ORIGINAL

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A ECENIA
RICHARD M ELLIS
KENNETH A HOFFMAN
THOMAS W KONRAD
MICHAEL G MAIDA
MARTIN P McDONNELL
J STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R DAVID PRESCOTT
HAROLD F X PURNELL
MARSHA E RULE
GARY R RUTLEDGE

GOVERNMENTAL CONSULTANTS
MARGARET A MENDUNI
M LANE STEPHENS

September 26, 2002

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 110
Betty Easley Conference Center
Tallahassee, FL 32399-0850

VIA HAND DELIVERY

SEP 26 PM 3:55
COMMISSION CLERK

Re: Docket No. 020412-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of US LEC of Florida Inc. ("US LEC") are the following documents:

1. Original and fifteen copies of the Prefiled Rebuttal Testimony of Wanda Montano; and; 10330-02

2. Original and fifteen copies of the Prefiled Rebuttal Testimony of Frank R. Hoffman, Jr. 10331-02

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Martin P. McDonnell

Martin P. McDonnell

5+original

MPM/rl
Enclosures
cc: All Parties of Record
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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition of US LEC OF FLORIDA INC.	)	
For Arbitration with Verizon-Florida, Inc.	)	
Pursuant to 47 U.S.C. § 252(b) of the	)	Docket No. 020412-TP
Communications Act of 1934, as amended	)	
By the Telecommunications Act of 1996	)	Filed: September 26, 2002
	)	

REBUTTAL TESTIMONY OF WANDA G. MONTANO ON BEHALF OF US LEC OF FLORIDA INC.

DOCUMENT NUMBER-DATE
10330 SEP 26 02
FPSC-COMMISSION CLERK

Q: PLEASE STATE YOUR NAME FOR THE RECORD.

A: My name is Wanda G. Montano.

Q: ARE YOU THE SAME WANDA G. MONTANÓ WHO FILED DIRECT TESTIMONY IN THIS DOCKET ON AUGUST 2, 2002?

A: Yes.

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of my testimony is to address the arguments raised by Verizon's witness Peter J. D'Amico concerning Issues 1 and 2 in US LEC's arbitration petition and Verizon's witness Terry Haynes concerning Issue 6 in US LEC's arbitration petition.

<u>**ISSUES 1 AND 2 – INTERCONNECTION**</u>

Q: MR. D'AMICO ALLEGES THAT STATEMENTS IN THE FCC'S *1996 LOCAL COMPETITION* ORDER AND *PENNSYLVANIA 271 ORDER* SUPPORT VERIZON'S POSITION THAT THE POI AND IP CAN BE AT SEPARATE LOCATIONS. (D'AMICO DIRECT AT 18-19) DID MORE RECENT DECISIONS BY THIS COMMISSION AND BY THE FCC'S WIRELINE COMPETITION BUREAU ADDRESS THE SEPARATION OF THE POI AND IP?

A: Yes. On September 10, 2002, this Commission released its "*Reciprocal Compensation Order*" in Docket No. 000075-TP.[1] Both BellSouth and Verizon participated in this case. The Commission specifically rejected the

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[1] *Investigation Into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP (Fl. PSC. Sept. 10 2002) ("*Reciprocal Compensation Order*").

argument made by both BellSouth and Verizon "that a point of interconnection and an interconnection point are separate entities because the distinction lacks any discernable authority."[2] Instead, the Commission ruled that "ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA."[3]

In addition, as I discussed in my direct testimony, the July 17, 2002 Order from the FCC's Wireline Competition Bureau ("Wireline Bureau") appears to reject Verizon's proposal to establish an IP that is on Verizon's network prior to the point of physical interconnection where the ALEC has agreed to accept Verizon's traffic.[4] In other words, the Wireline Bureau rejected Verizon's proposal to make the ALEC financially responsible for Verizon's originating transport to deliver its traffic to the POI. Therefore, Verizon's position is not supported by decisions from this Commission and the Federal Communications Commission and must be rejected.

Q: WHAT ABOUT THE *SPRINT ARBITRATION ORDER* CITED BY VERIZON (D'AMICO DIRECT AT 5-6)?

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2 *Reciprocal Compensation Order* at 25.

3 *Reciprocal Compensation Order* at 25.

4 *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, ¶ 53 (Wireline Comp. Bureau, rel. July 17, 2002) ("*FCC Arbitration Order*").

