

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Interconnection of Neutral)	WC Docket No. 06-159
Tandem, Inc. Pursuant to 47 U.S.C.)	
§ 201(a) and 332(c)(1)(B))	

AT&T'S REPLY COMMENTS

AT&T Inc. ("AT&T") submits these Reply Comments pursuant to the Public Notice (DA 06-1603) released in this proceeding on August 9, 2006, concerning Neutral Tandem's Petition for Interconnection filed with the Commission on August 2, 2006. The Commission's decision in this proceeding should be guided by the fundamental principle manifested in the Act that no telecommunications carrier may refuse to interconnect either directly or indirectly with another telecommunications carrier.

I. SECTION 251(a)(1) OF THE ACT REQUIRES TERMINATING CARRIERS TO INTERCONNECT DIRECTLY OR INDIRECTLY WITH ALL CARRIERS, INCLUDING TANDEM TRANSIT PROVIDERS

Consideration of the issues raised in Neutral Tandem's petition must begin with the requirement set forth in § 251(a)(1) of the 1996 Act that all telecommunications carriers are required to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."¹ In the *Local Competition Order*, the Commission held that the interconnection requirement in § 251(a)(1) "is central to the 1996 Act and achieves important policy objectives."² Accordingly, the Commission declined to limit the application of §

¹ 47 U.S.C. § 251(a)(1).

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd. 15499, CC Docket No. 96-98 ¶ 997 (rel. Aug. 8, 1996) ("Local Competition Order"). More broadly, the Commission has declared that "universal connectivity is an important policy goal that our rules should continue to promote." Access Charge Reform, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd. 9923, CC Docket No. 96-262 ¶ 93 (rel. April 27, 2001) ("CLEC Access Charge Order"). With respect specifically to interconnection with intermediate carriers such as transit providers, the Commission also has declared that transit service is critical to the ability of carriers to interconnect indirectly. See Petition of

251(a)(1) to dominant carriers only.³ Thus, under § 251(a)(1), *all* telecommunications carriers have a clear obligation to interconnect directly or indirectly with other telecommunications carriers.⁴

Neutral Tandem's petition raises the question of how to apply § 251(a)(1) to the situation in which one telecommunications carrier (Neutral Tandem) requests *direct* interconnection with another telecommunications carrier (Verizon Wireless) who insists on *indirect* interconnection only for the receipt of that traffic. In that situation, it is logically impossible for both telecommunications carriers simultaneously to have the individual right to choose to interconnect directly or indirectly with the other telecommunications carrier.

Although the Commission has not directly addressed the issue, the only solution to that dilemma that is consistent with the Commission's reciprocal compensation rules and promotes efficient interconnection is to afford originating telecommunications carriers the option to deliver such traffic either directly or indirectly, at their own cost, to terminating telecommunications carriers. Under the Act and the Commission's rules, for purposes of ILEC compliance with §251(b)(5), terminating carriers are permitted to recover from originating carriers the costs of transporting and terminating traffic that originates on the networks of originating carriers.⁵ The Commission also has recognized more broadly that calling-party-network-pays "arrangements, where the calling party's network pays to *terminate* a call, clearly are the dominant form of

WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, *Memorandum Opinion and Order*, 17 FCC Rcd. 27,039 CC Docket No. ¶ 118 (rel. July 17, 2002) ("*Virginia Arbitration Order*"); *see also* Review of the Section 251 Unbundling Obligations of Local Exchange Carriers, *Report and Order and Order on Remand and Further Notice of Rulemaking*, 18 FCC Rcd. 16,978, CC Docket No. 01-338 ¶ 534 n. 1640 (rel. Aug. 21, 2003).

³ *Local Competition Order* ¶ 997.

⁴ The United States Cellular Corporation complains that "forcing unwilling parties to do business with each other is bad idea," *United States Cellular Corporation* comments at 4, but the Act does not allow any telecommunications carrier to choose to interconnect with some telecommunications carriers but not others.

⁵ 47 U.S.C. § 252(d)(2)(A); 47 C.F.R. § 51.701, *et. seq.*

interconnection regulation in the United States and abroad.”⁶ Consistent with that form of interconnection regulation, the Commission previously prohibited ILECs from charging wireless carriers for traffic that originates on ILEC networks, and codified that prohibition in the Commission’s reciprocal compensation rules.⁷ In short, the Act and the Commission’s rules thus generally impose on originating carriers financial responsibility for the transport and termination of telecommunications traffic.

