MILLER & MARTIN PLLC
ATTORNEYS AT LAW

1200 One Nashville Place
150 Fourth Avenue North
Nashville Tennessee 37219 2433
(615) 244 9270
Fax (615) 256 8197 or (615) 744 8466

Melvin J Malone
Direct Dial (615) 744 8572
mmalone@millermartin com

RECEIVED
2006 JAN 27 PM 4 02
TRA DOCKET ROOM

January 27, 2006

VIA HAND DELIVERY

Honorable Ron Jones, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE **In Re Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996**
TRA Consolidated Docket No 03-00585

Dear Chairman Jones

Enclosed please find an original and thirteen (13) copies of the Joint Petition for Reconsideration of January 12, 2006, Order of Arbitration Award Submitted on Behalf of CMRS Providers

Also enclosed is an additional copy to be "File Stamped" for our records All parties of record have been served If you have any questions or require additional information, please let me know

Very truly yours,

Melvin J Malone

clw
Enclosures
cc Parties of Record

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

Petition of	)	
	)	
Cellco Partnership d/b/a Verizon Wireless	)	Consolidated Docket
For Arbitration Under the	)	No 03-00585
Telecommunications Act of 1996	)	
	)	

JOINT PETITION FOR RECONSIDERATION OF JANUARY 12, 2006, ORDER OF ARBITRATION AWARD SUBMITTED ON BEHALF OF CMRS PROVIDERS

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration Under the Telecommunications Act of 1996	))))))	Consolidated Docket No 03-00585

JOINT EXCEPTIONS TO ORDER OF ARBITRATION AWARD
SUBMITTED ON BEHALF OF THE CMRS PROVIDERS

I OVERVIEW

In its Order of Arbitration Award ("*Order*") entered on January 12, 2006, in this docket, the Tennessee Authority Regulatory ("Authority" or "TRA") broadly affirmed that the disputed issues raised in this proceeding were subject to the arbitration and compensation provisions of 47 U S C §§ 251 and 252 of the Communications Act of 1934, as amended (the "Act") The Authority appropriately held that the exchange of intraMTA traffic between local exchange carriers ("LECs") and commercial mobile radio service providers ("CMRS Providers") that is exchanged indirectly through a third-party LEC is subject to the Act's reciprocal compensation provision and thus the Federal Communications Commission's ("FCC" or "Commission") rules implementing the forward-looking pricing provisions of § 252(d)(2) of the federal statute The CMRS Providers wholly support the Authority's *Order* with respect to these findings

Within the context of the agency's overall findings, however, the *Order* sets forth particular determinations with respect to the following (1) the scope of telecommunications traffic subject to reciprocal compensation, (2) the obligations of LECs to afford dialing parity pursuant to § 251(b)(3) to traffic exchanged between telecommunications carriers, and (3) the allocation of costs of dedicated facilities used to transport traffic subject to reciprocal compensation With respect to these discrete issues, and a later identified one, the CMRS Providers respectfully seek, as set forth below, reconsideration and clarification pursuant to Tenn Code Ann Section 4-5-317 and Authority Rule 1220-1-2- 20

II ARGUMENTS

1 **Joint Issue No 2(b)** (excluding Verizon Wireless and Cingular Wireless) Do the reciprocal compensation requirements of 47 U S C § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC)?

With respect to Issues 2 and 2(b), the Authority properly ruled that Section 251(b)(5) and "Subpart H of the FCC Rules, 47 C F R §§ 51 701 through 51 717 defines telecommunications traffic and includes *any* 'traffic exchanged between a LEC and CMRS provider that at the beginning of the call, originates and terminates within the same Major Trading Area '"[1] In making this determination the Authority rejected the Rural Coalition of Small Local Exchange Carriers and Cooperatives' ("ICOs") arguments that the FCC's rules do not apply to calls that originate on an ICO's network but are handed off to a third-party carrier for delivery to a CMRS Provider network (this type of exchange is also referred to as indirect interconnection)[2] Conversely, the Authority concluded that the "plain language" of the FCC's reciprocal

---

[1] *Order* at 16

[2] *See* Response of the Rural Coalition of Small LECs and Cooperatives at 31 TRA Consolidated Docket No 03-00585 (Dec 1, 2003) (emphasis added) (ICO Response), *see also* Hearing Tr TRA Consolidated Docket No 03-00585, Vol VII at 34 3–4 (Aug 11 2004) ("Recip comp rules apply to local exchange carrier services not interexchange carrier services) (witness Steven E Watkins)

compensation rules applies equally to traffic which is exchanged indirectly through a third party, as to traffic completed between two carriers (i e , "direct interconnection") [3]

Having confirmed that the reciprocal compensation obligations of 251(b)(5) and the FCC's interpretative rules apply to indirect exchanges of traffic completed within a single MTA, the Authority next considered whether reciprocal compensation should apply to intraMTA traffic which is transported via an interexchange carrier ("IXC") The CMRS providers offered substantial legal support from the FCC's Local Competition Order, and decisions of other courts and regulators resolving the same question to support that the FCC's Rule 51 703 applied to the exchange of *all* intraMTA traffic between LECs and CMRS, regardless of whether the traffic was carried by an IXC [4]

However, the ICOs maintained in their reply brief that intraMTA traffic that is originated by a LEC and routed to the customer's IXC is not subject to reciprocal compensation [5] The ICOs' argument is premised on the idea that the manner in which a call is delivered changes the jurisdictional nature of the traffic, *i e* , that a carrier or its end-user can transform intraMTA traffic into *interMTA* traffic by causing traffic to be sent through an IXC The *Order* addressed this issue by creating an exception to FCC rule 51 701(b)(2) that is not otherwise contained in either the Act or FCC rules FCC rule 51 701(b)(2) applies reciprocal compensation to all

---

[3] *Order* at 17

[4] *See e g In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* 11 FCC Rcd 15499 ¶ 1036 (1996) (emphasis added) (the *Local Competition Order*), *3 Rivers Telephone Cooperative Inc v U S West Communications Inc* NO 99 90-GF-CSO (slip op) at 50 (D Mont Aug 22, 2003) (attached in the Appendix to Sept 10, 2004, Joint Post Arbitration Brief Submitted on Behalf of the CMRS Providers) and *Atlas Tel Co v Corp Comm n of Okla* 309 F Supp 2d 1299 1310 11 (W D Okla 2004) (filed with the Authority in TRA Consolidated Docket No 03-00585 on April 14 2004) *aff'd*, 400 F 3d 1256 (10th Cir 2005) Since the January 12 2005, TRA deliberations, the United States Court of Appeals for the Tenth Circuit affirmed the lower court finding in *Atlas Tel Co* that § 51 703(b)(2) of the FCC rules requires that all intraMTA traffic exchanged between a CMRS and LEC is subject to reciprocal compensation including the situation where an IXC is used to complete the call

