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Ex Parte

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

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; IP-Enabled Services, WC Docket No. 04-36.

Dear Ms. Dortch:

On September 12, 2008, Verizon submitted a comprehensive proposal for a new, straightforward, and workable intercarrier compensation regime.[1] In a recent letter addressing Verizon's proposal, a group of competitive carriers agreed that "[t]he Commission can, and should, unify terminating rates for all types of traffic."[2] However, the CLECs' letter also raised concerns about Verizon's proposal, which appeared to be based on a misunderstanding of Verizon's proposed interconnection provisions. We have discussed these concerns with several of these parties, and we agree that we should clarify our initial proposal. In short, Verizon's proposal does *not* alter carriers' ability to interconnect to an incumbent carrier's network at "any technically feasible point" as provided in the Act, nor does it alter carriers' ability to use the state arbitration process as a way to resolve interconnection disputes under the Act.

First, Verizon's proposal does *not* alter carriers' ability under the Act to interconnect to an incumbent LEC's network at "any technically feasible point." *See* 47 U.S.C. § 251(c)(2)(B). In order for a uniform terminating rate proposal to have meaning, however, that proposal must delineate which services will be included in that rate, and which services will not. The default Points of Interconnection (POIs) identified in Verizon's proposal merely define the services that

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1 *See* Proposal for Intercarrier Compensation Reform, *attached to* Verizon Ex Parte, CC Docket No. 01-92, CC Docket No. 96-45 (Sept. 12, 2008) ("Verizon Proposal").

2 *See* Letter from 360networks(USA), inc., et al. to Chairman Martin, CC Docket No. 01-92, WC Docket No. 04-36 (Sept. 29, 2008) at 7.

are "included" in the $0.0007 rate, and allocate financial responsibility for getting traffic to and from the POI. *See* Verizon Proposal §§ 1.b.ii, 1.b.iv. If a delivering carrier wants the benefit of the $0.0007 per minute default terminating rate, the delivering carrier must bear the expense of getting its traffic to the terminating carrier's default POI; at that point, the terminating carrier is responsible for the remaining functions to terminate the call. *See* Verizon Proposal § 1.d.i. But that in no way alters carriers' statutory ability to interconnect at other technically feasible points, subject to an appropriate allocation of the financial responsibility for any such arrangement.

The primary concern underlying the letter appears to be the perceived disruption of existing interconnection arrangements at technically feasible points that *differ* from the default POIs identified in Verizon's proposal, such as existing mid-span fiber meet arrangements for local traffic. Again, however, Verizon's proposal does not disrupt these arrangements.

Under Verizon's initial proposal, to the extent carriers have agreements with particular interconnection arrangements, such as "mid-span fiber meets" that might differ from the interconnection and transport obligations set forth in Verizon's plan, and those agreements are not in "evergreen" status, those arrangements will remain in place during the term of those contracts absent an agreement to modify them. *See* Verizon Proposal § 1.k.i. For those contracts that are in "evergreen" status, Verizon's initial proposal provided that, unless the parties agreed otherwise, the new default rules would apply beginning on the implementation date of the plan. *See id.*[3] Of course, in the case of existing mid-span fiber meets and similar arrangements, both parties to the "meet" have already invested in the facilities to exchange traffic at that location and have little incentive to disrupt those interconnection facilities. As such, Verizon anticipated that the parties to such arrangements would most often agree to continue to exchange traffic at those points. In order to resolve uncertainty, however, Verizon now amends § 1.c. of its original proposal to allow carriers to designate existing mid-span fiber meet arrangements (including those in "evergreen" status) as "default" points of interconnection for the traffic exchanged under those existing arrangements today.

