Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.

CASE 01-C-0095

New York Public Service Commission

2001 N.Y. PUC LEXIS 495

July 30, 2001

[*1] COMMISSIONERS PRESENT: Maureen O. Helmer, Chairman; Thomas J. Dunleavy; Leonard A. Weiss; Neal N. Galvin

At a session of the Public Service Commission held in the City of Albany on July 26, 2001

ORDER RESOLVING ARBITRATION ISSUES

(Issued and Effective July 30, 2001)

BY THE COMMISSION:

INTRODUCTION

In November 1996, pursuant to the Telecommunications Act of 1996 (the Act), the Commission resolved various interconnection disputes presented to it by AT&T Communications of New York, Inc. and New York Telephone Company (currently doing business as Verizon New York Inc.) n1 More recently, AT&T and Verizon attempted to negotiate a new interconnection agreement, but they were not entirely successful.

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n1 Cases 96-C-0723 and 96-C-0724, AT&T Communications of New York, Inc. and New York Telephone Company - Interconnection, Opinion No. 96-31 (issued November 29, 1996); Order Denying Petition For Rehearing (issued February 14, 1997).

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Consequently, on January 19, 2001, AT&T and two affiliates petitioned to arbitrate their **[*2]** current disputes with Verizon. n2 On February 13, 2001, Verizon answered AT&T's petition and confirmed that many issues remained unresolved among the carriers.

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n2 In addition to AT&T, these proceedings involve TCG New York Inc. and ACC Telecom Corp. All three companies are referred to as "AT&T". AT&T's arbitration petition was filed 135 days subsequent to its request to Verizon for negotiations pursuant to § 252 of the Act. While this case was being arbitrated, AT&T and Verizon agreed to extend the time period for a Commission decision pursuant to § 252(4)(C) so as to provide themselves more time to conduct negotiations.

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The presiding officer assigned to this case conducted arbitration conferences on February 21 and 22, March 13, April 30, and May 3, 2001. Over this period, the parties continued to negotiate, and they managed to narrow their disputes. However, several interconnection issues remained in dispute, and the parties addressed them in briefs. n3 Our resolution of the contested issues is presented below.

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n3 On April 18 and 27, 2001, the companies briefed an initial set of eight issues. The remainder was addressed in subsequent briefs submitted on May 25 and June 6, 2001.

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CONTESTED ISSUES

Verizon Tariffs

During the first agreement, AT&T became distressed by the operation of Verizon's intrastate tariffs. In an instance involving a $ 19.56 per amp charge for the collocation power carriers use, Verizon attempted to apply the charge on a per feed basis to AT&T's detriment. AT&T filed a complaint which led to Verizon agreeing to amend the tariff to comport with AT&T's and Staff's view of the application of the charge.

In a second instance, also pertaining to collocation power rates, Verizon's tariff included a dispute resolution process AT&T considered to be inferior to the commercial arbitration and alternative dispute resolution provisions discussed below.

In another instance, involving the purchase and use of T1.5 circuits for local traffic usage, AT&T complained about Verizon's application of its tariff in an anti-competitive manner to restrict competitors' use of such circuits. n4

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n4 AT&T complained specifically about Verizon's efforts to require CLECs to measure the actual amount of the local traffic carried on a T1.5 circuit and to impose restrictions on the commingling of special access circuits and local service circuits. It also complained about Verizon's provision of overly expensive maintenance and repair services.

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Finally, AT&T complained about Verizon tariff provisions covering building risers. According to AT&T, Verizon unduly restricted its access to such risers and imposed excessive time and material charges that cost it a contract.

For these and other reasons, AT&T wants an all - inclusive agreement that contains no references to Verizon's tariff and does not rely on tariff provisions for any significant purpose. Further, should there be any tariff changes during the term of the new agreement, AT&T believes they should not alter its agreement with Verizon.

According to AT&T, Verizon should not be able to use its tariff to frustrate the Act's objective that carriers engage in good faith negotiations and enter into commercial agreements. AT&T opposes reliance on Verizon's tariffs, because they are not the results of the parties' mutual negotiations, and because they are within Verizon's control. According to AT&T, the tariff provisions place an improper burden on it to justify any departures. The company also complains that it does not have the resources necessary to be immersed in the tariff process. Instead, it prefers the facility and definiteness of a self-contained and self-executing **[*5]** agreement.

According to Verizon, there are valid reasons for applying its Tariff Nos. 8 and 916 to AT&T. n5 It maintains that the tariffs provide equal treatment for all carriers, they comply with all applicable laws, and they were derived from extensive regulatory scrutiny. Verizon considers them superior to any contract provisions the parties could produce here.

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n5 Tariff No. 8 contains Verizon's collocation terms and rates for competitive carriers. Tariff No. 916 provides terms and rates for unbundled network elements (UNEs).

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Verizon contends that its tariffs provide it no advantage over any other carrier due to the public review process and the Commission requirements that have been imposed on it. It also denies that the tariffs are one-sided, given the airing of public and regulatory concerns in advance of their adoption. Verizon points out that AT&T has commented on various tariffs it has filed and has sought amendments in various instances. Verizon also observes that it provides AT&T notice of all its tariff **[*6]** amendments and claims that no ambush is possible. According to Verizon, the inputs provided by the public, other carriers, and regulators simply do not permit it to have unilateral control of the tariff process.

This issue concerns the essential relationship between Verizon's tariff and the new interconnection agreement to be executed with AT&T. This matter permeates many of the points in dispute between the parties, and it appears to have negatively influenced the course of this proceeding. Rather than find acceptable means to resolve their issues, the parties' negotiations languished, and they remained polarized on matters that should not have defied a consensual resolve.

While AT&T goes to great lengths to discredit the tariff process, its arguments are not persuasive. We find that the tariff approach is entirely suitable for implementing many of the interconnection and access requirements Verizon should bear under the Act. Not only does the tariff process promote comparable interconnections for competitive carriers and unbundled access on similar terms, the Commission previously approved this approach to assist parties and reduce the matters they must truly negotiate or arbitrate **[*7]** on a case-by-case basis. The tariff process permits ample opportunity for interested persons to participate and seek changes (or even the rejection) of proposed tariffs before they become effective. Moreover, AT&T has made substantial use of this process over the years despite any assertions otherwise.

We also note that the examples AT&T cites to demonstrate the harm it suffered from the tariff process are all instances that were ultimately resolved in AT&T's favor. Moreover, in numerous instances, AT&T states that it would include provisions in the new agreement as they are currently found in the existing tariffs. However, upon review, it appears that AT&T seeks to change the existing tariff provisions in material ways, notwithstanding that many of those provisions were filed in compliance with Commission orders issued after extensive proceedings. AT&T's proposals, in effect, seek to revisit and revise Commission-approved tariffs.

We are persuaded on the record presented that as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship. Consequently, we will not adopt AT&T's proposal. Instead, we will conform the new agreement to **[*8]** Verizon's tariff where it is possible to do so. In general, we are requiring that the pertinent provisions of Verizon's tariff be incorporated by reference into the new agreement. This matter is also addressed below in the discrete contexts in which the parties have raised it. n6

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n6 This is not to say that CLECs are prohibited from negotiating terms, conditions and rates that are different from Verizon's tariff where circumstances may require a divergence (i.e., where the tariff does not address the unique needs of a given CLEC).

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Tariff Amendments and Updated Documents

Not only does Verizon want the new agreement to rely on its tariffs, it believes the agreement should be subject to tariff changes as implemented. Therefore, it proposes that the references to tariffs (and other documents) refer to them as amended from time to time. It claims this flexibility will help to keep the new agreement current with competitive changes and growth in the telecommunications market.

AT&T is opposed to the agreement changing **[*9]** when Verizon's tariffs are altered. It contends that this practice would destabilize the parties' rights and deprive them of the bargains they reached. AT&T fears Verizon will implement self-serving and parochial tariff revisions, and it will not disclose their purposes nor identify their effects on carriers. It insists Verizon cannot be relied upon to provide adequate notice of detrimental tariff revisions, and it claims not to have the resources necessary to scrutinize the tariff changes.

The Commission finds it is better to allow the new agreement between AT&T and Verizon to absorb tariff amendments and changes that are intended to implement substantial telecommuniations policy initiatives than to freeze it at its inception. There are several significant collaborative proceedings pending, and federal developments emerging, that will make alterations for the benefit of competitors and consumers. On the other hand, it is just as likely that the Commission, acting in the public interest, may decide issues contrary to AT&T's liking. Thus, it is not desirable to forestall or preclude the applicability of tariff amendments as AT&T's proposal would do.

That having been said, we are mindful **[*10]** that there may be instances in which a tariff filing's generic resolution represents a significant change or does not adequately address specific provisions in interconnection agreements. Therefore, during the tariff review process, for good cause shown, the Commission reserves the right to treat a tariff filing, or discrete portions thereof, as being subject to the change of law provision of the new agreement, allowing the parties to negotiate appropriate terms for the interconnection agreement.

Pending Proceedings

Verizon proposes that the new agreement contain references to pending Commission proceedings to permit them to run their course. Rather than prematurely decide any such matters here and now, Verizon would apply the results of the proceedings to AT&T and itself when they become known. Verizon states this approach was used in the first agreement, and AT&T has agreed to it in other states. It knows of no reason why it should not continue to apply here as well. Its use could avoid discrimination among carriers, save time from examining the same matters twice, and avoid the confusion that any differing results may engender.

AT&T responds specifically to Verizon's proposal **[*11]** as it pertains to digital subscriber line (DSL) issues. It prefers that the new agreement govern all matters, and that no items be left open for future resolution.

The Commission intends to proceed with the various collaborative and other pending proceedings that are certain to produce results for Verizon, AT&T and other carriers. The new agreement shall not preclude, nor forestall, any such results from being implemented at the time the Commission renders its decisions, or when it adopts the results and terms achieved in any such proceeding. The parties are on notice that Commission resolution of the arbitration issues presented to it here does not preclude it from otherwise exercising its regulatory authority.

Change of Law

Verizon and AT&T recognize that legal requirements may change during the term of the new agreement. According to AT&T, the parties' respective provisions differ in four significant ways:

1. The parties will attempt to negotiate new terms when changes in law occur. AT&T would provide 30 days for the negotiations; Verizon has proposed 60 days.

2. Verizon and AT&T recognize that judicial and regulatory decisions may reduce or eliminate Verizon's obligations. **[*12]** AT&T urges Verizon not to unilaterally relieve itself of any obligation to furnish services, facilities, or arrangements in questionable circumstances.

3. When a change of law triggers regulatory action, AT&T proposes that the status quo prevail until a commercial arbitrator resolves any disputes. AT&T also urges that Verizon's position not enjoy any presumptive validity while a dispute is pending.

4. AT&T believes that tariff revisions made subsequent to the new agreement should not change the agreement or trigger any further negotiations. According to it, a tariff amendment should not be considered a change of law.

Overall, Verizon observes that AT&T has accepted the Verizon proposal elsewhere. n7 In response, AT&T insists that its experience in New York warrants the use of different provisions. In greater detail, Verizon insists that it should not be limited to a commercial arbitrator's decision, nor should the status quo operate after any significant regulatory decision is rendered. It also believes more time is needed for negotiations than does AT&T, and that tariffs should not be excluded from the change in law provisions. Verizon denies that it can unilaterally impose **[*13]** its view on AT&T, and it observes that legal changes are usually made explicit and are self-implementing.

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n7 In Pennsylvania, Virginia, New Jersey, Maryland, Delaware and the District of Columbia.

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The Commission finds, on balance, a combination of the parties' proposals is appropriate. Thus, Verizon's § 27.4 is adopted subject to two modifications. Further negotiations shall occur within the thirty days proposed by AT&T before the parties may pursue other appropriate remedies. Also, we adopt AT&T's proposal permitting the parties to seek other available remedies without waiting thirty days when active negotiations have ceased for a continuous, 15-day period. The parties may extend this time period if they mutually agree to do so.

AT&T's § 7.4 is also adopted for the agreement. It provides suitable procedures for continuing services when further negotiations and disputes occur. The interconnection agreement provisions shall continue to operate unless the FCC, the Commission, or a court of competent jurisdiction mandates **[*14]** a differing obligation. We also clarify that the Commission may treat significant judicial or FCC developments as being subject to the change of law provision, notwithstanding that tariff amendments might flow from such decisions. In other words, the Commission will retain authority to prevent certain tariff changes from flowing through to the AT&T interconnection agreement, absent compliance with the change of law provision.

Commercial Arbitration and Alternative Dispute Resolution

The 1997 agreement encouraged the parties to use commercial arbitration and alternative dispute resolution (CAADR) procedures which, to date, have only been used twice. AT&T is satisfied with the results achieved in both instances, and it supports comparable provisions for the new agreement.

Verizon is dissatisfied with the CAADR procedures and wants them omitted from the new agreement. It rejects the 1997 agreement's provisions as a precedent for this case. It claims that the dynamic forces at work in the telecommunications industry require a fresh examination for this generation of interconnection agreements and that CAADR procedures should not be imposed on unwilling parties. It considers any **[*15]** such mandate to be an infringement of the company's right to use the State's procedures and to rely on its substantive laws. Verizon prefers to obtain its legal redress from either the Commission or the FCC and, if necessary, the courts.

Verizon considers AT&T's CAADR proposal to be ambiguous, unrealistic, and burdensome. For example, the company states that AT&T's proposed remedies are unclear and that an inter-company review board requires more than two days to operate properly. It faults AT&T's proposal for lacking discovery provisions and objective standards for the use of expedited procedures. Verizon also claims AT&T's expedited and routine ADR proposals are inconsistent, and neither of them provide adequate time for the Commission to review an arbitrator's award. Verizon opposes the implementation of an arbitrator's decision pending an appeal, or allowing it to become final were the Commission not to act. Verizon also seeks to preserve its right to appeal any arbitrator's award that is deemed to be a Commission decision. Verizon complains also about the excessive cost of retaining an arbitrator for the term of the new agreement.

Alternatively, if the Commission finds that CAADR **[*16]** should be included in the new agreement, Verizon urges acceptance of its proposal. Under it, not all disputes are candidates for CAADR, nor would CAADR substitute for other procedures. CAADR would be available to complement other processes, and its use would not preclude court actions.

AT&T dislikes Verizon's CAADR proposal because it applies to too few disputes. Many of the categories Verizon would remove from CAADR, AT&T would retain. And, contrary to Verizon's contention that CAADR cannot be forced on an unwilling party, AT&T insists that the Commission has ample authority to require parties to use arbitration, subject to our review. AT&T sees no need to modify the 1997 provisions, nor does it favor the selection of a different arbitrator for each dispute. It sees advantages to keeping an arbitrator on retainer, as has been the practice. Finally, AT&T would retain the schedules and deadlines that were used in the first agreement. In sum, AT&T claims all of Verizon's objections are trivial and lack merit.

The Commission finds that it has the authority to require CAADR provisions in interconnection agreements established pursuant to the Act. These procedures are a typical feature **[*17]** in the interconnection agreements the Commission has approved in the past, including the existing AT&T/NYNEX. We find that the considerations stated in the order approving the first agreement apply with equal force here:

An ADR process makes sense for disputes arising out of the interconnection agreement affecting the obligations and performance of the parties, and we include one in this interconnection agreement... . This process is intended to provide for the expeditious resolution of all disputes between the parties arising under this agreement. Dispute resolution under the procedures provided in this agreement shall be the exclusive remedy for all disputes between the parties arising out of this agreement or its breach. n8

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n8 Cases 96-C-0723 and 96-C-0724, supra Opinion No. 96-31, mimeo p. 62.

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From our review of the parties' proposals, we find that AT&T's preference for a single arbitrator under a retainer is not essential, and that such an approach can produce unwarranted expenses. The fact that the **[*18]** arbitrator retained for the first agreement was only used twice supports this decision. We are also concerned about such a provision in the agreement being adopted by other CLECs, as it would be impractical and costly for Verizon to secure and retain arbitrators potentially for each CLEC with an interconnection agreement.

On the other hand, the Commission finds Verizon's proposals to exclude matters from the arbitration process and to set limits on discovery unduly restrictive. Because the company has not shown a valid basis to exclude the matters identified in its § 28.11.1, such exclusions are not acceptable. Accordingly, AT&T's proposal to include the existing provisions in the new agreement is accepted, subject to the modifications and clarifications discussed here.

To eliminate any claim that the first agreement's provisions are ambiguous or uncertain in their application, the following clarifications are provided:

. The dispute resolution process is the exclusive remedy for the parties. However, in the event that a state or federal agency should address some or all of the issues decided as a result of the CAADR process, the agency decision will take precedence.

. If an **[*19]** agency determination does not cover all the issues raised in the CAADR process, arbitrated determinations shall survive to the extent they can be reconciled with the agency decision.

. The Commission will have 15 days in a regular ADR, and 7 days in an expedited ADR, to determine whether or not it will review an arbitrator's decision, and if so, when it will issue a decision. The arbitrator's decision becomes a final and binding Commission order, if the Commission decides to take no action in the requisite period.

. Either party may appeal a final and binding Commission decision, and if necessary, either party may request a stay of the effect of the order. n9

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n9 Additionally, to the extent the parties believe there are other ambiguities in the existing agreement, they may address them prior to submitting the new interconnection agreement.