Originating telecommunications carriers also should have the right to determine whether they will deliver telecommunications traffic directly or indirectly to terminating telecommunications carriers. Otherwise, terminating telecommunications carriers could force originating carriers to bear the cost of inefficient interconnection arrangements, and originating carriers would have no recourse for recovering the cost of those inefficiencies other than through their end user retail rates. Because most carriers both originate and terminate telecommunications traffic, the economic costs of such inefficiencies would spiral, as each telecommunications carrier forced into an inefficient interconnection arrangement for its originating traffic in turn forces other telecommunications carriers into inefficient interconnection arrangements for their originating traffic. The only interpretation of § 251(a)(1) that is consistent with Act and promotes efficient interconnection is that originating carriers are entitled to choose whether to interconnect directly or indirectly with terminating carriers.

A natural corollary to that interpretation of the scope of § 251(a)(1) is that a terminating telecommunications carrier may not refuse to interconnect directly with a transit service provider (under appropriate contractual terms, and assuming the transit provider agrees to bear the cost of

⁶ Developing a Unified Intercarrier Compensation Regime, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 9610, CC Docket No. 01-92 ¶ 10 (rel. April 27, 2001).

⁷ 47 C.F.R. § 51.703(b).

such direct interconnection),⁸ because to do so would be to refuse indirect interconnection with the originating telecommunications carrier. Thus, as Verizon declared in its comments in the *Time Warner Cable* proceeding, intermediary, wholesale telecommunications carriers are “entitled” under § 251(a)(1) to interconnect directly with terminating telecommunications carriers, and actions that “deny a competitive LEC the right to interconnection when providing such a service would violate § 251(a)(1).”⁹

Providing that all originating carriers may choose whether to interconnect directly or indirectly also allows § 251(a)(1) to be interpreted in a manner that treats all telecommunications carriers and classes of telecommunications carriers the same. The Rural Cellular Association suggests that the Commission eschew such a competitively neutral interpretation of § 251(a)(1) for one that favors wireless carriers over all other telecommunications carriers.¹⁰ The upshot of

⁸ Because it is the originating carrier that has the right to choose whether to send its traffic directly or indirectly to a terminating carrier, a transit provider (*e.g.*, Neutral Tandem) can not force an originating telecommunications carrier (*e.g.*, Verizon Wireless) to subscribe to the transit provider’s service (and thus force the originating carrier to indirectly interconnect with a terminating telecommunications carrier). Moreover, a terminating telecommunications carrier need not interconnect directly with other telecommunications carriers without appropriate contractual terms or merely on whatever terms the intermediary telecommunications carrier demands. Rather, a terminating telecommunications carrier may insist on a contract setting forth appropriate terms and conditions with the intermediary telecommunications carrier, including terms and conditions addressing “administrative” and operational issues such as those raised by Verizon Wireless and CTIA, *e.g.*, apportionment and reimbursement of costs, generation and delivery of traffic reports, and assurance that the terminating carrier is appropriately compensated for transport and termination of traffic by originating telecommunications carriers. *See, e.g., Verizon Wireless Comments* at 24-26; *CTIA Comments* at 7. Thus, the Commission has held that § 251(a)(1) does not impose a requirement that carriers interconnect “regardless of the rate at which” interconnection is offered. *CLEC Access Charge Order* ¶ 92. What a terminating carrier may not do is refuse outright—on any terms—to interconnect directly with an intermediary carrier. *See CompTel Comments* at 2.

⁹ Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers may Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC Docket No. 06-55, *Comments of Verizon* at 9 (April 10, 2006). Verizon Wireless asserts that the “public interest with respect to Neutral Tandem’s requested relief is different from the calculus in the context of Time Warner Cable’s petitions[.]” Letter from Helgi C. Walker, Wiley Rein & Fielding LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-159, *et. al.* at 1 (Sept. 18, 2006). Even if that were correct, it is irrelevant. While the policy issues underlying the *Neutral Tandem* and the *Time Warner Cable* proceedings may not be the same, the legal analysis with respect to a carrier’s rights under § 251(a)(1) plainly is the same. In both cases, the question is whether an intermediary carrier has the right to interconnect directly with a terminating carrier. Thus, Verizon’s statement in the *Time Warner Cable* proceeding that an intermediary carrier is “entitled” under § 251(a)(1) to interconnect directly applies with equal force whether the terminating carrier is a rural ILEC, a CMRS carrier, a CLEC, or any other sort of telecommunications carrier.

