EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF VERIZON
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING

Michael E. Glover
Of Counsel

Karen Zacharia
Amy P. Rosenthal
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

Attorneys for Verizon

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crossing local calling areas."[13] Where these arrangements went undetected, competitors were able to receive compensation on calls for which they should have been paying compensation under existing rules. Other carriers have routed calls, or tampered with data identifying calls, to obtain the same benefits.

Still other carriers have attempted to use consumers' desire to utilize developing technologies – specifically the Internet – to create the largest and most anti-competitive of the arbitrage opportunities to have arisen as a result of the 1996 Act. These carriers exist primarily – or even exclusively – to deliver calls to Internet Service Providers ("ISPs") for further transit onto the Internet, erroneously claiming entitlement to reciprocal compensation on the grounds that they are purportedly terminating local calls.[14] As this Commission has recognized, "convincing evidence" demonstrates that requiring payment of compensation for ISP-bound calls "create[s] opportunities for regulatory arbitrage and distort[s] the operation of competitive markets." *ISP Remand Order* ¶¶ 2, 81.[15] Those arbitrage opportunities "created incentives for inefficient entry of [competitors] intent on serving ISPs exclusively and not offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act." *Id.* ¶¶ 21, 70. Those arbitrage opportunities have also thwarted technological advancement, as the carriers

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[13] Brief for Plaintiff-Appellant at 3-4, *Global NAPs, Inc. v. Verizon New England Inc.*, No. 04-4685 (2d Cir. filed Nov. 22, 2004).

[14] As Verizon has demonstrated in prior filings, these carriers' claims to reciprocal compensation are entirely unfounded. *See generally* Verizon and BellSouth White Paper, CC Docket Nos. 96-98, 99-68 (filed May 17, 2004) (attached hereto as Attach. B); Verizon and BellSouth Supplemental White Paper, CC Docket Nos. 96-98, 99-68 (filed July 20, 2004) ("Verizon/BellSouth Supp. White Paper") (attached hereto as Attach. C); Verizon and BellSouth Further Supplemental White Paper, CC Docket No. 96-98, 99-68 (filed Sept. 27, 2004) (attached hereto as Attach. D).

[15] 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*"), *remanded*, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003).

wireline communications, which currently is not. As was the case in the *Vonage Order*, the "significant costs and operational complexity" that would be associated with modifying or supplementing carriers' systems for tracking and segregating these different categories of traffic would serve "no legitimate policy purpose." *See Vonage Order* ¶¶ 23, 25. The Commission therefore has good grounds for preempting state authority over intrastate intercarrier compensation. But, 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.

B. The Commission Should Reject Arguments That § 251(b)(5) Authorizes It To Adopt Rules To Govern Intercarrier Compensation For All Traffic Exchanged Between Carriers

Some have suggested that the Commission could (and should) avoid § 2(b) by reading § 251(b)(5) to cover all traffic exchanged between and among all carriers. *See, e.g.*, ICF Ex Parte Brief at 28-35. They do so because the Supreme Court, in *Iowa Utilities Board*, held that the Commission has authority to regulate intrastate traffic in the course of prescribing rules, under § 201(b), to implement the provisions added by the 1996 Act, including §§ 251 and 252. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-81 (1999). But reliance on § 251(b)(5) would create more than 50 separate state intercarrier compensation regimes, 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. The Commission, therefore, should reject any suggestion that it find in § 251(b)(5) authority to adopt comprehensive intercarrier compensation reform.

Although the Supreme Court held in *Iowa Utilities Board* that the Commission can regulate intrastate traffic when it implements the local competition provisions of the 1996 Act, the Court did not read those provisions to give the Commission direct control over intrastate rates. Instead, in the related context of the Commission's authority to implement § 252(d)(1),[41] the Court held that the "Commission has jurisdiction to design a pricing methodology." *Iowa Utils. Bd.*, 525 U.S. at 385. But it "is *the States* that will apply th[e] [statutory pricing] standards and implement th[e] [Commission's] methodology, determining the concrete result in particular circumstances." *Id.* at 384 (emphasis added).

No different from the Supreme Court, the Commission has recognized as a general matter that "the obligations created by section 251 *and our rules* are effectuated through the process established in section 252," which envisions state commission arbitration of disputes about the implementation of the § 251 obligations and the Commission's rules implementing them.[42] Courts of appeals have similarly held that "[i]nterconnection agreements are . . . the vehicles chosen by Congress to implement the duties imposed in § 251." *Verizon Md. Inc. v. Global NAPs, Inc.*, 377 F.3d 355, 364 (4th Cir. 2004); *see BellSouth Telecomms. Inc. v. MCImetro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1278 (11th Cir. 2003) (en banc) ("Interconnection agreements are tools through which the [1996 Act is] enforced").