A: Although Mr. D'Amico claims that the Commission approved requirements that "mirror" Verizon's VGRIP proposal in the *Sprint Arbitration Order*,[5] the Commission decision was based on the particular facts and circumstances before it in that case. As I noted in my direct testimony, the *Sprint Arbitration Order* predated both the *AT&T Arbitration Order*[6] and the Staff Recommendation in Docket No. 000075-TP[7], later accepted by this Commission, that support US LEC's position. Significantly, the *Reciprocal Compensation Order* was issued in a generic proceeding that was opened by the Commission to establish guidelines for all carriers that interconnect in Florida. In that case, the Commission held that:

> An originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA. These rules require an originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.[8]

The Commission's decision supports US LEC's position that Verizon is required to bear the costs of delivering its originating traffic to the POI

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5 *Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.*, Final Order on Arbitration, Docket No. 000828-TP, Order No. PSC-01-1095-FOF-TP at 36 (Fl. PSC May 8, 2001) ("*Sprint Arbitration Order*").

6 *Petition by AT&T Communications of the Southern States, Inc., d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. 000731-TP, Final Order on Arbitration, Order No. PSC-01-1402-FOF-TP at 41 (Fl. PSC June 28. 2001) ("*AT&T Arbitration Order*").

7 December 5, 2001 Commission Agenda Conference, Docket No. 000075-TP, Adoption of November 21, 2001 Staff Recommendation, Issue 14.

selected by US LEC, and to compensate US LEC for the transport and termination functions it performs. This ruling substantiates US LEC's position that Verizon's VGRIPs proposal does not comply with the FCC's rules or Commission precedent, and US LEC urges the Commission to reject it.

Q: PLEASE RESPOND TO VERIZON'S ARGUMENT THAT IT MAY REQUIRE A SEPARATE IP WHERE THE ALEC REQUESTS AN "EXPENSIVE" FORM OF INTERCONNECTION (D'AMICO DIRECT AT 18).

A: I do not believe that Mr. D'Amico's position is viable in light of the Commission's *Reciprocal Compensation Order*. Furthermore, to the extent that there is any validity to Verizon's "expensive" interconnection argument, which appears doubtful, my understanding is that Verizon would be required to support its position with cost studies demonstrating that US LEC's single IP per LATA is "expensive." In order to charge US LEC for "expensive interconnection," Verizon would have to comply with the FCC's pricing rules and prove what costs it incurs to deliver its originating traffic to the POI/ default IP selected by US LEC.[9] Furthermore, Verizon would have to demonstrate that it is not already compensated for the costs of delivering

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[8] *Reciprocal Compensation Order* at 26.

[9] *See* 47 C.F.R. §§ 51.501(b), 51.505(e).

traffic originated by its customers through the revenues it receives for providing the full range of services to those customers.[10]

Q: WHY SHOULD VERIZON BE REQUIRED TO MAKE SUCH A COST SHOWING?

A: Verizon is asking the Commission to impose a cost on US LEC and Verizon claims that it is entitled to impose those costs because, allegedly, US LEC's chosen network design is "expensive." Verizon must be required to prove that allegation.

The costs of interconnecting two networks arise in part from the differences between the configuration of the two networks and in part from the factors noted in Mr. Hoffmann's direct testimony (available facilities, traffic volume, and distance). If the Commission were to adopt Verizon's proposal without also requiring Verizon to prove its "expensive" costs, and despite its finding in the *Reciprocal Compensation Order*, this Commission would have to ignore the fact that Verizon, through its own chosen network design, contributes to the cost of interconnecting its network with US LEC's. The Commission also would have to ignore the fact that Verizon is already receiving compensation from its customers for providing them access to the

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[10] *TSR Wireless, LLC. v. U S West Communications, Inc.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, FCC 00-194, ¶ 34 (rel. June 21, 2000) ("*TSR Wireless*") (emphasis added), *aff'd, Qwest Corp. et al. v. FCC et al*, 252 F.3d 462 (D.C. Cir. 2001).

PSTN and therefore could be compensated twice for performing one function. Moreover, adopting Verizon's proposal favors Verizon's network design by imposing all the costs of interconnecting US LEC's and Verizon's networks on US LEC. Such a result is not in the public interest and would impede the development of competition.

Q: HAS VERIZON SUBMITTED ANY COST STUDIES IN THIS PROCEEDING?

