorothy Atwood, at 2-3; Letter dated December 13, 2000 from John T. Nakahata, Counsel to Level 3 Communications, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 1.

16 *ISP Remand Order* at ¶ 44 (emphasis added).

17 *ISP Remand Order* at ¶¶ 26-30.

18 *Id* .at ¶¶ 34-47.

FX/virtual NXX [numbers] that are also ISP-bound are subject to the inter-carrier compensation regime set forth in the ISP Remand Order."[19] Similarly, the Public Service Commission of Michigan ruled in a Section 252 arbitration proceeding that, with respect to virtual NXX traffic, the *ISP Remand Order* "takes care of ISP traffic."[20]

An Arbitration Panel of the Texas Public Utility Commission has also considered the issue, and specifically addressed a position similar to the one taken by Verizon. The Texas Arbitrators rejected the argument that "the ISP Remand Order does not apply to all types of ISP-bound traffic, but only to ISP traffic that originates and terminates in the same local calling area."[21] Because the FCC had said ISP-bound traffic was subject to Section 251(g) rather than Section 251(b)(5), all compensation for it was governed by the FCC's rules adopted under its Section 201 authority.[22]

In an arbitration proceeding in Wisconsin concerning the same type of FX-like service that is at issue here, the Arbitrator found that the FCC's intercarrier compensation regime "expressly provides for a single compensation rate without respect to the terminating point of the call."[23] Similarly, in Washington, the Utilities and Telecommunications Commission agreed that the *ISP Remand Order* applied to all ISP-bound traffic, regardless of the terminating point of the call.[24] In California, the Commission ruled in an arbitration proceeding that the FCC's *ISP Order on Remand* governs intercarrier compensation arrangements between carriers for the transport and termination of all ISP-bound traffic, including virtual NXX traffic.[25] The Oregon Public Utilities Commission has also concluded that the FCC had preempted its ability to rule on

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[19] *Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award (PUC Ohio Oct. 4, 2001) at 9. *See also, Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (PUC Ohio May 9, 2002) (same result).

[20] *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sep. 7, 2001), 2001 WL 1335639.

[21] *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, PUC Docket No. 241015, Revised Arbitration Award (Tex. PUC Aug. 28, 2002) at 31.

[22] *Id*

[23] *In the Matter of Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms and Conditions With CenturyTel of Wisconsin*, Docket 05-MA-130, Arbitration Award (WI PSC Dec. 2, 2002) ("Wisconsin Arbitration Order") at 20-21.

[24] *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc.*, Docket No. UT-023043, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb. 27, 2003), at 2-4.

[25] *Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.01-11-045, A.01-12-026, Opinion Adopting Final Arbitrator's Report With Modification (Cal. PUC July 5, 2002).

compensation matters for ISP-bound virtual NXX traffic and that all ISP-bound traffic was subject to the FCC regime.[26]

It is clear that the intercarrier compensation regime applicable to ISP-bound traffic established in the *ISP Remand Order* applies to all ISP-bound traffic, including ISP-bound traffic using CLEC Foreign Exchange arrangements. Further, it would be illogical to have different intercarrier compensation regimes based upon the location of the calling party and the called ISP modem when the Commission has already ruled that ISP-bound traffic does not terminate at the ISP modem.

Non-ISP-Bound Foreign Exchange Traffic Should Continue To Be Treated As Local Traffic For Intercarrier Compensation Purposes

Foreign Exchange arrangements (including CLEC and ILEC FX services) are a legitimate response to customer demands. Some customers have expressed an interest in obtaining telephone services that do not fit the rigid geographical requirements applicable to numbering resources. The allocation of numbering resources based upon geographic rate centers is a vestige of the monopoly-based number resource assignment system developed by AT&T in 1947.[27] Under the North American Numbering Plan, the numbering system, including NXX codes, was designed to support two functions of telephone networks—routing and rating of telephone calls. When the numbering rules were implemented, Harry Truman was President of the United States and telephone switches were mechanical. Even though the technology has advanced dramatically, Verizon wants to keep the regulatory requirements mired in the past. The Commission should reject this approach.

US LEC, Focal, Starpower, RCN, and Pac-West have already briefed the matter of the use of virtual central office codes for non-ISP-bound traffic.[28] A copy of the relevant portions of those Comments are attached. Verizon's presentation does not rebut any of the assertions made in the attached Comments. In particular:

- CLEC Foreign Exchange services are a competitive response to ILEC Foreign Exchange services, which have been provided for years.