¹⁰ *See, Rural Cellular Association Comments* at 3-4; *see also United States Cellular Corporation Comments* at 2.

its claim is that a wireless carrier has the “option”¹¹ to interconnect indirectly with any terminating wireline telecommunications carrier, using a transit service provider of the wireless carrier’s choice, and the wireless carrier also may force that same wireline carrier to send the wireline carrier’s own traffic through a transit service provider of the wireless carrier’s choice. Thus, a wireless carrier could refuse to accept traffic from individual transit providers (including ILECs) in favor of other preferred transit providers, and also require originating wireline telecommunications carriers (including CLECs as well as ILECs) to forego indirect interconnection and to interconnect directly with the wireless carrier.¹²

There is no basis for such a lopsided interpretation of the rights and responsibilities under § 251(a)(1).¹³ Section 251(a) contains no provisions relieving any carrier of its obligation to interconnect with other carriers based on the types of carriers involved. In particular, as AT&T has indicated in comments in another proceeding, § 251(a) contains no provisions absolving terminating carriers of their obligation to interconnect with a requesting telecommunications carrier simply because the requesting telecommunications carrier does not directly serve end user customers.¹⁴ Indeed the Commission already has rejected that interpretation. In its *Local*

¹¹ *United States Cellular Corporation Comments* at 2.

¹² The position of CTIA and other wireless carriers is particularly difficult to square with the fact that wireless carriers themselves rely on transit service in order to interconnect indirectly with terminating carriers, such as CLECs and ILECs. Indeed, the Rural Cellular Association supports “efforts to provide competitive intercarrier transit and tandem-switched access services.” *Rural Cellular Association Comments* at 1; *see also CTIA Comments* at 2. Allowing any class of carrier to dictate the use of a particular transit service provider in both directions of telecommunications traffic would prevent rather than promote the development of a competitive market for tandem transit service.

¹³ There is no basis for the suggestion by the Rural Cellular Association that the right of a wireless carrier under § 332 of the Act to establish physical connections with a common carrier upon reasonable request somehow trumps the obligation of wireless carriers under subsequently enacted § 251(a)(1) of the Act to interconnect directly or indirectly with other telecommunications carriers. *See Rural Cellular Association Comments* at 5-9. Nor is there any basis for the Rural Cellular Association’s claim that, because only ILECs are subject to the requirements of § 251(c)(2)—which imposes a requirement for direct interconnection specially on ILECs—§ 251(a)(1) does not require wireless carriers (or any other carrier) to interconnect directly with, and terminate traffic from, other telecommunications carriers. *See Rural Cellular Association Comments* at 8. To the contrary, the fact that § 251(c)(2) imposes more stringent requirements on ILECs was one of the reasons the Commission refused to forbear from applying § 251(a)(1) to non-dominant carriers. *See Local Competition Order* ¶ 997.

¹⁴ *See* Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale

Competition Order, the Commission rejected the general notion that it need not apply § 251(a)(1) to a class of carriers simply because such carriers are non-dominant.¹⁵ More specifically, the Commission has rejected any notion that wireless carriers are not subject to the requirement under § 251(a)(1). Thus, in the *Local Competition Order*, the Commission held:

We believe, as a general policy matter, that all telecommunications carriers that compete with each other should be treated alike regardless of the technology used unless there is a compelling reason to do otherwise. We agree with those parties that argue that all CMRS providers are telecommunications carriers and are thus obligated to comply with section 251(a).¹⁶

There is simply no basis in the language of the statute for the proposition that wireless carriers are entitled to special dispensation under § 251(a)(1).

There also is no validity to any claim that the Commission's *CMRS Reseller Interconnection Order*¹⁷ effectively absolved wireless carriers of the obligation to interconnect directly with other telecommunications carriers.¹⁸ That decision, as well as the Commission's orders in the *Cellnet Communications*¹⁹ and *Cellexis International*²⁰ complaint proceedings,

Telecommunications Services to VoIP Providers, *AT&T's Comments* at 2, WC Docket No. 06-55 (April 10, 2006). By referring to Neutral Tandem as "merely an alternative 'middleman' between carriers," *Verizon Wireless Comments* at 2; *see also id.* at 15 ("Neutral Tandem simply seeks to insert itself as an alternative tandem between carriers. . . in other words, to collect fees as a middleman."); Verizon Wireless suggests that no carrier other than a carrier directly serving end user customers has any right to interconnect with terminating carriers. That conclusion is plainly incorrect. It is premised on the misguided notion that "telecommunications services" are only services provided directly to end users. The Act, however, defines "telecommunications service" as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46)(emphasis added). The Commission as well as the courts have repeatedly rejected the argument that the term "public" in the definition of "telecommunications service" refers only to end user, retail customers. Simply put, wholesale services are just as much telecommunications services as end user, retail services, and wholesale providers are just as much telecommunications carriers as retail service providers.