[5] *See Order* at 19 *see also* ICO Response at 31

intraMTA traffic exchanged between LECS and CMRS Specifically, the TRA limited the application of the FCC's MTA Rule to "any wireline-wireless traffic that does not cross a LATA boundary and that originates and terminates within the same MTA is subject to reciprocal compensation whether or not it is carried by an IXC "[6]

The application of the LATA distinction for traffic, which is originated by wireline carriers and completed by an IXC to a CMRS carrier within a single MTA, is inconsistent with the regulatory framework established by the FCC in the Local Competition Order[7] As a practical matter, the imposition of a LATA constraint for landline-originated traffic is inconsistent with the symmetry requirement imposed by the FCC rule 51 711(a)[8] In essence, it would mean that the ICOs do not pay CMRS Providers reciprocal compensation for intraMTA traffic they cause to be terminated on CMRS networks and instead collect originating access charges (from their own customers) for that same traffic Moreover, such a ruling will encourage arbitrage of the reciprocal compensation regime, and is clearly at odds with what the FCC and Congress had in mind when it enacted rules that required mutual and *symmetrical* recovery of costs for traffic within the MTA

The MTA rule, as modified by the Authority, is also inconsistent with the Tenth Circuit's opinion that all traffic exchanged within an MTA, including traffic exchanged via an IXC, is

---

[6] *Id* at 20

[7] *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* 11 FCC Rcd 15499 (1996) (the "*Local Competition Order*)

[8] *See* 47 C F R § 51 711(a) This rule requires that compensation be reciprocal and symmetrical unless a CMRS provider, or the smaller of two LECs can establish before a state commission that asymmetrical compensation is required under subsection 51 711(b) Hearing Officer Miller has already concluded in this case that asymmetrical compensation is not applicable *See* TRA Transcript of Proceedings Status Conference, at 4 (July 21, 2005) (I find that the rates must be symmetrical and each ICO s rates must be company-specific)

subject to the reciprocal compensation rules adopted by the FCC, and thus the application of access compensation is precluded [9]

The historical significance of LATA restrictions was essentially to define the areas in which a Regional Bell Operating Company ("RBOC") or a GTE Telephone Operating Company ("GTOC") could provide specified services LATA restrictions were not automatically made applicable to non-RBOCs or non-GTOCs, such as the ICOs in this case There does not exist any relationship between an RBOC or GTOC LATA restriction and an ICO's reciprocal compensation obligation to support any LATA limitation on the ICO's duty to pay for all ICO originated intraMTA traffic

For the foregoing reasons, the CMRS Providers request that the TRA reconsider its ruling that LEC-CMRS traffic that is exchanged via an IXC, and traverses a LATA boundary, is not subject to reciprocal compensation Such a finding is inconsistent with the Tenth Circuit's interpretation of 47 C F R § 51 701(b)(2) and 47 U S C § 251(b)(5)

> 2 **Joint Issue No 7** (A) Where should the point of interconnection ("POI") be if a direct connection is established between a CMRS Provider's switch and an ICO's switch? (B) What percentage of the cost of the direct connection facilities should be borne by the ICO?

The CMRS Providers only seek reconsideration of the TRA's interpretative finding concerning Issue 7(B) Issue 7(B) sought to clarify how FCC rule 51 709(b) should be applied to direct interconnection facilities establishing dedicated transport between a CMRS Provider and an ICO A majority of the arbitration panel concluded that "the cost for direct connection facilities should be borne by the CMRS provider to the point of interconnection and facilities on

[9] *See supra* n 4

the other side of the CMRS provider's point of interconnection should be borne by the ICO member."[10]

As the CMRS Providers discussed in their briefs, dedicated transport facilities are established for the exclusive transport of traffic exchanged between the two (2) carriers' switches and the costs should be shared between the carriers in relation the relative usage of each party of the dedicated facilities.[11] The FCC's rule for the allocation of facilities limits the recovery of each party's cost recovery for the use of a direct interconnection arrangement as follows:

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.[12]

Accordingly, the CMRS Providers have argued that unless the parties have agreed to a different cost allocation, each carrier's rate of recovery should be apportioned based on its relative traffic flow. For example, where the land to mobile traffic flow between an ICO and CMRS Provider is 70/30, then the percentage of the cost of the facility to be recovered by the ICO for call termination should be 70%, and 30% for the CMRS Provider. In addition, the CMRS Providers have explained that the cost of the facility should include the entire span of the interconnection facility as opposed to the portion of the facility located within the local calling area of the LEC. The CMRS Providers' position is that the TRA's conclusion regarding the recovery for use of direct interconnection facilities is inconsistent with the FCC's rule that requires sharing of costs in proportion to each party's relative use of the entire facility.

---

[10] *Order* at 37.

[11] *See* Joint Post Arbitration Brief Submitted on Behalf of the CMRS Providers at 75, TRA Consolidated Docket No. 03 00585 (Sept. 10, 2004).

[12] 47 C.F.R. § 51.709(b).

With respect to Joint Issue 7(B), the ICOs agree that the FCC's rules regarding the sharing of dedicated facilities would apply in the case of a direct connection [13] However, the ICOs dispute the geographical extent to which the ICOs are obligated to share the expense of the facilities beyond their respective rate center boundaries

The FCC, however, has clearly established that with respect to dedicated facilities that interconnect two (2) parties' networks, the parties are to share the costs of such facilities based upon their proportionate use of the facilities, regardless of how the facilities are provisioned, and without regard to the carriers' respective service areas [14] Notwithstanding the existence of this clear and unqualified FCC rule, the ICOs contend that in the case of a direct interconnection

> The two-way facilities to which the proportionate use charges would apply are limited in distance to geographic limits of the ICO's LEC service area That is, the facilities for which the proportionate use applies cannot extend beyond a point at the border of the ICO's service area network
>
> With respect to one-way facilities, the proportionate share use concept does not apply, each party bears the expense of its one-way facility For similar reasons as discussed previously, the ICO will not be responsible for transport beyond its service area boundary for one-way facilities used by the ICO to deliver its local exchange service calls to the CMRS provider [15]

