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

In the Matter of Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92

REPLY COMMENTS OF VERIZON
<u>IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING</u>

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INTRODUCTION AND SUMMARY

As Verizon has explained, the goal of any intercarrier compensation reform should be the replacement of the existing regimes of top-down regulation with negotiated, commercial agreements between interconnecting carriers. That is because a market-based approach, which relies upon such agreements, is the best long-term solution to ensuring the efficiency of telecommunications markets in the face of substantial technological change. Such an approach permits carriers to craft interconnection agreements that reflect the particular characteristics of the traffic they exchange and, moreover, to modify them rapidly to adapt to emerging technologies. Negotiated arrangements have proven successful in a variety of circumstances – most notably in the Internet – in the absence of either rate regulation or a regulatory mandate to enter into such arrangements in the first place.

Given the success of these agreements in other contexts, the Commission should be skeptical of claims that it must first create a new regulatory regime before there can be a transition to a regime of negotiated arrangements. And the Commission should reject claims that

[1] The Verizon telephone companies ("Verizon") are identified in Appendix A to Verizon's opening comments.

intercarrier compensation "reform" should take the form of regulatory mandates that impose a one-size-fits-all solution, such as a mandatory bill-and-keep regime. Such command-and-control regimes cannot produce efficient results given the complexities of today's (and tomorrow's) telecommunications markets. Indeed, the Commission's experience with the existing intercarrier compensation rules has demonstrated that even the most well-intentioned regulatory compensation regime can be manipulated in unforeseeable ways by carriers seeking arbitrage opportunities. Because such manipulation creates market inefficiencies that harm consumers, the Commission should reject proposals to replace old rigid regulatory mandates for intercarrier compensation with new ones. Instead, the Commission should allow interconnection arrangements to be based on market forces and negotiated commercial agreements.

In its opening comments, Verizon set forth five principles that the Commission should follow if it concludes that some transitional default rules – whether in the form of a default rate structure or a process for resolving disputes that may arise in negotiations – are appropriate during the shift to negotiated agreements. Any such default rules:

- must account for the fact – already reflected in market-based arrangements – that interconnection does not always benefit each of the interconnecting networks equally, and that companies will agree to forgo intercarrier compensation only where they perceive interconnection as providing equal value to each, but will insist on some form of compensation when that is not the case;
- should preserve existing negotiated arrangements – such as those that currently exist between and among the networks that make up the Internet or that are being entered into between networks that exchange packets on an Internet protocol ("IP") basis

without using the circuit-switched network – and facilitate additional ones, by ensuring that any default rule does not become a mandatory rule in practice;

- should provide for positive rates and a more uniform rate structure for various types of traffic than exists currently;
- should provide sufficient flexibility to ensure that carriers can recover the costs currently recovered through intercarrier compensation and can be compensated for the value provided by interconnection with other networks; and
- should not require disruptive changes to existing interconnection architectures as part of intercarrier compensation reform.

As Verizon demonstrated at length in its opening comments, all of the proposals made thus far fail to satisfy one or more of these principles. Verizon will not repeat those arguments here, as nothing in the comments filed in support of one proposal or another rectifies the serious flaws in each of the proposals.

Further, as Verizon explained, the Commission should not adopt new intercarrier compensation rules unless those rules will apply at *both* the interstate and *intrastate* levels. The Commission cannot remedy concerns regarding some carriers' efforts to exploit the disparity between interstate and intrastate rates unless it first concludes that it can preempt state regulation and assume control of all intercarrier compensation issues. Although the legal issue of the Commission's authority to regulate all intrastate traffic is non-trivial, there are reasonable arguments supporting preemption of existing state commission authority. Nonetheless, if the Commission were to conclude that it lacks preemptive authority over intrastate traffic, it should not resort to half-measures by modifying the rules for interstate traffic only, but should, instead, seek from Congress exclusive authority to regulate intercarrier compensation for both interstate and intrastate traffic.

As an immediate matter, the Commission should address the principal source of arbitrage problems under the existing rules, which is that some carriers have ignored or tried to evade those rules. The Commission should do so by making clear that all providers of voice telephone service that use the public switched network for interexchange traffic are subject to the existing access charge regime, while also expressly allowing carriers to negotiate voluntary compensation arrangements that depart from the existing rules. Other commenters have suggested additional rulings the Commission should issue while this rulemaking remains pending. Verizon addresses those issues, as well as commenters' claims regarding the Commission's authority to preempt state regulation of intercarrier compensation for intrastate traffic, in these reply comments.

First, the Commission should not establish a requirement that carriers, or incumbent carriers alone, provide transiting service to other carriers. Despite the fact that no such obligation exists today, carriers voluntarily provide transiting service at reasonable rates pursuant to commercial agreements or tariffs. There is thus no need for the Commission to interfere with such voluntary arrangements through regulation. In addition, nothing in the Telecommunications Act of 1996 ("1996 Act") requires transiting, nor are the conditions in 47 U.S.C. § 201 for imposing such an obligation satisfied. There is also no basis to claims that transit providers – rather than the carrier that sent the call through the transit provider's tandem – should be obligated to compensate terminating carriers. Upon request, Verizon provides the terminating carrier with the same information – including identification of the carrier that delivered the traffic to Verizon and the calling party and/or charge number that carrier passed to Verizon – that Verizon has and can use to bill for its transiting service. This same information should then be used by the terminating carrier to bill the carrier (the originating carrier or an IXC) that all agree is actually responsible for any intercarrier compensation. It is the carrier that delivers the traffic to Verizon's tandem, however, that should be responsible for ensuring both the accuracy of the call detail information passed to Verizon and that calls are routed to the appropriate tandems, pursuant to the Local Exchange Routing Guide ("LERG").

Second, the Commission should reject the proposals of some commenters to extend new (or existing) intercarrier compensation rules to the exchange of traffic between networks on an IP-to-IP basis. Instead, as Verizon has explained, regardless of whether the packets exchanged are carrying voice, data, or video, and regardless of the carrier involved, such exchanges should remain governed by voluntary, commercial agreements, not by regulation. Instead, any rules the Commission adopts should apply only to traffic exchanged on a circuit-switched basis, including traffic exchanged on an IP-to-circuit-switched basis.

Third, the Commission should reject various proposals to establish "cost"-based rates for intercarrier compensation for circuit-switched traffic. Instead, rates should be established through negotiated, commercial agreements between carriers. To the extent the Commission were to establish a default rate to apply in the absence of any agreement, it should not be based on any of the various proposed bases for calculating a carrier's "cost," which has proven to be an amorphous and readily manipulated regulatory concept, but instead should satisfy the principles Verizon has set forth in this proceeding. Namely, such a default rate should be positive, like the rates in market-based arrangements when interconnection does not benefit both networks equally, and should also ensure that carriers have the flexibility to recover the costs currently recovered through intercarrier compensation.

Fourth, the Commission should affirm that, under its existing rules, intercarrier compensation for virtual NXX calls that use the circuit-switched network is based on the location of the parties to the call, not the telephone number dialed. The Commission should also reject proposals to modify existing rules to require the originating carrier to pay compensation on virtual NXX calls, which are *called*-party-paid toll calls. As with all such calls – whether 1-800, traditional foreign exchange, or collect calls – it should remain the case that the default rule for virtual NXX calls is that the carrier originating a call to a virtual NXX number provided by a different carrier should *receive*, not pay, intercarrier compensation.

I. THE COMMISSION SHOULD NOT ESTABLISH A REQUIREMENT TO PROVIDE TRANSITING SERVICE

A. There has never been a requirement under federal law to provide transiting service. Despite this, carriers have voluntarily offered transiting service and have agreed to reasonable commercial arrangements with other carriers. There is no basis for the Commission to impose new, intrusive regulatory requirements now, as the existing commercial arrangements demonstrate the absence of any need for such regulation.

As the Commission has repeatedly recognized, its "rules have not required incumbent LECs to provide transiting." *Triennial Review Order*[2] ¶ 534 n.1640; *see, e.g.*, *Florida/Tennessee 271 Order*[3] ¶ 155 ("With regard to transit traffic, . . . we find no clear Commission precedent or

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[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003), *vacated in part and remanded, USTA v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004).

[3] Memorandum Opinion and Order, *Application by BellSouth Corporation, et al., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee*, 17 FCC Rcd 25828 (2002).

rules declaring such a duty."); *BellSouth 5-State 271 Order*[4] ¶ 222 n.849; *MD/DC/WV 271 Order*[5] ¶ 101; *see also Virginia 271 Order*[6] ¶ 54 ("There is no clear precedent or Commission rule that would require Verizon to serve as a billing intermediary between two other carriers that exchange traffic transiting Verizon's network."). The Commission's Wireline Competition Bureau reached the same conclusion, in the context of an interconnection agreement arbitration, rejecting AT&T's claims that federal law requires incumbents such as Verizon to provide transiting service to competitors and, moreover, to do so at TELRIC rates. *See Virginia Arbitration Order*[7] ¶ 117 ("reject[ing] AT&T's proposal" and stating that it did not "find clear Commission precedent or rules declaring such a duty"). The Bureau reaffirmed that decision last year, denying AT&T's petition for reconsideration.[8]

Despite the absence of any obligation under federal law, Verizon and other incumbents voluntarily provide transiting service to competitors, pursuant to negotiated commercial agreements or tariffs, and at reasonable rates. *See*, *e.g.*, USTA at 19; BellSouth at 36-37; *see*

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[4] Memorandum Opinion and Order, *Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, 17 FCC Rcd 17595 (2002).