¹⁵ *Local Competition Order* ¶ 997. CTIA's and Verizon Wireless's discussion of the continued non-dominance of wireless carriers, *see CTIA Comments* at 5-6; *Verizon Wireless Comments* at 12-13, is thus irrelevant to the question of whether § 251(a)(1) requires wireless carriers to interconnect direct with requesting telecommunications carriers.

¹⁶ *Id.* ¶ 993.

¹⁷ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Fourth Report and Order*, 15 FCC Rcd. 13523, CC Docket No. 94-54 (rel. July 24, 2000).

¹⁸ *See, e.g., CTIA Comments* at 4-5; *United States Cellular Corporation Comments* at 2; *Verizon Wireless Comments* at 11-15.

¹⁹ *Cellnet Communications, Inc. v. New Par, Inc., et. al., Order*, 15 FCC Rcd. 13814, DA 00-1660 (rel. July 26, 2000).

²⁰ *Cellexis International, Inc. v. Bell Atlantic Nynex Mobile Systems, Inc., et. al.*, 16 FCC Rcd. 22887, FCC 01-368 (rel. Dec. 19, 2001).

addressed only demands by wireless resellers to interconnect with facilities-based wireless carriers. In none of those decisions did the Commission broadly hold that wireless carriers are never required under § 251(a)(1) to interconnect directly with any other carrier.

Moreover, the Commission's decisions in those proceedings in no way undermine the proper interpretation of § 251(a)(1) that originating telecommunications carriers are entitled to choose to send their traffic either directly or indirectly to terminating telecommunications carriers, and thus that terminating telecommunications carriers are required to interconnect directly with other telecommunications carriers. In those proceedings, the wireless resellers demanded the right to "place their switches between the mobile telephone switching office (MTSO) of the cellular carrier and the facilities of the local exchange carrier (LEC) or interexchange carrier."²¹ Thus, the wireless resellers did not simply request to terminate traffic to facilities-based wireless carriers, and, in denying those requests, the Commission in no way absolved wireless carriers of their obligation under § 251(a)(1) to interconnect directly with other telecommunications carriers. The Commission should reject any such interpretation of § 251(a)(1) and affirm that all intermediate carriers, including transit service providers, are entitled to interconnect directly with terminating telecommunications carriers.

II. NEUTRAL TANDEM'S PETITION DEMONSTRATES THE MERITS OF THE MISSOULA PLAN

The Missoula Plan is the only proposal before the Commission that comprehensively reforms intercarrier compensation in a manner that addresses the myriad relationships between intercarrier compensation, interconnection, and universal service. As such, Verizon Wireless is correct that adoption of Missoula Plan would effectively resolve the question of whether carriers are entitled to direct interconnection with terminating carriers (as well as numerous other outstanding interconnection and intercarrier compensation-related disputes currently pending

²¹ *CMRS Reseller Interconnection Order* ¶ 2.

before the Commission).²² Two components of the Missoula Plan provide such a solution. First, as Verizon Wireless indicates,²³ the Missoula Plan would allow carriers to interconnect directly at one or more Edges of a terminating carrier's network.²⁴ In addition, the Missoula Plan provides that any telecommunications carrier may request an interconnection agreement with any other telecommunications carrier pursuant to the negotiation and arbitration procedures set forth in § 252 of the Act,²⁵ which would facilitate the negotiation of interconnection agreements for direct interconnection between transit carriers and terminating carriers, including wireless carriers. The issues raised in Neutral Tandem's petition thus illustrate the merits of the Missoula Plan's comprehensive resolution of intercarrier compensation and interconnection issues.²⁶

III. THE COMMISSION SHOULD REJECT NCTA'S CLAIM THAT THE ACT REQUIRES ILECS TO PROVIDE TRANSIT SERVICE

Ostensibly in response to the Commission's Public Notice concerning Neutral Tandem's petition to interconnect directly with Verizon Wireless, NCTA urges the Commission to "clarif[y] that incumbent LECS must provide transit service pursuant to section 251."²⁷ There is no basis for NCTA's demand. As an initial matter, NCTA's assertion that ILECs are required under the Act to provide transit services is not at issue in this proceeding. Neutral Tandem is a competitive transit service provider, and the sole issue raised by its petition is whether it is entitled to interconnect directly in order to terminate traffic to Verizon Wireless.