---

[13] *See* Pre filed Direct Testimony of Steven E Watkins at 33 TRA Consolidated Docket No 03 00585 (To the extent that an interconnection point on the incumbent LEC network is established then the ICO is willing to share in the costs on a directional basis for those facilities that connect the networks) In the same discussion Mr Watkins points out the willingness to share in facilities costs for dedicated facilities would not include the cost of the entire facility but only the portion within "their network borders

[14] 47 C F R § 51 507(c) (The costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users[ ]) *See also Local Competition Order* 1062 ("The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility) and *Local Competition Order* 1063 (We recognize that the facility itself can be provided in a number of ways – by use of two service providers by the other carrier, or jointly in a meet point arrangement We conclude first that no matter what the specific arrangements, these costs should be recovered in a cost causative manner and that usage-based charges should be limited to situations where costs are usage sensitive)

[15] ICO Response at 60-61 Hearing Tr , TRA Consolidated Docket No 03-00585, Vol VIII at 44 10 – 45 14 (Aug 11 2004) (witness Steven E Watkins)

The ICOs' position lacks any legal or factual support, and is at odds with FCC rules 47 C F R §§ 51 701, 51 703(b) and 51 709(b) [16] In particular, the FCC has clearly ruled that "Section 51 703(b), when read in conjunction with Section 51 701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated [A] LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules "[17] Moreover, reviewing courts have found the language of § 51 703(b) to be "unambiguous"[18] and "quite specific"[19] in prohibiting a LEC from shifting the costs incurred from originating traffic onto the terminating carrier

In the *Order*, the TRA resolves Issue 7(B) by allocating costs based on the geographical location of the point of interconnection between the ICO and CMRS Provider, rather than the relative usage of the dedicated trunks The FCC's reciprocal compensation rules define "termination" as the point at the terminating carrier's end office where traffic is terminated to the customer [20] Read together, §§ 51 701(d) and 51 703(b) require that the originating LEC bear the cost of traffic originating to the end office of the terminating carrier, not the boundary of the originating carrier's network By finding that each party must pay for the *all* costs of transport facilities for traffic <u>to</u> and <u>from</u> the location of the POI, which must be located on an ICO network,[21] as opposed to the point where traffic is actually terminated, the TRA's cost allocation

---

[16] *See Order* at 37, n 138

[17] *See TSR Wireless* 15 FCC Rcd 11166, ¶ 31

[18] *See MCI Metro Access v BellSouth Telecommunications* 352 F 3d 872, 881 (4th Cir 2003)

[19] *See Southwestern Bell Tel Co v Publ Utils Comm'n of Tex* 348 F 3d 482 487 (5th Cir 2003)

[20] 47 C F R § 51 703

[21] *Order* at 37 (With regard to Issue 7(A), the Arbitrators voted unanimously that the CMRS providers have the right pursuant to the Act and FCC rules to designate the point(s) of interconnection at any technically feasible point on the LEC s network and the CMRS providers shall be responsible for delivering calls to the point of interconnection with ICO members)

rule runs afoul of the FCC's apportionment requirements, as the ruling impermissibly shifts the ICOs' costs for originating traffic over direct facilities onto the terminating carrier in violation of 47 C F R §51 703(b)

Accordingly, the CMRS Providers request reconsideration of the use of a POI on the network as the demarcation for the sharing of facilities costs for direct interconnection requirements

> 3 **Joint Issue No 12** (excluding Cingular as to Issue 12(B)) Must an ICO provide (A) dialing parity and (B) charge its end users the same rates for calls to a CMRS NPA/NXX as calls to a landline NPA/NXX in the same rate center?

The CMRS Providers agree with the TRA's conclusion that the ICOs clearly have an affirmative obligation to provide dialing parity in accordance with § 251(b)(3) and the applicable FCC rules, but seek reconsideration of the finding that the non-discrimination mandate of § 251(b)(3) does not extend to the ICOs' rating of calls completed to wireless NPA- NXXs that are rated locally within an ICO's service area

With respect to Issue 12(B), the TRA concluded that "ICO members are not required to charge end users the same rate for calls to a CMRS NPA/NXX as calls to the landline numbers, unless the calls originate and terminate within the **rate center** of the LEC "[22] As the CMRS Providers maintained in their briefs, there is currently no practical way to determine the precise location of mobile call origination and termination, and the industry has used rate centers to which NPA- NXXs are affiliated to approximate the routing and rating of calls to wireless NPA-

[22] *See Order* at 52 (emphasis added) The CMRS Providers also note that the language quoted above could be misconstrued to imply that ICO members could discriminate between charges to their customers for calls to wireless numbers outside of the local calling area and calls to similarly rated wireline numbers outside of the calling area The TRA clearly does not intend to sanction such a discriminatory practice nor would it be consistent with the Act

NXXs [23] Given this industry practice for locating and routing of wireless calls, the assessment of toll charges by the ICOs to locally rated CMRS numbers is discriminatory to the extent a call to a similarly rated landline number would be treated as local It would simply undermine the competitive goals of the Act, the concept of local number portability, as well as the way that all telecommunications carriers determine how to charge their customers, if the ICOs are permitted to charge different end user rates for calls to numbers associated with the same rate center depending on the called party's service provider [24] Moreover, in the absence of any viable alternative for how the ICOs would treat calls to wireless numbers – of which none has been proposed – there is no doubt that carriers are required to use the rating points for determining the local nature of the call [25]

The TRA should extend the statutory requirements of non-discrimination to the rating of wireless traffic because it is consistent with the Act and will otherwise prevent the ICOs from

---

[23] *See* e g , *Central Office Code (NXX) Assignment Guidelines*, 95-0407-008, Section 6 2 2 (Jan 7, 2002) Rating and routing points may have different locations The so called "rating and routing points are used by other carriers to determine where to deliver a particular call and whether toll charges are appropriate *See also* Pre-filed Rebuttal Testimony of Greg Tedesco on Behalf of T Mobile USA, Inc at 8, TRA Consolidated Docket No 03 00585 (June 24 2004) (as adopted by witness Dave Conn)