To the extent that carriers are concerned with future arrangements, nothing in the Verizon proposal prevents a delivering carrier from negotiating to interconnect at a *different* technically feasible point and delivering its traffic there. In that case, the cost of the alternative interconnection would not be included in the $0.0007 per minute termination rate, and that rate will not apply as the default at that alternate POI. Accordingly, the parties also would have to negotiate the appropriate allocation of financial responsibility for the alternate POI, just as they do

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[3] As Verizon provided in its September 12 proposal, the Commission should ensure an orderly network architecture transition, to the extent parties opt to change existing POIs. *See* Verizon Proposal § 5.f.

today. On the one hand, the parties may find that interconnecting at a different point will be more efficient for both parties, and may therefore agree to a lower rate. On the other hand, interconnecting at a different point may also impose additional costs, or eliminate economic efficiencies, for one or more of the carriers. For example, a terminating carrier that accepts traffic at an alternate POI may have to establish new interconnection facilities or provide additional transport services, and the terminating carrier should be compensated for those costs. Thus, to the extent a carrier requests interconnection at a point other than the default POI, that carrier may negotiate a rate appropriate for that alternate interconnection point, taking into consideration any additional costs incurred or saved, or efficiencies lost or gained, by either party as a result of interconnecting somewhere other than the default POI. Indeed, the Commission and courts have long recognized that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), *be required to bear the cost of that interconnection*, including a reasonable profit." *Local Competition Order*, 11 FCC Rcd at 15603, ¶ 199 (emphasis added).[4]

By the same token, Verizon's proposal does not prevent a terminating carrier from negotiating different points of interconnection at which it will receive traffic on its network. Each carrier must identify at least one POI per LATA at which it will accept both direct and indirect interconnection and terminate traffic at the default rate of $0.0007 per minute. A terminating carrier remains free, however, to negotiate with delivering carriers to establish different POIs, with a negotiated rate taking account of any additional costs incurred or saved, and efficiencies lost or gained, as a result of connecting at the alternate POI.

<u>Second, Verizon's proposal does not alter carriers' ability to use the state arbitration process as a way to resolve interconnection disputes under the Act.</u> On the contrary, state commissions would continue to have the same authority as today to conduct arbitrations of disputed issues under 47 U.S.C. § 252, and would continue to have the same obligations as today to ensure that their rulings are consistent with, and do not undermine, any Commission rules implementing the obligations in § 251(b) and (c) -- including those rules adopted or amended to

[4] *See also id.* ¶ 209; Memorandum of the Federal Communications Commission as Amicus Curiae at 22 & n.17, *U S WEST Comms., Inc. v. AT&T Comms. of the Pac. N.W., Inc.*, No. CV 97-1575 JE (D. Or. filed Aug. 16, 1998) (under the *Local Competition Order* ¶ 199, an incumbent LEC may "obtain additional compensation if a specific request for interconnection warrants it"); *MCI Telecomm.*, 271 F.3d at 518 (**"**[t]o the extent . . . that [a CLEC's] decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to [that CLEC]" (citing *Local Competition Order* ¶ 209)); *see US West Communications, Inc. v. Jennings*, 304 F.3d 950, 961 (9th Cir. 2002) (same).

implement Verizon's reform proposal. As prescribed by the express terms of the Act, when a state commission conducts an arbitration under 47 U.S.C. § 252, it must "ensure" that its "resolution" of the "open issues" in the arbitration "meet[s] the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251." 47 U.S.C. § 252(c)(1). Accordingly, to the extent the Commission establishes default POIs at which the default $0.0007 per minute rate applies, states would be bound to follow that rule. This is no different from prior instances in which the Commission amended its regulations, whether, for example, as to UNEs, TELRIC-pricing, number portability, or reciprocal compensation. And, again, carriers could still interconnect at other technically feasible points as provided in the Act, and the states would retain their existing authority under the Act to resolve disputes relating to such alternative interconnection arrangements.

We hope that this clarification addresses the concerns raised regarding Verizon's proposal. We continue to work closely with the industry to attempt to develop a workable, straightforward solution to the badly broken intercarrier compensation regime.

Sincerely,

Donna Epps

cc: Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Deborah Tate
Dan Gonzalez
Amy Bender
Scott Bergmann
Scott Deutchman
Nick Alexander
Greg Orlando
Dana Shaffer
Don Stockdale
Marcus Maher
Randy Clarke
Al Lewis
Victoria Goldberg
Doug Slotten
Jay Atkinson
Bill Sharkey
Lynne Engledow