[5] Memorandum Opinion and Order, *Application by Verizon Maryland Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC Rcd 5212 (2003).

[6] Memorandum Opinion and Order, *Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, 17 FCC Rcd 21880 (2002).

[7] Memorandum Opinion and Order, *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*, 17 FCC Rcd 27039 (Wireline Comp. Bur. 2002).

[8] *See* Order on Reconsideration, *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*, 19 FCC Rcd 8467 (2004).

also FNPRM[9] ¶ 129 ("recogniz[ing] that many incumbent LECs, mostly BOCs, voluntarily provide transit service"). These voluntary arrangements have proven successful, and those commenters that argue for the promulgation of new rules to regulate transit service have not shown any need for such regulation. Instead, their arguments for the imposition of such federal rules – and, in particular, for TELRIC pricing – are a transparent attempt to use the regulatory process to cut their costs to artificial and uneconomic levels, and to shift those costs to incumbents. In any event, none of the statutory provisions on which these commenters rely supports their claims, which should be rejected.

§ 251(a)(1). Section 251(a)(1) imposes on "[e]ach telecommunications carrier" the "*duty*" to "interconnect directly or indirectly" with other carriers. 47 U.S.C. § 251(a)(1) (emphasis added). That is, § 251(a)(1) creates no *rights*, but instead imposes on every carrier the *obligation* to ensure that it is interconnected with all other carriers. Even though a carrier may satisfy its obligation through indirect interconnection,[10] nothing in § 251(a)(1) gives that carrier a *right* to insist that some other carrier assist it by providing transiting service. Nor is it reasonable to expect that a third-party carrier will be willing to provide transiting service in all circumstances. Verizon, for example, finds that it is inefficient to use its tandem switches for transiting when the volume of traffic exchanged between two indirectly interconnected carriers is

[9] Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685 (2005).

[10] *See* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 997 (1996) ("*Local Competition Order*") (subsequent history omitted) ("find[ing] that indirect connection (*e.g.*, two non-incumbent LECs' interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a)").

consistently at a level sufficient to fill a DS1.[11] In such circumstances, those carriers should engage in negotiations to establish direct interconnection between their networks.

The Commission, moreover, has expressly held that "interconnection," as used in § 251(a)(1), "refers solely to the physical linking of two networks, and not to the exchange of traffic between networks." *Total Telecomms.*[12] ¶ 23. For this reason, the Commission held that § 251(a)(1) "cannot reasonably be interpreted to encompass a general requirement to transport and terminate traffic" and rejected claims that this section "encompasses a duty to transport and terminate all traffic bound for any other carrier with which it is physically linked." *Id.* ¶¶ 22, 26. The D.C. Circuit upheld this determination, finding that § 251(a)(1) is unambiguous on this matter. *See AT&T Corp. v. FCC*, 317 F.3d 227, 234-35 (D.C. Cir. 2003) (rejecting the argument that the "'the duty . . . to interconnect' in § 251(a)(1) 'encompasses the duty to exchange traffic' between networks, not just the duty to establish a physical linkage between networks").[13]

Those commenters that rely on § 251(a)(1) as the source of an obligation to provide transiting service offer no plausible alternative reading of the statute. Some claim that this section must be read to contain an *implicit* requirement that other carriers (presumably only

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[11] *See Virginia Arbitration Order* ¶¶ 115-116 (adopting Verizon's proposed DS1 threshold).

[12] Memorandum Opinion and Order, *Total Telecomms. Servs., Inc. v. AT&T Corp.*, 16 FCC Rcd 5726 (2001) ("*Total Telecomms.*").

[13] Although the Commission here sought comment on whether the definition of "interconnection" it adopted in the context of § 251(c)(2) "applies, or should apply, in the context of section 251(a)," *FNPRM* ¶ 128, in *Total Telecomms.*, the Commission expressly held that it could "find nothing in the statutory scheme to suggest that the term 'interconnection' has one meaning in section 251(a) and a different meaning in section 251(c)(2)." *Total Telecomms.* ¶ 25. In any event, now that the D.C. Circuit has held that § 251(a)(1) unambiguously draws a "distinction between physical linkage and exchange of traffic," *AT&T*, 317 F.3d at 235, the Commission has no authority to reach a contrary interpretation, *see National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 125 S. Ct. 2688, 2700 (2005) ("[a] court's prior judicial construction of a statute trumps an agency construction . . . [when] the prior court decision holds that its construction follows from the unambiguous terms of the statute").

ILECs[14]) provide transiting service, because otherwise the right to interconnect indirectly would be meaningless. *See, e.g.*, ICF at A-24–A-25; Leap Wireless at 11-12; KMC/Xspedius at 58; T-Mobile at 21-22; *see also* Pac-West *et al.* at 22. But § 251(a)(1) does not create a "right" to interconnect indirectly; it creates a "duty" to interconnect. Nor is § 251(a)(1) rendered irrelevant if a carrier, in particular circumstances, is unable to fulfill its duty by arranging for indirect interconnection. What § 251(a)(1) ensures is that one carrier cannot insist that another interconnect directly or not at all; if a carrier successfully arranges indirect interconnection, such as by negotiating a voluntary agreement with an ILEC, a third carrier cannot reject that arrangement. *See* BellSouth at 33-34. Finally, there is no merit to XO's claim (at 25) that § 251(a)(1) requires transiting because it is a form of indirect interconnection. When a carrier voluntarily provides transiting service, it is necessarily *directly* interconnected to the carrier that is purchasing that service; the voluntary offer of transiting service may enable another carrier to interconnect indirectly, but transiting is not, itself, indirect interconnection.

§ 251(c)(2). Section 251(c)(2) requires ILECs to provide CLECs "interconnection with the [ILEC's] network for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2)(A). As with § 251(a)(1), the Commission has held that this section "refers only to the physical linking of two networks for the mutual exchange of traffic." *Local Competition Order* ¶ 176. For this reason, the Commission's regulations provide that the term interconnection "does not include the transport and termination of traffic." 47 C.F.R. § 51.5. The Eighth Circuit upheld the Commission's interpretation, noting that

[14] Because § 251(a)(1) applies to *all* telecommunications carriers, however, there would be no basis for limiting any implicit duty to provide transit service to ILECs. *See FNRPM* ¶ 130 ("seek[ing] comment on whether transit service obligations under the Act should extend solely to incumbent LECs"). Indeed, there is no basis to commenters' assumption that ILECs are the only possible enablers of indirect interconnection. And, as the Bureau recognized, TELRIC would not apply to any duty under § 251(a)(1). *See Virginia Arbitration Order* ¶ 117.

§ 251(c)(2) makes explicit reference to interconnection of the CLEC's "facilities and equipment" with the ILEC's network, which is a "reference . . . to a physical link." *Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1071-72 (8th Cir. 1997). And, as the Commission has noted, § 252(d)(1), which sets the pricing standard for interconnection under § 251(c)(2), likewise applies only to the "rate for the interconnection of facilities and equipment." 47 U.S.C. § 252(d)(1); *see Local Competition Order* ¶ 176. The Commission's interpretation of § 251(c)(2), therefore, forecloses any argument that this section requires ILECs to provide transiting service. *See*, *e.g.*, BellSouth at 34-35.

Many of the commenters that argue to the contrary contend that § 251(c)(2) could be interpreted to require transiting, claiming that it is not explicitly limited to "traffic originated by either the ILEC or the [CLEC]" that obtained interconnection, but is "broad[] enough to include traffic originated by a third party or terminated to a third party." Pac-West *et al.* at 21; *see* Cox at 14-22; XO at 25-26. But these commenters ignore the Commission's determination, upheld by the Eighth Circuit, that § 251(c)(2) "does not include the transport and termination of traffic" *at all*. 47 C.F.R. § 51.5. Indeed, in light of the D.C. Circuit's conclusion that "interconnection," as used in § 251(a)(1), is unambiguously limited to the physical linking of networks, it is doubtful that the Commission could lawfully change its prior interpretation of that same word, as it appears in § 251(c)(2). In any event, it is clear from the reference to "facilities and equipment" in both § 251(c)(2) and § 252(d)(1), that the interconnection requirement is necessarily limited to the physical connection between ILEC and CLEC networks. The reference in § 251(c)(2) to the "transmission and routing" of traffic, as the Eighth Circuit found, "only . . . describe[s] what the interconnection, the physical link, would be used for," and does not impose any affirmative obligations. *CompTel*, 117 F.3d at 1071-72.

Other commenters claim that "routing," as used in § 251(c)(2), is synonymous with "transiting" and, therefore, that the section imposes an obligation to provide transiting service. *See* KMC/Xspedius at 58-59; Leap Wireless at 12-13. There is no dispute that interconnection facilities *can* be used for transit traffic, but that is not the relevant question. Instead, it is whether an ILEC *must* provide transiting – to transmit and route traffic between a carrier and a third party – on the terms specified in § 251 and § 252. As to that question, the Commission has correctly held that § 251(c)(2) does not impose any obligations with respect to the transport and termination of traffic.

