COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Complaint of WorldCom Technologies, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts

D.T.E. 97-116

INITIAL COMMENTS BY AT&T IN SUPPORT OF THE MOTION OF GLOBAL NAPs TO VACATE ORDERS D.T.E. 97-116-C and D.T.E. 97-116-D

AT&T Communications of New England, Inc., on behalf of itself and its affiliated companies (including Teleport Communications-Boston, Inc., Teleport Communications Group, and ACC National Telecom Corp.) (collectively "AT&T") respectfully urges the Department to allow the motion of Global NAPs, Inc., to reinstate Order D.T.E. 97-116.

Bell Atlantic-Massachusetts ("BA-MA") and various competitive local exchange carriers ("CLECs") entered into interconnection agreements ("ICAs") which, in some form or another, require reciprocal compensation to be paid for "local traffic." D.T.E. 97-116-C at 8 n.16. At the time those ICAs were signed, all parties - including BA-MA - understood that for this purpose calls to Internet service providers ("ISPs") would constitute local traffic and thus would be subject to reciprocal compensation payments. The Department so concluded in October 1998, in Order D.T.E. 97-116. However, the Department later vacated that Order, on the basis of a February 1999 ruling by the Federal Communications Commission ("FCC") which concluded that ISP-bound calls are interstate for jurisdictional purposes.

That FCC decision has itself now been vacated, however. Indeed, the United States Court of Appeals for the District of Columbia Circuit has made clear that the existing federal statutory framework requires ISP-bound traffic to be treated as local traffic. Orders D.T.E. 97-116-C and 97-116-D therefore no longer have any valid basis, and thus should be vacated.

Procedural Background.

On October 21, 1998, the Department held that ISP-bound traffic is local within the meaning of the ICA between BA-MA and MCI WorldCom, and therefore subject to reciprocal compensation payments. *See* D.T.E. 97-116 (the "October 1998 ISP Order") at 12. The Department stated that it expected Bell Atlantic to apply this understanding of the definition of local exchange traffic to all ICAs between BA-MA and CLECs. D.T.E. 97-116 at 14.

On February 26, 1999, the FCC issued a ruling regarding the jurisdictional status of calls to ISPs. It found that calls to ISPs plus subsequent connections from the ISP to an Internet site constitute a single call, and thus any such calls to out-of-state web sites are interstate and subject to the FCC's jurisdiction. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Declaratory Ruling, Order No. FCC 99-38 (rel. Feb. 26, 1999) (hereinafter, "*FCC ISP Jurisdictional Ruling*"). *Cf.* D.T.E. 97-116-C at 3-4.

On May 19, 1999, the Department vacated Order D.T.E. 97-116, and concluded that ISP-bound calls should be deemed to be interstate, not local, and therefore not subject to reciprocal compensation. *See* D. T.E. 97-116-C (the "May 1999 ISP Order"). The Department explained that "the express *and exclusive* premise" of the October 1998 ISP Order is that a call to an ISP is functionally two separate services, and that this reasoning had been rejected in the *FCC ISP Jurisdictional Ruling*. D.T.E. 97-116-C at 23 (emphasis in original). For this reason it vacated the October 1998 ISP Order. *See* D.T.E. 97-116-C at 25.

On or about June 7, 1999, AT&T filed a timely motion for reconsideration or clarification of the May 1999 ISP Order. Numerous CLECs - including Choice One, Conversent, CoreComm, Focal, Global NAPs, Level 3, MCI WorldCom, RCN-BecoCom, RNK, and Sprint - joined in or supported that motion. *See* D.T.E. 97-116-D at 1-2.

On February 25, 2000, The Department denied AT&T's motion. *See* D.T.E. 97-116-D. The Department explained that:

[The Department's] finding in D.T.E. 97-116 that ISP-bound calls were "local" within the meaning of that term as used in interconnection agreements was based on the conclusion that such traffic was jurisdictionally local because the communication appeared to be severable into two components. D.T.E. 97-116, at 11-13. The [*FCC ISP Jurisdictional Ruling*] demonstrated the unsoundness of that earlier legal reasoning and necessitated vacating D.T.E. 97-116. D.T.E. 97-116-C at 19-25.

D.T.E. 97-116-D at 18 (footnote omitted).

However, the FCC decision that served as the basis for D.T.E. 97-116-C and 97-116-D has now been vacated by the United States Court of Appeals for the District of Columbia Circuit. *See Bell Atlantic Telephone Companies v. F.C.C.*, ___ F.3d ___, 2000 WL 273383 (D.C. Cir. March 24, 2000). GNAPs therefore moved to vacate the Department's May 1999 ISP Order, and to reinstate the October 1998 ISP Order.