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Thus, the provisions in the first agreement shall continue, except, as discussed above, the single arbitrator provisions in § 17.1 shall be deleted. Should the parties' negotiations **[*20]** on disputed issues prove to be unsuccessful, they shall follow the standard rules for selecting an arbitrator set forth in the Commercial Arbitration Rules of the American Arbitration Association, unless they mutually agree to use some other rules for selecting an arbitrator.

Definitions In The Agreement

Verizon prefers definitions derived from its tariff. In support of tariff-based definitions, it claims they represent the carriers' collective efforts to provide common meaning to the language governing their relations. According to Verizon, their use promotes consistency and non-discrimination.

Verizon claims AT&T's definitions are inadequate, inconsistent with industry standards, and not readily ascertainable. It also prefers a single section in the agreement providing a glossary of terms. n10 Verizon also states that only its definitions encompass the new technology and current network services. It notes that the following words and phrases have been particularly contentious: interconnection point, reciprocal compensation traffic, line sharing, line splitting, collocation tariff, and bona fide request. As elsewhere, AT&T opposes the incorporation of any tariff provisions **[*21]** into the new agreement.

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n10 AT&T appears to have conceded this point in its latest draft of a new agreement. Nevertheless, the parties continue to dispute the definitions included in this section of the new agreement.

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There is no disagreement between the parties that the new interconnection agreement should contain clear definitions for its most significant terms. The Commission finds that the most suitable definitions for the new agreement are those available from Verizon's tariff. In the instances that the tariff does not provide defined terms for the new agreement, the FCC's or the Commission's applicable rules, regulations, or orders shall define the terms.

GTE/Bell Atlantic Merger Conditions

Verizon proposes to include in the new agreement a provision governing any conflicts that may emerge between its terms and the GTE/Bell Atlantic merger conditions adopted by the FCC. Verizon's proposal would give priority to the merger conditions, and it would subject the agreement's measurement and billing provisions **[*22]** (among others) to the merger obligations. In support of its proposal, Verizon points out that AT&T has agreed to a similar, if not identical, provision in Virginia.

Inasmuch as no particular conflicts have been identified, this issue may well be academic. In any event, we find no need to establish a general rule of construction at this time. Accordingly, Verizon's proposed provision is not adopted.

UNE Performance Standards and Remedies

AT&T proposes to keep the unbundled network element (UNE) performance standards from the first agreement. Verizon claims there should be no other performance standards than those included in the Performance Assurance Plan (PAP) n11 and the New York Carrier-to-Carrier (C2C) Guidelines, n12 as they are amended from time to time. In the event metrics and remedies are incorporated into the new agreement, Verizon recommends that modifications be made to the standards from the first agreement.

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n11 Case 99-C-0949, Bell Atlantic-New York - Performance Assurance Plan Proceeding, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan (issued November 3, 1999). **[*23]**

n12 Case 97-C-0139, Telephone Company Service Quality Standards Proceeding, Order Establishing Permanent Rule (issued June 30, 1999).

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According to AT&T, the 1997 provisions have worked well, and they are fair. It believes they are still needed to give Verizon a proper incentive to provide quality performance. AT&T faults Verizon for not presenting a counter-proposal in negotiations, and it therefore urges the Commission to reject the proposals in Verizon's brief. n13

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n13 AT&T acknowledges that Verizon presented a counter-proposal during the negotiations, but it claims the company prematurely withdrew it before AT&T could consider it.

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AT&T also claims that Verizon made concessions to enter the long distance market that should stop its opposition to the continued use of the 1997 performance standards. AT&T points to the following commitment made in the Verizon § 271 proceeding:

Until such time as the Public Service Commission **[*24]** determines they are no longer necessary, where an existing interconnection agreement with a competitive local exchange carrier (CLEC) in New York State incorporates performance standards and remedies, such performance standards and remedies will not be unilaterally withdrawn by [Verizon]. Such standards and remedies will continue to be offered by [Verizon] in subsequent negotiations with those CLECs upon expiration of the existing agreements and similarly will be negotiated in good faith with other CLECs who request negotiation of such terms and conditions. n14

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n14 Case 97-C-0271, Pre-Filing Statement, dated April 6, 1998, p. 2.

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Verizon considers the PAP/C2C Guidelines to be the better service quality measures, standards, and incentives for carriers operating in New York, including AT&T. Verizon claims the 1997 provisions are outdated, and they did not contemplate the regulatory framework established by the PAP/C2C Guidelines. Verizon urges that AT&T receive but one incentive payment and no double recovery whenever **[*25]** the company's performance falls short of standard. In response to this, AT&T claims the PAP/C2C Guidelines are intended to coexist with the 1997 provisions. It denies that the multiple remedies available to it under the two sets of standards provide any windfall. AT&T points to instances where the Commission and the FCC have recognized cumulative and multi-faceted systems to assure a high quality performance.

Were we to re-adopt the 1997 provisions, Verizon insists that they should be modified to exclude outdated measurements and unfair penalties. It proposes that all updates conform to the C2C Guidelines, and that the measurements not included in the C2C Guidelines be deleted. Verizon would also include in the new agreement only those measurements for which a financial incentive exists.

In particular, Verizon would modify various average measures that do not assess well its performance for AT&T, n15 and it would reform the calculation of remedies. Credit calculations would be based only on the number of service failures, n16 and there would not be disproportionately large penalty escalations for small increases in failure rates. n17 Overall, Verizon believes the aggregate amount **[*26]** of bill credits available to AT&T should be reduced and precautions should be adopted to avoid erroneous assessments.

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n15 These include metrics measuring the average intervals offered for completion of orders, the average intervals in which orders are actually completed, and the percentage of orders completed within specified intervals. Verizon states that the orders cover a wide range of services (within both POTS and special services) that may differ from those ordered by Verizon's retail customers. Thus, the parity comparisons may be invalid.

n16 In this category, Verizon points to the calculations of credits for installations, maintenance and ordering.

n17 Verizon notes that a 1% miss results in a 10% credit while a 6% miss results in a 25% credit.

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In response to Verizon's dissection of the 1997 provisions, AT&T claims no piecemeal attack should be heard that was not presented first in negotiations. Moreover, AT&T insists such an approach is contrary to Verizon's § 271 commitments. Further, AT&T denies **[*27]** that the 1997 provisions are stale; instead, it asserts that they were custom tailored for its circumstances, and metrics without financial consequences are useful for diagnostic purposes.

AT&T states that Verizon has provided no data to demonstrate that the different mix of services ordered by Verizon's retail customers and AT&T's customers caused it to fail the § 3.1.1 and § 3.1.2 provisioning metrics. AT&T also observes that Verizon previously challenged, without success, the bill credit remedies it is challenging here.

Verizon replies that during negotiations AT&T sought to extend metrics to resale and interconnection. n18 According to it, AT&T's move from the existing contract language relieved Verizon of any obligation to continue to offer the prevailing metrics and remedy provisions. Verizon also presents, for the first time, data and charts purporting to demonstrate the unfairness of the current methodology used to calculate penalties.

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n18 Generally, negotiation discussions, concessions, and offers to settle are afforded confidentiality protection. However, both Verizon and AT&T, in effect, consented to waiver of confidentiality with respect to these negotiations. See, 16 NYCRR 3.9(d).

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The Commission finds that the parties have not attempted to negotiate this matter in earnest, nor have they presented any other mutual efforts to arrive at a consensus framework for performance metrics and remedies. Thus, the basic and direct options before the Commission are either to continue the terms of the current agreement, as AT&T proposes, or to exclude metrics and remedies from the new agreement as Verizon requests. We find that AT&T has made the better case.

The metrics and remedy terms of the first agreement were in place before Verizon agreed to implement the PAP. Verizon was clearly aware of its potential financial obligations to AT&T (and tens of other competitors) when it consented to the PAP's additional financial consequences. n19 Verizon cannot now argue against nor can it avoid the cumulative commitments it made in the PFS, PAP and the § 271 proceeding.

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n19 The PAP contemplated three financial prongs for CLEC relief when receiving poor performance from Verizon. The first two, Mode of Entry and Critical Measures, are included in the PAP. The third is in the interconnection agreement.

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While Verizon is correct that some metrics and standards duplicate those in the PAP, unlike the PAP's, the first agreement's metrics and remedies provide AT&T various geographic protections, and they address product disaggregation. Verizon is also correct that the PAP/C2C performance metrics have evolved over time, and it might be administratively advantageous to update the interconnection agreement's metrics. Nevertheless, because the parties were unable to do this in negotiations, the Commission finds that Verizon's continued reporting of the first agreement's metrics does not present an undue burden. n20

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n20 If the parties are able to reach any agreement on this matter, they may amend the metrics before they submit their final agreement.

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The other modifications to the metrics, standards, and calculations of remedies proposed by Verizon lack sufficient support and cannot be adopted. Verizon did not demonstrate satisfactorily that the installation intervals for the mix of products ordered by its retail customers **[*30]** are shorter than the intervals for the products ordered by AT&T's customers. The Commission finds the data Verizon provided in its briefs (to show that the remedy calculation methodology is unfair) was presented too late and without adequate support for it to be useful in this proceeding. We agree with AT&T that Verizon should have presented its positions, and its support, during negotiations.

Accordingly, the existing performance metrics and remedies contained in the first agreement shall continue in effect, except to the extent the parties may mutually agree otherwise before they are to submit an executed agreement.

Liability Provisions

Verizon has proposed that AT&T implement tariff and contract provisions to limit Verizon's potential liability to AT&T customers. AT&T objects to Verizon's attempt to influence the contents of its tariffs and contracts, and it claims Verizon's terms are too burdensome to administer. Instead, it believes Verizon should defend suits brought by third parties by cross-claiming AT&T in appropriate instances.

Verizon points out that it has no legal relationship to AT&T's customers but that may not stop them from bringing suit against it. Verizon is **[*31]** confident that AT&T can easily include its proposed terms in the company's contracts, and it urges AT&T to state in its tariff that resold Verizon services are subject to the same terms, conditions, and limitations that apply to Verizon's customers who purchase the services. Verizon states that AT&T has accepted its proposal in Virginia and elsewhere, and these terms apply to the

UNEs that CLECs obtain from Verizon. n21 Verizon insists that standard commercial practices allow carriers that are not involved in a transaction to limit their liability.

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n21 AT&T points out that the result of its negotiations with Verizon in Virginia is distinguishable from the contested matter presented in New York. AT&T also complains that Verizon provides no citations or details for the terms applicable to CLECs.

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In another liability-related matter, AT&T proposes to retain the terms in the first agreement that recognize Verizon's potential liability for below standard UNE performance and its potential liability from adverse commercial **[*32]** arbitration rulings. Verizon's opposition to these provisions comes from its substantive position on the matters. As discussed above, Verizon is opposed to the inclusion of UNE performance standards in the new agreement, and it is opposed to an arbitrator imposing sanctions on it.

The Commission finds that Verizon's proposal to limit its liability to AT&T customers is a proper and valid commercial practice. We are not persuaded that AT&T would incur any insurmountable difficulties from including these provisions in its tariff and contracts. Verizon's proposed § 24.5 provides Verizon the same protection AT&T receives from Verizon, since a comparable provision appears in Verizon's tariff for AT&T's benefit. This provision also benefits ratepayers by avoiding liabilities that could affect the rates customers pay. n22 Accordingly, Verizon § 24.5 is adopted.

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n22 *Lauer v. New York Telephone Co., 231 A.D.2d 126, 129; 659 N.Y.S.2d 359, 361 (1997).*

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As to AT&T's proposal that § 25.5 (exclusions from the limits of liability) **[*33]** maintain potential liability for UNE performance standards and the results of commercial arbitration, the Commission has determined that the new agreement will contain performance standards and CAADR procedures. Accordingly, AT&T is correct that these items should be excluded from the new agreement's liability limitation provisions.

Advanced Services

AT&T wants the new agreement to contain provisions for the resale of advanced services. It objects to Verizon's proposal calling for AT&T to obtain them from its affiliate, Verizon Advanced Data Inc. (VADI). AT&T insists that the Act requires ILECs to provide advanced services to CLECs at a discount, and it points to a recent court decision that has required an ILEC to provide advanced services to a CLEC. n23

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n23 *Association of Communications Enterprises v. FCC, 235 F. 3d 662 (D.C. Cir. 2001).*

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Verizon states that it does not provide advanced services, because the FCC required it to establish a separate affiliate for this purpose. It therefore claims that such **[*34]** services should not be addressed in the new agreement. Verizon is aware of the D.C. Circuit decision but claims it has no direct application to it, because Verizon was not a party to the proceeding.

In any event, in recognition of this decision, Verizon's affiliate is prepared to offer DSL services at a discount pursuant to the FCC's rules. Verizon points out that its affiliate has amended its federal tariff, so eligible carriers can obtain its offerings at a discount. n24 Thus, Verizon states that AT&T has access to advanced services as required by law. n25 Furthermore, Verizon points out, if its affiliate does not negotiate with AT&T in good faith, AT&T can seek recourse from the Commission.

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n24 A model agreement has been provided to the carriers to implement this provision.

n25 Verizon Reply Brief, p. 35.

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Although VADI appears to be willing to provide advanced services through resale and has taken steps to do so, the D.C. Circuit ruled that an ILEC cannot avoid its advanced services obligations by passing **[*35]** them on to an affiliate. Therefore, the Commission finds that AT&T is entitled to a provision in the new agreement that ensures the availability of advanced services on a resale basis, whether offered by Verizon or its affiliate. AT&T's § 12.5.10 is not acceptable. The parties are directed to draft a provision for the new agreement that is consistent with this determination.

Vertical Services

AT&T has sought vertical services from Verizon (custom calling, call forwarding, and call waiting, among others) that it wants to resell on a stand-alone basis. It objects to Verizon's insistence that vertical services be purchased in conjunction with dial tone service. AT&T claims it is discriminatory and unduly restrictive for Verizon to bundle the vertical features with local dial tone. Pointing to regulatory decisions in California and Texas, AT&T states that it is possible for ILECs to offer them separately.

Verizon insists the public interest is not served by AT&T purchasing stand-alone vertical features at wholesale rates. It points out that enhanced service providers do not receive a price discount and, were AT&T to obtain one, it would have an unfair competitive advantage in the **[*36]** voice messaging market. n26 Verizon also claims the standard discount in New York is excessive for vertical features, because it does not avoid any costs by providing local dial tone separate from the vertical features.

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n26 Verizon admits that enhanced service providers can purchase one vertical feature (call forward busy line/don't answer) at wholesale rates on a stand-alone basis. It distinguishes this situation by noting that Verizon does not provide this feature as a discrete retail offering.

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Verizon claims the Act does not require ILECs to provide any service at wholesale that they do not offer to retail customers, and the Act does not require that any retail service be disaggregated into discrete services. It points to a regulatory decision in Massachusetts holding that vertical features need not be provided on a stand-alone basis at a wholesale price.

It is not at all clear that it is technically feasible for ILECs to offer all vertical features on a stand-alone basis. Indeed, the more popular features such **[*37]** as call waiting and call forwarding are technically tethered to the underlying ILEC voice port. We will not require that vertical features be made available on a stand-alone basis. However, CLECs using Verizon's UNE-Platform offering (which uses Verizon's underlying voice port) can obtain most vertical features on an unbundled network element basis, but they cannot obtain voice mail on such a basis. This is because the FCC considers voice mail to be an enhanced service and did not require that it be unbundled. We, on the other hand, continue to regulate voice mail, and it is available for resale at the wholesale discount. We see no reason why voice mail, or any other vertical feature of a CLEC's choosing, should not be available for resale, at the wholesale discount, along with Verizon's voice UNE-Platform offering.

Software Licensing

Verizon must use its best efforts to obtain for CLECs the same access it has to the intellectual property and software that is embedded in Verizon's network but is owned by other parties. n27 AT&T and Verizon differ on how this requirement should be enforced and the consequences that could result should Verizon fail to obtain comparable rights **[*38]** for AT&T.

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n27 Two recent court and regulatory decisions clearly establish this responsibility. *AT&T Communications of Virginia, Inc. v. Bell-Atlantic-Virginia, Inc. 197 F. 3d 663 (4th Cir. 1999)* and CC Docket No. 96-98, In the Matter of Petition of MCI for Declaratory Ruling that *New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements, Memorandum Opinion and Order (released April 27, 2000) (FCC Licensing Order) 15 FCC Rcd 13896.*

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Verizon states it will use commercially reasonable best efforts to negotiate extensions of its licensing agreement with vendors. It points out, however, that vendors are not regulated, and they ultimately control their patents and copyrights. Should it be unsuccessful, Verizon believes it should not be required to hold AT&T harmless, nor should it provide AT&T any warranty, indemnification, or guarantee. In support of its position, Verizon points out that the Fourth Circuit acknowledged that ILEC efforts may not succeed in every **[*39]** instance and the court refrained from imposing an absolute duty on ILECs to provide CLECs the same licensing terms that they have. Verizon insists that the new agreement should not include any such remedies given the UNE remedies it will contain and the protection the Act provides to AT&T.