- The originating carrier's switching and transport obligation is the same whether or not virtual central office codes are used by the terminating carrier. Since the originating carrier is required to switch and transport all traffic to the POI with the terminating

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[26] *In the Matter of the Investigation into the Use of Virtual NPA/NXX Calling Patterns*, UM 1058, Order (Ore. PUC May 27, 2003), *rehearing denied*, Order (Ore. PUC Sep. 16, 2003).

[27] *See Numbering Resource Optimization*, FCC CC Docket No. 99-200, Notice of Proposed Rulemaking (rel. June 2, 1999), at ¶ 1.

[28] *See* note 13, above.

carrier, the physical location of the terminating carrier's customer has no relevance to the level of transport the originating carrier must provide to complete the call. For this reason, the originating carrier should be completely indifferent as to where the terminating carrier's customer is located. Therefore, it makes no sense to require the terminating carrier to establish a POI in every ILEC-defined local calling area where it has an NXX code homed.

- The small "local calling areas" of the ILECs are an anachronism that is neither required nor appropriate in the contemporary telecommunications market. One need only look at the "all distance" plans offered by CMRS carriers, including CMRS carriers operated by Verizon and the other BOCs, to see that the local/toll distinction is doomed to extinction.

Since those Comments were filed, the Wireline Competition Bureau has had the opportunity to consider the regulatory requirements applicable to CLEC Foreign Exchange service. In the proceeding before the FCC's Wireline Competition Bureau, the ILEC position was summarized as follows:

> Verizon objects to the petitioners' call rating regime because it allows them to provide a virtual foreign exchange ("virtual FX") service that obligates Verizon to pay reciprocal compensation, while denying it access revenues, for calls that go between Verizon's legacy rate centers. This virtual FX service also denies Verizon the toll revenues that it would have received if it had transported these calls entirely on its own network as intraLATA toll traffic. Verizon argues simply that "toll" rating should be accomplished by comparing the geographical locations of the starting and ending points of a call.[29]

The CLECs involved in the FCC proceeding articulated the same arguments that the Commenters have presented to the Commission here. For example, calls to FX customers are indistinguishable from other calls that terminate within the local calling area,[30] and it would be difficult and costly to segregate that traffic. In the FCC Arbitration, AT&T stated this argument as follows:

> AT&T further notes that, if Verizon were to prevail in treating AT&T's virtual FX traffic as toll traffic, there would have to be some way to segregate the virtual FX traffic from section 251(b)(5) traffic. AT&T asserts that there is currently no way to accomplish

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29 *Virginia Arbitration Order* at ¶ 286.

30 *Id.* at ¶ 300.

> this by, as Verizon suggests, comparing the physical end points of a call. Furthermore, AT&T argues that a traffic study to determine the relative percentages of virtual FX and section 251(b)(5) traffic would be costly and overly burdensome.[31]

Considering all the arguments made by the parties, the Wireline Competition Bureau rejected Verizon's effort to change the way carriers compensate each other for exchanging FX traffic. The Wireline Competition Bureau stated:

> We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[32]

The Wireline Competition Bureau does not stand alone in reaching this conclusion. Several state commissions, when confronted with the same arguments that Verizon makes here, have reached the same result articulated in the *FCC Arbitration Order*. For example, the North Carolina Utilities Commission ("NCUC") has ruled that a CLEC's FX services should be treated as local traffic subject to reciprocal compensation.[33] The NCUC considered the decisions frequently relied upon by ILECs, particularly the decision of the Maine Public Utilities Commission regarding virtual NXX. Nevertheless, the NCUC found the case inapplicable.

> The Commission believes that the question which the Commission needs to decide in this issue is whether a telephone call from a BellSouth customer physically located in one rate center to a MCIm customer physically located in a different rate center but who has a NPA/NXX code from the same rate center as the caller placing the call is a local call or a long distance call. The Commission believes that based on the evidence presented in this

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31 *Id.* at ¶ 287 (footnotes omitted).

32 *Id.* at ¶ 301.

33 *Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. P-474, Sub 10, Recommended Arbitration Order (NCUC, adopted April 3, 2001).

> case, and assuming that MCIm has in place either owned or leased dedicated facilities between the FX customer's premises and the switch, the calls in question to the extent they are within a LATA should be classified as local and, therefore, subject to reciprocal compensation. The Commission notes that NPA/NXX codes were developed to rate calls and, therefore, MCIm's assertion that whether a call is local or not depends on the NPA/NXX dialed, not the physical location of the customer, is reasonable and appropriate.[34]

Accordingly, the NCUC concluded "that calls within a LATA originated by BellSouth customers to MCIm FX customers are to be considered local and, therefore, subject to reciprocal compensation."[35]

Similarly, the Kentucky Public Service Commission found that a CLEC's FX service should be treated the same as ILEC Foreign Exchange service, and both services should be treated as local traffic.