Argument.

I. D.T.E. 97-116-C and D.T.E. 97-116-D Were Premised on an FCC Order That Has Been Vacated, and Thus They Too Should Be Vacated.

The May 1999 ISP Order was based on the now-vacated jurisdictional ruling by the FCC. As the Department explained in denying AT&T's motion for reconsideration, D.T.E. 97-116-C "was premised on the fact that the FCC's one-call analysis fatally undercut the two-call basis (the express and exclusive basis) of the Department's previous analysis." D.T.E. 97-116-D at 18 (citing D.T.E. 97-116-C at 22-25, 38). According to the Department, "[t]he FCC's *Internet Traffic Order* demonstrated the unsoundness of [the Department's] earlier legal reasoning and necessitated vacating D.T.E. 97-116." D.T.E. 97-116-D at 18.

But this legal reasoning is no longer sound. The D.C. Circuit recently vacated the *FCC ISP Jurisdictional Ruling*. *See Bell Atlantic* ___ F.3d ___, 2000 WL 273383 (D.C. Cir. 2000). As explained below, the Court not only held that the FCC had failed to provide a defensible justification for the change of reasoning reflected in the now-vacated order, that reasoning appears to run counter to a statutory scheme which mandates the opposite result.

The Department has made clear that where one of its orders is based on FCC precedent, and the FCC precedent is superceded or vacated, then the Department's Order must also be vacated. An order by the Department is "ransom to the validity of its legal or jurisdictional conclusion." D.T.E. 97-116-C at 22. If an order's "express legal basis were to prove untenable (as, in the event, it has), the effectiveness of the Order could not hold." *Id.* In the May 1999 ISP Order, the Department reasoned as follows:

The Department based its October [1998 ISP] Order on a mistake of law, i.e., on an erroneous characterization of ISP-bound traffic and on a consequently false predicate for concluding that jurisdiction was intrastate. By basing its jurisdictional analysis and finding on a mischaracterization of the nature of ISP-bound traffic, the Department exceeded its grant of state regulatory authority under the 1996 Act. … [T]he FCC has, to put the matter baldly, rendered the DTE's October Order in *MCI WorldCom* - as a practical matter - a nullity.

Id. at 24.

At the time it rendered its May 1999 ISP Order, the Department recognized that the FCC's new one-call jurisdictional analysis of ISP-bound traffic was "temporized" and "muddled." D.T.E. 97-116-C at 24 n.25. The D.C. Circuit has agreed, finding that the FCC "has not supplied a real explanation for its decision to treat end-to-end analysis as controlling." *Bell Atlantic*, 2000 WL 273383, at *7. It further held that "[t]here is an independent ground requiring remand - the fit of the present rule within the governing statute." *Id.*, at *8. For both reasons, the Court vacated the *FCC ISP Jurisdictional Ruling*.

The *Bell Atlantic* decision vacated the FCC's ruling that ISP-bound calls are interstate and not local,

leaving in place a decisional framework - based in turn on a governing statutory framework - which the Department has already determined (in the October 1998 ISP Order) together compel the conclusion that ISP-bound calls are local and subject to reciprocal compensation. With the FCC's ruling vacated, D.T.E. 97-116-C and 97-116-D have become - in the Department's words - "untenable" and a "nullity." They should be vacated.

II. The D.C. Circuit's *Bell Atlantic* Opinion Should Lead the Department to Find As a Matter of Law That ISP-Bound Traffic is Local and Subject to Reciprocal Compensation.

The impact of the D.C. Circuit's decision is not merely procedural. The Court did far more than remand the issue to the FCC and ask for a better explanation of why ISP-bound calls may be treated as jurisdictionally interstate. The holding and findings in the *Bell Atlantic* decision should lead the Department to determine now, as it did in October 1998, that as a matter of law ISP-bound calls are local telecommunications traffic for which reciprocal compensation is mandated. The D.C. Circuit's decision necessarily shifts the focus of this case away from any ***policy*** discussion of whether ISP-bound calls should be subject to reciprocal compensation to the threshold ***legal*** question of whether ISP-bound calls constitute a local telecommunications service for which reciprocal compensation is already mandated. If an ISP-bound call is local, the governing pricing rules mandate that symmetrical reciprocal compensation is due. *See* 47 U.S.C. § 251(b)(1); 47 C.F.R. §§ 51.701-711. Put simply, the *Bell Atlantic* ruling leaves the FCC and this Department with no other cognizable choice but to find that calls to ISPs are local.