AT&T insists, however, that strong enforcement provisions are needed to ensure its access to UNEs on the same terms Verizon has. To obtain Verizon's best efforts to renegotiate the existing licenses, AT&T believes that warranty and guarantee provisions are necessary. According to AT&T, Verizon's proposal improperly absolves the company, permits non-identical access, and restricts use of UNEs. Thus, AT&T urges that this matter be firmly addressed in the agreement. n28 As an alternative to Verizon providing an explicit warranty, AT&T is willing to accept a notice when Verizon is unable to renegotiate an existing license and a commitment to indemnify AT&T in any case where it can be shown that the company did not use its best efforts.

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n28 As to the recovery of the costs Verizon incurs to obtain license rights for CLECs, AT&T acknowledges that they may be included in UNE rates established in an appropriate rate proceeding and using the FCC-mandated cost recovery model.

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[*40]

The Commission has the same expectations of Verizon as does the FCC of all ILECs. In its Licensing Order, the FCC stated that, in nearly all cases, requesting carriers should be able to access UNEs without needing additional licenses. In general, no additional licenses or fees should be required when competing carriers obtain access to UNEs under the existing contracts where their use is within the scope of the original license. n29 Indeed, the parties have not demonstrated here any instance where intellectual property issues have risen in New York. Nonetheless, the Commission finds that the new agreement should contain an appropriate provision concerning this matter. Accordingly, in any instance where Verizon is unsuccessful in negotiating co-extensive terms for AT&T, Verizon should immediately and explicitly notify AT&T of any such results. n30 Thereafter, Verizon must continue to use its best efforts to negotiate terms that are, at least, comparable to those it achieved for itself.

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n29 FCC Licensing Order, P8.

n30 The notice Verizon provides to AT&T should identify the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as identify any and all related facilities or equipment, affected by such failure; the extent to which Verizon asserts AT&T's use has exceeded the scope of the license; and the specific circumstances that prevented Verizon from obtaining the revised provisions.

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[*41]

AT&T's proposed language is not entirely acceptable, because it would, in effect, have Verizon guarantee the performance of third party vendors to AT&T, which is unnecessary. The new agreement will contain other, sufficient remedies to redress any failure by Verizon to fulfill its obligations. Nor are we adopting Verizon's proposed provision, as presented, having found merit in

AT&T's proposal for specific notice when any negotiations for extensions of the existing licenses are unsuccessful. Thus, we are directing the parties to include in the new agreement Verizon's proposed § 28.16.4(a) modified to incorporate the notice provision specified here.

Asset Transfers

AT&T has proposed § 22.17 addressing the possible transfer of telephone operations to a third party. In the event of a transfer, this provision would require the transferee, among other things, to be bound by the interconnection agreement and to ensure that the transfer would not have an adverse impact on the operations or services provided to AT&T. Moreover, AT&T would examine the transfer agreement to the extent it pertains to the interconnection agreement, and it would have to find it to be "reasonably satisfactory". **[*42]** It would also require Verizon to guarantee the transferee's performance.

Verizon objects to this provision fearing it would provide AT&T the right to veto a future sale or transfer of the company's assets. It maintains that no rule of law requires Verizon to continue its interconnection obligations were it to sell the firm or cease to provide service. Thus, Verizon believes it should not be required to obligate a future transferee.

Verizon notes, as well, that a transfer of its assets would have to comply with applicable state requirements and federal law. n31 Accordingly, it contends that an asset sale has little to do with the interconnection agreement or the Act's requirements. Given the regulatory requirements applicable to asset transfers, Verizon believes AT&T requires no such provision in the new agreement.

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n31 In New York, PSL § 99(2) applies to such transactions.

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AT&T states that it needs such assurances to enter and compete in the local exchange market. It claims a transfer of Verizon's assets could undermine **[*43]** its ability to serve residential and business customers if it could not rely on continuous wholesale services pursuant to the terms of the agreement. AT&T is particularly concerned about a sale to a telephone provider that may introduce different electronic interfaces, new modes of interconnection, and have rural exemptions that could render its capital investment obsolete.

In support of its proposal, AT&T states that the first agreement covered asset transfers, and BellSouth has accepted a comparable provision in its interconnection agreement with AT&T in Mississippi. n32 And, rather than rely on PSL § 99(2) to determine AT&T's rights, the company prefers a service continuity provision in the new agreement.

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n32 According to Verizon, relatively few interconnection agreements contain the kind of provision that AT&T seeks here, and the one to which AT&T points was the result of the parties' negotiations.

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The interconnection agreement with Verizon forms the basis for AT&T to enter and compete in the local exchange market. **[*44]** Its terms are critical to the company's competitive growth and to its provision of stable and reliable service. Accordingly, the Commission finds that AT&T has a valid interest in the continuing performance of the terms in the agreement in the event of a transfer. However, AT&T's interests are best addressed in the context of the Commission review of any proposed transfer of Verizon's assets that would occur pursuant to PSL § 99(2). Were any such transfer to be proposed, we would expect Verizon to discuss the matter with AT&T and other CLECs. It is also reasonable to expect that Verizon would negotiate terms to ensure continued performance under existing interconnection agreements. The actions available to the Commission pursuant to PSL § 99(2) provide an adequate forum for the presentation and consideration of any such matters by the affected parties. Accordingly, the Commission finds that other regulatory practices apply to asset transfers, and AT&T proposed language need not be adopted.

Interconnection Points/Network Architecture

AT&T states that the Act permits it to interconnect with Verizon at any technically feasible point, and the FCC has ruled that a CLEC has the option **[*45]** to designate a single point of interconnection (POI) in each LATA. n33 AT&T proposes that its financial responsibility for local calls be consistent with its physical interconnections. It insists that Verizon should bear the cost of local traffic originating from its customers and, as a corollary, that AT&T should not be charged any of Verizon's costs. AT&T maintains this is consistent with the financial responsibilities it bears for the traffic it originates and delivers to Verizon.

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n33 CC Docket No. 00-65, Application by SBS Communications, Inc. etc. for Provision of In-Region InterLATA Services in Texas (released June 30, 2000), P78.

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AT&T objects to Verizon's proposal to transfer local traffic at Verizon tandems and at the end offices where it is collocated, as this would permit Verizon to avoid local traffic costs. In support of its position, AT&T points to a FCC decision and to state regulatory decisions in Indiana, Wisconsin and Michigan. AT&T contends that Verizon's proposal penalizes it for establishing 250 **[*46]** collocation facilities in New York and discourages it from providing any other competitive facilities.

If AT&T has the right to designate POIs, Verizon insists that it should have the right to designate the interconnection points for financial purposes. Verizon points to § 252(d)(1) of the Act as requiring AT&T to compensate it for added interconnection costs. According to Verizon, AT&T's position has been rejected in North and South Carolina and elsewhere. Consequently, to the extent AT&T's POIs and Verizon's interconnection points do not coincide, Verizon believes AT&T should be financially responsible for transporting traffic between them. It observes that the rates AT&T currently pays only cover certain costs, and AT&T's interconnection proposal involves other costs for which it makes no provision. Were AT&T's proposal to be adopted, Verizon believes new interconnection rates would be needed.

While there are a number of unresolved matters relating to interconnection, the most significant issues involve where the carriers interconnect and how the costs of the facilities will be allocated between them. Verizon has proposed a fundamental change by seeking to separate the physical **[*47]** point of interconnection (POI) from the financial responsibility, or the interconnection point (IP). If this were to occur, AT&T would have to pay to have traffic originated by Verizon customers on Verizon's network hauled to the physical point of interconnection. AT&T is strongly opposed to this and it proposes to keep the existing arrangement. While not raised explicitly by either party, Verizon's proposal appears to be designed to address internet traffic issues. CLECs are permitted to use "virtual NXXs" that allow a CLEC to activate a telephone number (NXX) in an exchange where it has no physical presence. n34 Calls from the local calling area of the exchange where the NXX is addressed are rated as local calls, even though this traffic is terminated to a CLEC customer (invariably an internet service provider) at a location outside the local calling area. Verizon considers this unfair, because it must haul what is essentially a toll call without receiving compensation from the originating customer or the CLEC, and it must pay reciprocal compensation when the call is terminated on the CLEC's network. Thus, Verizon raises a legitimate issue, and under its proposal, AT&T would pay **[*48]** for the transport of this traffic. The problem with this, however, is that not only would AT&T pay for the transport of traffic associated with virtual NXX calls, it would also pay for the transport of traffic associated with its facilities-based local exchange business. n35 This Commission and the FCC have taken steps to equitably address the costs and compensation of internet traffic. We are inclined to allow such measures to take hold before going any further, especially with any proposal that has significant consequences for the development of facilities-based competition.

- -Footnotes- -

n34 Case 00-C-0789, Omnibus Proceeding to Investigate the Interconnection Agreements Between Telephone Companies, Order Establishing Requirements for the Exchange of Local Traffic (issued December 22, 2000).

n35 The carriage, terms, conditions and charges associated with AT&T's UNE-Platform business are not affected by this issue.

- -End Footnotes- -

Our orders establishing the framework for competition, n36 recognize that CLEC networks would, in all **[*49]** likelihood, not mirror the incumbent's. This has proven to be correct, as most CLEC network designs use a single central office switch and long loops to serve a region, rather than the more traditional design of many switches and short loops. The policy established in our Competition II proceeding, that remains applicable, assumes that a carrier is responsible for the costs to carry calls on its own network.

- -Footnotes- -

n36 Case 94-C-0095 - Proceeding Concerning Universal Service and the Competitive Framework for the Local Exchange Market.

- -End Footnotes- -

We recognize that there is some tension between our decision to require CLECs to pay for the transport of internet traffic on similar calls originated from the customers of independent telephone companies. n37 However, that decision had no significant impact on the full service, facilities-based operations of the CLECs, because in this instance, the CLEC is not directly competing for customers within the independent telephone company.

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n37 Case 00-C-0789, Order Establishing Requirements for the Exchanged Local Traffic (issued December 22, 2000).

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[*50]

We reject Verizon's proposal and shall keep in place the existing framework that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches the point of interconnection. AT&T's language in this regard is adopted. However, AT&T's proposal to interconnect at any technically feasible point on Verizon New York's network (including tandems, end offices, outside plant and customer premises) is too broad and vague, particularly with respect to Verizon's outside plant. Verizon's language provides an acceptable list of possible interconnection points and methods, and it is therefore adopted, provided it is amended to allow bona fide requests for additional points and methods of interconnection beyond those specified on the list.

Other Network Architecture and Interconnection Issues

Verizon claims that AT&T's proposed interconnection methods are incomprehensible, and that AT&T seeks preferential treatment. It objects to an AT&T proposal to use intra-building interconnections where both companies have a presence. It claims AT&T could obtain an unfair competitive advantage where its switches are located in the same buildings **[*51]** as Verizon's, or where they both have entrance facilities. However, AT&T insists that the intra-building connections it seeks are not discriminatory, as it is entitled to interconnect at any technically feasible point. We find that AT&T's proposal to use intra-building interconnections is efficient for both of them, and it is adopted.

Verizon objects to AT&T's proposals for converting existing interconnections to the new arrangement. n38 It complains that AT&T is not willing to pay all the transition costs for new network architecture, and the AT&T transition process includes a timeline for which neither party is currently prepared. Verizon also objects to AT&T's proposal to grandfather existing arrangements for indefinite periods, while AT&T pursues new architecture in other instances.

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n38 Verizon objects specifically to AT&T's proposed Section 4.1.4.

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Verizon objects further to AT&T's term "exchange access trunks", which it says is confusing and conflicts with other interconnection principles to which AT&T subscribes. **[*52]** It believes AT&T's transition strategy will prolong the interconnection process at Verizon's expense, and the initial, high-usage trunk groups AT&T has proposed adds unnecessary trunking. Instead, it believes existing two-way trunk groups should be converted to one-way use, and new trunk groups should be constructed for the other carrier to use. Verizon also objects to making any billing changes before the trunk groups are changed, and it insists on full compensation for the services it provides.

Both parties have proposed language for the transition to a new network architecture. We find that AT&T should pay for all relevant, incremental costs triggered by AT&T's actions during the transition. The parties are directed to develop a schedule that accomplishes the transition of existing arrangements, including the conversion of two-way trunks, within one year, unless they mutually agree to another timeframe.

Finally, the parties disagree about interconnections at locations other than intermediate hubs on Verizon's network. According to Verizon, AT&T should only use DS-3 interface facilities at offices designated in the National Exchange Carriers Association (NECA) tariff as intermediate **[*53]** hub locations. It claims that if AT&T orders DS-3 facilities to offices not properly equipped, there may not be sufficient interoffice facilities to handle the traffic. AT&T claims that Verizon cannot legally deny it such a connection, especially if it is a more efficient than other interconnections.

We are requiring the parties to cooperate and forecast the traffic that passes between them. As discussed below, Verizon has proposed that AT&T connect directly to its end offices when AT&T's traffic reaches a specified threshold. In view of that proposal, which we are accepting with certain modifications, it is unreasonable to deny AT&T the use of the most efficient interconnections at any given Verizon end office. The parties are therefore directed to include language in the interconnection agreement permitting AT&T DS-3 connections at any end office, provided however, that AT&T gives Verizon adequate notice of its needs in the forecasting process.

AT&T's Originating Traffic

AT&T objects to Verizon's proposal calling for it to deliver originating traffic to the company's end offices rather than to POIs of its own choosing. In instances where it has small amounts of originating **[*54]** traffic volumes for a particular end office, AT&T plans to deliver its traffic instead to a Verizon tandem switch. In these cases, AT&T believes Verizon should charge it UNE-based rates for transport between the Verizon tandem and the end office. This would permit AT&T to avoid construction of facilities to Verizon end offices when it does not have sufficient traffic to warrant such action.

In Case 00-C-0789, a proceeding in which we investigate telephone company interconnection agreements, we addressed a similar issue involving traffic between independent telephone companies and CLECs. We found that if the call volumes between an independent and a CLEC exceeded the capacity of a DS-1 channel, the CLEC was responsible for arranging for direct trunking. We find that the same approach is reasonable here. If the traffic between AT&T and any given Verizon end office exceeds the DS-1 level, AT&T shall be responsible for arranging a direct trunk to that office. If AT&T must use Verizon's facilities, Verizon shall offer AT&T the UNE rates for the facilities requested.

AT&T's Reciprocal Compensation Rate

AT&T proposes to charge the tandem reciprocal compensation rate for Verizon's originating **[*55]** traffic that terminates at an AT&T switch. This rate is higher than the end office reciprocal compensation rate Verizon believes should apply. AT&T points out that the Commission has applied the tandem rate to carriers that have an incoming traffic to outgoing traffic ratio of 3 to 1 or less. Carriers with higher traffic ratios are permitted to demonstrate that the tandem rate should apply above the threshold.

In support of its position, Verizon points out that carriers pay end office rates for convergent traffic, for local traffic that does not pass through an AT&T tandem, and when a substantial imbalance exists in the carriers' traffic flows and revenue streams. According to it, AT&T should not receive the tandem switched rate for traffic routed directly to an end office. It also contends that, before an AT&T switch can qualify for the tandem rate, it should meet both a functional and geographic comparability test. n39

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n39 Verizon urges us to follow the approach adopted by the Texas Commission that requires a CLEC without a hierarchical, two-tier switching system to demonstrate that it is actually serving a given area using tandem-like functionality and actual geographic comparability.

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[*56]

AT&T does not dispute the use of a geographic comparability test. n40 However, it disagrees as to whether a CLEC should also meet a functional equivalency test. n41 AT&T insists that the FCC has adopted the former but not the latter test, and it points to regulatory decisions in Indiana, North Carolina and Kentucky to support its view. Nonetheless, were the functional equivalency test applicable, AT&T contends that its switches could meet this requirement as well. It states that they perform the same functions as do Verizon's tandem switches, and it points to regulatory decisions in Georgia and North Carolina as its support.

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n40 This test requires the CLEC switch to serve a geographic area comparable to the area served by the ILEC's tandem switch.

n41 This test requires that the switch aggregate traffic between customers calling outside of the immediate exchange.

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In April 2001, the FCC issued an order that sets forth the terms, conditions, and prices for intercarrier compensation of telecommunications traffic **[*57]** delivered to internet service providers (ISPs). In addition to setting rates for ISP-bound traffic, the FCC adopted a rebuttable presumption that traffic exchanged between carriers exceeding a 3:1 ratio of terminating to originating traffic is ISP-bound traffic. There can be no doubt that the FCC's order applies to ISP-bound traffic and to traffic greater than the 3:1 ratio.

The issue here also concerns the full service traffic, or traffic below the 3:1 ratio, that the Commission fully addressed in an August 1999 order which states:

If a carrier's incoming to outgoing traffic ratio exceeds 3:1 for the most recent three-month period, it is fair to presume that a substantial portion of its traffic is convergent, costing less to terminate, and that delivery of that traffic therefore should be compensated at end-office (in the Bell Atlantic-New York context, Meet Point A) rather than tandem (Meet Point B) rates. The end-office rate should apply to the portion of the traffic that exceeds the stated ratio, and the tandem rate should continue to apply to the portion of the traffic below that ratio. (Emphasis added.) n42

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n42 Case 99-C-0529, Reciprocal Compensation Proceeding, Opinion No. 99-10, 1999 (issued August 26, 1999) pp. 56 and 57.