A: No. In fact, Verizon has admitted in response to US LEC's request for production of documents that it does not have any such studies:

> **<u>Request for Production of Documents Nos. 1 and 2</u>**
>
> 1. Please provide all cost studies and other documents in your possession, custody or control relating to an analysis of Verizon's purported costs based upon a single Interconnection Point ("IP") or Point of Interconnection ("POI") per LATA with an ALEC.
>
> 2. Please provide all traffic studies, cost studies, network planning, and other documents in your possession, custody or control relating to an analysis of Verizon's purported costs of delivering Verizon's originating local traffic to US LEC's IP at its switch in the Tampa (952) LATA:
>
> **<u>Response to Request for Production of Documents Nos. 1 and 2</u>**
>
> Verizon does not possess any traffic studies, cost studies, or other documents referenced in these requests.[11]

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[11] Verizon Response to US LEC Request for Production of Documents 1 and 2 (September 20, 2002).

In short, Verizon asks the Commission to conclude that US LEC's chosen form of interconnection is "expensive" without any supporting data whatsoever. The Commission should reject Verizon's unsubstantiated request.

Q: MR. D'AMICO REFERS TO STATE COMMISSION DECISIONS THAT HE CLAIMS SUPPORT VERIZON'S POSITION (D'AMICO DIRECT AT 8-10). ARE YOU AWARE OF OTHER STATE COMMISSION DECISIONS THAT SUPPORT US LEC'S POSITION?

A: Yes, I am aware that some state commissions have ruled in favor of US LEC's position on the POI/default IP issue. Most recently, for example, on September 13, 2002, an Administrative Law Judge recommended that the Pennsylvania Public Utility Commission adopt US LEC's position on Issues 1 and 2 in the pending arbitration between US LEC and Verizon's Pennsylvania affiliate involving the identical issues.[12] US LEC will include information about this and other relevant decisions in its briefs following the hearing.

Q: PLEASE SUMMARIZE YOUR RECOMMENDATION FOR ISSUES ONE AND TWO.

A: The recent *Reciprocal Compensation Order* from this Commission and the Arbitration Order from the FCC's Wireline Bureau confirm that US LEC's

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[12] *See Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon Pennsylvania, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Recommended Decision, Docket No. A-310814F7000 (Sept. 13, 2002) at 9-17 ("*Pennsylvania Recommended Decision*").

proposal is more consistent with current Commission precedent and FCC rules than Verizon's. The Commission should adopt US LEC's proposal.

<u>ISSUE 6 – COMPENSATION FOR VIRTUAL NXX TRAFFIC</u>

Q. DO YOU AGREE WITH MR. HAYNES' STATEMENT THAT THE COMMISSION "NEED NOT ADDRESS THE APPLICATION OF INTRASTATE ACCESS CHARGES TO VIRTUAL FX TRAFFIC" BECAUSE THEY ARE COVERED IN THE PARTIES' TARIFFS? (HAYNES DIRECT AT 2, 16).

A: Not at all. US LEC acknowledges that the Commission's *Reciprocal Compensation Order* indicated that carriers are not "obligated" to pay reciprocal compensation for non-ISP, voice calls completed using FX, or virtual NXX arrangements because those are not "local" calls.[13] However, my understanding is that the Commission expressly declined to decide whether reciprocal compensation or access charges should apply to that traffic, concluding that the issue was "better left for parties to negotiate in individual interconnection agreements."[14]

Under Verizon's proposed language, FX voice traffic would be viewed as intraLATA toll calls and subject to the parties' tariffs for the purposes of compensation, even though those same calls would still be rated, routed and treated as local for the calling party. Under US LEC's proposal, FX voice traffic would continue to be treated as local and subject to the

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[13] *Reciprocal Compensation Order* at 31.

[14] *Reciprocal Compensation Order* at 33.

parties' reciprocal compensation obligations, which is consistent with that traffic being treated as local for the calling party.

Q: PLEASE RESPOND TO VERIZON'S STATEMENT THAT NXX CODES HAVE TRADITIONALLY BEEN USED TO BILL END USERS FOR CALLS, BUT NOT FOR INTERCARRIER COMPENSATION (HAYNES DIRECT AT 8).