The Court explicitly held that the FCC's use of the "end-to-end" analysis - and thus its conclusion that the traffic is interstate - was not supported. In the Court's words:

The Commission's ruling rests squarely on its decision to employ an end-to-end analysis for purposes of determining whether ISP-traffic is local. There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate. But it has yet to provide an explanation why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.

Bell Atlantic, 2000 WL 273383, at *5. The D.C. Circuit went further, however. Its holdings and findings eliminate any possibility that calls to ISPs are anything but local, by rejecting each and every one of the grounds that the FCC relied upon in initially determining that ISP-bound calls are interstate. No other arguments have been or could be made to save the *FCC ISP Jurisdictional Ruling*.

Significantly, the D.C. Circuit went on to make clear that the FCC's ruling that ISP-bound traffic is interstate is invalid for another, independent reason: it cannot be squared with the governing statutory framework. The Court faulted the FCC for having "brushed aside" the applicable statutory requirements. *Bell Atlantic*, 2000 WL 273383, at *4.

ISP-bound calls - like all telecommunications traffic - must either be "telephone exchange service[] as defined in 47 U.S.C. § 153(47),[(1)] or "exchange access" as defined in 47 U.S.C. § 153(16).[(2)] "Telephone exchange service" is local traffic which is subject to reciprocal compensation,[(3)] and "exchange access" is long distance which is generally subject to access charges. The FCC has conceded, and the D.C. Circuit has found, that these two categories "occupy the field." *Bell Atlantic*, 2000 WL 273383, at *8. This finding follows from the governing law. By statutory definition, local exchange carriers - whether incumbents or competitors - are engaged either in telephone exchange service or in providing exchange access. *See* 47 U.S.C. § 153(26). For this reason, when a CLEC interconnects with an ILEC's network, it does so to transmit and route telephone exchange service and exchange access. *See* 47 U.S.C. § 251(c)(2)(A); *Bell Atlantic*, 2000 WL 273383, at *3.

The D.C. Circuit found that calls to ISPs do not fall under the definition of long-distance "exchange access." The Court noted that, under 47 U.S.C. § 153(16), "[a] call is 'exchange access' if offered 'for the purpose of the origination or termination of telephone toll services.'" *Bell Atlantic*, at *8. It then agreed with the arguments made by MCI WorldCom, and specifically found that because "ISPs provide information service rather than telecommunications" they "connect to the local network 'for the purpose of' providing information services, not originating or terminating telephone toll service." *Id.* The Court emphasized that in this respect ISPs appear to be no different than many other end-users, the calls to which all constitute "telephone exchange service", *i.e.* "local traffic," and are therefore subject to reciprocal compensation. In the Court's words:

Although ISPs use telecommunications to provide information service, they are not themselves telecommunications providers (as are long distance carriers).

In this regard an ISP appears, as MCI WorldCom argued, no different from many businesses, such as "pizza delivery firms, travel reservation agencies, credit card verification firms, or taxicab companies," which use a variety of communication service to provide their goods or services to their customers. Of course, the ISP's origination of telecommunications as a result of the user's call is instantaneous (although perhaps no more so than a credit card verification system or bank account information service). But this does not imply that the original communication does not "terminate" at the ISP. The [FCC] has not satisfactorily explained why an ISP is not, for purposes of reciprocal compensation, "simply a communications-intensive business end user selling a product to other consumer and business end-users."

Bell Atlantic, 2000 WL 273383, at *6.

On the flip side of this logical coin, the D.C. Circuit also confirmed that ISP-bound calls fall squarely within the definition of local "telephone exchange service." The Court explicitly rejected the FCC's argument that an ISP-bound call does not "terminate" at the ISP. Unlike long-distance carriers, ISPs "are 'information service providers,' Universal Service Report, 13 FCC Rcd at 11532-33 (¶ 66), which upon receiving a call originate further communications to deliver and retrieve information to and from distant websites." *Bell Atlantic*, 2000 WL 273383, at *6. "[T]he mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not 'terminate' at the ISP." *Id.* The Court realized the legal significance of this finding - it places ISP-bound calls more appropriately into the FCC definition of "local" telecommunications traffic. The Court explained that by 47 C.F.R. § 51.701(b)(1) the FCC has defined "telecommunications traffic" as local if it "originates and terminates within a local service area" and that the FCC has defined "termination" as "the switching of traffic that is subject to 47 U.S.C. § 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." *Id.* at *5. The Court found that "[c]alls to ISPs appear to fit this definition: the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the 'called party.'" *Id.* These holdings compel the conclusion that because ISP traffic "terminates" at the ISP, that traffic terminates within a local service area and therefore satisfies the statutory definition of "telephone exchange service" as well as the FCC's definition of "local" traffic.