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[*58]

AT&T is correct and is entitled to the tandem rate for traffic below the 3 to 1 ratio, as long as the traffic is not internet traffic covered by the FCC's rules.

Verizon's Reciprocal Compensation Rates

Like AT&T, Verizon wants a carrier originating local calls to pay it the proper amount of reciprocal compensation--the tandem rate for traffic delivered to a tandem switch and the end office rate for calls delivered to an end office. It points out that the end office rate only compensates receiving carriers for end office switching. Verizon states that traffic delivered to a tandem (even if delivered on an end-office trunk) requires compensation for the additional functions performed at the tandem switch and for transport costs. It is concerned that AT&T may seek to pay only the end office rate for traffic delivered to a tandem. Rather than include any formula for calculating tandem and end office reciprocal compensation rates in the new agreement, Verizon prefers that the rates be derived from its tariff.

Verizon is correct that its tariff, filed to comply with the results of our Competition II Proceeding, should apply here. n43 The tariff subjects traffic delivered to the end **[*59]** office only to the end office rate, and it applies the tandem rates (i.e., transport and end office) to traffic delivered to the tandem. The tariff rates reflect the costs for network components we approved in the Unbundled Network Elements Proceeding.

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n43 Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection, and Intercarrier Compensation, (issued September 27, 1995).

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Calling Party Number Identification

Originating carriers provide terminating carriers calling party number (CPN) information that identifies the jurisdictional nature of the telephone calls and permits them to apply the correct rates. The FCC requires common carriers that use SS7 technology for interstate calls to transmit this information. Without it, a carrier does not know when to apply switched exchange access service charges.

Verizon has proposed to bill traffic that lacks CPN information (up to 10 percent of the total volume) at rates consistent with the ratio of calls for which the CPN information **[*60]** is provided. However, above this level, Verizon would consider that all such calls are interstate and bill them the switched exchange access service charges. Verizon deems this provision necessary to protect the integrity of the reciprocal compensation reporting system, and it claims AT&T should have little difficulty meeting the standard. Verizon points out that the Commission approved a comparable provision for the Verizon/Sprint Communications interconnection agreement executed last year.

AT&T considers Verizon's proposal to be unduly harsh. It points out that, over the last four years, it has provided CPN with virtually all its calls. Given this, AT&T proposes that the companies retain their current practice of using historical data to determine the appropriate traffic ratios for all calls. To the extent Verizon is concerned about other carriers and not it, AT&T maintains that its proposal provides Verizon suitable protection from bad actors who may attempt to game the process. n44

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n44 AT&T has rejected Verizon's offer to waive the 90 percent threshold were a force majeur event to occur. In the unlikely event that it were to fall below this threshold, AT&T would expect the requirement to also be waived in cases of human error and for a mechanical difficulty.

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[*61]

Given that AT&T has consistently provided CPN with virtually all its calls, this matter appears to be academic with respect to these carriers. However, circumstances could change. As long as AT&T can reasonably explain to Verizon why CPN is not supplied for any of its calls, the companies' prevailing business practice of using historical data to determine the appropriate traffic ratios should continue to apply. However, should AT&T ever be unable to provide a reasonable explanation for why its CPN has dropped, Verizon's proposal for a 90% threshold should prevail.

8YY Traffic

Verizon proposes to collect reciprocal compensation on 8YY traffic served by local telephone companies, because its current systems are not able to distinguish such calls from toll traffic. If an originating carrier can provide records showing that an 8YY call was incorrectly billed, Verizon would provide a credit.

AT&T objects and prefers that Verizon not bill any 8YY calls incorrectly. It proposes that originating carriers be required to send the necessary information to the terminating carrier for it to bill all calls correctly in the first instance.

Verizon has explained to our satisfaction that it **[*62]** does not currently have the technical ability to stop billing, on a real-time basis, translated 8YY calls as reciprocal compensation calls. Verizon has accepted AT&T's proposed provision with the exception of § 6.4.5. The Commission finds that this section does nothing to clarify the parties' respective obligations, and it need not be included in the new agreement. AT&T's language is otherwise acceptable.

Call Details

AT&T opposes Verizon's proposal to limit its provision of call detail information to the records it normally provides carriers in the ordinary course of business. AT&T believes Verizon should provide carriers any such information it is technically capable of supplying, even if the company has not previously recorded it.

Verizon states that it currently fulfills its obligation to provide CLECs sufficient recorded call details for them to bill their customers. It knows of no valid reason to provide carriers any additional details, even if it is technically feasible for it to do so. Verizon contends that AT&T's proposal is unclear, overly broad and could require it to make costly switch modifications and upgrades. It believes it should not have to alter its internal **[*63]** operating systems or its retail service offerings to tailor them for a CLEC.

The Commission finds that Verizon need not provide AT&T any more data than Verizon normally obtains and provides itself and other carriers. In general, Verizon is required to provide AT&T data and records containing sufficient call detail information to allow AT&T, and other CLECs, to bill usage charges to their customers. Verizon is not required to gather data for AT&T simply because it is technically feasible for the company to do so. Accordingly, the parties should use the call detail provisions Verizon has proposed for the new agreement.

Tandem Transit Services

AT&T plans to provide other telephone companies some of the tandem transit services it obtains from Verizon. AT&T claims this is a time-honored and standard way for CLECs to obtain indirect interconnections. It also claims it is improper for Verizon to unilaterally terminate or limit these services by imposing maximum volume thresholds, excessive rates, and reciprocal service obligations. According to AT&T, the Act does not allow Verizon to place any limits on services used for interconnection purposes. n45 It also notes that the current **[*64]** agreement between the parties contains no such restrictions.

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n45 AT&T maintains that its receipt of transit traffic services is assured by § 251(a)(1) and § 251(c)(2)(A) and (B). It also points to FCC regulations allowing it to determine whether it is preferable to obtain direct trunk connections with other CLECs or indirect connections using an ILEC's tandem transit service.

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Verizon insists that the Act's interconnection requirements apply only to AT&T-originated local traffic delivered to Verizon end users. It denies any Act-imposed requirements to provide unlimited transit services to (or even to accept AT&T's traffic destined for) another carrier. n46 As a matter of discretion, however, the company states that it is willing to deliver some such traffic to third-party carriers but only up to the DS-1 level that it uses as a benchmark to limit congestion on Verizon tandems.

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n46 In support of its position, Verizon points to § 252(d)(2)(A)(i) providing reciprocal compensation and the recovery of costs associated with the transport and termination of calls originating on the network facilities of the other carrier.

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[*65]

AT&T doubts the validity of Verizon's congestion concerns. It states that tandem congestion is unsubstantiated and Verizon has not provided any proof. It reasons that congestion concerns cannot be attributed to CLECs that would add their own tandem trucks, or make other interconnection arrangements, were their traffic to grow to substantial proportions. AT&T also claims that Verizon's proposal is inconsistent with, and more restrictive than, the Commission's provisions addressing tandem congestion. n47

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n47 Case 00-C-0789, supra. Verizon claims its position here is in keeping with the December 22, 2000 order.

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With respect to the extra charges Verizon would impose when tandem transit traffic exceeds the DS-1 level, AT&T claims they have no cost basis. n48 Verizon admits that the extra charges would signal a carrier that it should establish other trunking arrangements. Verizon believes it should impose hefty fees to strongly encourage a carrier to terminate its use of tandem transit services.

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n48 AT&T points out that it pays Verizon for transit services and the costs of trunking and billing; and, it maintains that any additional charges are punitive.

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[*66]

In a related matter, AT&T states that, as a CLEC, it has no duty to provide tandem transit services to Verizon, but it may provide them within its discretion. Verizon, however, believes AT&T should reciprocate, as a matter of fairness, and make its tandem transit services available to others.

Verizon also urges AT&T, when it enters into tandem transit service arrangements with other carriers, to use its best efforts to establish direct billing arrangements. It objects to AT&T's proposed language that would obviate the need for AT&T and a terminating carrier to provide direct billings. Verizon believes it should not serve as a middleman in these situations. To the extent Verizon incidentally incurs terminating charges, it insists upon being compensated and reimbursed by AT&T.

Finally, Verizon objects to paying AT&T reciprocal compensation for any traffic originated by a third party. It states that the Act does not impose on it any such requirement, and there is no other basis for AT&T to seek such compensation.

The Commission finds that Verizon is not obligated to provide transit service for the exchange of traffic between AT&T and other carriers. Nonetheless, Verizon does have a tariff **[*67]** offering called Transient Tandem Services (TTS) that AT&T may use. Verizon correctly points out that, in Case 00-C-0789, the Commission determined that the level of service available to other carriers can be limited to the equivalent of one T1 (24 channels). The Commission determined that CLECs and other carriers must enter into interconnection agreements to assure the completion of their calls and, at the T1 level, all carriers (including AT&T) are obliged to provide direct transport.

Competitive Tandem Services

Some interexchange carriers do not have resources to build facilities to each Verizon end office. AT&T has facilities to connect other carriers' points of presence (POPs) to Verizon end offices. It currently provides tandem services for terminating traffic and charges carriers tariff rates. It is not technically feasible at this time for AT&T to provide carriers tandem services for originating traffic.

Verizon accepts AT&T's provision of the tandem function in the access arrangements for other interexchange carriers. However, it disagrees with AT&T about access traffic charges and the inclusion of competitive access tandem arrangements in the new agreement. Verizon **[*68]** insists that AT&T's arrangements with other carriers do not belong in the new agreement if they do not bear on exchange service or exchange access for AT&T end users. According to Verizon, it is better left to federal and state tariffs. In support of its position, Verizon points to regulatory decisions in Indiana and Kansas.

If this matter were to be addressed in the new agreement, Verizon would object to AT&T's proposal to modify the rates, terms and conditions contained in its access tariffs. Verizon is opposed to AT&T siphoning any access revenues and purchasing transport for access traffic at UNE rates. It complains that AT&T has provided no evidence for any division of access charge revenues, including its proposal here for ten percent of the switched exchange access revenues. Verizon states that AT&T's handling of interexchange traffic does not relieve it of any responsibilities or costs, and it must still perform the switching and transport functions.

With respect to AT&T's proposal for access transport at UNE rates, Verizon points to FCC and state regulatory decisions having found that the switching elements may not be used to provide interexchange service to end users for **[*69]** whom the requesting carrier does not already provide local exchange service. According to Verizon, unbundled network elements (and TELRIC rates) were not meant for CLECs to use in their capacity as interexchange carriers. Finally, Verizon insists there are substantial technical problems that preclude AT&T from handling originating traffic.

In response, AT&T observes that interexchange carriers will not select its competitive tandem services, unless they can avoid a portion of Verizon's charges. Without its competitive offering, AT&T insists that carriers will pay inflated prices to Verizon, and they will have to charge their customers higher prices. With respect to originating traffic, AT&T seeks only Verizon's cooperation to explore a technically feasible approach for the future. In any event, AT&T maintains that the originating traffic difficulties should not preclude it from providing competitive services for terminating traffic.

The Commission finds that there are no legal or regulatory restrictions precluding AT&T from providing competitive access tandem service to other carriers, even if technical restrictions limit its offering to terminating traffic for the time being. However, **[*70]** this proceeding and the new agreement concerns AT&T's local service interconnections with Verizon and not

AT&T's competitive arrangements with other carriers. Accordingly, AT&T's access service language need not be included in the new agreement.

Information Services Traffic

AT&T does not provide intrastate information services. It is possible for a customer to originate a call on AT&T's network destined for another carrier's information services platform; however, AT&T blocks such calls and plans to continue to do so. Consequently, AT&T sees no need to include any substantive provisions in the new agreement. It has asked Verizon to negotiate suitable rates, terms and conditions if and when it decides to stop blocking customer access, or if it were to obtain Verizon-originated information services.

Verizon is concerned about AT&T removing its blocking, and it believes the new agreement should address this possibility. According to Verizon, the parties negotiated acceptable provisions for information services traffic, but AT&T withdrew its support for them when they did not reach agreement on other matters.

The Commission finds that the dispute here appears only to be incidental **[*71]** to the parties' other disputes. As such, Verizon has offered suitable language to negotiate an arrangement with AT&T when it either develops its own information services, or it connects an information services provider's platform to its network. In the interim, Verizon's provision pertains only to traffic to its own customers without anticipating any future circumstances. Accordingly, AT&T has not provided any compelling reason for not using the provisions Verizon has presented.

Trunk Forecasts

AT&T is willing to provide Verizon good faith forecasts of its outbound traffic; it is unwilling to forecast the amount of traffic on Verizon inbound trunks. It points out that the parties have generally agreed to use one-way trunks for interconnection purposes, and it believes each of them should forecast their own outbound traffic. According to AT&T, Verizon has sufficient knowledge of its traffic and experience to do so. AT&T also states that it needs no contractual obligation to inform Verizon of its marketing efforts that can produce unusually high amounts of Verizon outbound traffic. It would do so in any event to ensure that AT&T customers receive their inbound calls.

In a related **[*72]** matter, AT&T and Verizon agree that severely under-utilized trunks should be disconnected. However, AT&T objects to Verizon unilaterally disconnecting outbound trunks without providing advance notice. It wants an adequate opportunity to inform Verizon of any traffic volume increases it is aware of that could affect the decision to disconnect the trunk. In general, AT&T believes the implementation and grooming process the parties have agreed to (including trunk fill standards and notices of trunk disconnections) are adequate, and that nothing else is needed. AT&T is opposed to paying Verizon financial penalties for under-utilized outbound trunks. It considers this proposal to be punitive and likely to produce under-forecasts. AT&T insists it has no reason to over-forecast traffic, and there is no need to impose any penalties.

Given AT&T's objection to penalty provisions, Verizon has eliminated them from its proposal and has thereby resolved the matter. Nonetheless, it still wants AT&T to forecast its inbound traffic from Verizon. It claims CLEC forecasts are needed because only they know the likely results of their marketing efforts. Verizon would use this, and other information, to **[*73]** guide its construction of network improvements and to manage its workforce, particularly for the timing and sizing of one-way trunk groups. Verizon points to a Massachusetts regulatory decision that found forecasts of future demand useful for telephone companies to maintain efficient networks and to meet customers' future needs. It also points to the CLECs participating in the New York Carrier-To-Carrier Proceeding that have agreed to provide traffic forecasts. n49

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n49 AT&T observes that Verizon only agreed to forecast its originating traffic in the collaborative proceeding.

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With respect to the disconnection of under-utilized trunks, Verizon wants all the information AT&T has, preferably in the forecast it would provide. Verizon urges that trunks not be kept in service on a mere hope that they may be used in the future. According to it, the joint grooming process does not serve this purpose, nor should the matter be relegated to another round of negotiations.

The Commission finds that accurate forecasts of AT&T's **[*74]** and Verizon's traffic are necessary for a well-designed and functioning network. Consequently, the parties must work together and share their respective traffic information as soon as practicable. In particular, disproportionate amounts of traffic can be generated by internet service providers that only the CLECs would know about, and they should share this information with Verizon. Accordingly, in addition to providing forecasts of its own outbound traffic, AT&T should also provide Verizon its best estimates of inbound traffic in all instances when it can reasonably expect volumes in excess of a three to one ratio of inbound traffic to outbound traffic.

AT&T Available Space Licenses

AT&T is willing to provide Verizon central office space to interconnect its equipment, and it would do so on a non-discriminatory basis pursuant to tariff. AT&T complains that Verizon did not respond to its proposal in negotiations. Nonetheless, AT&T wants the matter addressed now to deprive Verizon of any excuse to avoid interconnections and not deliver traffic to it.

Other than acknowledge AT&T's willingness to make space available to others, there is little else for the Commission to do to address **[*75]** this matter. We recognize that Verizon did not answer AT&T's available space offer in its briefs; however, this matter is not essential to the new agreement.

Internet Service Provider Traffic

When they began their negotiations, the parties considered rates, terms and conditions for traffic routed to internet service providers (ISPs). However, the FCC recently addressed ISP-bound traffic, and Verizon now claims the matter is moot for purposes of the new agreement.

The FCC ruled that this traffic is not subject to § 251(b) reciprocal compensation requirements and that the rates for ISP-bound traffic are subject to its jurisdiction. n50 The FCC requires compensation for ISP-bound traffic in accordance with a declining rate schedule, a cap on the per-minute-of-use rates, and a limit on the total volume of calls eligible for compensation. According to

Verizon, this matter can no longer be arbitrated here, and the parties must conform to the FCC's requirements. Verizon states it will abide by the FCC's interim rate structure until it sets permanent rates.

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n50 CC Docket Nos. 96-98 and 99-68, Inter-Carrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order (issued April 27, 2001).

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[*76]

However, AT&T believes that the new agreement need not acknowledge the FCC's decision pending an appeal and a request for a stay. It claims the FCC order is precarious, and the previous reciprocal compensation arrangements should stand. According to it, Verizon could invoke the new agreement's "change of law" provision, if the FCC's order is upheld. n51 Absent a stay or the grant of an appeal, Verizon insists that the FCC order is self-implementing and became effective on June 14, 2001.

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n51 AT&T faults Verizon for not providing any language for the new agreement. It insists that the matter cannot be left without a provision, and that a generic reference to the FCC order is inadequate, because the FCC has provided multiple options, and Verizon should make a selection.