[24] *See In the Matter of Petition of WorldCom Inc et a Memorandum Opinion and Order* 17 FCC Rcd 27,039 ¶ 117 (July 17, 2002 (*Virginia Arbitration Order*) *see also See Order Instituting Rulemaking on the Commission s Own Motion Into Competition for Local Exchange Service Order Instituting Investigation on the Commission s Own Motion Into Competition for Local Exchange Service* Rulemaking No 95-04-043/Investigation No 95-04-044, Interim Opinion, Decision No 99-09 029, 1999 Cal PUC LEXIS 649, at Section IV B (Sept 2 1999) (rejecting ILEC claims that they should be allowed to rate calls to a CLEC NPA/NXX assigned to a local rate center as toll even when the NPA/NXX was assigned to foreign exchange service) *See also Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies CASE 00-C-0789* Order Establishing Requirements for the Exchange of Local Traffic at 4, 2000 N Y P U C LEXIS 1047 (N Y P U C Issued and Effective Dec 22 2000) (attached hereto)

[25] *See Virginia Arbitration Order* at ¶¶ 301 303

discriminating in the manner in which the ICOs provide call completion services to CMRS Providers, as compared to other wireline carriers [26]

4 **Issue No 14** Scope of the Interconnection Agreement regarding traffic transited by BellSouth

In addition to the discreet issues identified above, the CMRS Providers note the following matter regarding Issue 14 and seek clarification by the Authority Although the CMRS Providers agree with the ultimate conclusions reached by the TRA on this issue, they note that the text of the *Order* provides that "[t]he arbitrators found that interconnection agreements are, by design, for direct interconnection and , therefore, are intended to be two-party agreements "[27] A review of the *Order* indicates that although the TRA did determine that interconnection agreements were intended to be "two-party agreements", there was no such determination that interconnection agreements were designed for "direct interconnection " In fact, as discussed in the *Order*, such a holding would be inconsistent with the terms of the Act itself Accordingly, the CMRS Providers respectfully request that the phrase "by design, for interconnection, and therefore are" be deleted

---

[26] The CMRS Providers note that the *Order* also states that ' As such even though *intraMTA CMRS to LEC calling* is local for reciprocal compensation purposes, nothing prevents the LEC from charging its end uses for toll calls *Order* at 52 (emphasis added) The reference to ' CMRS to LEC calling seems to be inappropriate given that the discussion in the Order is about LEC to CMRS calling This appears to be little more than a scrivener s error but as currently stated, it could create unnecessary confusion as to what ICOs can charge their end users for wireless originated calls

[27] *Order* at 56

III CONCLUSION

For the above reasons, the CMRS Providers respectfully requests that the Authority grant the relief requested herein, and such other and further relief as the Authority deems just and proper [28]

Respectfully submitted this 27th day of January 2006

Melvin J Malone
Miller & Martin, PLLC
1200 One Nashville Place
150 4th Avenue North
Nashville, Tennessee 37219-2433
(615) 244-9270

Elaine D Critides
Verizon Wireless
1300 I Street, NW, Suite 400W
Washington, DC 20005
(202) 589-3756

Attorneys for Cellco Partnership d/b/a
Verizon Wireless

[28] On page 6 of the *Order*, the names of the parties and the witnesses that participated in the Hearing appear Inadvertently however, the *Order* does not include T Mobile USA, Inc and its counsel, Leon M Bloomfield of Wilson and Bloomfield, LLP, 1901 Harrison St, Suite 1630 Oakland, CA 94610 In addition, the *Order* does not note the appearance of Suzanne Toller of Davis, Wright and Tremaine, One Embarcadero Center, Suite 6000, San Francisco CA, then co-counsel for AT&T

Dan Menser
Marin Fettman
Corporate Counsel
T-Mobile USA, Inc
12920 SE 38th Street
Bellevue, WA 98006

Leon M Bloomfield
Wilson & Bloomfield, LLP
1901 Harrison St , Suite 1620
Oakland, CA 94610
510-625-8250

Attorneys for T-Mobile USA, Inc

Edward Phillips
Sprint
14111 Capital Blvd
Mail Stop NCWKFR0313
Wake Forrest, NC 27587
919-554-3161

Bill Atkinson
Sprint
3065 Cumberland Cir , SE
Mailstop GAATLD0602
Atlanta, GA 30339

Attorneys for Sprint PCS

Mark J Ashby
Senior Attorney
Cingular Wireless
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342

Paul Walters, Jr
15 E First St
Edmond, OK 73034
405-359-1718

Attorneys for New Cingular Wireless PCS, LLC
d/b/a Cingular Wireless

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2006, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated

[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronically	Stephen G Kraskin Kraskin, Lesse & Cosson, LLC 2120 L Street NW, Suite 520 Washington, D C 20037
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronically	William T Ramsey Neal & Harwell, PLC 2000 One Nashville Place 150 Fourth Avenue North Nashville, TN 37219
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronically	J Gray Sasser Melvin Malone Miller & Martin PLLC 1200 One Nashville Place 150 Fourth Avenue North Nashville, TN 37219
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronically	Edward Phillips Sprint 14111 Capital Boulevard Wake Forest, NC 27587-5900
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronically	Elaine D Critides Verizon Wireless 13001 Street, NW, Suite 400 West Washington, DC 20005
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronically	Paul Walters, Jr 15 East First Street Edmond, OK 73034

[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronically	Mark J Ashby Cingular Wireless 5565 Glenridge Connector, Suite 1700 Atlanta, GA 30342
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronically	Dan Menser, Sr Corp Counsel Marin Fettman, Corp Counsel Reg Affairs T-Mobile USA, Inc 12920 Southeast 38^{th} Street Bellevue, WA 98006
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronically	Leon M Bloomfield Wilson & Bloomfield, LLP 1901 Harrison Street, Suite 1630 Oakland, CA 94612
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronically	Charles McKee Sprint Spectrum L P d/b/a Sprint PCS 6450 Sprint Parkway MailStop 2A553 Overland Park, KS 66251
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronically	Bill Atkinson Sprint 3065 Cumberland Circle, SE Mailstop GAATLD0602 Atlanta, GA 30339

Melvin J Malone

Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies

CASE 00-C 0789

New York Public Service Commission

2000 N Y PUC LEXIS 1047

December 22 2000 Issued and Effective

PANEL [*1] COMMISSIONERS PRESENT Maureen O Helmer, Chairman, Thomas J Dunleavy, James D Bennett, Leonard A Weiss, Neal N Galvin

OPINION At a session of the Public Service Commission held in the City of Albany on October 11 2000