Therefore, if the Commission were to interpret § 251(b)(5) to apply to all traffic, it would be limited to designing a "pricing methodology" for state commissions to follow; but it would be

[41] Just as Congress gave state commissions the authority to "[d]etermin[e] . . . the just and reasonable rate for network elements," it gave those commissions the authority to determine whether "the terms and conditions for reciprocal compensation [in an interconnection agreement are] just and reasonable." 47 U.S.C. § 252(d)(1), (2)(A).

[42] Memorandum Opinion and Order, *Core Communications, Inc. v. SBC Communications Inc.*, 18 FCC Rcd 7568, ¶ 30 (2003) (emphasis added), *vacated and remanded on other grounds*, *SBC Communications Inc. v. FCC*, No. 03-1147, 2005 U.S. App. LEXIS 8404 (D.C. Cir. May 13, 2005).

the various state commissions that would each have the authority to implement that methodology and determine the "concrete result" in any case through the § 252 process. *Iowa Utils. Bd.*, 525 U.S. at 384-85. The federal district courts, not the Commission, would have the authority to review such state commission decisions for compliance with the Commission's regulations. *See* 47 U.S.C. § 252(e)(6). For these reasons, reliance on § 251(b)(5) would doom any effort to establish a uniform intercarrier compensation regime, and would instead create more than 50 separate regimes, outside of the Commission's direct control.

In addition, because state commissions have authority over *any* traffic that the Commission concludes is subject to § 251(b)(5), embracing arguments that interstate traffic comes within § 251(b)(5) would give states authority over compensation for traffic that has previously been within the Commission's exclusive control, including Internet traffic and interstate long distance traffic. Therefore, while there is no question of the Commission's authority, today, to establish a single regime for interstate traffic, interpreting § 251(b)(5) to apply to all traffic exchanged between all carriers would spread the *dis*uniformity inherent in the § 252 process to these other types of traffic.

In any event, the Commission cannot rely on § 251(b)(5) as a source of authority to regulate all traffic. Verizon has previously catalogued at length the various reasons that § 251(b)(5), along with § 252(d)(2), can only be read to apply 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.[43] While we will not repeat that entire discussion here, the salient points can be briefly summarized as follows:

- *First*, the express terms of the 1996 Act make clear that reciprocal compensation applies only to traffic that *terminates* on the network of an

[43] *See supra* note 14 & Attachs. B-D.

interconnecting local exchange carrier and that excludes long-distance traffic, which does not terminate on the LEC network. *See* §§ 251(b)(5), 252(d)(2)(A).

- *Second*, historical background and the legislative history reinforce the conclusion that § 251(b)(5) is limited to local telecommunications: reciprocal compensation was intended to fill a gap by addressing compensation for calls exchanged between local carriers competing in the same calling area; Congress did not intend for § 251(b)(5) to modify the existing compensation regimes for long-distance and other interexchange calls, which were already well established.

- *Third*, the reciprocal compensation obligation imposed by § 251(b)(5) applies to "[e]ach *local* exchange carrier"; it would be unworkable to read that provision as applying to traffic that LECs exchange with IXCs, because IXCs have no obligation under that provision to agree to pay LECs for the termination of traffic.

- *Fourth*, § 251(g) further emphasizes that Congress did not intend reciprocal compensation to displace the existing access regimes – to the contrary, given the care that Congress took to preserve the access regimes, it would be bizarre to read § 251(b)(5) to convert traffic for which LECs had long *received* originating access charges into traffic for which LECs would be required to *pay* reciprocal compensation.

- *Fifth*, this conclusion is still further reinforced by § 251(i), which says that nothing in § 251 shall be construed to limit or otherwise affect the Commission's authority under § 201. Extending § 251(b)(5) to interstate access traffic would be flatly inconsistent with that rule of construction, because, as explained above, it would subject that traffic to reciprocal compensation at rates set *by the states*, not by the Commission, thereby limiting the Commission's prior authority under § 201 – the very result that Congress barred.

See Verizon/BellSouth Supp. White Paper at 17.

The Commission itself concluded in the *Local Competition Order* that § 251(b)(5) cannot be read to preempt state authority to establish intrastate access charges, and that conclusion was never challenged. *See Local Competition Order* ¶¶ 732, 1033. Instead, as the Commission has repeatedly held – and, as the D.C. Circuit noted, "everyone agrees" – § 251(b)(5) "doesn't apply" to an "interexchange carrier phone call," whether interstate or intrastate. Transcript of Oral Argument, *WorldCom, Inc. v. FCC*, Nos. 01-1218 *et al.*, at 9-10 (D.C. Cir. Feb. 12, 2002);