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The Commission finds that the FCC's order speaks for itself, and there is no need for the agreement to include any terms, conditions or rates for the internet traffic that the FCC order addresses.

Call Flow Diagrams

AT&T and Verizon differ as to **[*77]** whether the new agreement should include call flow diagrams as did the first agreement. n52 AT&T favors the practice and says it can eliminate disputes. It specifically requests that 24 diagrams be included in the agreement, observing that Verizon accepted this practice in Maryland. n53

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n52 Call flow diagrams show the applicable charges for local and intraLATA toll calls.

n53 Verizon counters, claiming that a diagram-related dispute remains between them in Maryland.

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Verizon considers the 24 diagrams unnecessary given the parties' sophistication and the existence of their contractual and legal obligations apart from any diagrams. Verizon admits that the depictions may serve as illustrative aids, but it debunks any notion that they encompass the universe of all applicable routing patterns. It knows of another 63 scenarios, but it prefers that they not be added to the agreement. According to Verizon, this could start a perpetual amendment process that could deprive it of revenues pending the execution of amendments. **[*78]** Ultimately, it fears the inclusion of diagrams in the agreement will produce confusion and disagreements. It believes AT&T may attempt to evade payments for services that do not appear in the diagrams.

The Commission finds that the 24 call flow diagrams AT&T wants to include in the new agreement should be contained in it to serve as descriptive aids for the types of calls they address. The 24 diagrams are not to be considered determinative of all possible calling scenarios between AT&T and Verizon. They represent only some call flows, and as such, they are not intended to control for any pricing purposes.

Shared Transport Charges: Direct and Tandem Routing

AT&T claims Verizon's method of calculating usage charges for local calls routed between end offices is flawed. This traffic can either be routed directly or through a tandem switch. However, AT&T believes that almost all its traffic is directly routed.

The blended rate Verizon currently uses assumes that 20 percent of the calls are routed through a tandem and 80 percent are routed directly. AT&T insists that all but one percent of its calls are directly routed. For its evidence, AT&T points to monthly carrier access billing **[*79]** service (CABS) records and to automatic message accounting (AMA) records. But, Verizon insists that AT&T has never supplied it any report or study supporting its allegation. To this, AT&T responds that the pertinent data is routinely stripped from the records it receives, and that the information is only available to Verizon. AT&T believes an annual study would be the best method to determine the actual amount of direct routed and tandem routed calls.

According to Verizon, AT&T is seeking unwarranted, special treatment. It claims that the 80/20 composite rate reflects the engineering principles and switch configurations it uses. Moreover, Verizon states that it does not have the recording capability to determine when a particular call is directly or indirectly routed. For this reason, it has used a weighted average for the unbundled common transport charge. It also claims the 80/20 composite rate is endorsed by the CLEC community and AT&T's traffic is routed no differently than is any other carrier's traffic, including its own.

We are not persuaded that the proportion of all carriers' local calls routed directly and through a tandem switch is anything other than the 80 percent direct **[*80]** routed and 20 percent tandem routed for which a study has been provided to the Commission. Nor can we presume that AT&T's traffic, which is handled no differently than any other carrier's traffic, is likely to be routed in any other proportions. Until a carrier is able to present to the Commission a study demonstrating a new and different proportion of local calls being routed through tandem switches, we will continue to rely on established results showing a 80 percent/20 percent ratio. Accordingly, Verizon's provisions for the new agreement for this matter are to be used. n54

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n54 AT&T is free to pursue this issue further either informally or through the complaint process, if it requires more access to Verizon data.

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Shared Transport Charges: Access and Conversation Minutes-of-Use

There is no dispute between AT&T and Verizon that access minutes of use (AMOU) apply to the originating switch charges for local calls, and that conversation minutes of use (CMOU) apply to terminating switch charges. The dispute here **[*81]** concerns which charge to apply to the transport portion of a local call. AT&T insists it is the CMOU, because SS7 signaling technology does not allow a transport trunk to be seized pending the set up and completion of a telephone call.

Verizon points out that it bills all CLECs AMOUs for transport purposes and urges that AT&T not be permitted to avoid this financial obligation. The company insists that it incurs costs the entire time an AT&T customer has access to a Verizon trunk, including the time the telephone is ringing. Verizon claims an originating caller, from the time the last dialed digit goes through, seizes its network trunk.

The current rate is set upon costs that were extensively litigated in the First Network Elements Proceeding in 1998. Subsequently, in Case 98-C-1357, we directed a comprehensive reexamination of all unbundled network element rates. The litigation phase of that proceeding has recently concluded, and a recommended decision was issued May 16, 2001. We trust that AT&T has considered and addressed this matter in that proceeding. Thus, on the basis of the limited information provided here, we can only conclude that the current use of CMOUs to determine the **[*82]** applicable rate is appropriate. Assuming that the issue is fully joined in the proceeding coming before us shortly, if changes are warranted we will make them simultaneously with other unbundled network element rate changes.

Shared Transport Charges: Non-Conversation Time Additive Factor

The charges that terminating carriers apply to originating carriers for completed local and intraLATA calls include a non-conversation time additive factor (NCTA) to compensate the terminating carrier for the cost of uncompleted calls and for the time its network is in use before a conversation begins. The NCTA is fully addressed by Verizon's tariff; however, AT&T proposes to include a NCTA for its originating traffic in the new agreement. Verizon insists, however, that this is a tariff matter that does not belong in the agreement.

AT&T claims Verizon's NCTA is excessive and points to daily usage feed records (DUF files) for its support. Rather than use a tariffed NCTA that is over five years old, AT&T urges that the figures it presented in this proceeding be adopted. The difficulty with this approach, according to Verizon, is that AT&T did not provide a traffic study to support its figures, **[*83]** nor did it adequately explain how they were derived.

This issue presents the same circumstances considered above with respect to CMOUs and AMOUs. Accordingly, we will wait for the parties to fully present the issue for its resolution in Case 98-C-1357.

AT&T's UNE-Platform Customers: Third-Party Carriers

Verizon does not collect either transport or termination charges when a third-party carrier terminates local calls to an AT&T UNE-Platform customer. Instead, it keeps the reciprocal compensation it receives from the carrier that AT&T would otherwise be entitled to.

With respect to an AT&T UNE-Platform customer's local calls that terminate to a third-party carrier, Verizon passes the carrier's reciprocal compensation charges, and usage charges, to AT&T for it to pay. AT&T accepts these practices and states that they have worked reasonably well.

According to AT&T, were these arrangements to change, the changes should provide for symmetrical opportunities and responsibilities. If Verizon begins to apply transport and terminating charges (and forces AT&T to establish reciprocal compensation arrangements with third-party carriers), AT&T believes it should negotiate reciprocal compensation **[*84]** rates with the third-party carriers for both originating and terminating traffic purposes. According to AT&T, it requires a means to establish equitable reciprocal compensation agreements with third-party carriers, and it can only do so if it negotiates for both types of calls.

AT&T disputes Verizon's assertion that third-party carriers cannot determine whether their incoming calls originate from a Verizon or an AT&T UNE-Platform customer. AT&T points to Texas where it states that such calls are being distinguished. If it is truly impossible to distinguish between them, as Verizon claims, AT&T would prefer that the current arrangements be retained without the change Verizon has proposed.

According to Verizon, third-party carriers' inability to distinguish between an ILEC's customers and a CLEC's UNE-Platform customers is an industry-wide problem that is being addressed by the Ordering and Billing Forum to which AT&T belongs. Direct billings between third-party carriers and AT&T will ultimately solve this problem. However, in the near term, Verizon is only willing to perform a clearinghouse function, if the carrier that creates the costs provides it compensation. It rejects an AT&T **[*85]** proposal for it to either transmit third-party carrier bills to AT&T or send them back to a CLEC. This approach, Verizon states, could subject it to billing and collection disputes that would not include AT&T.

Verizon also opposes any selective use of a "bill and keep" compensation arrangement for AT&T UNE-Platform customers. According to Verizon, this arrangement should only be used when the carriers are entitled to reciprocal compensation from each other. In this case, Verizon states it should receive reciprocal compensation for the calls it terminates from an AT&T end user; however, it claims AT&T should not receive reciprocal compensation for calls to UNE-Platform customers for whom Verizon provides the facilities and incurs the costs.

In their respective positions on this matter, both parties have indicated that the current practice is working satisfactorily. It appears that only more difficulties would arise were we to adopt one or the other's changes to the existing practice. Accordingly, the Commission finds that the prevailing practices shall be maintained in the new agreement.

Packet Switching Rates

Verizon does not currently provide packet switching. The FCC required **[*86]** it to divest its digital subscriber line access multiplexer (DSLAM) equipment to an affiliate when Bell Atlantic and GTE merged. Given the divestiture of these assets, Verizon states that it has no duty to provide any such services to AT&T. It believes that AT&T should contract directly with the Verizon affiliate for its requirements. Only if Verizon were to reacquire the assets, would it recognize an obligation to provide packet switching pursuant to the FCC's rules.

Consequently, Verizon is opposed to AT&T's proposal seeking to bind either it, or the affiliate, to provide packet switching. Verizon states that the affiliate would only be obligated if it were found to be Verizon's successor or assign. Moreover, it points out that the affiliate has not been a party to this proceeding. While Verizon is aware of a court decision adverse to its position, it states that it was not a party to the judicial proceeding, and it remains subject to the FCC merger requirements.

Verizon has neither interim nor permanent rates for packet switching. Were it to provide the service, Verizon states that it would have to develop the rates. If Verizon becomes legally obligated to provide packet switching **[*87]** service, AT&T wants the new agreement to contain an interim rate that would be trued-up to the permanent rate. AT&T is willing to accept a reasonable interim rate to encourage the prompt provision of this service. However, it is also interested in the correct rate being applied both prospectively and retroactively. With respect to the true-up AT&T has proposed, Verizon states that it would comply with a Commission order mandating a true-up, but it believes rate changes should only apply prospectively.

We find that AT&T's proposals for interim packet switching rates, and a true-up mechanism, are premature. The FCC and this Commission (in the DSL Collaborative Proceeding) may or may not decide to require Verizon to offer packet switching on an unbundled network basis. Coincident with any such decision, consideration would be given to interim and permanent rates, and whether a true-up is needed. There is nothing to be gained by making any such determination in advance.

Carrier Identification Codes

The first agreement required Verizon to provide carrier identification codes (CICs) and other information useful for AT&T to bill other CLECs and interexchange carriers access and usage **[*88]** charges. AT&T pays Verizon for the codes and the information it supplies, but it has been disappointed by Verizon's performance, claiming that the company did not consistently fulfill its obligations. To provide Verizon a strong incentive to provide adequate CICs (and billing name and address information), AT&T proposes that Verizon be financially responsible for uncollectible charges for as long as it lacks correct codes and billing information from Verizon.

In support of its position, AT&T points to Verizon having provided it "9000 Series" CICs that only Verizon can decipher and use for its internal business purposes. n55 AT&T also complains that Verizon provided it CICs before they were assigned to any carriers, rendering them useless for billing purposes. Further, it points to Verizon having reassigned CICs that once belonged to carriers but were subsequently used by Verizon for its business purposes. This situation led to incorrect billings on four occasions and to carriers laying blame on AT&T rather than Verizon.

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n55 According to AT&T, Verizon's website does not identify these codes.

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[*89]

Finally, AT&T urges Verizon to provide it other information when carriers do not qualify for codes and for "800" calls. In these instances, AT&T believes that Verizon should turn to its trunk routing information, or it should activate tandem switch and end office capabilities to provide the necessary billing information. n56

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n56 AT&T states it is not enough for Verizon to provide a local exchange routing guide (LERG) or an operating carrier number (OCN) in these instances. The LERG only indicates where a call has entered Verizon's network and does not show the carrier that originated it. AT&T also states that Verizon does not always provide correct or useful OCNs. At a minimum, Verizon believes the OCNs should provide a billing name and address associated with the CIC.

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Verizon believes that billing information standards should not be detailed in the new agreement. Instead, it urges that the agreement only commit the parties to implement the guidelines adopted by the Ordering and Billing Forum, an industry-wide forum **[*90]** that addresses the kinds of problems AT&T has laid out here. Verizon considers AT&T's proposal to be too restrictive in comparison to other solutions the industry-wide forum is considering. n57 Rather than focus exclusively on CICs, Verizon reports that OCNs and pseudo-CICs (the codes ILECS devise for entities that do no qualify for CICs) are being considered in the industry-wide forum, and they can serve AT&T's needs.

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n57 Verizon also points out that FCC regulations address this subject.

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With respect to AT&T's proposal that Verizon be financially responsible for CIC errors, the company contends there is no valid basis for shifting AT&T's billing risks and collection costs to it. Verizon states that it will provide AT&T the best information it has in conformance to industry standards, and that no fault should be cast on it for carriers who have not obtained CICs or for industry efforts that have yet to solve carrier identification problems. n58

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n58 Specifically addressing the fact that originating CICs can be lost when calls are switched between tandems, Verizon points out that the Order and Billing Forum has produced a solution to which it subscribes.

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[*91]

In sum, Verizon insists it has no responsibility for assigning or approval of CICs, as this is the responsibility of the North American Numbering Plan Administrator (NANPA). While it is willing to provide assistance, it believes AT&T should have most of the carrier billing information it needs from previous transactions, or it can obtain the information from the same industry data bases Verizon uses. It sees no need to impose a contractual duty on it, particularly given the upcoming assignment of OCNs in October 2001 that should eliminate some problems with pseudo-CICs. n59

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n59 OCNs are the responsibility of the National Exchange Carrier Association.

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The Commission finds that the parties should use the Ordering and Billing Forum's guidelines for replacing "pseudo" CICs with OCNs. With respect to the parties' concerns about "9000 Series" CIC codes, invalid CIC codes, and "stolen" CIC codes, Verizon has a duty to provide carriers CIC codes that contain the billing information they need. For this reason, we adopt AT&T's **[*92]** proposal that Verizon should be billed for any uncollectible usage that is the result of Verizon not providing AT&T a valid CIC code.

Unbundled Network Elements Issues

1. AT&T's Preamble

Verizon objects to AT&T's preamble for the UNE section of the new agreement. In it, AT&T makes general assertions for all UNEs and combinations that Verizon considers to be inappropriate. For one, Verizon would not make any sweeping statements about provisioning, ordering and billing requirements that suggest new processes are needed. n60 For another, it would not use broad language to anticipate future UNEs, or allow AT&T unfettered use of combinations to replace access services. Nor would Verizon include in the preamble any language that appears to conflict with FCC requirements and legal restrictions. In this regard, Verizon disputes whether AT&T, and its affiliates, can use UNEs and combinations for themselves.

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n60 According to Verizon, the ordering process is better left to the OSS and DSL Collaborative Proceedings. It also believes AT&T should submit the same types of service orders and bona fide requests that other CLECs use.

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[*93]

The Commission finds no essential need for a UNE preamble to be included in the new agreement. The UNE portion of the agreement will contain discrete provisions, and each of them addresses particular types of facilities. We agree with Verizon that its ordering and provisioning process, and business rules, are being considered in the OSS and DSL collaborative proceedings where all carriers' requirements are being addressed. Accordingly, there is no need for these matters to be covered by a UNE preamble. Nor is there any need for a preamble to discuss the bona fide request process that is fully addressed in Verizon's tariff and can be used to handle CLEC requests for non-standard service offerings.

2. Loops

Rather than include unbundled loop provisions in the agreement, Verizon proposes that its tariff provisions be incorporated by reference. Verizon states that the tariff process provides an adequate opportunity for the public to voice concerns and air grievances. It also believes the tariffs are better suited for making changes as circumstances warrant. According to Verizon, a flexible approach is needed to adjust to market growth and competitive developments.

Verizon disagrees **[*94]** with AT&T's proposal to retain the loop definitions and provisions from the first agreement. It states that the old agreement no longer conforms to the tariff provisions that apply to other carriers, and its definitions are incomplete and less accurate than the ones the industry uses today. n61

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n61 Verizon also objects to AT&T altering the definition of a local loop to include "transmission-related functionality". It sees this as an attempt to avoid the Commission's multiplexing order and to obtain unrestricted access to loops with multiplexers.

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Nor does Verizon believe that the new agreement need specify the technical characteristics of the loops it provides. It states that they are better left to the tariffs where loop characteristics conform to national or industry standards, except where Verizon supplements them for its service area. According to the company, its loop characteristics should neither be modified for each CLEC, nor should AT&T be able to define Verizon's technical standards.

With respect to the loop **[*95]** pre-qualification process, Verizon proposes that this matter be left to its tariff and to the DSL Collaborative Proceeding where it is being considered. Verizon denies AT&T's allegation that it does not provide adequate loop information. The company states that it complies with the standards promulgated by the Ordering and Billing Forum where, it believes, AT&T should go to request any more information. In the collaborative proceeding, Verizon has proposed to provide CLECs electronic access to loop information; however, some CLECs are unwilling to incur any costs for this system. Nevertheless, Verizon plans to implement a "change management process" in October 2001, and it currently has an interim process in place to provide CLECs loop information.

Verizon also objects to AT&T's proposal to use its own loop qualification tools, or employ a third party, to conduct the loop pre-qualification process. Given the pre-qualification service it provides, Verizon claims it should not incur any additional expenses or have to change its system for the tools AT&T or a third party might use.