ORDER ESTABLISHING REQUIREMENTS FOR THE EXCHANGE OF LOCAL TRAFFIC

(Issued and Effective December 22 2000)

BY THE COMMISSION

This proceeding was initiated to resolve a dispute by carriers regarding treatment of competitive local exchange carrier (CLEC) telephone numbers assigned to a central office (NXX) code n1 within an established local calling area but used by customers located beyond the local calling area of the designated NXX code

n1 In a seven digit local phone number, the first three digits identify the specific telephone company central office which serves that number

BACKGROUND

Department Staff (staff) investigated complaints by customers of independent telephone companies (Independents) regarding calls that failed to reach their destination or were unexpectedly billed at toll rates Staff found that in nearly all of the situations examined, the calls in question had been made to an Internet service provider (ISP) served from a CLEC network In [*2] all instances both the CLEC switch and the ISP customer for whom the calls were destined were located outside the Independent's local service area The CLEC used an NXX code within the Independent's established local calling area to provide locally-rated calling to customers located outside the geographic area associated with the assigned NXX code

Calls failed to reach their destination because no provision had been made for physical interconnection between CLECs and Independents Toll charges were imposed when the Independent's only available transmission path for routing the call was the toll network In all cases, Staff found that no interconnection arrangements/agreements had been made between the CLECs and the Independents to handle these calls, unlike the situation between Independents and Verizon New York, Inc (Verizon) where transport arrangements are in place to handle calls to a customer outside the geographic area associated with the assigned NXX

After Staff facilitated negotiations between the Independents and CLECs reached impasse this proceeding was begun and on May 16 2000 a Notice Inviting Comments was issued The Notice sought comments regarding these questions [*3]

(1) How to treat calls from telephone exchanges to CLEC phone numbers within that company s local calling area?

(2) Whether there were any unique costs incurred by originating carriers who transported calls to a requesting CLEC?

(3) Whether there were any unique costs incurred when a third party transported calls between the originating carrier and the requesting CLEC and if there were, how such costs should be compensated?

(4) What generic principles should be established as guidance for interconnection agreements and inter carrier compensation?

Comments n2 and reply comments n3 were filed A Petition for Clarification or Rehearing was also filed by the Independents' Small Company Group (Small Companies) n4 AT&T Communications of New York and ACC Corp responded A summary of comments submitted appears in Appendix D

n2 Parties who filed comments are listed in Appendix A
n3 Parties who filed reply comments are listed in Appendix B
n4 The member Independents comprising the Small Company Group are listed in Appendix C

DISCUSSION

Rating of Calls

According to the Small Companies, a customer should not be considered "within" a local calling area [*4] if that customer is actually located in a different geographic area Instead the Small Companies recommended that CLECs be required to assign telephone numbers in a manner that makes it technically feasible to identify, switch, and deliver calls according to whether a call is inter-exchange or local CLECs maintained that the calls at issue in this proceeding should be considered local

No Commission or FCC rules or policies prohibit a CLEC from activating a telephone number in an exchange where it has no physical presence A CLEC may obtain an NXX or central office code in any existing rate center in order to establish a presence or a "footprint " These number assignments are then listed in the Local Exchange Routing Guide (Routing Guide), recognized by the industry as the source for instructions on how to route calls and other industry databases

Currently, Independents rate customer calls to Verizon NXX numbers that are within the Independent's defined local calling area as local calls, even if the called party is outside the geographic area Treating similar calls to a CLEC NXX code within the Independent's established local calling area as toll calls would be problematic Therefore [*5] calls to an NXX code within an established local calling area, but used by customers located outside the local calling area of the designated NXX code will be considered local for rating purposes This treatment assumes that the CLEC has established the appropriate fundamental network and service arrangements with all incumbent carriers consistent with the requirements of this Order

Foreign exchange service also allows customers to obtain local service in an exchange where the customer has no physical presence Independents do not treat calls destined for foreign exchange service any differently than calls terminating within the physical boundaries of the rate center This is precisely the service CLECs offer their ISP customers i e , telephone numbers that can be called on a local basis in exchanges where the ISP has no physical presence, and this approach of rating those calls as local is consistent with the way Independents treat foreign exchange service calls

Rating these calls as local however, will not by itself ensure completed calls and proper billing A fundamental network and service arrangement with Independents is an essential element in accomplishing that goal Therefore, [*6] CLECs will be required to enter into an agreement establishing fundamental network and service arrangements prior to activating a code that can be accessed on a local basis by an Independent's customer n5 The FCC's Numbering Resource Optimization Order (NRO Order) n6 requires code applicants to provide the North American Numbering Plan Administrator (NANPA) with appropriate evidence that it will be ready to provide service within 60 days of the activation date Responsibility for defining the readiness of facilities has been delegated by the FCC to the state commissions n7 and a pre existing network and service arrangement will be an element of facilities readiness Staff will advise NANPA that no NXX codes should be issued until the requesting CLEC has documented that it has interconnection agreements in place with all incumbent carriers within the local calling area where the code is sought This requirement also applies to carriers seeking thousand blocks in areas where pooling has begun

n5 The Central Office Code (NXX) Assignment Guidelines note that interconnection arrangements need to be in place prior to the activation of a code Carriers may apply for a code six months prior to activation and may ask for an activation date no sooner than within sixty six days of the request

[*7]

n6 *Numbering Resource and Optimization Report and Order and Further Notice of Proposed Rulemaking 15 FCC Rcd 7545 (March 2000)*

n7 Id , para 97, Common Carrier Bureau Responses to Questions in the Numbering Resource Optimization Proceeding CC Docket No 99-200 (July 2000)

Unique Routing Costs Incurred By Independent Companies

Independent companies connect to other incumbent carriers such as Verizon via two methods (1) local trunks between their central office and the adjacent incumbent's central office or (2) toll trunks to Verizon's tandem In either case, the Independent's responsibility is limited to bringing its facilities to its boundary with the adjacent incumbent The incumbent's responsibility is to provide connecting facilities within its territory to the boundary

If the CLEC has facilities built out to the Independent's end office or has a meet point somewhere in the Independent's territory, costs associated with completing calls from Independent exchanges to CLEC numbers within the Independent's local calling area should be, based on comments received, inconsequential Nonetheless, Independents argued that the costs of originating and transporting [*8] these calls should be subject to access charges assessed to the carrier to which the call is delivered The Independents were concerned that facilities could become overloaded and additional costs would be incurred to reinforce the network However no facts were provided to substantiate these concerns