§ 251(b)(5). In the *FNPRM*, the Commission sought comment on "whether a transiting obligation could . . . arise under section 251(b)(5)." *FNPRM* ¶ 128. Although some commenters have incorrectly claimed that § 251(b)(5) governs the rates for transit traffic, *see*, *e.g.*, XO at 26, commenters do not claim that § 251(b)(5) could give rise to an obligation to provide transiting service. Because transit traffic neither originates nor terminates on the network of the transiting carrier, and is not reciprocal, such traffic is not subject to the duty in § 251(b)(5) to "establish reciprocal compensation arrangements." 47 U.S.C. § 251(b)(5); *see* BellSouth at 35-36; *see also* Verizon at 40-41 (explaining that § 251(b)(5), read in the context of the 1996 Act and the terms of the accompanying pricing provisions in § 252, necessarily applies only to traffic that originates on the network facilities of one local exchange carrier and terminates on the network facilities of an interconnecting local exchange carrier within the same local calling area). Indeed, the Commission has expressly distinguished transit traffic from reciprocal compensation traffic, explaining that its reciprocal compensation regulations do not apply to "traffic that originates from a carrier other than the [incumbent] LEC but nonetheless is carried over the [I]LEC network to the [competing] carrier's network." *TSR Wireless Order*[15] ¶ 19 & n.70. For these reasons, § 251(b)(5) cannot give rise to a duty to provide transiting service, and commenters are also wrong in contending that § 251(b)(5) governs the rates for transiting service.

§ 201(a). Section 201(a) provides in pertinent part:

> It shall be the duty of every common carrier engaged in interstate . . . communication . . . , in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

47 U.S.C. § 201(a). Even assuming the references to "physical connection" and "through routes" encompass transiting service, there is no basis for finding in this proceeding that any individual carrier, let alone that all carriers, must provide transiting service pursuant to § 201(a). As an initial matter, Verizon and other ILECs do not provide transiting service on a "common carrier" basis. Instead, as explained above, they do so pursuant to voluntarily negotiated agreements. *See NARUC v. FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976) (holding that a "carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal"). For this reason, § 201(a) is inapplicable to transiting service.[16]

In any event, contrary to the claims of commenters that rely on § 201(a), that section does not, of its own force, impose any obligations at all, let alone an obligation to provide transiting

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[15] Memorandum Opinion and Order, *TSR Wireless, LLC v. US WEST Communications, Inc.*, 15 FCC Rcd 11166 (2000) ("*TSR Wireless Order*"), *petitions for review denied*, *Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[16] In addition, § 201(a) applies only to interstate service. Therefore, if the Commission were to attempt to use § 201(a) as the basis of an obligation to provide transiting service for the completion of intrastate calls – such as through the indirect interconnection of two CLECs operating in the same LATA – the Commission would have to face the same issues of its authority to preempt state regulation over intrastate service that arise in the context of Commission regulation of intercarrier compensation for all traffic. *See infra* Part V.

service. *See* NuVox at 6-7; KMC/Xspedius at 56-57; ICF at A-22. Instead, obligations can arise under § 201(a) only "after opportunity for hearing" and based on a finding that requiring the establishment of a physical connection or a through route is "necessary or desirable in the public interest." 47 U.S.C. § 201(a); *see, e.g., AT&T Corp. v. FCC*, 292 F.3d 808, 812 (D.C. Cir. 2002) ("The language of § 201(a) is clear: if the FCC wants to compel AT&T to establish a through route with another carrier, then the FCC must follow the procedures specified in the second clause of § 201(a)."). No such finding could be made on the record here, even assuming § 201(a) encompasses transiting service. As explained above, even absent a federal requirement to provide transiting service, ILECs have done so voluntarily, and at reasonable rates. *See* BellSouth at 38. Commenters that seek the creation of such an obligation have not come close to meeting their burden under § 201(a) of demonstrating that imposing a new federal obligation is either "necessary or desirable." Among other things, they have not demonstrated that ILECs possess market power in a properly defined, relevant market. *See* Memorandum Opinion and Order, *AT&T Submarine Sys., Inc.*, 13 FCC Rcd 21585, ¶ 9 (1998), *aff'd*, *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999); *see also* BellSouth at 37-38. Nor have these commenters substantiated their vague and anecdotal complaints about ILECs' offers of transiting service.

§ 214. T-Mobile, alone among the commenters, contends that the Commission can use § 214 to require "any ILEC providing transit services as of the effective date of these rules . . . to continue providing such services at TELRIC rates." T-Mobile at 21. But T-Mobile does not even discuss the text of § 214, let alone identify any provision in that section that could authorize the Commission to compel ILECs that are currently providing transiting service voluntarily to continue providing such service and to do so at TELRIC rates. In fact, there is no such provision. Presumably, T-Mobile is referring to the portion of § 214 that requires a carrier, before "discontinu[ing] . . . service to a *community*" to "obtain[] from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby." 47 U.S.C. § 214(a) (emphasis added). But transiting service is provided to individual carriers, not "to a community," and any termination of transiting service will not result in the discontinuation by the ILEC of service to any community. In addition, nothing in § 214 authorizes the Commission to reprice services, particularly where, as here, carriers such as Verizon are not seeking to discontinue their voluntary provision of transiting service.

B. Some commenters have argued that a transiting service provider should be obligated to pay the intercarrier compensation due on a call that transits its tandems, and then to seek reimbursement from the carrier that sent the call through the tandem, which all parties agree is the carrier actually responsible to pay that amount. *See* Eastern Rural at 4; NTCA at 51; PrairieWave at 5; South Dakota PUC at 9; TDS Telecom at 11. But the Commission has already correctly concluded that a carrier has no obligation "to serve as a billing intermediary between two other carriers that exchange traffic transiting [its] network." *Virginia 271 Order* ¶ 54; *see also Cavalier Arbitration Order*[17] ¶ 41 ("there is no requirement that [a transit provider] involve itself in the payment of access charges or reciprocal compensation on traffic it does not originate").

The commenters that raise these proposals do so in the context of complaining about so-called "phantom" traffic. The "phantom" traffic to which they refer encompasses, broadly speaking, two different scenarios. The first scenario is one in which they claim they cannot identify the carrier that delivered the traffic to the transiting tandem – that is, the carrier that

[17] Memorandum Opinion and Order, *Petition of Cavalier Telephone LLC*, 18 FCC Rcd 25887 (2003).

should be charged for any intercarrier compensation due on the call. But when Verizon acts as the transiting service provider for an IXC, a CLEC, or a wireless carrier, Verizon provides the carrier that receives the traffic with daily terminating access records, in industry-standard electronic messaging interface ("EMI") format. Those records contain all the information that Verizon uses to bill for its transit service, which includes a Carrier Identification Code ("CIC") for traffic delivered to Verizon by IXCs *or* an Operating Company Number ("OCN") for traffic delivered to Verizon by wireless carriers or CLECs. Contrary to the claims by the Rural Alliance (at 109), the industry-standard practice since 2000 on calls delivered by a carrier other than an IXC is to use the OCN, rather than the CIC. *See* OBF Issue 1921 (closed Nov. 2000). The terminating access records on such calls also include the Calling Party Number ("CPN") and/or Charge Number ("ChN") information as Verizon receives it from the carrier that delivers the traffic to Verizon's tandem.[18]

On calls from IXCs, CLECs, and CMRS carriers that are routed through Verizon's tandems, terminating carriers should use these terminating access records – and not signaling information that is transmitted along with the call – for intercarrier compensation billing purposes. For example, on a call carried by an IXC, the industry standard is that the CIC that identifies the IXC is signaled as the call is routed to the IXC (to enable the call to get to the IXC) but is *not* signaled as the call is routed from the IXC to the terminating end office (because that information is no longer necessary for call routing).[19] A terminating carrier that is looking for a

[18] One commenter asserts that there are "significant problems" with the information it receives, but provides no description of these supposed problems or even identifies the ILEC(s) from which it receives that information. PrairieWave at 4.

[19] *See, e.g.*, Bill Krall, Telcordia Technologies, *OBF Issues 2241 and 2308*, at 6-7, Presentation at the OBF Billing Committee Meeting (Nov. 2002). Modifying the standards for SS7 signaling to ensure that the CIC is signaled all the way to the terminating carrier would require expensive and substantial changes to existing signaling systems.

CIC code in the signaling data will not find it because it is not supposed to be there, not because it was "stripped off" by the transiting carrier. Indeed, Verizon's experience is that difficulties in identifying the carrier that is responsible for paying intercarrier compensation can typically be corrected through carrier education on how to read and interpret the information contained in the terminating access records.

The second "phantom" traffic scenario is one in which the terminating carrier can identify the carrier responsible for paying intercarrier compensation, but cannot correctly identify the jurisdiction of the call and, therefore, the proper rate to apply. There are originating carriers and IXCs that send calls to Verizon – either for termination by Verizon or transit to other carriers – where the Calling Party Number ("CPN") and/or Charge Number ("ChN") are either blank or populated with inaccurate information. This can occur through inadvertence or malfeasance, as carriers purposefully disguise the jurisdictional nature of those calls by misrepresenting them as being subject to more favorable intercarrier compensation rates. Verizon agrees with other commenters that it is unlawful to send false call detail data or to strip such data off of calls. Indeed, originating carriers and IXCs that deliver traffic to tandems for transit to another carrier – and, indeed, should require originating carriers and IXCs generally – should be required to ensure that accurate and complete call detail information is passed with the call and also to route calls to the appropriate tandems, pursuant to the Local Exchange Routing Guide ("LERG").[20]

[20] If an IXC, for example, does not deliver a call on a direct trunk group to the tandem that the terminating end office subtends (as identified in the LERG) – but instead delivers it so that it must be switched first at a different tandem – it becomes extremely difficult (if not impossible) for the carrier operating the first tandem to ensure that the terminating access record that is created reaches the carrier that terminated the call. That is because the industry-standard terminating access record does not have a field to record the identity of the second tandem involved in switching the call, which may be operated by a different carrier.