In sum, the *Bell Atlantic* opinion by the D.C. Circuit establishes the following key points: (i) ISP-bound traffic must be either exchange access or telephone exchange services, for which reciprocal compensation is mandated; (ii) calls to ISPs do not fit under the definition of exchange access; and (iii) instead, calls to ISPs are telephone exchange services. ISP-bound calls constitute local telephone exchange service because they are "terminated" at the ISP within the local exchange and therefore meet the definition of "telephone exchange service" and "local telecommunications traffic." ISPs are no different from many businesses, such as "pizza delivery firms, travel reservation agencies, credit card verification firms, or taxicab companies," which use a variety of communication service to provide their goods or services to their customers.

It follows from these findings by the D.C. Circuit that calls to ISPs fall under the definition of "telephone exchange service," for which reciprocal compensation is mandated.

III. BA-MA Must Honor Its Contractual Obligation to Pay Reciprocal Compensation on All Calls Understood to be Local At the Time It Entered Into its Interconnection Agreements.

A. The Department Should Not Substitute Its Own Policy Prescription for the Parties' Contractual Commitments.

There is another reason why the Department should eschew any attempt at this time to bring about a new policy regarding intercarrier compensation for ISP-bound calls, and instead should recognize and enforce BA-MA's legal obligation to pay reciprocal compensation under existing law and Interconnection Agreements. The Department has noted that it will not act "to save contracting parties from later-regretted commercial judgments." D.T.E. 97-116-C at 27 n.29. Similarly, the Department recently held that parties must be able to enforce signed ICAs, and that subsequent Department orders - regarding, for example, a BA-MA tariff or an arbitrated provision in another ICA - shall almost never override terms in an existing ICA. *See* D.T.E. 98-57 at 20-23 (March 24, 2000). The Department stressed that "CLECs should be able to rely with certainty on their interconnection agreements." *Id.* at 22.

Consistent with these admonitions, the Department should hold BA-MA to the contracts it entered into, and should not resuscitate Orders that would have the effect of undermining approved ICAs. BA-MA's effort to avoid paying reciprocal compensation for ISP-bound calls is nothing more than a long-running effort to be saved from its own bad commercial judgment.

It is undisputed that CLECs incur real costs in terminating calls to ISPs that are originated by BA-MA's local exchange customers, and that CLECs are entitled to be compensated for those costs. D.T.E. 97-116-C at 28-29; 97-116-D at 18. The Department has made clear that, if it were writing on a blank slate, it would not use the existing scheme of reciprocal compensation as the mechanism for providing intercarrier compensation for ISP-bound calls. *See, e.g.,* D.T.E. 97-116-D at 18-19. But that is not the situation in which the Department or the parties find themselves.

BA-MA acknowledges that it is obligated under its ICAs to pay reciprocal compensation for "local traffic," where "local" is defined as calls that originate and terminate within a given local access transport area ("LATA"). D.T.E. 97-116-C at 8 n.16. Because "both the telecommunications industry as a whole and the parties to this [proceeding] in particular treated ISP-bound calls as terminating locally at the time the interconnection agreements were being negotiated," it is appropriate to require BA-MA to honor its contractual obligation to pay reciprocal compensation for ISP-bound calls. *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas*, ___ F.3d ___, 2000 WL 332062, at *10 (5th Cir. March 30, 2000).

At the time that the current ICAs were negotiated in Massachusetts, it was understood by all parties - including Bell Atlantic and NYNEX - that ISP-bound traffic was local under the then-current FCC decisional law. This is undisputed. In 1996, as today, calls by a BA-MA local exchange customer to an ISP are tariffed and rated as local calls. *Cf.* D.T.E. 97-116-C at 15-16. Bell Atlantic confirmed that it understood ISP-bound calls to be local and subject to reciprocal compensation in May 1996, when it made a filing with the FCC arguing in favor of a reciprocal compensation scheme and against mandatory imposition of bill-and-keep. In those comments, Bell Atlantic expressly recognized that reciprocal compensation would apply to ISP-bound traffic, when it stated that:

[T]he notion that bill and keep is necessary to prevent LECs from demanding too high a rate reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominantly inbound such as credit card authorization centers and internet access providers.