CLECs share in the obligation to allow efficient interconnection to the Independents As previously noted, Independents are currently responsible for bringing meet point facilities to their borders only the long-standing arrangement in place today for trunks used in the provision of local calling between the Independents and Verizon Because Independent responsibility is limited to delivering traffic to its service area borders CLECs must either provide their own interconnection facilities or lease facilities to the meet-point With this obligation placed on CLECs no unique costs would be incurred by the Independents in transporting calls to CLECs

Third Party Carriage of Independent-CLEC Calls

All parties agreed that a need exists for third party transport of low volume calls between Independents and CLECs CLECs stated that it would be inefficient for them to physically [*9] interconnect with Independents for the exchange of relatively small amounts of traffic and proposed instead that calls between an Independent and a CLEC should be carried initially by an incumbent local exchange carrier (ILEC) Verizon, recognizing that it would most often be the third party involved in transporting such calls n8, offered to provide existing services for the exchange of Independent CLEC traffic in return for reasonable compensation Tandem switching rates are available in Verizon's 914 tariff but rates for traffic carried via shared common transport and using tandem switching are not tariffed and need to be developed Verizon will be directed to file a tariff for delivery of traffic from the Independent's meet point to the Verizon tandem Interested parties will have an opportunity to comment on the proposed rates

n8 Other Independents could also be involved in transporting these calls

If call volumes between an Independent and a CLEC go beyond the small volume level, the CLEC should be responsible for establishing direct trunking The DS 1 or T 1 level (24 voice grade channels) recommended by both Verizon and Time Warner is a reasonable standard for triggering [*10] dedicated transport since it represents a standard unit of network capacity, is an efficient network design and is generally acceptable to most parties Parties may of course decide a different level is appropriate in a negotiated agreement Rates for dedicated transport facilities are available in Verizon's 900 tariff

Fiber Tech proposed that Independents offer a service similar to Verizon's Competitive Alternative Transport Terminal which allows competitive fiber providers a means to interconnect with CLECs collocated in a central office While recognizing the competitive benefits offered by competitive fiber providers Fiber Tech's proposal is beyond the scope of this proceeding

Inter-Carrier Compensation

The Independents and Verizon currently have a "bill and keep" n9 arrangement for the exchange of local traffic The calls at issue closely resemble those that are currently handled in local calling arrangements between the Independents and Verizon and therefore, it is appropriate to handle these calls on the same "bill and keep" basis In addition, since the CLEC is not located within the same geographic territory as the Independent and is not directly competing with [*11] the Independent for local customers, treatment of the call as local for the purpose of reciprocal compensation does not appear warranted It should also be recognized that if a third party ILEC (e g Verizon) transports a call between the originating and terminating carriers, it should have no responsibility to pay for its completion

n9 "Bill and keep" is a compensation method whereby each carrier is responsible for its own costs and recovers those costs from its end users

Procedural Matters

The Small Company Group petitioned for clarification or in the alternative rehearing of the May 5 Order based on (1) potential displacement of long standing legal requirements and regulatory policies, (2) possible prejudgment of issues (3) a potential due process violation absent rehearing and modification of the May 5 Order, and (4) potential violations of Commission and federal policy based on the statement in the May 5 Order "that carriers are reminded of their legal obligation to complete customer calls regardless of disputes over intercarrer compensation or call rating designations and to bill such calls appropriately "

AT&T and ACC opposed the petition, arguing that there [*12] was no potential violation of Commission federal or public policy and that the Commission's reminder of a carrier's legal obligation to compete calls was consistent with law

The May 5 Order instituting this proceeding posited issues for comment which arose from previous discussions with Small Companies AT&T, and ACC A Notice Inviting Comment was issued on May 16 2000 and parties were given the opportunity to submit initial and reply comments

Clarification and/or rehearing is appropriate when ordered action is ambiguous or based on an error of fact or law The Small Companies' petition was based not on Commission ordered action, but potential or possible action At the time the Small Companies' petition was interposed no action had been ordered The statement regarding a common carrier s obligation to complete calls was merely a reminder of pre existing duties The Small Companies have failed to demonstrate any action that is ambiguous or erroneous Therefore, the Small Companies' petition for clarification and/or rehearing was premature and is denied

The Commission orders

1 Prior to activating an NXX code that can be accessed on a local basis by an independent telephone [*13] company's customer, CLECs must enter into an arrangement establishing fundamental network and service arrangements CLECs must make arrangements for interconnection facilities to a meet-point designated as the Independent Telephone Company boundary Independent Telephone Companies are responsible for delivering traffic to their own service area borders

2 Calls to an NXX code that is within an established local calling area and that is used by customers located beyond the local calling area shall be rated as local for the purpose of customer billing

3 Verizon New York Inc shall file with the Secretary (5 copies) a tariff for shared transport as discussed in this Order within 30 days of issuance of this Order and also serve the proposed tariff on parties on the service list for this case

4 Parties will have 20 days from Verizon New York, Inc 's filing to submit comments Comments shall be served on parties on the service list for this case

5 The Petition for clarification and/or rehearing is denied

6 This proceeding is continued

APPENDIX A

INITIAL COMMENTS

ACC Corp (ACC)
AT&T Communications of New York Inc (AT&T)
Adelphia Business Solutions, Inc (Adelphia)
Verizon-New [*14] York (Verizon formerly Bell Atlantic)
CTSI, Inc (CTSI)
Fiber Technologies, LLC (Fiber Tech)
Focal Communications Corp of New York Inc (Focal)
Mid-Hudson Communications, Inc (Mid-Hudson)
Northland Networks, Ltd (Northland)
RCN Telecom Services of New York Inc (RCN)
Small Company Group (Small Companies)
TC Systems Inc (TC)
Time Warner Telecom, Inc (Time Warner)
WorldCom Inc (WorldCom)

APPENDIX B

REPLY COMMENTS

ACC Corp (ACC)
AT&T Communications of New York Inc (AT&T)
Adelphia Business Solutions Inc (Adelphia)
Bell Atlantic New York (BA NY or Bell Atlantic)
CTSI, Inc (CTSI)
Cablevision Lightpath, Inc
Fiber Technologies LLC (Fiber Tech)
Focal Communications Corp of New York Inc (Focal)
Frontier Telephone of Rochester, Inc
Mid-Hudson Communications Inc (Mid Hudson)
Northland Networks Ltd (Northland)
RCN Telecom Service of New York, Inc (RCN)
Small Company Group (Small Companies)
TC Systems Inc (TC)
Time Warner Telecom, Inc (Time-Warner)
WorldCom, Inc (WorldCom)