A: By separating the rating and routing of a call, Mr. Haynes is confusing the issue. As he concedes in his testimony, NXX codes typically have been used for determining how a call is rated to the end-user. US LEC agrees with Mr. Haynes on that point. A call from an end user in a given calling area to another end user with an NXX code associated with the same calling center should be rated as a local call for the originating end-user. At the same time, however, Mr. Haynes is incorrect in stating that rating codes have not been used to establish intercarrier compensation. As I understand it, since switching and billing systems cannot distinguish between calls to a "virtual NXX" from calls to a "physical NXX", rating codes have been used for inter-carrier compensation purposes as well. Indeed, Mr. Haynes, himself, admits that "Verizon's billing system, for purposes of billing reciprocal compensation, was designed to compare the NPA-NXX codes of the calling and the called party . . .." (Haynes Direct at 23: 18-20). Moreover, Verizon also has admitted in its responses to US LEC's discovery that it has billed US LEC for reciprocal compensation for calls made by US LEC customers to Verizon customers who are utilizing Verizon's own FX arrangements.

Q: DO YOU AGREE WITH MR. HAYNES'S VIEW OF HOW NXX CODES ARE USED TO RATE A CALL TO AN END USER?

A: Absolutely. An end user can only rely on the NXX codes as an indication as to whether a call will be billed to them as a local or toll call. In fact, as Mr. Haynes notes in his testimony, comparing the rate centers of NXX's is how Verizon in fact rates calls, not by comparing physical location of end users.

Q: IS FX TRAFFIC CONSIDERED TO BE LOCAL TRAFFIC?

A. Yes. For rating and compensation purposes, FX traffic has been treated as local. As noted above, Verizon rates and bills its customers based on the NXX codes of the calling and called party. If the call is rated as local, Verizon bills its customer for a local call; conversely, if the call is rated as toll, Verizon bills the customer for a toll call.

Q. VERIZON CLAIMS THAT ACCESS CHARGES TYPICALLY HAVE BEEN ASSESSED ON FX CALLS. IS THAT CORRECT?

A: No. Verizon is comparing two completely different situations. In the traditional context of interexchange calls, a carrier will compare the originating and terminating point of the call in assessing interstate (as opposed to intrastate) access charges on a third party. But a carrier initially compares the originating and terminating NXXs to determine whether the call is a local call subject to reciprocal compensation or a toll call subject to access charges. As noted above, virtual NXX calls are in fact rated as local calls, are routed precisely the same as local calls, are billed to the end user as such, and have been billed as local for intercarrier compensation purposes, as well. Moreover, Mr. Haynes confuses the issue by addressing conditions that existed prior to the Telecommunications Act of 1996. In the pre-Act era, there was no local competition in Florida and, therefore, no reciprocal compensation. It is axiomatic that with competition only in interexchange services, all intercarrier compensation would be between interexchange carriers and the incumbent local exchange carriers in the form of access charges that were dependent on the originating and terminating points of the end-to-end call. That just is not the case anymore.

Q. DOES US LEC HAVE ANY FX CUSTOMERS IN FLORIDA?

A. Yes, it appears that within Verizon's serving area, 17 US LEC customers in the Tampa LATA utilize FX arrangements; that is, they have been assigned NXX codes in several local calling areas and, while they have physical locations in at least one of those areas, they also have been assigned an NXX code in at least one area where they have no physical locations.

In this regard, US LEC's practice differs markedly from the scenario presented by Mr. Haynes. For example, US LEC does not obtain an entire exchange code solely for the purpose of designating it for a rate center/exchange area in which it has no customers of its own or no facilities. (Haynes Direct at 7:6-8) Rather, US LEC obtains NXX codes in order to serve customers wherever they may be located. Most often, the numbers are assigned to customers in the rate centers or exchanges where the customer's business is located, but in some instances a customer may purchase an FX arrangement in addition to other physical locations. This service is identical to FX arrangements offered by Verizon to its customers. Nor does US LEC assign virtual NXX codes only to its customers that are expected to receive a high volume of incoming calls from an incumbent's customers. (Haynes Direct at 7:23-25). Here again, US LEC offers its FX product to all customers, regardless of their expected call volume.

Q. DOES US LEC OFFER ANY OTHER SERVICE THAT APPEARS TO PROVIDE CUSTOMERS WITH A "VIRTUAL" NXX?

A: Yes, US LEC offers a tariffed long-distance service known as "Local Toll Free." Essentially, it allows a customer physically located in another LATA or another state to obtain a local number in a Florida exchange. The difference between Local Toll Free and FX service is that a call to a US LEC "Local Toll Free" number terminates in the exchange associated with that NXX. US LEC then re-originates the call and routes it over long-distance lines to the customer's physical location. US LEC's customer pays the long-distance charges associated with the call.