Because it is the responsibility of all carriers to provide accurate call detail information, transiting service providers are in no better position than terminating carriers to address missing or falsified call detail information. *See, e.g., Cavalier Arbitration Order* ¶ 40 ("Verizon is unable to pass . . . information that Verizon does not receive and we do not expect Verizon to attempt to obtain information it does not have."). In any event, no different from other carriers, Verizon is harmed when it cannot accurately identify the jurisdiction of a call, as Verizon's rates – both for traffic that it transits and for traffic that it terminates to its end-user customers – vary based on the jurisdiction of the traffic that transits Verizon's tandems.[21] It is the terminating carrier's responsibility to enter into billing arrangements with the carriers that owe it intercarrier compensation, through which they can address any instances where data is missing or falsified. That is precisely what Verizon does when it acts as either a transiting service provider or the terminating carrier, addressing calls with inaccurate CPN and/or ChN through the use of billing factors (*e.g.*, percent local usage) or investigations in the event there is suspicion of wrongdoing.

Some commenters argue further that rural LECs should be permitted to block calls for which they believe they cannot properly bill. *See, e.g.*, Eastern Rural at 4; Iowa Telecom at 3; TDS Telecom at 11-12. As an initial matter, even if such blocking could be accomplished as a practical matter, it would be harmful to end users placing the calls that are blocked, as in most (if not virtually all) cases the end users are neither aware of nor complicit in any missing or false information in the call detail records. In any event, as a practical matter, it is not clear whether these carriers intend to block such calls themselves, or expect transiting service providers to do

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[21] To the extent some contend that such misidentified traffic is more costly to rural LECs, that is largely because rural LECs' access charges are substantially higher than both RBOC access charges and RBOC transiting charges. *See* Ex Parte Letter from Karen Brinkmann, Latham & Watkins LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 5 (July 1, 2005).

so. If it is the latter, Verizon's systems are not currently capable of making call-by-call determinations on a real-time basis, as traffic transits its tandems, on whether to block a given call as one for which the terminating carrier may not be able properly to bill. Nor could those systems be upgraded to make such split-second decisions without the development of new technology by network equipment vendors and substantial investment by the industry to fund such development and deployment. If the rural LECs intend to block the calls themselves, it is not clear what information they plan to use as the basis for the blocking decision. The terminating access records that Verizon, as a transiting carrier, provides to terminating carriers are not provided on a real-time basis. The signaling information that is provided on a real-time basis is primarily designed to ensure that the call routes properly, not that the call can be billed properly and may legitimately lack information that would be necessary for billing purposes.

Finally, some commenters request that the Commission mandate compliance with the recently adopted Jurisdictional Information Parameter, or "JIP." *See, e.g.*, Rural Alliance at 108, 110-11; GVNW Consulting at 27. As these commenters recognize, the JIP is currently a *recommended* field, not a required one. *See* Rural Alliance at 110. That is because the industry standard-setting committee recognized that substantial development work is required for carriers to add this information to their existing SS7 signaling systems. Verizon intends to follow the industry standards for populating the JIP, but is still working on the extensive development necessary to provide the JIP throughout its footprint.[22]

[22] Verizon notes that relying on industry groups to develop the standards that carriers will follow is consistent with the Commission's recent approach to the exchange of customer account information between LECs and IXCs, where the Commission relied on a joint proposal by ILECs and IXCs. *See* Report and Order and Further Notice of Proposed Rulemaking, *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, 20 FCC Rcd 4560, ¶ 28 (2005).

II. INTERCARRIER COMPENSATION RATES SHOULD BE BASED ON NEGOTIATED, COMMERCIAL AGREEMENTS

As we have shown, the market provides numerous, current examples of networks interconnecting on commercially negotiated terms in the absence of both rate regulation and a mandate to interconnect in the first place. *See* Verizon at 8-11. The most relevant example for these purposes is the Internet, where purely voluntary arrangements – often tailored to the specific needs of the interconnecting networks – have ensured that the Internet is always fully interconnected regardless of whether any particular pair of networks is directly interconnected. *See id.* The Internet experience thus demonstrates that, because carriers have strong incentives both to interconnect their networks and to do so in an economically efficient manner, negotiated agreements are the most effective way of ensuring efficient interconnection arrangements and efficient network development. The Commission should follow this model as it pursues a deregulatory approach to intercarrier compensation reform, rather than attempting yet another one-size-fits-all, top-down regulatory regime. *See* NYDPS at 1 ("recommend[ing] that the Commission rely primarily on commercially negotiated agreements, rather than regulatory mandates, for intercarrier compensation arrangements").

Some commenters, however, have proposed that the Commission should make another such attempt, by setting intercarrier compensation rates using the TELRIC methodology the Commission developed for UNEs. *See, e.g.*, KMC/Xspedius at 53-55; Pac-West *et al.* at 8-13; Time Warner Telecom *et al.* at 8-15, 16-18. TELRIC, however, is precisely the wrong methodology for encouraging voluntary, commercial interconnection arrangements and investment in network development. That is because TELRIC – and any other hypothetical, forward-looking approach – does not mirror the way in which networks interconnect in the market. As we have shown, networks tailor their compensation arrangements to the *actual* characteristics of the interconnecting networks and the perceived exchange of value from that *specific* interconnection. *See* Verizon at 17-18; Declaration of Lyman Chapin ¶¶ 36-40 ("Chapin Decl.") (Attach. A to Verizon Comments).

Application of TELRIC is also inconsistent with the Commission's past decisions, upheld on appeal, to rely on a "market-based approach" to intercarrier compensation reform. *E.g.*, *CALLS I Order*[23] ¶ 60. Indeed, as the courts and the Commission have recognized, the availability of TELRIC – as opposed to market-based – pricing undermines competition and harms consumers by decreasing the incentives of all carriers to invest in new facilities. *See*, *e.g.*, *USTA I*, 290 F.3d at 427; *Broadband Forbearance Order*[24] ¶ 21; *see also TELRIC NPRM*[25] (explaining that TELRIC provides "an insufficient return on investment capital for new infrastructure") (Separate Statement of Commissioner Martin). In any event, if the Commission were to establish default rules as a transition to negotiated, commercial arrangements, any rates established should both adequately compensate networks for their value and, along with other default rules, ensure that carriers have opportunities to recover costs currently recovered through intercarrier compensation. *See* Verizon at 21-29.

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[23] Sixth Report and Order in CC Docket Nos. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) ("*CALLS I Order*"), *aff'd in part, remanded in part, Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

[24] Memorandum Opinion and Order, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496 (2004) ("*Broadband Forbearance Order*"), *petitions for review pending*, *AT&T Corp. v. FCC*, Nos. 05-1028, *et al.* (D.C. Cir.).

[25] Notice of Proposed Rulemaking, *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, 18 FCC Rcd 18945 (2003).

III. THE COMMISSION SHOULD NOT EXTEND ITS INTERCARRIER COMPENSATION RULES TO TRAFFIC EXCHANGED ON AN IP-TO-IP BASIS

Currently, networks that exchange traffic on an IP-to-IP basis are not subject to the Commission's intercarrier compensation rules. Instead, as explained above, these networks, particularly those that make up the Internet, enter into voluntary arrangements that have proved robustly successful without any regulation at all. Such arrangements, moreover, would be harmed by the overlay of a new federal regulatory regime. *See id.* at 19; Chapin Decl. ¶¶ 9, 48-52. Indeed, such top-down, one-size-fits-all regulation would surely fail in its aim of "improving" upon existing commercial arrangements, as regulation is inherently contrary to the decentralized manner in which the Internet ensures universal connectivity. *See* Chapin Decl. ¶¶ 9, 48-52. The Commission, moreover, should strive to "creat[e] a level-playing field for the provision of advanced services by similarly situated service providers"[26] by ruling that all traffic exchanged on an IP-to-IP basis – regardless whether the packets are carrying voice, data, or video, and regardless of the carrier involved – shall have the advantages of the same deregulatory framework that applies today to the Internet.[27] This is especially necessary given the rapid convergence of voice and data being transmitted on the same IP basis as all other Internet traffic.

Some commenters, however, contend that the Commission should adopt rules that would govern traffic exchanged on an IP-to-IP basis on the same terms that apply to traffic destined for (or originated from) the PSTN. *See, e.g.*, CompTel/ALTS at 5; XO at 6-7; Corr Wireless at 4; CenturyTel at iv; WilTel at 25-26. But these commenters do not even begin to explain how such

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[26] Memorandum Opinion and Order, *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, FCC 05-95 (rel. May 5, 2005) (Separate Statement of Chairman Martin).