Finally, Verizon urges that bridge tap lengths remain in the loop length measurements it provides to CLECs. **[*96]** When a bridge tap is identified by an automated loop qualification, Verizon informs the carrier of its location and provides other information. Verizon may remove bridge taps from loops, if AT&T requests that it do so.

The Commission finds that Verizon's tariff contains adequate provisions for CLECs to access the company's loops, provisions that should apply to all carriers, including AT&T. Additional provisions in the new agreement are not necessary. The tariff defines unbundled and other types of loops, and it specifies their technical characteristics. n62

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n62 In any instance where the tariff does not contain all the technical characteristics of a loop, the parties should resort to generally accepted national or industry standards for the details they require.

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Loop pre-qualification matters are being addressed in the DSL Collaborative Proceeding (Case 00-C-0127) that began in August 1999. If we were to approve AT&T's proposal to use its own pre-qualification tools, Verizon would have to modify its system that other **[*97]** CLECs also use, and the company would incur added expenses. We find that the prevailing system that has been designed for all carriers is adequate. However, to the extent that it is technically feasible to modify the requisite systems to accommodate both AT&T's needs and those of the other CLECs, and if AT&T is willing to pay for the modifications, Verizon should make them.

Finally, the length of a bridge tap on a loop can affect its data transmission capability. For this reason, Verizon's loop qualification database notes the presence of a bridge tap on a subscriber loop. However, because not all bridge tap arrangements interfere with data transmissions, it is the CLEC's responsibility to request and pay for the removal of bridge taps.

3. Digital Subscriber Line Loops

AT&T wants digital subscriber line (DSL) loop provisions in the new agreement. As discussed above, it wants the agreement to capture Verizon's legal obligations, rather than having to rely on the company's tariff. It criticizes the tariff for not containing the line splitting provisions the FCC has required. AT&T is unwilling to wait for an expected tariff proposal from Verizon, the contents of which it does not **[*98]** know. Were this matter to be handled by a tariff, AT&T fears that Verizon could unilaterally modify its terms or render unfavorable interpretations. AT&T also makes four other points.

First, it contends that a qualified loop should not be qualified a second time for another carrier providing the same type of DSL service. According to Verizon, this matter is being addressed adequately in the DSL Collaborative Proceeding where it belongs. Verizon agrees that a second qualification can be avoided, if the loop is pre-qualified for the same type of advanced data service. But, it states, comparable service with different loop characteristics would have to be pre-qualified again.

Next, AT&T states that Verizon's operational support systems (OSS) for DSL are not addressed in the tariff. The provisions it has drafted for the new agreement would reflect obligations established by the Commission's January 29, 2001 order and developments in the DSL Collaborative Proceeding.

Third, AT&T criticizes Verizon's mechanized loop qualification system and wants the system enhancements Verizon has promised (in the DSL Collaborative Proceeding) to provide by October 2001. It proposes that the new agreement **[*99]** contain Verizon's commitment. AT&T also wants the new agreement to reflect Verizon's commitment to provide the extract files that it currently provides on a non-contractual basis. n63

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n63 Extract files provide loop data on a wire center basis similar to the information available through the mechanized loop qualification system.

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Finally, AT&T observes that costly, manual loop qualifications are required when bridge taps exist on loops and that Verizon adds the information it obtains in this manner to the company's OSS systems. Rather than incur all the costs of a manual loop qualification that may benefit other carriers, AT&T proposes that this charge be spread among all carriers.

The Commission finds that the matters AT&T has raised here concerning DSL loops are being adequately considered in the DSL Collaborative Proceeding for the benefit of all CLECs. It would be inefficient to decide these matters in the context of each carrier's interconnection agreement. Moreover, AT&T has not raised here any unique claims applicable **[*100]** only to it. Accordingly, the new agreement need not contain any such provisions pertaining to DSL loops. The applicable requirements will be derived in the collaborative proceeding, and they will be incorporated in the company's tariff, as they are resolved.

4. Cable Plats and Related Network Information

In November 2000, AT&T complained to the Commission about not having sufficient access to Verizon cable plats and other network related information. It uses this information to make interconnection decisions and to determine whether it can access unbundled subloops. By now, AT&T believes Verizon should have provided it direct access to this information on a trial basis, as suggested by the staff assigned to this matter. However, the parties did not agree to any such trial, and AT&T wants a provision in the new agreement ensuring its access.

Verizon objects to AT&T litigating the same matter twice and urges that it remain in the complaint proceeding. Verizon also claims the access AT&T seeks is not required by the Act, nor would it serve a legitimate purpose. n64 Verizon is not opposed to AT&T obtaining such information; it objects to AT&T having unfettered access to its files. **[*101]** Rather than provide AT&T direct access, it prefers that other methods be used to protect its proprietary information.

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n64 In response, AT&T states that the FCC's Local Competition Order recognizes legitimate requests for access to network information and requires that this information be available for inspection and copying, subject to reasonable conditions to protect proprietary data.

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Verizon also objects to the quick turnaround and delivery AT&T wants. In general, Verizon needs time to ensure that its proprietary information is protected. Finally, in response to AT&T's request for electronic access to house and riser information, Verizon states that such access is not available, because its paper records are scattered widely throughout the company. It is willing, however, to locate and provide its paper records upon request. Verizon also notes that it has an electronic list of house and riser assets it has divested that it is willing to share with AT&T.

Earlier this year, AT&T filed an expedited dispute resolution **[*102]** request to gain access to certain plant related records. Staff has been working with the parties to define the records at issue and to establish a trial that would promote AT&T access to the records under conditions that are mutually agreeable to the parties. Verizon and AT&T are still considering the mechanics of a trial. Accordingly, the Commission finds that this matter should remain in and be resolved by the dispute resolution process.

5. Subloops

Verizon acknowledges that the UNE Remand Order and the FCC regulations require it to provide CLECs access to subloops. It has implemented tariff provisions to comply with these requirements, and it has amended them from time to time. Verizon proposes that the new agreement incorporate by reference its tariff provisions, and that subloops not be addressed in it otherwise.

However, AT&T wants feeder, distribution, and intra-premises subloops (with multiplexing functionality) to be addressed in the new agreement. In general, it seeks technology-neutral access, a commercially reasonable and timely process, and forward-looking TELRIC prices. AT&T claims the tariff does not address these matters adequately. According to it, feeder subloops **[*103]** are nowhere discussed in the tariff, and intra-premises subloops are not expressly addressed. n65

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n65 AT&T wonders whether the tariff's house and riser cable provisions (discussed below) are intended to encompass intra-premises subloops.

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AT&T wants to use Verizon's intra-premises facilities to deliver a variety of services in apartment buildings, corporate parks, and on academic campuses. It also wants to perform the work needed at the cross-connection blocks, and it seeks to avoid collocation requirements for intra-premises subloops. It maintains that the provisions it seeks would help AT&T to fully realize the competitive potential of multi-tenant environments.

In response, Verizon insists that access to intra-premises facilities must be had at the terminal box that serves as the demarcation point between the carriers' networks. Verizon also insists that it does not allow representatives of other companies unrestricted access to its network to splice cables at will. It states that restrictions are needed to address **[*104]** customer service, fraud, labor union, liability, and network concerns.

AT&T acknowledges that distribution subloops are addressed in the tariff; however, it claims the provisions are not technology-neutral. It states that they only permit access to two and four-wire copper pairs, and not to fiber optics or other technologies Verizon is considering. AT&T also criticizes the distribution subloop provisions for mandating access at the outside plant interconnection cabinet and not permitting interconnections at any other points. It considers the tariff overly restrictive and objects to the connection and conversion charges Verizon would impose. AT&T states that interconnections at outside plant cabinets are unworkable, because they lack electricity. AT&T also complains that Verizon does not have a standard process for taking subloop orders or for provisioning these facilities. It believes performance standards should be applied distribution subloops.

Verizon denies AT&T's claim that it should provide access to subloops at any technically feasible point. According to it, the UNE Remand Order modified any such requirement by establishing access at accessible terminals. Verizon insists that **[*105]** only its technicians should access the terminal box, and that its charges are proper for the costs associated with the services it provides.

Verizon states that AT&T's provisions for the agreement do not reflect FCC requirements. According to Verizon, it is not possible to include provisions in the new agreement for every variety of subloop. It also contends the AT&T provisions are overly broad and ambiguous, and that problems permeate every sentence AT&T has offered. It urges that AT&T obtain subloops pursuant to the tariff, as other CLECs do. Should AT&T request subloops that differ from the tariff, Verizon states it can handle such requests using the bona fide request process specified in the tariff.

The Commission finds that Verizon has complied with the FCC's UNE Remand Order by providing suitable tariff provisions for unbundled subloop elements. The tariff defines feeder and intra-premises subloops, and its building and riser cable provisions pertain to large apartment buildings. With respect to AT&T's access to buildings on corporate and academic campuses where Verizon owns the cable, AT&T should submit bona fide requests for access at these locations. Overall, the new agreement **[*106]** should incorporate by reference Verizon's tariff that can be modified from time to time to include additional subloop provisions as they are needed.

6. NGDLC Loops

AT&T wants a provision in the agreement requiring Verizon to provide it Next Generation Digital Loop Carrier (NGDLC) loops when this technology is deployed. Verizon acknowledges that it is exploring NGDLC loops but claims it is premature to include them in the agreement, because it has not decided whether they qualify as a UNE. Absent a final decision, Verizon insists it has no obligation to furnish NGDLC loops. According to Verizon, the agreement can be amended if and when NGDLC loops arrive.

AT&T urges that NGDLC loops be addressed now, because they are essential for AT&T to compete in the provision of high bandwidth advanced services. According to AT&T, it does not matter that Verizon is willing to offer NGDLC loops as a wholesale service. n66 It states that Verizon should unbundle the loops and provide them as a UNE so it can compete with Verizon's data affiliate.

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n66 According to AT&T, it is anticompetitive for Verizon to provide NGDLC loops as a wholesale service.

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[*107]

Verizon disagrees with AT&T's claim that NGDLC loops must be deemed a UNE. It insists that this new technology falls outside the Act's requirements. Verizon states there is no requirement that an ILEC build new network capabilities to unbundle the existing network for competitors. It points out that the FCC is considering the matter, and it is premature to include NGDLC loops in the new agreement before the FCC and the courts have ruled.

Were the Commission to include NGDLC loop provisions in the new agreement, Verizon would object to AT&T's proposal as not complying with the applicable requirements. It points out that the FCC's rules do not require ILECs to provide unbundled loops with DSLAMS in the remote terminals. n67 Verizon also does not consider line cards to be an element of a NGDLC loop. It notes that the FCC is considering this issue in the context of the collocation of line cards at ILEC remote terminals. Absent a FCC finding to the contrary, Verizon does not plan to offer to collocate line cards in the terminals. Nor does Verizon consider line splitters to be an element of a NGDLC loop. It supports an industry-wide approach to line splitting matters. n68

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n67 AT&T acknowledges Verizon's position but claims the FCC's classification of DSLAMs is wrong, because DSLAMs cannot perform switching functions at remote terminals. In any event, AT&T claims that the FCC's logic should not apply to NGDLC loop architecture. **[*108]**

n68 According to AT&T, there are no technical impediments to line splitting on NGDLC loops.

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The Commission finds that it is premature to consider the inclusion of any NGDLC provisions in the new agreement given the current status of this technology and pending its regulatory review. Similarly, we did not require the provision of NGDLC loops on a UNE basis in the DSL Collaborative Proceeding. We find that this matter can be better addressed in the DSL Collaborative Proceeding if and when Verizon makes these loops available to competitors. n69

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n69 See, Case 00-C-0127 Digital Subscriber Line Services, Opinion No. 00-12 (issued October 31, 2000); Order Granting Clarification, Granting Reconsideration In Part and Denying Reconsideration in Part, and Adopting Schedule (issued January 29, 2001).

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7. House and Riser Cables

AT&T wants provisions in the agreement allowing it access to Verizon's house and riser cable facilities so **[*109]** it can connect customers in apartment and office buildings. AT&T wants to perform the cross-connections itself to save costs and to effectively serve its customers. In November 2000, AT&T complained to the Commission about this matter. Since then, another carrier sought to perform cross-connections, and it was allowed to do so on a trial basis.

In January 2001, the Commission requested public comments on this matter. n70 AT&T submitted comments supporting the practice, and Verizon opposed it. Verizon prefers that cross-connection work to be done by company employees. It is opposed to AT&T and others having unrestricted access to the network. It is concerned that such access will adversely affect customer service, will disturb union relations, increase telecommunications fraud, create corporate liability, and detract from the company's ability to sustain the network. Verizon also believes CLECs may not provide it accurate reports of their activities.

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n70 Case 00-C-1931, In the Matter of Staff's Proposal to Examine the Issues Concerning the Cross-Connection of House and Riser Cables, Notice Inviting Comments (issued January 29, 2001).

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[*110]

Nevertheless, Verizon acknowledges that the Commission has directed it to file tariff amendments allowing CLECs to perform cross-connections. n71 It is also aware that any valid concerns will be addressed in the collaborative process established for this purpose. Consequently, Verizon urges that this matter be addressed in the collaborative process and the tariff, and not in the interconnection agreement.

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n71 Case 00-C-1931, supra, Order Granting Direct Access Cross-Connections to House and Riser Facilities, Subject to Conditions (issued June 8, 2001).

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AT&T does not want to rely on the tariff to secure its access to house and riser cable. It believes its rights should be memorialized in the interconnection agreement. According to AT&T, the tariff process subjects it to Verizon's interpretations and to unexpected modifications of the tariff terms.

As explained above, this matter has been fully resolved by our recent order. A collaborative proceeding, in which AT&T is a participant, has been convened to develop **[*111]** cooperative billing and operational practices. Verizon has submitted its proposed tariff revisions that are currently being evaluated by Staff and the parties, including AT&T. Thus, the Commission finds that this matter is best resolved by the interconnection agreement incorporating the Verizon tariff provisions by reference, as amended from time to time.

8. Dark Fiber

Here, as elsewhere, the parties want the Commission to decide whether Verizon's tariff, or AT&T's interconnection agreement, should control access to unused loop capacity, particularly dark fiber. AT&T maintains that its provisions are consistent with the Act, and Verizon's tariffs are flawed. Verizon claims the tariff satisfies the UNE Remand Order requirements, but AT&T's proposal does not.

AT&T and Verizon are clearly at odds about the UNE Remand Order requirements. Verizon claims AT&T seeks a broader offering than it is entitled to; AT&T counters that Verizon would unreasonably restrict access to unused transport capacity. AT&T believes the Order is not limited to fiber technology. It claims that Verizon must provide it access to all types of media--dark fiber, copper pairs, and coaxial cable. However, Verizon **[*112]** insists that neither copper pairs nor coaxial cable are subject to the dark fiber requirements.

AT&T seeks access to dark fiber at splice joints claiming it is technically feasible for Verizon to provide access at this location. However, Verizon states that spliced fiber falls outside the UNE Remand Order's unused loop capacity requirements. It points out that the Commission has also ruled to the same effect. n72 In response, AT&T claims that Verizon should not limit access to continuous fiber strands. It believes it should have the same access to the dark fiber as Verizon enjoys.

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n72 Case 00-C-0127, supra, order issued January 29, 2001.

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AT&T defines dark fiber loops to include electronic components (such as lightwave repeaters and optical amplifier equipment) and it claims to have access rights to all such facilities. But Verizon states that AT&T's position conflicts with the UNE Remand Order (and FCC rules) that define dark fiber transport as facilities without any multiplexing, aggregation, or other electronics. **[*113]** It points also to a Commission decision stating that CLECs must provide the necessary electronics for dark fiber. n73

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n73 Case 00-C-0127, supra, Opinion No. 00-12, p. 24, n. 3.

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Verizon insists that the applicable requirements only provide AT&T access to dark fiber subloops at the accessible terminals in its end office, and it objects to AT&T's proposal to access dark fiber elsewhere on the subloop. According to Verizon, AT&T's proposed cross-connections can degrade the transmission quality of the fiber. But, AT&T claims the Act and the UNE Remand Order provide it access to all technically feasible points (including points at regenerator or optical amplifier equipment), and they do not limit cross-connections to hard termination points.

Next, AT&T wants to reserve some of Verizon's dark fiber for its future use. It states that, if Verizon can reserve fiber for itself, AT&T should also be able to do so. It observes that the Act, the UNE Remand Order, and the FCC's regulations all mandate non-discriminatory treatment. **[*114]** But, rather than reserve any fiber capacity, AT&T prefers that Verizon upgrade its electronics and increase the bandwidth of the existing capacity. According to AT&T, Verizon should only reserve its capacity if it can demonstrate a threat to its ability to provide service as a carrier of last resort.

Verizon insists, however, that AT&T cannot reserve dark fiber pursuant to the UNE Remand Order. Verizon's tariff provides all carriers access to available dark fiber facilities on a first-come, first-served basis. Verizon insists that it does not reserve any dark fiber for itself.

AT&T also proposes that when Verizon installs new or additional dark fiber facilities it should include some for AT&T's future requirements. AT&T states it is willing to provide Verizon timely forecasts of its future requirements. However, Verizon claims the applicable law does not require it to consider AT&T's needs when designing its network and expanding its capacity. According to Verizon, it is only obligated to provide AT&T access to spare facilities on the existing network. It believes AT&T should construct its own facilities or obtain additional capacity from a third party.