Moreover, NCTA's claims are legally unfounded. Neither the Act nor the Commission's rules require ILECs to facilitate indirect interconnection between other carriers by providing transit services. There are no provisions in the Act or in the Commission's rules specifically

²² See *Verizon Wireless Comments* at 10.

²³ See *id.*

²⁴ See § III of the Missoula Plan.

²⁵ See *id.* § IV.B.

²⁶ AT&T disagrees, however, that the merits of the Missoula Plan warrant delay of any individual carrier's request to interconnect with another carrier.

²⁷ *NCTA Comments* at 6.

requiring the provision of transit services. Rather, NCTA and others read into the Act such a requirement based on the Act's interconnection provisions, specifically, 47 U.S.C. § 251(a)(1) and 47 U.S.C. § 251(c)(2)(A). Transiting, however, is not a function of an ILEC's obligations under section 251(c) of the Act. As the Wireline Competition Bureau indicated in the *Virginia Arbitration Order*, "the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under [47 U.S.C. § 251(c)(2)]."²⁸ More broadly, the interconnection that must be provided under Section 251(c)(2)(A) is interconnection (1) "for the facilities and equipment of any requesting telecommunications carrier," (2) "with an ILEC's network." It is thus very clear that § 251(c)(2)(A) is an obligation to interconnect the requesting carrier's facilities *with the ILEC's network*.²⁹ It is not an obligation to interconnect a requesting carrier's facilities with another carrier's network, *i.e.*, to provide indirect interconnection and become a third party provider of transit services. Therefore, § 251(c)(2)(A) creates no obligation to provide transit services.

Nor do any other provisions of § 251 create such an obligation. While AT&T endorses the legal analysis of the Missoula Plan supporters that the Commission has authority under the Act to require an ILEC to *continue* providing transit service once it already has assumed that obligation (if for no other reason than to avoid unnecessary network disruptions),³⁰ the Commission has never held that ¶ 251(a) requires any telecommunications carrier to act as an intermediary and provide transit service in the first instance. Section 251(b)(5) also has never been interpreted to require carriers to provide transit services or to compel interconnection of any kind; instead, it covers the transport and termination charges that may flow between the carriers

²⁸ *Virginia Arbitration Order* ¶ 117; *see also id.* (noting the absence of "clear Commission precedent or rules declaring such a duty").

²⁹ The Commission thus clarified that "the term 'interconnection' under section 251(c)(2)(A) refers only to the physical linking of *two networks for the mutual exchange of traffic*." *Local Competition Order* ¶ 176 (emphasis added).

³⁰ The Missoula Plan requires all ILECs "that are providing Tandem Transit Service at Step 0 must continue providing that service during the term of the Plan." *See* § III.D.2.a.

whose customers are the parties to a call. In short, there is no legal basis for NCTA's claim that ¶ 251 of the Act requires ILECs to provide transit service.³¹

CONCLUSION

Consistent with the language of the Act, in order to preserve the ability of carriers to offer transit service to other carriers, and in order to preserve the ability of telecommunications carriers to interconnect directly and indirectly with other telecommunications carriers, the Commission should affirm in this proceeding that intermediate telecommunications carriers, including transit service providers, have the right under the Act to interconnect directly with terminating telecommunications carriers.

Respectfully Submitted,

/s/ Jim Lamoureux

Jim Lamoureux
Gary L. Phillips
Paul K. Mancini

AT&T INC.
1120 20th Street NW 10th Floor
Washington, D.C. 20036
202-457-3052 – phone
202-457-3073 - facsimile

Its Attorneys

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³¹ If an ILEC does choose to provide transit services, it may price its service at the “market” rates that NCTA derides, *NCTA Comments* at 3 n. 8, and is not required to price those services at TELRIC rates. *Virginia Arbitration Order* ¶ 11. Moreover, ILEC transit providers are not required to act as billing intermediaries between originating and terminating carriers. *Id.* ¶ 119.