[27] In contrast, traffic that is exchanged on an IP-to-PSTN basis (or vice versa) is currently subject to the Commission's intercarrier compensation rules.

regulation could yield better results than the unregulated arrangements that have led to the development of the robust and fully interconnected Internet. Nor do these commenters offer any reason why the lessons of the Internet are not equally applicable to all exchanges of packets on an IP-to-IP basis. Because there is no reason to distinguish among packets exchanged on an IP-to-IP basis – either by the type of data carried in the packet or the carrier originating or receiving the packet – the Commission should refrain from extending regulation into these well-functioning, unregulated markets.

IV. CALLS TO VIRTUAL NXX TELEPHONE NUMBERS SHOULD REMAIN SUBJECT TO THE INTERCARRIER COMPENSATION RULES THAT APPLY TO CALLED-PARTY-PAID TOLL CALLS

The Commission's existing rules provide that all calls between customers in different local calling areas – even where, as in a virtual NXX call, the caller dials what appears to be a "local" number to place a call to a distant local calling area – are not subject to either reciprocal compensation or intercarrier compensation under the *ISP Remand Order*[28] ("ISP intercarrier compensation"). Indeed, there is no dispute that neither reciprocal compensation nor ISP intercarrier compensation is due when an ILEC's customer in Philadelphia places a *calling*-party-paid (*i.e.*, 1+ dialed) long-distance call – or even a 1-800 call – to a CLEC customer in Allentown or Los Angeles, regardless of whether the CLEC's customer is an end user or an ISP. Instead, CLECs claim that, merely by assigning their customer a telephone number that appears "local" to the ILEC customer, they are suddenly entitled to reciprocal compensation or ISP intercarrier compensation. But nothing in the Commission's existing rules – which, respectively, incorporate the statutory definition of "exchange access" and are limited to "calls made to [ISPs]

[28] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001), *remanded*, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003).

located within the caller's local calling area," *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) (emphasis added), *cert. denied*, 538 U.S. 1012 (2003) – turns on the number a CLEC assigns to its customer.[29]

Nor is there any reason to modify those existing rules as an interim matter, as some commenters urge. *See, e.g.*, Pac-West *et al.* at 52; CompTel/ALTS at 18-19; XO at 12-13. These commenters would have the Commission treat virtual NXX calls as though they were calls between two customers located in the same local calling area, "[r]egardless of the physical location" of the called party. CompTel/ALTS at 13-14, 19. Thus, on a call from Philadelphia to Los Angeles – where the CLEC is already getting paid by its Los Angeles-based customer for the virtual NXX service – these CLECs are seeking additional compensation from the originating carrier.[30] But the 1996 Act and the Commission's rules have long recognized that for *called-party-paid* toll calls – and there can be no serious dispute that this is what virtual NXX calls are – the carrier serving the *called* party is subject to the rules that would apply to the originating carrier if the same call were made as a *calling*-party-paid call. Thus, § 271(j) expressly provides that "800 service, private line service, or their equivalents" are treated as "in-region" interLATA

[29] *See generally* Ex Parte Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68 (Jan. 7, 2005) (Attach. 1 hereto).

[30] Indeed, it is readily apparent that these commenters seek this rule change to enable just such regulatory arbitrage by CLECs. Each of them also argues that the Commission should find that ISP-bound calls – where the ISP and the calling party are located in the same local calling area – are subject to reciprocal compensation under § 251(b)(5). *See* Pac-West *et al.* at 52-53; CompTel/ALTS at 14-16; XO at 10-12. But, as the Commission has found and these commenters do not address, requiring payment of reciprocal compensation for ISP-bound calls results in a "windfall" for CLECs that is an example of "classic regulatory arbitrage," causes "severe market distortions," produces "uneconomical results," and "hinder[s] the development of efficient competition in the local [telephone] markets." *ISP Remand Order* ¶¶ 21, 70, 76, 95. In any event, as Verizon has explained, these claims cannot be squared with the text, structure, or history of the 1996 Act, which limit reciprocal compensation to calls that originate and terminate in the same local calling area on the networks of interconnecting LECs. *See* Verizon at 13 n.14, 40-41.

services subject to § 271 when they "*terminate* in an in-region State" of a Bell Operating Company. 47 U.S.C. § 271(j) (emphasis added). And the Commission has held that originating carriers are entitled to compensation when their customer places interLATA, interstate foreign exchange calls – where the call*ing* party dials an ostensibly local number to reach a party actually located in another state – just as if their customer had dialed the call directly.[31] The commenters that seek to change this Commission's intercarrier compensation rules provide no basis for transforming carriers that had been entitled to payment of compensation into carriers that must pay compensation to other carriers, which have manipulated the number assignment system to make calls to their customers appear local, when in fact they are not.

V. THE COMMISSION SHOULD NOT ADOPT HALF MEASURES IF IT CONCLUDES IT LACKS LEGAL AUTHORITY TO ADOPT COMPREHENSIVE INTERCARRIER COMPENSATION REFORM

As Verizon has explained, comprehensive intercarrier compensation reform necessarily must address intercarrier compensation for both interstate and intrastate traffic. A primary reason for any new intercarrier compensation rules the Commission adopts on a transitional or other basis would be to move toward a more uniform intercarrier compensation regime for various types of traffic, in order to provide fewer opportunities for arbitrage. But that cannot be achieved unless those rules apply to both interstate and intrastate traffic. Indeed, it would be no meaningful "reform" at all if the Commission were to craft new compensation rules to apply to interstate traffic only while leaving compensation for intrastate traffic in the hands of more than 50 states and territories.

The Commission has express authority to regulate intercarrier compensation for interstate and wireless traffic. With respect to the intraexchange (or local) traffic subject to § 251(b)(5),

[31] *See* Memorandum Opinion and Order, *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, ¶¶ 71, 80 (1998), *recon. denied*, 15 FCC Rcd 7467 (2000).

however, Congress gave the Commission express authority only to establish general rules governing the compensation for such traffic, with the various state commissions authorized to apply those general rules and set the actual rates. And Congress gave the Commission no express authority over interexchange, intrastate traffic. Nonetheless, courts have repeatedly recognized that the Commission can regulate intrastate traffic in certain circumstances, where the Commission preempts the states' historical authority over such traffic. *See* Verizon at 34-36. Although the exercise of this authority to regulate intercarrier compensation for all traffic admittedly raises a non-trivial legal issue, there are reasonable arguments that would support the Commission's exercise of such authority under its established preemption authority. *See id.* at 36-38. Indeed, the argument for preemption involves the same grounds on which the Commission has relied to assert authority over intrastate VoIP and wireless traffic. Namely, as telephone numbers become increasingly detached from their historical, geographic affiliations – through consumers' increasing use of wireless and VoIP services, which offer both mobility and the assignment of telephone numbers unrelated to the subscriber's residence – it will become increasingly difficult to separate traffic into intrastate and interstate components.[32]

A number of commenters have argued that the Commission has no possible authority to preempt state commission authority over intrastate traffic. *See, e.g.*, NARUC at 4-6; GVNW

[32] Pac-West *et al.* (at 25-26) agree that such difficulties in distinguishing intrastate and interstate traffic would justify preemption of state commission authority over intercarrier compensation for intrastate traffic, but suggest that the industry has not yet reached this point. It is, however, plainly within the Commission's authority to put in place transitional default rules *today*, based on the reasonable view that consumers' use of numbers unrelated to their residence will continue to increase throughout the transition to negotiated agreements. NARUC (at 12-13), however, argues that the increasing difficulty of using telephone numbers accurately to identify the jurisdiction of calls could never support preemption because carriers could always create billing factors. But without the ability to audit the billing factors using verifiable data, billing factors are merely a guess at the jurisdictional mix of calls. The fact that carriers could make such (increasingly uninformed) guesses would not be a persuasive response to a Commission finding that traffic cannot actually be separated into intrastate and interstate components.

Consulting at 25; KMC/Xspedius at 67-70. They are wrong. NARUC, for example, relies on the savings clause in the 1996 Act that provides that the Act "shall not be construed to modify, impair, or supersede . . . State . . . law unless expressly so provided." 1996 Act § 601(c) (codified at 47 U.S.C. § 152 note). That savings clause is irrelevant to the argument Verizon has outlined, which is based not on any construction of the 1996 Act, but instead on the Commission's historical preemption authority. Similarly, GVNW Consulting claims that § 2(b) and § 254(g) are a bar to preemption. But courts have long recognized that § 2(b) is not an absolute bar to preemption, and the fact that § 254(g) "does not mandate geographic wholesale rate averaging" is irrelevant to the question whether the inseparability of traffic supports preemption. GVNW Consulting at 25. KMC/Xspedius likewise argue only that § 253 and § 254 do not authorize preemption, but that is a far cry from demonstrating that the Commission has no authority at all to preempt state regulation of intercarrier compensation for intrastate traffic.