AT&T also objects to its having **[*115]** to submit fiber inquiry requests to Verizon. It claims this requirement is costly and burdensome, and it provides no assurance that the facilities will be made available. AT&T believes Verizon has records of its available loop plant capacity, and that it does not need any field surveys to determine whether fiber facilities are available for CLEC use.

Verizon is opposed to redesigning its facilities request process for AT&T. It states that, after performing a record review to determine if the requested fiber facilities are available, a CLEC has the option of verifying the accuracy of the information or determining transmission quality by requesting a fiber layout map or field survey respectively. Verizon claims that it utilizes the same processes to determine the availability of dark fiber for its own use.

AT&T also objects to Verizon having up to 30 days to turn up dark fiber for CLECs. At most, AT&T believes Verizon needs no more than 20 days to perform the necessary steps. According to AT&T, the 30-day interval unnecessarily slows its efforts to plan and grow its local network.

Verizon objects to AT&T's proposal calling for it to certify that its dark fiber meets industry standards. **[*116]** Verizon states that the FCC does not require ILECs to improve the transmission quality of their facilities for a competitor's use. It also points out that dark fiber does not have uniform capabilities. Industry standards have changed since fiber was first installed, and the fiber lines may experience degradation. For these reasons, Verizon states it cannot guarantee any constant quality of the fiber optic facilities, or that the fiber will be suitable for any particular purpose. It insists that CLECs must upgrade and retrofit dark fiber to meet their needs.

Verizon also states that it must maintain and restore the damaged dark fiber facilities it owns. This means that it may have to splice the fiber cables it provides to AT&T. Accordingly, it states that AT&T's access to unused dark fiber must assume the risk of such future splices. It distinguishes this maintenance activity from other maintenance responsibilities that would properly belong to AT&T.

Finally, Verizon objects to AT&T personnel having unrestricted access to its network to splice and test dark fiber. As stated elsewhere, Verizon is concerned about such access having an adverse effect on the network and its interfering **[*117]** with the company's relationships with others.

The Commission finds that AT&T and other CLECs should obtain access to Verizon's dark fiber facilities pursuant to the tariff provisions that have been implemented consistent with the requirements of the UNE Remand Order. AT&T has not shown any unique circumstances that distinguish it from other CLECs. Consequently, the new agreement need only incorporate by reference the applicable tariff provisions.

9. Line Splitting n74

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n74 Line splitting occurs when a customer that obtains voice service from a CLEC on a UNE-Platform basis also obtains high-speed data service on the same line.

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In the pending DSL Collaborative Proceeding, Verizon is cooperating with the CLECs to develop shared line access. It has filed descriptions of line sharing and line splitting, and it has provided a schedule for implementing tariff provisions. Working groups are developing systems and operational requirements; AT&T and others are participating in this process. AT&T wants to establish line splitting **[*118]** provisions in the interconnection agreement. Rather than establish any line splitting requirements here, Verizon proposes that the collaborative process and the company's tariff set the applicable standards. Verizon believes it is better to conform the new agreement to the business rules and the OSS systems being devised in the DSL collaborative proceeding. n75

- -Footnotes- -

n75 Were the Commission to address line splitting here, Verizon has addressed the specific matters they would contain, including the purchase of UNE-Platform loops, the provisioning of splitters and the provisioning interval, splitter lease terms, splitter locations, operational support systems, advanced services, and the use of authorized vendors. See, Verizon's May 25 Arbitration Brief, pp. 180-193.

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AT&T, Verizon, and other carriers are rolling out line splitting in New York, and they are testing the new provisioning procedures and interfaces that are needed to deploy it. A line splitting working group meets on a regular basis to accomplish this work. On **[*119]** May 29, 2001, Verizon filed a proposed tariff addressing the terms and conditions for line splitting and a recurring charge for OSS line sharing, line splitting and sub-loop unbundling. In response to a Commission invitation to submit comments, n76 several CLECs, including AT&T, filed incisive commentary which will be considered in the tariff review process. The approved tariff shall be incorporated by reference into the new agreement.

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n76 Case 00-C-0127, supra, Notice Inviting Comments (issued June 27, 2001).

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10. Line Sharing and Resold Voice Services

AT&T proposes that line sharing be available in instances where it resells Verizon's voice services. Verizon states that this would contravene the FCC's Line Sharing Order. n77 According to Verizon, the Order requires an ILEC to provide access to the high frequency portion of a copper loop when it is the voice provider.

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n77 CC Docket Nos. 96-98 and 98-147, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (issued December 9, 1999).

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[*120]

Verizon's position is correct, and its definition for line sharing is adopted. Moreover, the DSL Collaborative Proceeding is the proper proceeding for developing any process that would allow CLECs to provide data over resold lines.

11. Network Interface Devices

According to Verizon, its tariff adequately addresses the use of network interface devices, and it proposes that the tariff provisions be incorporated by reference into the new agreement. AT&T is generally opposed to any tariff provisions being incorporated into the agreement. For the reasons stated above, the Commission finds that the tariff should set the terms and determine the provision of these UNEs. We note that the existing tariff does not contain definitions for the various network interface devices, and it should be amended to include them.

12. Local Switching: Latent Features and Exemptions

Verizon provides AT&T access to its local switching as required by the UNE Remand Order and its tariff. It proposes that the tariff be incorporated by reference into the new agreement; AT&T proposes its own contract language. Verizon does not believe that tariff provisions should be at issue in this proceeding, and it claims **[*121]** that AT&T's proposal does not reflect properly its local switching obligations.

In particular, Verizon objects to AT&T obtaining any latent switch features to which Verizon does not subscribe and for which it is not licensed. Verizon points out that it would incur additional costs were it to obtain and deploy any latent features for AT&T. It believes AT&T should bear the development and provisioning costs for any latent features it should seek through the bona fide request process.

In a related matter, the parties have agreed to include in the new agreement citations to the legal authorities governing unbundled local switching. While they have agreed to cite the FCC's Third Report and Order, Verizon objects to AT&T's paraphrases of it. Verizon believes they are unnecessary, and they could become obsolete or ambiguous were the FCC to change its rules.

In particular, the parties differ on a significant term in the FCC order, "end user with four or more lines." n78 AT&T wants to narrow this exception to unbundled local switching by limiting it to the geographic location in which a business customer takes service. Verizon would apply the term broadly to business customers no matter where **[*122]** they are located.

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n78 This phrase, according to AT&T, permits Verizon to not provide unbundled switching on the fourth and subsequent lines serving the same business end user in the largest metropolitan statistical areas.

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To support its position, AT&T points to the commitment Verizon made in the Section 271 proceeding to make unbundled local switching available for business customers. According to AT&T, any exception should be applied narrowly in order to make competitive alternatives more available to the mass market and to small business customers.

In response, Verizon states that it fulfilled its Section 271 commitment by including UNE-Platform service in its tariff. It claims that local switching need not be unbundled where it would not improve competition, as is the case with medium and large business customers that operate in densely populated areas.

In general, the Commission finds that Verizon's tariff properly addresses local switching requirements, and the tariff provisions should be incorporated into the **[*123]** new agreement. With respect to any latent switch features AT&T may want, it should pay for their development, activation, and any associated fees and charges. As to AT&T's proposals to apply the unbundling rule only to the fourth or greater line (to limit the rule to voice grade DS-1 equivalents) and to apply the rule to customer locations, some aspects of these disputes are clear, but others are not properly joined for us to consider them here. Moreover, AT&T is not the only UNE-Platform provider in New York, and the issues it raises could impact other providers. If AT&T believes Verizon's tariff, as it implements the FCC's four business line rule, is ambiguous or that Verizon is misapplying its tariff, we encourage AT&T to file a petition for a declaratory ruling, and we will obtain input from other CLECs with an interest in the matter. Otherwise, we deny AT&T's proposal pertaining to the interconnection agreement.

13. Interoffice Facilities and Dedicated Transport

Verizon provides CLECs access to unbundled interoffice facilities as required by the FCC UNE Remand Order and pursuant to the company's tariff. It proposes that the tariff (as amended from time to time) be incorporated **[*124]** by reference into the new agreement. Verizon claims AT&T's proposal does not reflect its obligations properly, and it objects to AT&T's definition for "dedicated transport." n79

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n79 Within AT&T's definition, Verizon also objects to such phrases as "interoffice transmission path" and "network components" as being undefined and broader than the FCC's definition.

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AT&T's definition comes from the parties' first agreement, as interpreted in an alternative dispute resolution proceeding. According to Verizon, AT&T was improperly provided two UNEs for the price of one by an interpretation that did not comport with the FCC's Local Competition Order and its UNE Remand Order. It urges that the term from the first agreement not be used in the new agreement.

The FCC has defined "dedicated transport" as a type of interoffice transmission facility, and as such, the term does not include a local loop. The facility between a central office and an end user is considered a different unbundled network element. Verizon insists it has **[*125]** no obligation to provide AT&T transport and loop combinations as a single UNE. n80 It urges the Commission to establish proper rates for each UNE on the basis of their respective costs. n81

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n80 According to Verizon, such a combination of two UNEs constitutes an expanded extended link (EEL).

n81 Act § § 252(b), (c)(2), and (d). Verizon points out that, in the UNE Pricing Proceeding, the Commission determined that an interoffice facility runs between two central offices.

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AT&T prefers the definition the alternative dispute resolution process established that includes dedicated transmission facilities between customer premises and the AT&T point of presence (POP). It clearly benefits from being able to purchase, as a single UNE, a DS-1 level transmission facility from a customer's premises to the POP.

AT&T acknowledges that its preferred definition does not comport with the FCC definition; however, it states that the parties are not bound to use the FCC definition. n82 AT&T claims it has relied on the existing definition **[*126]** to implement its business plans in New York, and it believes Verizon's position has changed after it obtained its Section 271 approval. AT&T also states that the prevailing definition reflects the type of special access arrangements that were available in New York before the Act. n83

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n82 AT&T maintains that the FCC definition is descriptive and not preclusive. According to it, the FCC definition should not be used to restrict the use of dedicated transport.

n83 Verizon denies that special access arrangements provide any guidance. It points to differences in UNE configurations, billing arrangements, rates and charges as undermining AT&T's comparison.

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AT&T denies any intent to obtain loop facilities for free. According to it, Verizon has provided an incorrect price comparison that compares the costs of a DS-1 circuit with a four-wire digital UNE loop. The proper comparison, it states, would compare the costs of a DS-1 dedicated transport circuit between two central offices with the costs of a DS-1 circuit running **[*127]** between a central office and a customer's premises. Under this approach, the costs of both circuits are the same. Thus, AT&T believes TELRIC rates should apply to the dedicated transport it would retain.

AT&T also urges the Commission to affirm the rate application rules from the first agreement that permit it to order multiplexing for a dedicated transport UNE (or an unbundled loop UNE) as a single UNE order and not as a UNE combination. According to Verizon, multiplexing is a transport functionality not an interface UNE. It points out that the tariff addresses multiplexing in the transport section, and the Commission's Multiplexing Order resolved this matter against AT&T. n84 Rather than perpetuate the results of the first agreement, Verizon urges the Commission to reflect the Multiplexing Order results into the new agreement.

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n84 Cases 98-C-0690 et al., Combinations of Unbundled Network Elements, Order Regarding the Multiplexing Component of the Expanded Extended Link (issued August 10, 1999).

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Verizon is correct **[*128]** that the standard understanding of dedicated transport facilities is that they run between switching offices. Such facilities typically differ from the plant and technology that is used for the loops to customer premises. Moreover, the facilities used to connect an AT&T POP and a customer's premises generally include both a loop and an interoffice facility. The Commission finds that Verizon should be allowed to recover the cost of all the transport and loop facilities that are used for these connections. Accordingly, Verizon's definition shall be used for purposes of the new agreement.

14. Limits on Unbundled Access

Verizon acknowledges that it must provide CLECs access to UNEs at any technically feasible point on its network. However, at this time, Verizon considers collocation to be the only method available for CLECs to access UNEs at its premises. Verizon acknowledges that collocation is not required for access at the customer premises, or when UNE combinations are ordered. It also acknowledges that a CLEC may request access at other points on the network by using the bona fide request process that permits it to evaluate the request, the applicable law, and the appropriate **[*129]** rates.

Next, Verizon claims that stand-alone loops that are provisioned over integrated digital loop carrier (IDLC) facilities cannot be unbundled. It proposes to reflect this in the new agreement, claiming it is consistent with regulatory decisions in other states and the FCC's UNE Remand Order. AT&T acknowledges these circumstances and requests to be informed of any such facilities when Verizon provides its firm order confirmation. However, Verizon states that it does not know when it confirms an order whether any IDLC facilities are present. It proposes to notify AT&T within three business days of a request, if unbundled facilities are unavailable.

Finally, the parties agree that Verizon should be compensated when its personnel make premises visits to AT&T customers but do not gain access. Verizon proposes that the charge equal the sum of its service order and its premises visit charges.

AT&T has not addressed the issues presented in this section, and it must be presumed to have no objection to Verizon's positions. In any event, Verizon proposed § 11.7 is acceptable and adopted.

15. UNEs Provided For Telecommunications Service

Verizon insists that CLECs can only obtain UNEs **[*130]** to provide telecommunications service and for no other purpose. It proposes to reflect this in the new agreement; AT&T has proposed to exclude any such limitation. Verizon maintains that the new agreement should not extend AT&T's rights beyond the applicable law, including § 251(c)(3) of the Act.

AT&T does not address this issue in its briefs, so it is not clear why it proposes to exclude the limitation; nor can we think of a reason to do so. Access to UNEs is intended for the provision of telecommunications service, and Verizon may reflect this in the new agreement.

16. Credits for Missed Appointments

Verizon charges AT&T a non-recurring fee to recover its costs when it converts an analog, two-wire loop with local number portability. Under certain circumstances, Verizon waives the charge when an appointment is missed, and the work is rescheduled. The parties disagree about the removal of this charge from Verizon's billing system. Verizon states that it cannot remove the charge (once a service order is initiated) without making significant modifications to its ordering and provisioning process. For this reason, Verizon states that AT&T should notify it when a credit is owed. According **[*131]** to Verizon, it is far less costly for AT&T to provide notification, than for Verizon to overhaul its ordering and provisioning system for CLECs. n85

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n85 In this context, Verizon objects to AT&T's use of the term "firm order confirmation" for conversions of analog two-wire loops with local number portability. According to it, "local service request confirmation" is the proper term the industry recognizes, and that comports with applicable law.

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AT&T is also concerned about double billings in these circumstances. Rather than request a credit, AT&T insists that Verizon should cancel the charges on its own. If necessary, it believes that Verizon should reprogram its system and undertake the measures needed to ensure that only one charge is assessed. AT&T

believes it should not be saddled with the expense and burden of seeking credits for incorrect billings.

We accept at face value Verizon's claim that it would be very costly for it to correct the current situation. Consequently, AT&T must notify Verizon when a credit is **[*132]** due. However, since this saddles AT&T with the expense of correcting faulty Verizon bills, AT&T should be compensated by Verizon for its administrative expenses.

17. Maintenance of UNEs

Verizon believes that AT&T should be responsible for initial testing and trouble isolation on the UNEs it purchases from Verizon. When AT&T accesses UNEs through collocation, Verizon states, AT&T should run the tests and trouble isolation from its collocation cage or space. In instances where AT&T obtains access through UNE-platform arrangements, Verizon also states that AT&T should be responsible for performing remote testing using appropriate equipment. Verizon complains that AT&T's proposed language for UNE maintenance is too broad and is likely to produce disputes in the future. Instead of allowing complaints to emerge, Verizon urges that its language be adopted.

AT&T reports that the parties are close to agreeing on AT&T's responsibility to perform initial tests and trouble isolation work. However, AT&T does not believe that it should have this responsibility in situations where it is not possible for it to do tests that only Verizon can perform.

We find that AT&T should not be held responsible **[*133]** for initial testing where it is not technically feasible for AT&T to perform the test. The parties are directed to resolve this matter by defining "technically infeasible" and by listing the situations where AT&T is absolved of this responsibility.

Combinations

Verizon proposes that its tariff provide the applicable terms and conditions for UNE combinations. It states that the tariff contains all the combinations required by law. As legal requirements and technology change, Verizon states that it will update the tariff accordingly. n86

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n86 In addition to three standard offerings, UNE-Platform, expanded extended links (EELs), and extended dedicated trunk ports, the tariff provides general terms, conditions, and rates for other possible combinations carriers may request.

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Verizon objects to AT&T's proposal to use holdover provisions from the first agreement for UNE combinations. According to Verizon, the provisions are obsolete, and they define combinations that do not exist and are no longer contemplated. It also **[*134]** criticizes AT&T's language for addressing individual UNEs. Because individual UNEs are addressed elsewhere, it sees no need for duplicate provisions that could create confusion and conflicts.