APPENDIX C

SMALL COMPANY GROUP

Armstrong Telephone Company
Berkshire Telephone Company
Cassadaga Telephone Corporation
Champlain Telephone Company
Chautauqua & Erie Telephone Corporation
[*15] Chazy & Westport Telephone Corporation
Citizens Telephone Company of Hammond
Crown Point Telephone Corporation

Delhi Telephone Company
Dunkirk & Fredonia Telephone Company
Edwards Telephone Company
Empire Telephone Corporation
Fishers Island Telephone Company
Germantown Telephone Company
Hancock Telephone Company
Margaretville Telephone Company
Middleburgh Telephone Company
Newport Telephone Company
Nicholville Telephone Company
Ontario Telephone Company
Oriskany Falls Telephone Corporation
Pattersonville Telephone Company
Port Byron Telephone Company
State Telephone Company
TDS Telecom of Deposit
Township Telephone Company
Trumansburg Home Telephone Company
Vernon Telephone Company

APPENDIX D

SUMMARY OF COMMENTS RECEIVED

1 Treatment of calls between telephone company exchanges to CLEC numbers assigned to NXX code within that company's local calling area

The positions of the parties are generally divided between the incumbents (small companies and Verizon) and the CLECs

The Small Companies argue that assigning a number associated with one geographic area to a customer located in a different geographic area does not mean that the customer should be considered "within" the local [*16] calling area associated with the number As such the Small Companies request that the Commission require all LECs to divulge their NPA NXX code assignment practices and the manner in which telephone numbers are assigned to actual customers premises and LEC-designated rate centers These arbitrary number assignment practices are not in keeping with the point to-point nature of calls, according to the Small Companies The Small Companies state that CLECs fail to recognize the rights of its members and that other carriers cannot be forced to concede to these arbitrary practices The Small Companies recommend that CLECs be required to deploy numbers in a manner that makes it technically feasible to identify switch and deliver calls according to whether a call is interexchange or local Absent these practices, Small Companies state that calls to these numbers must be treated as interexchange/toll and subject to proper intrastate access changes Finally, the Small Companies note that a continuation of the current practices will harm independent company customers

Verizon posits that if a CLEC wants to have the call rated as a local call, the CLEC should either extend its facilities into [*17] the local calling area or pay for transport of the call from the local area to its switch n1

n1 A CLEC's switch may also be located some distance away from the exchange where the code is assigned

CLEC respondents agree that the calls at issue in this proceeding should be considered local Focal believes customer confusion would be encountered if these calls were treated as anything other than local Likewise Mid Hudson and Northland filing jointly argue that independent customers CLEC customers and CLECs would all suffer severe and irreparable harm if the calls were not treated as local AT&T states that there is no basis for discriminating between local and toll calls since independent companies make no distinction in routing and rating calls to incumbent customers (e g Verizon) some of which terminate to customers physically located outside of the local calling area, through the use of foreign exchange and remote call forwarding services n2 Time-Warner concludes that the calls at issue are local, therefore carriers should honor rate center assignments with their end users Worldcom states the physical location of the called party has no relevance on how a call is [*18] rated and billed Worldcom also states that the location of call ing and called parties is irrelevant and notes a California Commission ruling that determined the rating of calls is based on the NXX prefix of calling and called parties even if called party is located in different exchange n3 RCN CTSI and Adelphia filing jointly, state that there is no economic, technical or policy reason for different treatment to calls to the same rate center RCN/CTSI/Adelphia note a Michigan PSC order rejecting the argument that an ISP did not have a physical presence in the exchange, that this was not a prerequisite under the tariff, and that rating and routing need not be the same n4 n5 They also argue for FX service claiming it is a time honored service which allows businesses to expand their presence

n2 The Small Companies and Verizon have argued that foreign exchange calls are interexchange in nature and not an appropriate example

n3 Order Instituting Rulemaking on the Commission's own Motion Decision No 99 09 029 Interim Opinion at 31 32 (California Public Utility Commission September 2, 1999)

n4 In the Matter of the Complaint of Glenda Bierman against Centurytel of Michigan, Inc d/b/a/ CenturyTel, April 12, 1999

[*19]

n5 In reply comments, the Small Companies notes an order issued by the Maine Commission which reclaimed a CLEC's NXX codes that did not have facilities nor was serving customers in the exchange where the codes were assigned

2 Unique Costs incurred by Independent companies

Almost all parties (with the exceptions of Verizon and the Small Companies) deem the costs associated with com pleting calls from independent exchanges to CLEC numbers within that company's local calling area to be inconsequen- tial This includes those calls that must be completed to an end user located outside of that local exchange

However, Small Companies assert that these types of calls are interexchange calls, and that the costs of originating and transporting these calls should be subject to access charges which, in turn should be assessed to the carrier to which the call is delivered The Small Companies state that these calls are toll calls that will be converted to lower priced local calls by not assessing an additional charge for these types of calls The Small Companies argue that their local facilities may become overloaded as the demand for these types of calls increase, and that independent [*20] companies will incur additional costs to reinforce its system The Small Companies argue that, while a CLEC can request interconnec tion a CLEC cannot declare or demand that other carriers accommodate the CLEC's practices

Verizon states that third party costs would occur if it were to carry traffic between an independent and a CLEC and that Verizon would expect full recovery of any costs Verizon argues that it should be compensated for the use of its network

Time Warner states that it is possible that some additional costs may be incurred by independent companies de pending on 1) call volumes, 2) location of the interconnection points and 3) current capacity of the system However, Time Warner also states if the CLEC has built out to the independent's end office or has a meet point somewhere in the Independent Carrier's territory, there should be few recurring costs

WorldCom claims that each carrier has its own costs for originating telecommunications, and that generally the re covery of costs associated with originating calls are the responsibility of the originating carrier RCN/CTSI/Adelphia believe that no additional costs would be incurred if traffic were routed the same way [*21] for both Verizon and CLEC customers

Focal states that some costs to build out the network may be necessary, but that these costs should not be extraordi nary Mid-Hudson/Northland note that it makes no difference to the independent whether its customers dial the "phan tom NXX" or any other NXX, the costs for handling each call are the same All calls from the independent to the CLEC NXX code can be delivered in the same manner at the same cost to the independent Accordingly, the charge to the caller should be the same