However, if the Commission were to conclude for any reason that it lacks authority to regulate intercarrier compensation for intrastate traffic, the Commission should seek such authority from Congress so that the Commission could address issues related to intercarrier compensation comprehensively, rather than piecemeal. Contrary to the claims of some commenters, convening one or more Federal-State Joint Boards is not a solution to the need for the Commission, rather than the various states, to have authority over intercarrier compensation for circuit-switched traffic. *See, e.g.*, KMC/Xspedius at 62-63; Pac-West *et al.* at 26; Time Warner Telecom *et al.* at 17. Such Joint Boards are unlikely to – indeed, cannot be expected to – result in a national intercarrier compensation regime, rather than a series of different state regimes. Because the result of any Joint Board will only carry the weight of a recommendation absent preemption of state authority, those states unwilling to adhere to the federal rules will remain able to do so.[33]

Other commenters, in contrast, claim that Congress already has given the Commission express authority to regulate intercarrier compensation for intrastate traffic. *See, e.g.*, ICF at 38-44, A-1–A-7; Time Warner Inc. at 7; CTIA at 20-21; Western Wireless/SunCom at 17. These commenters, however, assert that § 251(b)(5) authorizes the Commission to establish intercarrier compensation rates (or to mandate bill and keep) for all traffic exchanged between all carriers. As Verizon has previously shown, these claims are wrong. *See* Verizon at 38-42; *see also* NYDPS at 7-10; NARUC at 6-8; BellSouth at 43 n.66. In fact, reliance on § 251(b)(5) would create more than 50 separate intercarrier compensation regimes administered by commissions in the states and territories, rather than a single federal regime, because § 251(b)(5) does not authorize the Commission to regulate intercarrier compensation directly. In any event, § 251(b)(5) cannot lawfully be read to apply to long-distance and other interexchange traffic, but applies only to traffic that originates on the network facilities of one local exchange carrier and

[33] Nor is there any merit to the claims of some commenters that referral to a Joint Board is mandatory under § 410(c) or § 254. *See, e.g.*, NTCA at 60-63; Rural Alliance at 153-56; GVNW Consulting at 36; Colorado Telecomms. Ass'n *et al.* at 19. As the D.C. Circuit explained, the mandatory referral provision in § 410(c) is triggered "if – but only if – the Commission decides in its *discretion* to pursue a jurisdictional separation under § 221(c)"; otherwise, "[n]o procedural requirements are triggered." *Crockett Tel. Co. v. FCC*, 963 F.2d 1564, 1570 (D.C. Cir. 1992) (emphasis added); *see id.* at 1571 ("[W]hen the Commission divides the regulated area with the states without resort to the statutory formality, then employment of the statutory method [in § 410(c)] is not, by its own terms, mandatory."). Because the Commission has not invoked § 221(c) – and need not do so – § 410(c) is not triggered. In addition, the Fifth Circuit has held that § 254 "requires consultation with the Joint Board for only the *initial* implementation of § 254's universal service requirement." *Texas Office of Pub. Util. Counsel* v. *FCC*, 265 F.3d 313, 328 n.7 (5th Cir. 2001) (emphasis added). The use of a Joint Board for universal service issues after that initial consultation – which occurred years ago – "is *permissive*." *Id.* (emphasis added).

terminates on the network facilities of an interconnecting local exchange carrier (or wireless carrier) within the same local calling area.

CONCLUSION

For the foregoing reasons, the Commission should resolve the issues in this proceeding in accordance with the Verizon's Comments and these Reply Comments.

Respectfully submitted,

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July 20, 2005

ATTACHMENT 1

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January 7, 2005

Ex Parte

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

Re: <u>Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92</u>

Dear Ms. Dortch:

On behalf of Verizon, I am requesting that the attached documents regarding the appropriate intercarrier compensation for Virtual NXX traffic be filed in the record of the above dockets. Please let me know if you have any questions.

Sincerely,

Donna Epps

Attachment

cc: Scott Bergmann
Matt Brill
Jeff Carlisle
Dan Gonzalez
Christopher Libertelli
Steve Morris
Tamara Preiss
Jessica Rosenworcel

VERIZON'S TREATMENT OF ALL TYPES OF INTEREXCHANGE CALLS — INCLUDING VIRTUAL NXX CALLS — IS CONSISTENT WITH THE COMMISSION'S EXISTING RULES WHICH EXCLUDE ALL SUCH CALLS FROM RECIPROCAL COMPENSATION AND ISP INTERCARRIER COMPENSATION

The Commission's existing rules provide that all calls between customers in different local calling areas — even where, as in a Virtual NXX call, the caller dials what appears to be a "local" number to place a call to a distant local calling area — are not subject to either reciprocal compensation or intercarrier compensation under the *ISP Remand Order*[1] ("ISP intercarrier compensation"). Although the Commission is currently in the process of a comprehensive reevaluation of the intercarrier compensation rules for all traffic exchanged between carriers, until the Commission amends its rules it must enforce its existing rules, including as they apply to Virtual NXX calls. *See, e.g.*, *National Family Planning & Reproductive Health Ass'n, Inc. v. Sullivan*, 979 F.2d 227, 234 (D.C. Cir. 1992) ("an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked").

The Commission's current intercarrier compensation rules for wireline calls plainly exclude interexchange calls from both reciprocal compensation and ISP intercarrier compensation. Indeed, there is no dispute that neither reciprocal compensation nor ISP intercarrier compensation is due when an ILEC's customer in Philadelphia places a long-distance call to a CLEC customer in Allentown or Los Angeles, regardless of whether the CLEC's customer is an end user or an ISP. Instead, CLECs claim that, merely by assigning their customer a telephone number that appears "local" to the ILEC customer, they are suddenly entitled to reciprocal compensation or ISP intercarrier compensation. But nothing in the Commission's existing rules — which, respectively, incorporate the statutory definition of

[1] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

“exchange access” and are limited to “calls made to [ISPs] *located within the caller’s local calling area*,” *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) (emphasis added) — turns on the number a CLEC assigns to its customer.

Some, however, have argued that excluding Virtual NXX calls from reciprocal compensation and ISP intercarrier compensation is inconsistent with the treatment of other calls, such as traditional FX calls, wireless calls, and VoIP calls. In fact, the treatment of all such calls — under both the Commission’s rules and Verizon’s practice — is consistent. In all cases, reciprocal compensation and ISP intercarrier compensation do not apply to interexchange (or, in the wireless context, interMTA) calls. Verizon uses telephone numbers to determine whether calls are interexchange, but uses those numbers as a *proxy* for the location of the parties to a call, and where they represent the best information Verizon has as to those locations or where inaccuracies affect a sufficiently small proportion of the traffic exchanged that the development of more accurate geographic billing factors (or use of more accurate location information) is unwarranted. Thus, because CLEC calls to Verzion’s traditional FX customers (where the telephone number is not an accurate proxy for the Verizon customer’s location) make up less than 1 percent of all CLEC calls to Verizon customers, Verizon has not developed billing factors to account for such calls. At the same time, Verizon has repeatedly offered to work with CLECs to develop such factors, if the CLEC is willing to do the same for its Virtual NXX calls. No CLEC, however, has taken Verizon up on that offer — which still stands — for the simple reason that Virtual NXX calls account for 50 percent or more of the traffic certain CLECs receive from Verizon. For wireless calls, Verizon already utilizes billing factors developed by the carrier from which it receives a wireless call (whether from a wireless carrier or an interexchange carrier, when such factors are provided) to address the fact that the wireless caller's number may not reflect the caller's location. Verizon is also willing to work with CLECs or other LECs to develop appropriate, auditable billing factors for VoIP calls they exchange.

Finally, Verizon notes that, because it addresses here the Commission's *existing* rules, nothing the Commission does in applying its existing rules as written will constrain this Commission's options as it confronts the question of how to restructure comprehensively the various intercarrier compensation regimes.

1. ***Virtual NXX Calls.*** Any determination of the intercarrier compensation due for Virtual NXX calls — whether to ISPs or to voice customers — must begin with the Commission's existing rules, as noted above. Although more than 30 state commissions have addressed Virtual NXX calls, the Commission has addressed the applicability of its existing intercarrier compensation rules to such calls only once. In the *Maryland/DC/West Virginia 271 Order*,[2] the Commission explained that, while it "has not had occasion to determine whether incumbent LECs have a duty to pay reciprocal compensation for virtual [NXX] traffic under section 252(d)(2)," it could "find no clear Commission precedent or rules declaring such a duty." *Maryland/DC/West Virginia 271 Order* ¶ 151.[3] Review of the existing rules demonstrates that

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[2] Memorandum Opinion and Order, *Application by Verizon Maryland Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC Rcd 5212 (2003) ("*Maryland/DC/West Virginia 271 Order*").

[3] Similarly, when the Commission considered whether its existing rules permit an ILEC to require a CLEC to take financial responsibility for transporting calls at a point on the ILEC's side of the point of interconnection, the Commission held that such a requirement "do[es] not represent a violation of our existing rules." *See* Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, ¶ 100 & n.341 (2001).

Virtual NXX calls — no different from traditional foreign exchange ("FX") calls — are *not* subject either to reciprocal compensation or ISP intercarrier compensation.[4]

a. *Voice Traffic*. The Commission's current rules provide that telecommunications traffic "exchanged between a LEC and a telecommunications provider other than a CMRS provider" is not subject to reciprocal compensation if it is "interstate or intrastate exchange access." 47 C.F.R. §§ 51.701(b)(1), 51.703(a). There is no dispute that, under this rule, a variety of calls between ILEC and CLEC end-user customers are *not* subject to reciprocal compensation. This includes 1+ dialed long-distance calls, Feature Group A calls, 1-800 calls, intraLATA and interLATA traditional FX calls,[5] and intraLATA toll calls, regardless of whether the ILEC or an IXC provides the intraLATA toll service to the calling party. That is because all of these calls satisfy the statutory definition of "exchange access" in 47 U.S.C. § 153(16).