Q. VERIZON CLAIMS THAT US LEC WANTS A "FREE RIDE" FOR VERIZON'S "VALUABLE SERVICE" IN CARRYING US LEC'S TRAFFIC (HAYNES DIRECT AT 12-14). PLEASE RESPOND.

A: There is no "free ride" at issue here. Regardless of where US LEC's customer is located, Verizon routes the call precisely the same way: it is delivered to US LEC at the IP and, from that point on, US LEC incurs all the costs of transporting the call to its customer's location. As noted in issues one (1) and two (2) of this proceeding, it is Verizon's responsibility to carry traffic to the IP that US LEC has selected. That responsibility does not change if the called party has an FX arrangement. US LEC assumes the financial responsibility for the traffic at the IP, regardless of the physical location of the terminating customer. These architecture issues are discussed in greater detail by Mr. Hoffmann.

Q: DO YOU AGREE WITH MR. HAYNES' ASSERTION THAT US LEC IS NOT ENTITLED TO COMPENSATION FOR TERMINATING CALLS TO FX CUSTOMERS BECAUSE THOSE CUSTOMERS ALREADY PAY FOR THE SERVICE? (HAYNES DIRECT AT 13-14).

A: No, I do not. Again, Mr. Haynes is confusing the issue. All end users pay their carriers for the privilege of being able to originate and terminate calls. Intercarrier compensation, on the other hand, addresses an entirely different situation—the costs incurred by carriers to terminate calls. The FCC has acknowledged that carriers incur costs in originating and terminating calls and also has acknowledged that in a competitive environment, the carrier originating a call avoids the termination costs associated with that call when it hands the call off to a competing local provider.

Under our traditional 'calling-party-pays' system, the carrier serving the originating party pays the carrier serving the terminating party to compensate that carrier for the costs it incurs in providing the terminating services. Thus, in this situation, US LEC most assuredly provides a valuable service to Verizon customers—it enables those Verizon customers to complete calls to entities or individuals served by US LEC. US LEC incurs costs in providing those services—costs that, for these purposes, are assumed to equal those incurred by Verizon—and is entitled to be compensated by Verizon for providing those services. Similarly, Verizon provides the same services to its customers and US LEC compensates Verizon for the costs Verizon incurs.

Q: VERIZON CLAIMS THAT TREATING FX CALLS AS LOCAL IS CONTRARY TO INDUSTRY PRACTICE. DO YOU AGREE?

A: Absolutely not. US LEC's FX service is similar to Verizon's Foreign Exchange ("FX") products, in that both products provide local numbers outside of the local calling area of an end user. In Verizon's case, the end user subscribing to the FX service bears the cost of transporting the calls from the local calling area associated with the NXX to the exchange in which the FX customer is physically located. US LEC's customers also are charged for their virtual NXX arrangements, although for a single FX line, it is not the "hundreds of dollars a month" (Haynes Direct at 13) but that misses the point. The key is how these calls are treated for purposes of intercarrier compensation. Based on Verizon's responses to our discovery requests, it is clear that Verizon has treated its FX calls as local and has billed ALECs, including US LEC, for reciprocal compensation for calls to its FX customers.

In support of its dubious position, Verizon cites to an FCC case in which AT&T allegedly could have routed calls from Charleston, South Carolina to Atlanta, Georgia, so that a caller in Charleston would appear to be making a local call when it was, instead, answered in Atlanta. In that case, the FCC ruled that an *inter*LATA FX call was not a local call for the purposes of compensation and thus access charges were due. However, Verizon does not mention that, in the context of an *intra*LATA FX call, it argued to the FCC that "intraLATA FX service is a type of local exchange service." (*AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 589, ¶ 76 (1998), *reconsideration denied*, 15 FCC Rcd 7467 (2000).

Further, Verizon's example is not at all applicable here. The portion of the *AT&T* case that Verizon refers to dealt with an <u>interstate</u>, interLATA FX service. That is an extreme example that is not at all comparable to US LEC's practice of assigning an FX number to a customer within the same LATA, as is the issue in this proceeding. Nor is it comparable to US LEC's Local Toll Free offering, which is described in US LEC's tariff as a form of remote call forwarding. The Commission should assign no weight to the case and example cited by Verizon.