3 Third party carriage of independent CLEC calls

AT&T, Focal Mid Hudson/Northland RCN/CTSI/Adelphia, Time Warner, and Worldcom basically agree that it would be inefficient for them to physically interconnect with independents for the exchange of relatively small amounts of traffic immediately Calls between an independent and a CLEC should, therefore, be initially carried by a third-party ILEC, most often Verizon The parties offer comments on shared and dedicated transport, the costs incurred and reim bursement of the third party carrier for those costs

Verizon, recognizing that it would most often be the third party involved in such calls n6, offers to provide [*22] existing services and to develop new services for the exchange of independent CLEC traffic Fiber Tech states that it intends to enter the market as a competitive fiber provider AT&T holds that an Incumbent local exchange carrier (ILEC) must provide shared transport as an Unbundled Network Element (UNE) on its network between its meet point with a CLEC and its meet point on an independent-ILEC EAS trunk group n7 Focal states that ILECs should act as aggregators of traffic and be prohibited from limiting use of interconnected trunks to independents Mid Hudson/Northland want ILECs to offer both shared and dedicated transport RCN/CTSI/Adelphia feel that independent CLEC traffic flow will be minimal and exchanged via ILEC facilities Time Warner and WorldCom both indicate it is more efficient for the ILEC to transit relatively low volumes of independent-CLEC traffic The Small Companies state that calls terminating beyond the local calling area are actually interexchange and that "legitimate" local calling ar rangements involving third party carriers should remain subject to negotiation among the parties

n6 Other larger independents could be involved in these calls

n7 Verizon replies that EAS routes have been constructed to carry traffic between independent and ILEC end of fices and do not extend to tandems

[*23]

Some parties recommend or suggest that limits be placed on shared transport Verizon and Time Warner expect that dedicated facilities are appropriate for traffic requiring one DS 1 (T-1) n8 Focal recommends that 200 000 minutes of use per month for two consecutive months should require a CLEC to establish its own direct trunk group connection with an independent Focal also states that CLECs will evaluate whether or not to build direct trunks if ILECs are al lowed to increase their shared transport rates for legitimate costs such as tandem additions RCN/CTSI/Adelphia want the independent CLEC traffic threshold triggering a direct connection to be set by the parties

n8 Verizon New York's rates for dedicated transport are available in its P S C 900 Tariff

Verizon states that rates for the type of shared common transport used for independent CLEC calls are not tariffed and would have to be developed n9 Focal states that the compensation level should be at the ILEC s existing transit rates, adjustable for additional costs incurred to meet traffic requirements AT&T citing the FCC's UNE Remand Order n10 maintains that shared transport is a UNE and should be provided at total [*24] element long run incremental cost (TELRIC) Mid Hudson/Northland recognize the need for tandem switching costs but do not address common transport RCN/CTSI/Adelphia would compensate the ILEC at agreed upon or Commission approved rates provided the ILEC has demonstrated it has incurred incremental costs carrying independent-CLEC traffic Time Warner would compensate an ILEC with a network capable of exchanging traffic with an independent at that ILEC's established rate If the independ ent does not subtend the ILEC's tandem Time-Warner would have the Commission establish a default point of inter connection from which the CLEC could purchase transport from either the independent or ILEC for no greater than the ILEC's UNE price for interoffice transport WorldCom would compensate the ILEC at its TELRIC-based transit charge Cablevision urges that ILECs not be allowed to impose interexchange access fees or toll charges The Small Companies would have the ILEC charge either for interexchange access or at a negotiated EAS rate

n9 Verizon New York's rates for tandem switching that do not include common transport are available in its P S C 914 Tariff

n10 CC Docket No 96 98 FCC 99 238, Third Report and Order released November 5 1999

[*25]

AT&T Focal Time Warner would have the CLEC pay the ILEC for transporting calls to it Mid Hudson/Northland would have the originating carrier pay the ILEC to deliver a call to the receiving carrier's point of interconnection with the ILEC WorldCom would also have the originating carrier pay the ILEC's TELRIC based charge RCN/CTSI/Adelphia do not specify who should pay the ILEC indicating only that in the absence of an agree ment, cost recovery over a de minimus amount should be in accordance with Commission guidelines Verizon expects the party requesting dedicated transport to pay for it Verizon stresses that it is not the originating carrier for independent CLEC traffic and should not have to pay reciprocal compensation for its termination

4 Intercarrier compensation

In its Notice Inviting Comments, the Commission asked what generic principles regarding compensation should be established as guidance for interconnection agreements between carriers The independent companies and Verizon currently have a "bill and keep" arrangement for exchange of local traffic CLECs and Verizon, on the other hand, have reciprocal compensation agreements in which each carrier pays the other [*26] to complete calls

The Small Companies state that their member companies are willing to discuss terms and conditions for local calling if customers are physically located in neighboring exchanges but opine that most traffic discussed in this proceeding is not "local" The Small Companies also note that bilateral agreements between Verizon and CLECs cannot be forced on small company group members n11 Rather the calls in question are interexchange in nature and access charges should apply to these calls Verizon is concerned that agreements should specify who is responsible for new and additional transport facilities and services in third-party circumstances AT&T and Focal state that the Commission must make sure that compensation is not discriminatory for calls terminating in same exchange Similarly Worldcom and Mid Hudson/Northland note that the provisions of the 1996 Telecom Act are the governing policy, which dictates that each party should pay to terminate calls, therefore, the traffic should be treated no differently than Verizon to CLEC traffic Mid Hudson/Northland also note that CLECs, to date, have refrained from collecting reciprocal compensation from independents even [*27] though CLECs are entitled to it under S251 *(b) (5)* of Act Time Warner is most concerned that disputes over compensation should not interfere with call completion Several parties address the level of traffic and the need for compensation RCN/CTSI/Adelphia state that bill and keep should be used if traffic is balanced otherwise, each carrier should bill the other for terminating traffic However if traffic is negligible no payment should be required Focal suggests that interconnection agreements not be require until the traffic reaches a threshold level which it recommends to be 200 000 minutes per month for two consecutive months Focal also notes that the independent company and CLEC should determine a technically feasible point of interconnection Cablevision states that outcome of this proceeding should not limit CLEC's ability to design and operate an efficient network

n11 Verizon's interconnection agreements with CLECs allow for meet-point billing at Verizon's tandem within a LATA