Congress defined "exchange access" as "the offering of [1] access to telephone exchange services or facilities [2] for the purposes of the origination and termination of telephone toll services." 47 U.S.C. § 153(16). "Telephone exchange service" is defined as "(A) service within a telephone exchange, or within . . . [an] exchange area . . . , and which is covered by the exchange service charge, or (B) comparable service . . . by which a subscriber can originate and

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[4] As the Commission has made clear, neither the Wireline Competition Bureau, in the *Virginia Arbitration Order*, nor the Commission, in the *Starpower Damages Order*, addressed the question whether the Commission's intercarrier compensation rules require payment of compensation for Virtual NXX calls. *See Starpower Communications, LLC v. Verizon South Inc.*, 18 FCC Rcd 23625, ¶ 17 n.68 (2003) ("[W]e need not and do not address the legal and policy question of whether incumbent LECs have an affirmative obligation under [47 U.S.C. §§ 251(b)(5) and 252(d)(2)] to pay reciprocal compensation for virtual NXX traffic."); *id.* ¶ 17 n.63 ("The Wireline Competition Bureau [in the *Virginia Arbitration Order*] did not address the legal question of whether incumbent local exchange carriers have an affirmative obligation under the Act to provide reciprocal compensation for virtual [F]X traffic."); *Maryland/DC/West Virginia 271 Order* ¶ 151 n.601 (same).

[5] *See* Memorandum Opinion and Order, *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, ¶¶ 71, 80 (1998), *recon. denied*, 15 FCC Rcd 7467 (2000).

terminate a telecommunications service." *Id.* § 153(47). "Telephone toll service," in turn, is defined as "telephone service between stations in different exchanges for which there is made a separate charge not included in contracts with subscribers for exchange service." *Id.* § 153(48).

All of the call types listed above satisfy these definitions. They provide access to service and facilities within a given exchange area (*i.e.*, local calling area) for the purpose of connecting to a station (*i.e.*, an end user) located in a different exchange area. And, moreover, a separate charge is imposed on one of the parties to the call, beyond the charge paid for telephone exchange service. Thus, for 1+ long distance, Feature Group A calls, and intraLATA toll calls, the calling party pays the separate charge — whether assessed on a per minute basis or, with recent bundled calling plans, as a flat fee — for a call that connects a station in one exchange area to a station in another exchange. Indeed, it is precisely because the calls travel across the boundaries of an exchange area that the separate charge is imposed. Similarly, 1-800 and traditional FX calls, whether interLATA or intraLATA, connect stations in different exchanges. The only difference is that it is the *called* party, not the calling party, that pays the separate charge and, therefore, the called party's carrier that is offering the telephone toll service. All of these voice calls, therefore, qualify as exchange access and are not subject to reciprocal compensation under the Commission's existing rules.[6]

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[6] This is true regardless of where the hand-off between the ILEC and CLEC (or ILEC, IXC, and CLEC) occurs or where financial responsibility for transport transfers from one carrier to another. None of these factors are relevant to the statutory definition of exchange access. In addition, the Commission has made clear that, under its current rules, reciprocal compensation does not apply to "calls that travel to points — both interstate and intrastate — beyond the local exchange." *ISP Remand Order* ¶ 37. Thus, when an ILEC customer places, for example, an intraLATA toll call and pays toll charges to its toll carrier, that call continues to satisfy the definition of exchange access — and the CLEC receiving the call would rightly expect to receive terminating access charges — even if the ILEC to CLEC hand-off (or transfer of financial responsibility) occurs in the same local calling area where the call originated.

The *only* difference between an intraLATA Virtual NXX voice call from an ILEC end-user customer to a CLEC end-user customer and an intraLATA toll call between those same customers is that the CLEC has changed the telephone number assigned to its customer. *See Maryland/DC/West Virginia 271 Order* ¶ 149; *see also* Ex Parte Letter from Donna M. Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68 & 01-92 (filed Dec. 16, 2004) ("Verizon Dec. 16 Ex Parte"). That is, it remains the case that such a call provides "telephone service between stations in different exchanges" and that one party to the call — now, the CLEC customer receiving the call, rather than the ILEC customer placing the call — pays "a separate charge" above and beyond the charges that are imposed on the calling and called party for service within the local calling area.[7] Accordingly, intraLATA Virtual NXX voice calls are "exchange access" and not subject to reciprocal compensation under the Commission's current rules — the CLEC's assignment of a different telephone number to its customer is irrelevant to the statutory classification of the call. None of the more than 30 state commissions to consider this issue has ever held otherwise.[8] The same is true of interLATA Virtual NXX voice calls,

[7] Some have claimed that the ILECs' traditional local calling areas should not be used for these purposes. At a minimum, when a Virtual NXX call is made by an ILEC customer, the only applicable local calling area is the ILEC's — that, after all, is what the ILEC customer is purchasing. While CLECs have the right to establish their own retail local calling areas, they have no right to alter an ILEC's retail calling areas. In any event, in all, if not virtually all, states, the legacy local calling areas are, in fact, the result of extensive state regulation. For that reason, virtually all of the state commissions to address the issue have rejected claims that CLECs should be able to modify the intercarrier compensation rules by changing their retail local calling areas. *See*, *e.g.*, Opinion Adopting Final Arbitrator's Report with Modification, Dec. 02-06-076 (Cal. PUC June 27, 2002), *aff'g* Final Arbitrator's Report, Application Nos. 01-11-045 & 01-12-026 (Cal. PUC May 15, 2002); Arbitration Order, D.T.E. 02-45 (Mass. DTE Dec. 12, 2002); Order Resolving Arbitration Issues, Case 02-C-0006 (N.Y. PSC May 24, 2002).

[8] To the extent a handful of those commissions required payment of reciprocal compensation for Virtual NXX calls, they did so for the same (erroneous) administrability concerns underlying the Bureau's decision in the *Virginia Arbitration Order*.

which are no different from the interLATA foreign exchange calls discussed above,[9] and as to which there is no dispute that reciprocal compensation does not apply.

b. *ISP-Bound Traffic*. The Commission's current rules provide that telecommunications traffic "exchanged between a LEC and a telecommunications provider other than a CMRS provider" is not subject to reciprocal compensation if it "is interstate or intrastate . . . information access." 47 C.F.R. §§ 51.701(b)(1), 51.703(a). The Commission's rules also explicitly incorporate those portions of the *ISP Remand Order* in which the Commission held that ISP-bound traffic exchanged between an ILEC and a CLEC is information access. *See id.* § 51.701(b)(1) (citing, *inter alia*, *ISP Remand Order* ¶ 42).[10] For this reason, there should be no dispute that ISP-bound traffic is not subject to reciprocal compensation, regardless of where the ISP is located. In any event, however, where the ISP is not located in the same local calling area as the calling party, reciprocal compensation does not apply regardless of the treatment of ISP-bound calls.

In the *ISP Remand Order*, the Commission also established an interim compensation regime, pursuant to its authority to regulate interstate traffic under 47 U.S.C. § 201, to regulate

[9] On an interLATA Virtual NXX call, the CLEC receives the call at its point of interconnection in the LATA in which it originates and transports the call to its customer in a different LATA (often in a different state). An IXC similarly receives an interLATA traditional foreign exchange call at its point of presence near where the call originates before transporting it to its customer in a different LATA or state.

[10] Although the D.C. Circuit did not accept the Commission's chosen statutory grounds for finding that ISP-bound traffic is not subject to reciprocal compensation, the D.C. Circuit explicitly decided not to vacate the Commission's regulation. As the Commission has acknowledged, that means that its "reciprocal compensation . . . rules remain in effect." Memorandum Opinion and Order, *Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, 17 FCC Rcd 9018, ¶ 272 (2002); *see also, e.g.*, *National Lime Ass'n v. EPA*, 233 F.3d 625, 635 (D.C. Cir. 2000) (regulations that are remanded but not vacated are "le[ft] . . . in place during remand"). Thus, until the Commission amends its reciprocal compensation regulations, it remains bound by the provision of the regulation excluding information access.

intercarrier compensation for ISP-bound traffic. *See ISP Remand Order* ¶¶ 77-88. Some CLECs contend that this compensation regime applies to *all* calls to ISPs — regardless of where the ISP is located and regardless of how the call to the ISP is dialed. The D.C. Circuit, in contrast, had no difficulty recognizing that the "interim [compensation] provisions devised by the Commission" apply *only* to "calls made to [ISPs] *located within the caller's local calling area*." *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) (emphasis added). In other words, the *ISP Remand Order* compensation regime applies only to calls that would have been subject to reciprocal compensation if made to an end-user customer, rather than an ISP.