> Both utilities offer a local telephone number to a person residing outside the local calling area. BellSouth's service is called foreign exchange ("FX") service and Level 3's service is called virtual NXX service. The traffic in question is dialed as a local call by the calling party. BellSouth agrees that it rates foreign exchange traffic as local traffic for retail purposes. These calls are billed to customers as local traffic. If they were treated differently here, BellSouth would be required to track all phone numbers that are foreign exchange or virtual NXX type service and remove these from what would otherwise be considered local calls for which reciprocal compensation is due. This practice would be unreasonable given the historical treatment of foreign exchange traffic as local traffic.
>
> Accordingly, the Commission finds that foreign exchange and virtual NXX services should be considered local traffic when the

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34 *Id.* at 74.

35 *Id.*

> customer is physically located within the same LATA a[s] the calling area with which the telephone number is associated.[36]

Both of these decisions are consistent with the result reached by the Michigan Public Service Commission on a number of occasions. The Michigan Commission has considered this issue several times, and each time has decided not to reclassify foreign exchange service as non-local exchange traffic exempt from reciprocal compensation requirements.[37] Likewise, the Florida PSC concluded:

> [CLEC] witness Selwyn [states] that the practice of terminating a call in an exchange that is different than the exchange to which the NPA/NXX is assigned is nothing new. He contends that ILECs have been providing this service for decades through their [Foreign Exchange] service. We agree. We believe that virtual NXX is a competitive response to FX service, which has been offered in the market by ILECs for years.[38]

Finally, Verizon makes much of a US LEC service offering entitled "Local Toll Free service." (Verizon *ex parte* at 5). As is obvious from Verizon's exhibit (taken from US LEC's website), as well as from US LEC's state tariff, the "Local Toll Free Service" is offered by US LEC as part of its long distance and toll free services, *not* as part of its local service offering. Indeed, perusing US LEC's Local Exchange Carrier Tariff reveals that US LEC's foreign exchange service is tariffed as a local service[39] and "Local Toll Free service" is nowhere to be found. That is because the service Verizon referred to is provisioned as an enhancement to US

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[36] *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2000-404, Order (Ky. PSC March 14, 2001) at 7.

[37] *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sep. 7, 2001), 2001 WL 1335639; *Application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation*, Case No. U-12696, Opinion and Order (Mich. PSC Jan. 23, 2001); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Case No. U-12460, Opinion and Order (Mich. PSC Oct. 24, 2000); *Petition of Coast to Coast Telecommunications, Inc. for arbitration of interconnection rates, terms, conditions, and related arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan*, Case No. U-12382, Order Adopting Arbitrated Agreement (Mich. PSC Aug. 17, 2000); *Complaint of Glenda Bierman against CenturyTel of Michigan, Inc. d/b/a CenturyTel*, Opinion and Order, Case No. U-11821 (Mich. PSC Apr. 12, 1999).

[38] *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order on Reciprocal Compensation, Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP (Fla. P.S.C. Sep. 10, 2002) at 28 ("Florida Decision")

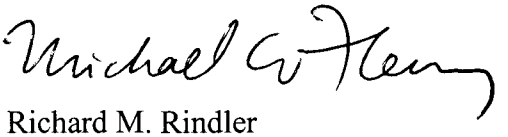
[39] Local Exchange Carrier Tariff within the Commonwealth of Pennsylvania, at Section 8.12 ("Foreign Exchange (FX) Service").

LEC's toll free service, its inbound 800 service. It bears no relationship at all to US LEC's Foreign Exchange service and should be ignored by the Commission in determining this issue.

Conclusion

The Commission should recognize that Verizon's objection to CLEC Foreign Exchange service is an attempt to undo the gains made by its competitors. Now that Verizon is no longer restrained by restrictions on providing in-region interLATA service, its reliance on the distinction between local and long-distance services is as anachronistic as the original numbering plan that established the postage-stamp local calling areas in the first place. For the foregoing reasons, the Commission should reject Verizon's approach and rule (1) that the intercarrier compensation regime established in the *ISP Remand Order* applies to all ISP-bound traffic, including ISP-bound traffic using CLEC Foreign Exchange arrangements; and (2) that CLEC Foreign Exchange service is a competitive response to ILEC Foreign Exchange service, and that both types of service should be treated as "local" traffic subject to reciprocal compensation obligations. Moreover, Verizon's proposals regarding tandem transit service overlooks the fact that Verizon is required to provide stand-alone tandem switching as a UNE, as the Commission recognized in the *Virginia Arbitration Order.*

Sincerely,



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