Q: DO YOU AGREE WITH MR. HAYNES' ASSERTION THAT US LEC DOES NOT HAVE ANY RIGHT TO RECIPROCAL COMPENSATION FOR VIRTUAL NXX TRAFFIC UNDER THE FCC'S RULES? (HAYNES DIRECT AT 21).

A: No, in fact, quite the opposite is true. The FCC's *ISP Traffic Order*[15] supports the conclusion that traffic rated as retail local traffic is eligible for reciprocal

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[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ("*ISP Traffic Order*"), *rev'd*, *WorldCom v. FCC*, 01-1218 (D.C. Cir., May 3, 2002).

compensation in the intercarrier context. In the *ISP Traffic Order*, the FCC addressed the decision of the United States Court of Appeals for the District of Columbia Circuit that vacated and remanded the FCC's earlier decision regarding intercarrier compensation for ISP-bound traffic.[16] The FCC viewed the D.C. Circuit's remand order as:

> question[ing] whether this traffic should be considered 'local' for purposes of section 251(b)(5) in light of the ESP exemption, by which the Commission has allowed information service providers at their option to be treated for compensation purposes (but not for jurisdictional purposes) as end users.[17]

Upon further review of the *Declaratory Ruling*, the FCC concluded that the D.C. Circuit may have been right in its analysis of FCC precedent:

> We do recognize, however, that the court was concerned by how one would categorize this traffic under our *prior* interpretation of section 251(b)(5), which focused on whether or not ISP-bound calls were 'local.' That inquiry arguably implicated the compensation mechanism for the traffic (which included a local component), as well as the meaning of 'termination' in the specific context of section 251(b)[.][18]

The FCC decided that, under its precedent, the term "local call" "could be interpreted as meaning . . . *traffic subject to local rates*" in addition to "traffic that is jurisdictionally intrastate."[19] In other words, FCC precedent justifies the payment of reciprocal compensation for traffic that is <u>treated</u> as local

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[16] *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), *vacating and remanding,* Declaratory Ruling in Docket 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68, 14 FCC Rcd 3689 (1999) ("*Declaratory Ruling*").

[17] *ISP Traffic Order* at ¶ 28.

[18] *Id.* at ¶ 56 (italics in original).

[19] *Id.* at ¶ 45 (emphasis added).

traffic, in addition to traffic whose end points are within specific local calling areas. In short, the *ISP Traffic Order* supports a determination that reciprocal compensation for non-ISP-bound traffic using FX arrangements is appropriate.

Further, in conjunction with the *ISP Traffic Order*, the FCC issued a Notice of Proposed Rulemaking to completely overhaul the existing intercarrier compensation regimes and replace them with a single, unified intercarrier compensation regime.[20] The FCC has identified the use of "virtual central office codes" as an issue to be resolved in its rulemaking proceeding on such a unified intercarrier compensation regime.[21] Thus, the issue of the proper regulatory treatment of traffic using virtual central office codes ultimately will be addressed by the FCC. Until that time, however, this Commission retains the jurisdiction to determine, as it should, that calls using virtual NXX arrangements properly are eligible for reciprocal compensation under an interconnection agreement.

Q. DO YOU AGREE WITH MR. HAYNES' CHARACTERIZATION OF THE COMMISSION'S *RECIPROCAL COMPENSATION ORDER* REGARDING VIRTUAL NXX TRAFFIC (HAYNES AT DIRECT 10-11)?

A: No, I do not. Verizon claims that the Commission decision resolved the issue of disputed FX compensation issues between Verizon and various ALECs in

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[20] *Developing a Unified Intercarrier Compensation Regime*, CC Dkt. No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. Apr. 27, 2001).

[21] *Id.* at ¶ 115.

Verizon's favor.[22] Verizon argues that because the Commission found that virtual NXX traffic is not local traffic, no reciprocal compensation is payable on such traffic.

Q. IS VERIZON'S POSITION CORRECT?

A: No, not entirely. The Commission concluded that calls to FX customers located outside of the local calling area to which the NXX is assigned are not local calls for purposes of reciprocal compensation,[23] a decision with which US LEC respectfully disagrees. However, Verizon's claim that the *Reciprocal Compensation Order* settled the issue of what compensation mechanism is applicable to FX traffic is wrong. In fact, the Commission specifically states otherwise, concluding that while carriers may not be "obligated" to pay reciprocal compensation for FX traffic, the Commission declined to "mandate a particular intercarrier compensation mechanism" for FX traffic.[24] Rather:

> [s]ince non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, we find it is appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements.[25]

The Commission acknowledged that the parties could agree to continue to pay each other reciprocal compensation for the traffic, or could agree to pay

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[22] Haynes Direct at 10-11.