The D.C. Circuit's understanding of the scope of the intercarrier compensation obligation established in the *ISP Remand Order* is plainly correct. The question before the Commission with respect to ISP-bound traffic has always been whether calls to an ISP in the same local calling area as the calling party are to be treated the same as calls to a local business. Indeed, the CLECs' long-standing argument that a call to an ISP is just like a call to a pizza parlor would be nonsensical if they were referring to a pizza parlor located across the state from the calling party, rather than to one physically located in the same local calling area as the calling party. Thus, in the *ISP Declaratory Ruling*[11] (¶¶ 12-15), the Commission rejected CLECs' arguments that a call to an ISP "terminate[s] at the ISP's *local* server" and "ends at the ISP's *local* premises." And, in the *ISP Remand Order* (¶¶ 10, 13), the Commission recognized that it was addressing the compensation due for "the delivery of calls from one LEC's end-user customer to an ISP in the *same local calling area* that is served by a competing LEC."

[11] Declaratory Ruling and Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999) ("*ISP Declaratory Ruling*").

The Commission also made clear that its interim compensation regime was designed to "limit, if not end, the opportunity" for CLECs to engage in "regulatory arbitrage" through serving ISPs. *ISP Remand Order* ¶ 77. That arbitrage opportunity arose as a result of state commission decisions requiring payment of reciprocal compensation for calls to ISPs located in the same local calling area as the calling party, normally on the theory that such calls are no different from a call to any other business located in that local calling area. The Commission, therefore, had no occasion or need to establish a new intercarrier compensation rule for *inter*exchange calls to ISPs. In addition, if the CLECs were correct that the *ISP Remand Order* created a compensation obligation for such interexchange calls, the result of such a decision would have been to create *new* arbitrage opportunities, by requiring incumbents to *pay* compensation on interexchange, long-distance calls — such as 1+ dialed and 1-800 calls — for which they had previously *received* compensation under established rules. The CLECs' attempt to expand the scope of the interim intercarrier compensation regime, therefore, is inconsistent with the D.C. Circuit's understanding of that regime, the Commission's order, and the policy rationales underlying the establishment of that regime.

The Commission, therefore, has not established a federal intercarrier compensation rule for interexchange calls to ISPs, though it surely could do so in the future. As the Commission has correctly held, ISP-bound calls are jurisdictionally interstate, and the Commission has jurisdiction over the compensation for such calls under § 201. Until such time as it modifies its existing rules, however, incumbents have no obligation to pay CLECs pursuant to the interim intercarrier compensation regime (or the reciprocal compensation rules) for interexchange calls to ISPs.

2. ***Traditional FX, Wireless and VoIP Calls.*** As noted above, some have claimed that reading the Commission's existing rules to limit the applicability of reciprocal compensation and ISP intercarrier compensation to *intra*exchange calls is inconsistent with the manner in which other types of calls — in particular, traditional FX, wireless, and VoIP calls — are treated. Those claims are wrong. As explained above, and shown below, although Verizon and other carriers can use telephone numbers to determine if such calls are interexchange (or interMTA), they do so where those numbers are the best information that Verizon has to reflect the locations of the parties to a call or where any inaccuracies are *de minimis*, so that development of more accurate billing factors is unwarranted.

a. *Traditional FX Calls*. Although ILEC traditional FX service is different from CLEC Virtual NXX service in many respects,[12] calls to ILEC traditional FX customers (whether end users or ISPs) also are not subject to either reciprocal compensation or ISP intercarrier compensation under the Commission's existing rules. Again, this is because such calls are interexchange calls, even if they appear "local" to the CLEC customer placing the call. CLEC calls to ILEC traditional FX customers, however, make up a tiny fraction of all calls by CLEC customers to ILEC customers — less than one percent of all traffic and a few hundred or thousand dollars monthly to any given CLEC. For this reason, as noted above, Verizon has not invested in developing billing factors that would exclude these few calls from Verizon's reciprocal compensation bills to CLECs. There simply is not enough traffic to justify it. Nonetheless, Verizon has repeatedly offered to work with CLECs to conduct studies or to develop factors for traditional FX traffic, if the CLEC would do the same for calls to the CLEC's Virtual NXX customers, which can make up 50 percent or more of all traffic delivered to a

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[12] *See, e.g.*, Verizon Dec. 16 Ex Parte.

CLEC and account for hundreds of thousands or millions of dollars in monthly billing by individual CLECs. No CLEC, however, has taken Verizon up on that offer, which still stands.[13]

b. *Wireless Calls.* The Commission's current rules provide that telecommunications traffic "exchanged between a LEC and a CMRS provider" is subject to reciprocal compensation if, "at the beginning of the call, [it] originates and terminates within the same Major Trading Area." 47 C.F.R. §§ 51.701(b)(2), 51.703(a). The Commission's rule for calls exchanged between wireline and wireless carriers has not changed since the *Local Competition Order*,[14] when the Commission first promulgated the rule. At that time, the Commission explained that whether such calls originate and terminate within the same MTA for purposes of the reciprocal compensation rule would be "based on the *parties' locations* at the beginning of the call." *Local Competition Order* ¶ 1043 (emphasis added). The Commission provided further that, for purposes of determining the "*geographic location* of the mobile customer," "the *location of the initial cell site* when a call begins shall be used." *Id.* ¶ 1044 (emphases added). Thus, it is clear that the Commission's current reciprocal compensation rules for LEC-CMRS calls are based on the physical location of the mobile caller and the wireline called party — not on a comparison of the telephone numbers. Therefore, the existing rules treat *inter*MTA calls between LEC and CMRS customers the same as *inter*exchange calls between ILEC and CLEC customers. No such calls are subject to reciprocal compensation, even if they are billed for retail purposes as a local call, based on a comparison of the calling and called parties' telephone numbers.

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[13] If the Commission were to make clear that Virtual NXX service is not subject to reciprocal compensation to the extent that ILECs establish methods to avoid billing reciprocal compensation for calls by CLEC customers to ILEC traditional FX customers, that would obviate the need for mutual agreement, and Verizon would establish such factors for its own service.

[14] , *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

At the same time, the Commission recognized that LECs and CMRS providers might not be able to distinguish interMTA calls from intraMTA calls on a "real time" basis and did not require them to do so. *See id.* ("[I]t is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected"). Instead, the Commission permitted "parties [to] calculate overall compensation amounts by extrapolating from traffic studies and samples." *Id.* This is what Verizon's interstate access tariff provides: Verizon will use "call detail to render bills" where the call detail it receives — including, but not limited to, the telephone number — is "sufficient . . . to permit it to determine the jurisdiction" of the calls, based on the geographic location of the parties to the calls; otherwise, it will use information in addition to the telephone number to develop billing factors with the other carrier, which will be used either alone or in conjunction with telephone numbers to render bills.[15] And this is how Verizon bills for wireless calls where carriers provide it with information on the originating point of calls — specifically, through the use of billing factors — in addition to the telephone number of the calling party. It is also the same manner that Verizon proposes ILECs and CLECs use to exclude Virtual NXX and traditional foreign exchange calls from their reciprocal compensation bills.

For LEC-CMRS traffic, however, the Commission's prior rulings do not mean that parties are precluded from relying exclusively on a comparison of telephone numbers to determine intercarrier compensation. Parties may do so by mutual agreement. *Cf.* 47 U.S.C. § 252(a)(1). In addition, if the party with the information necessary to determine whether a call is intraMTA or interMTA (and, if interMTA, whether interstate or intrastate) refuses to provide that information or to develop appropriate traffic studies, the other party would be justified in

[15] Verizon FCC Tariff No. 1, § 2.3.10(A)(1)(a)-(b), (B), (E).

calculating its bills based on a telephone number comparison. This, however, is not the case with Virtual NXX traffic, where the party preparing the bill (the CLEC) is also the party with the necessary information to determine whether the call is interexchange (the location of its Virtual NXX customer). CLECs, therefore, could not be justified in an attempt to rely exclusively on telephone number comparisons to pass off interexchange calls as intraexchange calls for purposes of either reciprocal or ISP intercarrier compensation.[16]

c. *VoIP Calls.* As demonstrated above, the Commission's existing rules provide that reciprocal compensation and ISP intercarrier compensation do not apply to *inter*exchange calls, or, in the case of LEC-CMRS traffic, to *inter*MTA calls. While these rules remain in effect, they should apply when one party to a call uses VoIP, rather than traditional, circuit-switched wireline service. To the extent that VoIP enables end-user customers to obtain non-geographically relevant telephone numbers (much like wireless customers can), it thus provides certain *retail* billing advantages (namely, the ability to receive calls without the calling party incurring the toll charges that normally would apply).

But these retail billing advantages should not govern whether the Commission's existing reciprocal compensation and ISP intercarrier compensation rules apply to individual VoIP calls, just as those billing advantages do not govern for non-VoIP calls. As with LEC-CMRS traffic, however, this does not mean that parties exchanging VoIP calls are precluded from relying exclusively on a comparison of telephone numbers to determine intercarrier compensation. Again, parties may do so by mutual agreement and might reach such an agreement based on a determination that, for example, given the current volume of VoIP traffic, both parties are likely

[16] To Verizon's knowledge, Virtual NXX is not an issue with wireless carriers, as those carriers have an economic incentive to deploy cellular towers in, and to assign numbers associated with, the MTAs in which their customers reside.

to receive an equivalent amount of traffic, so that instances in which a VoIP customers telephone number does not match its geographic location will roughly even out. In addition, because the Commission is currently examining intercarrier compensation in the context of VoIP calls, parties might reasonably agree to delay investing in the development of more precise methods of intercarrier compensation — such as using actual customer location information to develop billing factors — until the Commission has concluded its review.