If the Commission were to conclude that the new agreement should address combinations, Verizon urges that the AT&T provisions be substantially truncated. n87 With respect to an AT&T request for combinations that do not currently exist, Verizon points out that a recent judicial decision held that ILECs do not have an obligation to offer combinations that do not already exist or that are not already combined in the ILEC's network. n88

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n87 Verizon states that some of the AT&T provisions are acceptable (§ § 3.1.7 and 3.1.8), but most are confusing or unnecessary. For example, § 3.4.3 is obsolete given the parties' decision to adopt Verizon § 17, and § 3.4.4 is superceded by their agreement to use Verizon § 7.3.

n88 *Iowa Utilities Bd. v. FCC, 219 F. 3d 744, 759 (8th Cir. 2000).*

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Verizon objects also to AT&T's proposal to use **[*135]** a single local service request to order EELs and other combinations. According to Verizon, single orders do not comport with the industry's step-by-step provisioning practices. n89 It states that the existing process supports only one type of request per service order. It believes AT&T should not be permitted to change the service order system and force Verizon to incur substantial expense to do so.

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n89 Verizon states that the existing ordering system process was developed by the Alliance for Telecommunications Industry Solutions (ATIS), the Ordering and Billing Forum (OBF), and the Access Service Ordering Guidelines (ASOG). It notes that these bodies provide an industry consensus, and CLECs are familiar with their work and the common ordering processes they have established.

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Finally, with respect to UNE-Platform and EELs, amendments were made to the first agreement to implement these offerings. Verizon claims there is no need to include the amendments in the new agreement, because the tariff suffices for these purposes. **[*136]** In particular, Verizon points to the Commission order that addressed UNE combinations and mandated tariff revisions. n90 According to Verizon, the approval of the tariff effectively closed this matter, and AT&T should not be allowed to pursue it here for a second time.

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n90 Case 98-C-0690, supra, Order Suspending Tariff Amendments and Directing Revisions (issued January 11, 1999).

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AT&T has sought to retain obsolete terms for combinations and to negotiate its own terms for provisioning UNE combinations, some of which we have determined elsewhere in this order to be inappropriate. We find that the tariff provides for standard UNE combinations and for other possible combinations. Accordingly, it should be incorporated into the new agreement by reference.

Conversions

Consistent with its proposal that the tariff provisions for UNEs be incorporated by reference into the new agreement, Verizon proposes that the tariff terms for retail and special access service conversions to UNEs (and combinations) also be incorporated **[*137]** into the new agreement. Verizon points out that a FCC rulemaking proceeding is considering special access conversions and the use of UNEs to provide exchange access. Verizon plans to incorporate the results of the FCC proceeding into its tariff.

If the Commission were to include conversion requirements in the new agreement, Verizon urges that AT&T's provisions be rejected, because they are overly broad and so ambiguous as to permit any service to be converted to UNEs. According to Verizon, there is little need for conversion provisions in the agreement, because AT&T will not convert any special access circuits to UNEs or combinations before March 2004. By then, the parties plan to have a better understanding of the applicable standards from which suitable language can be crafted.

With respect to the standards for EELs, Verizon believes that they are likely to change during the term of the new agreement, and AT&T should not preclude the changes from applying to it. Verizon observes that the current standards for EELs are reflected in the tariff, and it is not necessary to set them again in the new agreement.

Verizon also claims AT&T's methods and procedures for conversions are unreasonable. **[*138]** It objects to AT&T's proposal to deem its orders complete upon delivery, providing Verizon no time to process them. Verizon believes its process for EEL conversions properly take into consideration customer concerns about service continuity, CLEC concerns about timely billings, and the time Verizon needs to make conversions. n91

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n91 Verizon expects to use up to 30 business days for conversions, whether they are processed manually or by a mechanized process. Verizon plans to implement a mechanized conversion process in the fourth quarter of 2001.

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In general, AT&T doubts that Verizon, and its tariffs, can be relied on to conduct reasonable business practices. It believes Verizon's obligations to convert UNEs should be fully detailed in the new agreement.

Inasmuch as the FCC has yet to act on the terms and conditions needed for the conversion of special access facilities to UNEs, it is premature to include any language in the agreement concerning the FCC's action. Moreover, we have stated applicable terms and conditions **[*139]** for conversions in various orders the results of which are reflected in Verizon's tariff. Accordingly, Verizon's proposal is accepted.

Cooperative Testing

AT&T proposes a cooperative testing provision to permit it to test UNEs (and ancillary functions) at any time of the day or week, and at any interface. AT&T believes this flexibility is needed for smooth operations and for it to adequately assess the functionality of Verizon-provided equipment.

Verizon objects, claiming it is under no obligation to provide AT&T comprehensive testing rights. Verizon is willing to provide carriers cooperative testing rights in limited circumstances. For example, it has agreed to cooperative testing in the DSL provisioning process. But, Verizon is opposed to giving AT&T any more rights than can be supported by industry forums and collaborative proceedings.

We are inclined to adopt reasonable cooperative testing practices for the benefit of both parties; however, we find that the specific language proposed by AT&T is overly broad, and it consequently cannot be adopted. The parties should continue to seek to achieve a mutually acceptable provision for the new agreement given their agreement in **[*140]** principle to the utility of such testing, and the guidance we provide here.

Verizon should cooperate with AT&T, as needed, to ensure that the network elements provided to AT&T and operational interfaces are in compliance with either the terms of Verizon's tariff or specific requirements of the interconnection agreement, or are otherwise functioning properly. AT&T's language specifying access for testing at any interface between the two parties goes too far; the parties should define the points of access. Finally, AT&T's proposal at § 11.17.3 pertaining to multiplexers has nothing to do with cooperative testing and should be removed.

Collocation

AT&T urges that the new agreement contain provisions to reduce its collocation costs and to make the process fair and reliable. It proposes that AT&T employees have access to collocation and associated spaces at any time without being accompanied by Verizon's employees or escorted by security guards. AT&T claims its proposal is consistent with the FCC's rules, and it should not be charged for escorts. n92

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n92 47 C.F.R. § 51.323(i).

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[*141]

Verizon believes the new agreement need only incorporate by reference the collocation provisions contained in its tariff. As to the need for Verizon escorts, the company states that this matter was not addressed during the parties' negotiations, and the Commission should therefore dismiss it. In any event, Verizon observes that the tariff permits it to use escorts whenever a CLEC requires access to areas outside the multiplexing node, when a CLEC accesses a cageless collocation arrangement that lacks other security, or on a CLEC's first visit to a central office. Further, the tariff permits Verizon to escort CLECs to their cageless arrangements at any time at no charge or delay to the CLEC.

In buildings where AT&T and Verizon both have facilities, AT&T proposes to collocate by running cables from its floors to Verizon's. Verizon points out that the FCC had precluded this practice and required all CLECs to collocate in the ILEC's central office. n93 Verizon also believes AT&T's proposal contravenes the Act's collocation definition, as it requires a physical collocation of interconnection equipment at the ILEC's premises. n94 It claims AT&T should not obtain competitive advantages that **[*142]** no other CLECs have.

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n93 CC Docket Nos. 91-141 and 92-222, In the Matter of Expanded Interconnection with Local Telephone Company Facilities Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order and NPRM (issued October 19, 1992).

n94 § 251(c)(6).

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Finally, Verizon wants to be able to collocate at AT&T facilities. Verizon believes it should have the option to have a collocation arrangement or share another carrier's collocation facilities. Verizon has requested, but AT&T has not offered it, contract rates for collocation space.

AT&T states that it will make space available to carriers in its central offices for interconnection purposes, but not for collocation purposes or to access UNEs. With respect to intra-building cable interconnections, AT&T claims it should not be saddled with unnecessary costs when it can use this method. It denies that the arrangement provides it any unfair competitive advantage.

The Commission finds that the new agreement should incorporate by reference **[*143]** Verizon's collocation tariff provisions. The tariff addresses the use of escorts consistent with the FCC rules. With respect to the use of intra-building-cables in buildings where AT&T's equipment is proximate to Verizon's wire center, we have concluded that it is efficient to permit AT&T to interconnect its facilities in this manner.

Finally, we find that the new agreement need not impose any collocation or UNE obligations on AT&T, inasmuch as it is a CLEC and not an ILEC.

Operational Support System Matters

AT&T drafted 29 provisions for the new agreement addressing the pre-ordering, ordering, provisioning, maintenance and billing functions. They cover such matters as service address verification at the pre-order stage, n95 electronic notification of jeopardy, n96 order completion, n97 and unscheduled maintenance and testing. n98 It states that Verizon would not consider its proposals. Since Verizon does not consider the new agreement to be a voluntary undertaking, AT&T urges the Commission to include in it everything Verizon may be unwilling to do on its own. AT&T states that the 29 provisions apply to essential operations, and Verizon should not have refused to discuss them. **[*144]**

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n95 On occasion, AT&T provides Verizon an incorrect service address for an end user. AT&T wants to be able to verify service address and other information at the pre-ordering stage. If corrections are not made here, AT&T may suffer order rejections.

n96 Not all service orders are executed as originally planned. AT&T seeks electronic notification from Verizon of tardy installations, so it can manage customers' expectations and promote customer satisfaction.

n97 AT&T wants Verizon to notify it electronically when an order has been provisioned, so it can initiate billing and not guess when the work has been done.

n98 AT&T wants to know as soon as possible of any unscheduled maintenance, testing, or monitoring that may affect its customers.

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In some instances, AT&T claims, Verizon is its single source of supply. Were the company to change its business practices, AT&T could suffer. To guard against any dire consequences, AT&T wants to include a provision in the new agreement allowing it to grandfather **[*145]** any OSS features Verizon may sunset. AT&T is willing to enter good faith negotiations to obtain them on acceptable terms and prices.

AT&T also wants the new agreement to contain a contingency plan should Verizon's OSS cease to function. It insists that a disaster recovery plan is needed given the essential role that OSS plays. The absence of a plan, AT&T states, puts its customers in jeopardy and threatens its ability to compete. According to Verizon, there is no need for any CLEC-specific contingency and disaster recovery plan. Were it to devise such a plan for AT&T, Verizon believes other CLECs would request such plans at great expense and burden to it.

AT&T also objects to Verizon issuing Firm Order Confirmations (FOCs) that do not inform it when the local service work will be performed. AT&T claims this runs afoul of the C2C guidelines and denies it scheduling information to which it is entitled.

For its part, Verizon urges that OSS matters not be addressed in the new agreement to the degree or detail that AT&T has proposed, and that any OSS requirements be consistent with Merger Conditions, applicable law and accepted industry practice. It also urges that OSS matters be addressed **[*146]** by all the CLECs through the change management process. n99

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n99 The change management process provides documented procedures that Verizon and the CLECs use to facilitate their communication about OSS changes, new interfaces and the retirement of old interfaces.

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In a related matter, AT&T refuses to provide Verizon access to its OSS as a condition for obtaining access to Verizon's OSS. AT&T insists that the ILEC's duty to provide non-discriminatory access is unconditional, and Verizon should not overreach the Act. n100 AT&T notes that it participates in and contributes to industry-wide forums. Thus, it believes that Verizon needs no direct recourse to it. Nonetheless, Verizon states that in the competitive market it can win back customers from AT&T, and it should have access to AT&T's OSS to minimize delay and to facilitate customer migration.

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n100 § 251(c)(3).

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[*147]

While AT&T seeks specific provisions in the new agreement to address OSS requirements and seeks to redefine FOCs, these matters are of industry-wide concern. We find no benefit in allowing individual CLECs to negotiate them when they have already been addressed in industry-wide proceedings, and no new or unique circumstances are present. Furthermore, to the extent AT&T, or any other CLEC, may propose changes to pre-order, ordering, provisioning, maintenance and billing functions that have general application to the industry, such matters should be brought directly to the Commission or to pending collaborative proceedings.

AT&T's proposal for a disaster recovery plan in the new agreement is not accepted. This is not to say that the adoption of a contingency plan in the event of a major service breakdown does not have merit. It does. The problem, once again, is that this is an industry-wide concern, which Verizon and all the CLECs should address in order to jointly establish interface contingency plans for Verizon-provided OSS. n101

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n101 We will require Verizon to draft a disaster recovery plan and submit it to the Commission within 60 days of the date of this order. Thereafter, comments will be solicited from CLECs and a plan will be established.

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[*148]

With respect to AT&T's proposal to grandfather OSS functionalities to protect it from Verizon-imposed OSS changes, in effect, this could lock Verizon into practices and procedures that may not comport with the direction and timing of industry changes. We find this unacceptable, and AT&T's proposal is not adopted. We note that OSS systems changes cannot be made precipitously. The change control process provides CLECs ample notice of pending changes. We also note that the uniformity of Verizon systems is guaranteed for a specific time by a settlement reached in a matter that MCI Worldcom, Inc. and AT&T brought to the FCC. n102 Thus, we believe that AT&T's concerns are adequately protected by the procedures that are in place.

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n102 MCI Worldcom, Inc. and AT&T, Corp. v. Bell Atlantic Corp., FCC File No. EAD-99-0003.

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Finally, with respect to Verizon's request for reciprocal access to AT&T's OSS, the Act contains no unbundling requirement for CLECs, therefore, Verizon's proposal is not adopted. Verizon is not without **[*149]** recourse, however, as this matter is currently being considered in the CLEC to CLEC Collaborative Proceeding.

Weekend Number Porting

AT&T wants to be able to transfer new customers over weekends, and during other off-hours, to satisfy customer preferences and to avoid interference with business customers' operations. It claims that Verizon is unwilling to provide it adequate support for off-hour porting.

Verizon states that it does not provide technical support for porting over the weekend. Nor does it install any new services for its own customers on these days. It maintains skeletal crews to perform necessary repairs; after-hour installations are only scheduled for large customers with public safety responsibilities, such as hospitals and police stations. It is willing to do the same but no more for AT&T.

Nonetheless, to address AT&T's request for weekend porting, Verizon has committed itself to install, by the close of business on each Friday, triggers on the lines AT&T wants to port. Verizon states that this enables AT&T to transfer the numbers without any further intervention until Monday, at which time, Verizon will make the necessary changes to the facilities, records **[*150]** and databases. This solution, according to Verizon, requires no additional weekend support, lets AT&T control its porting activities, provides a seamless transition, and permits new service installations to occur over the weekend.

Verizon's offer to provide AT&T and other CLECs an unconditional ten-digit trigger appears to satisfy AT&T's desire for weekend porting activity. n103 This offer should be formally executed in the new agreement. n104

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n103 For weekend ports, Verizon would remove the trigger at 11:59 p.m. on Monday evening.

n104 Verizon should cease billing the customer at the time the port actually takes place; it should not be a function of when the trigger is removed by Verizon.

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Audits

AT&T and Verizon agree that audits of each other's books and records may be needed to verify the accuracy of their bills to one another. However, they disagree about the use of company employees to perform the audits. AT&T believes the parties should be free to select either an outside auditor or use their own **[*151]** employees. n105 Verizon prefers that certified public accountants perform audits and that employees be precluded from doing so unless the parties can agree otherwise. Verizon is concerned about employee qualifications and potential bias.

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n105 AT&T points out that its proposal is consistent with the parties' first agreement, and an audit was performed by its employees without any adverse consequences. Also, a Sprint/NYNEX interconnection agreement arbitrated by the Commission contains a similar audit provision.

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AT&T complains that Verizon's proposal could preclude it from using the most knowledgeable experts. According to it, hiring less knowledgeable outside auditors (who would have to be trained) could make the cost of audits prohibitive. By not using in-house auditors, AT&T believes efficiencies would be lost, and the audits would be lengthy and lack continuity. AT&T is willing to impress upon its employees their obligations to Verizon to avoid the misuse of any confidential information. However, Verizon rejected **[*152]** this offer.

AT&T's proposal is adopted. It has provided reasonable grounds supporting its position that independent auditors should not be mandated. AT&T has offered to provide reasonable assurances to preserve confidential information. If necessary, a provision addressing confidentiality may be included in the interconnection agreement.

AT&T Rates Applicable to Verizon

Verizon believes AT&T should not charge it any greater rates than Verizon charges AT&T. AT&T objects, observing that CLECs have no market power. AT&T believes it should be permitted to charge rates consistent with market forces and its underlying costs. It claims that a price cap similar to the one Verizon has proposed here was rejected in a case involving Sprint Communications.

In response, Verizon points out that the standard practice in New York has been to limit CLECs to the prices that the ILEC charges, unless the CLEC provides rate or cost information demonstrating that higher prices are warranted. Absent a rate or cost study, Verizon believes this approach should apply to AT&T's prices for the services and facilities that Verizon may want to obtain from it.

We find Verizon's proposal to be reasonable, **[*153]** as it is premised on the established practice we employ. Absent a cost study and Commission approval of a higher rate, the default rates are those contained in Verizon's tariff.

Bona Fide Request Process

Like many other tariff provisions, Verizon proposes to incorporate in the new agreement the bona fide request process that carriers use to request UNEs not specifically addressed in the tariff. The Commission finds that the parties need such a process to effectively process AT&T's request for new UNEs. Accordingly, Verizon's proposal is adopted.

CONCLUSION

Having resolved the issues the parties submitted for arbitration, Verizon New York Inc., AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecom Corp. are expected to execute an interconnection agreement consistent with the uncontested results of their negotiations and our determinations by no later than August 31, 2001.

The Commission orders:

1. The issues presented for arbitration by Verizon New York Inc., AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecom Corp. are resolved as decided herein.

2. This proceeding is continued.

By the Commission