[23] *Reciprocal Compensation Order* at 33.

[24] *Id.*

[25] *Id.* at 33-34.

each other access charges or could agree to a form of so-called 'bill and keep.'[26]

Q. WHAT ABOUT THE OTHER STATE COMMISSION DECISIONS CITED BY MR. HAYNES (HAYNES DIRECT AT 19-20)?

A: Mr. Haynes refers to several state commission decisions which he claims support Verizon's position on Issue 6. Even if Mr. Haynes is correct on this point, numerous other commissions have ruled in favor of US LEC's interpretation. The rulings favorable to US LEC's position include the recent *Pennsylvania Arbitration Decision.*[27] We will address those decisions in our Brief.

Q. MR. HAYNES CLAIMS THAT VERIZON HAS RECENTLY TAKEN STEPS TO DEVELOP METHODS TO MEASURE THE VOLUME OF ALEC TRAFFIC TERMINATED TO VERIZON FX NUMBERS (HAYNES DIRECT AT 24-25). PLEASE COMMENT ON VERIZON'S PROPOSAL.

A: Verizon proposes to "fix" the historical system of rating calls based on the NPA/NXX of the originating and terminating numbers – a system that is not broken. In the first place, it is crystal clear that the "fix", which involves creating a data-base of FX customers, conducting traffic studies and then estimating the amount of traffic that is terminating to FX subscribers, is entirely intrusive, unworkable and expensive. Thus, the "fix" would require both parties to inquire from its customers how they intend to utilize the

[26] *Id.* at 34.

services they purchase and where they intend to locate all of their facilities. It would require both parties to add wholly unnecessary steps and processes to an already cumbersome billing process. Clearly, given that US LEC has only 17 FX customers in Verizon's territory in Florida, the cost to US LEC of Verizon's "fix" is likely to be substantially more expensive than the amount of reciprocal compensation that US LEC receives from its FX customers and the traffic they generate.

Critically, Verizon's contract proposal does not include or define the proposed "fix" about which Mr. Haynes testifies. Nowhere in the proposed interconnection agreement is there even one word about how Verizon's "fix" will be implemented or monitored. Moreover, US LEC has no way of knowing whether Verizon's "fix" actually works. Verizon states that it is based on a traffic study conduced here in Florida, but nowhere does Verizon state that its "fix" has been implemented, is functioning smoothly and is accurate.

Also missing from Mr. Haynes' testimony is the acknowledgement that there is a clear, irreconcilable conflict between Verizon's proposed contract language—which is all that is at issue here—and its proposed "fix" to distinguish between calls to FX customers and other locally dialed calls. Verizon's contract language states that reciprocal compensation will be paid based on the originating and terminating end-points of the call. In contrast, Verizon's proposed "fix" has nothing whatever to do with the beginning and

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[27] *See Pennsylvania Arbitration Decision* at 29-42.

end-points of a call; rather, like the compensation system it seeks to replace, it still relies on the NPA/NXX of the called party. Mr. Haynes concedes as much: The database of FX subscribers that Verizon proposes to create is not predicated on the endpoints of the calls to those subscribers, but on their NPA/NXX. (Haynes Direct at 25).

Q: WOULD ADOPTION OF VERIZON'S PROPOSAL BE FEASIBLE FROM US LEC'S POINT OF VIEW?

A: No. It would be expensive to implement and maintain and given the relatively small amount of voice FX traffic involved, it would not be either feasible or cost-effective.

Q: WHAT ACTION DOES US LEC RECOMMEND THE COMMISSION TAKE ON THE ISSUE OF VIRTUAL NXX?

A: We suggest that, in light of (a) common practice throughout the industry to rely on the NPA/NXX of calling and called parties to determine the rating and routing of a call, as well as a carrier's compensation obligations for calls, (b) the FCC's recent ruling on the issue adopting the position advocated here by US LEC, and (c) the small amount of the voice, non-ISP traffic involved, the Commission should rule in US LEC's favor on this issue.

Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A: Yes.