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Bell Atlantic Reply Comments, dated May 30, 1996, p. 21. *Cf.* D.T.E. 97-116-C at 14-15.

Prior to its recent ruling in Docket 98-57, the Department had announced a policy of superceding ICA provisions whenever a different policy outcome was established in a tariff ruling or another Department order. In late March, 2000, the Department put an end to that policy, and announced that from now on it will honor the primacy of approved contractual agreements. The Department made the following observations:

[W]e agree with the CLECs that our policy has the potential to undermine their interconnection agreements and can make it difficult for CLECs to rely on business strategies reflected in those agreements. The Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC. However, by allowing a tariff (or other Department Order) to take precedence over contractual provisions, our policy in practice has the potential to undermine the intent behind the arbitration/negotiation provisions of section 252 of the Act. In retrospect, we find that our unstated desire underlying this policy -- that is, to promote nondiscrimination among Bell Atlantic rates, terms, and conditions for resale and interconnection -- had negative unintended consequences.

D.T.E. 98-57 at 21-22. "As a general rule, it is better - far better - for business, rather than regulators, to reach commercial decisions." D.T.E. 97-116-D at 19.

In accord with its new policy, and with federal law as construed by the D.C. Circuit in the recent *Bell Atlantic* decision, the Department should leave the existing ICAs in place, to be enforced consistent with the parties' understanding - at the time the ICAs were negotiated and arbitrated in 1996 - of what would constitute "local traffic" and be subject to reciprocal compensation payments.

B. The Existence of an Imbalance in Traffic Flows Is Not Grounds For Doing Away With Reciprocal Compensation for ISP-Bound Traffic, as Reciprocal Compensation Presumes an Asymmetry of Traffic.

One final point deserves emphasis at this time. In the May 1999 ISP Order, the Department made clear that it was troubled by a perceived "imbalance" in traffic flows, which resulted in some CLECs receiving substantial reciprocal compensation payments from BA-MA because they were terminating substantially more traffic than they were originating. D.T.E. 97-116-C at 36. The Department suggested that the existence of asymmetrical traffic patterns and resulting asymmetries in reciprocal compensation amounted to an "unintended arbitrage opportunity," and were the antithesis of "real competition." *May ISP Order* at 32 & n.34. *See also id.* at 35. The Department indicated that the existence of an imbalance in reciprocal compensation payments constitutes a regulatory distortion. *Id.* at 38-39. This conclusion is unfair, and indeed is inconsistent with the entire premise of reciprocal compensation.

The explicit premise of the system of reciprocal compensation put into place by the Department was that there would ***not*** be a balance of traffic between carriers. *See Consolidated Arbitrations*, Dockets DPU 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4 Decision at 68 (December 4, 1996). In light of the Department's 1996 order requiring reciprocal compensation rather than bill-and-keep, the Department cannot now reasonably conclude that the fact that traffic flows are not in balance - as expected from the start - is evidence that CLECs are "gaming" the regulatory system or taking advantage of a "regulatory distortion." See D.T.E. 97-116-C at 39-40. In the *Consolidated Arbitrations* proceeding, AT&T advocated a bill-and-keep arrangement under which there would be no intercarrier compensation for terminating a call that was originated by the customer of another carrier. BA-MA resisted, pushing instead for a system of reciprocal compensation, on the ground that bill-and-keep would be inappropriate because there was no guarantee that there would be a rough balance of traffic between carriers. See *Consolidated Arbitration*, Phase 4 Decision at 66-67. The Department adopted the system of reciprocal compensation advocated by BA MA. The Department explained that "if we could be assured that calling was roughly symmetrical, we would adopt the bill and keep arrangement. However, we cannot be so assured, and so we will not require it." *Id.* at 68.

Bell Atlantic and the Department recognized from the start that adoption of a scheme of reciprocal compensation would necessarily mean that payments would flow in favor some carriers and out of the coffers of others. Bell Atlantic was perfectly happy with this arrangement at the outset, when (as the incumbent monopolist with near total market share) it expected the vast majority of reciprocal compensation payments for termination of traffic to flow in its direction. Only when circumstances changed, and certain high volume customers found that they could get better service and prices from BA-MA's competitors, did Bell Atlantic suddenly change its tune. Even then, however, BA-MA did not seek to change to a bill-and-keep system, or to make some other change that has the potential of being competitively neutral. Instead, BA-MA asked the Department to do away with intercarrier compensation on a particular kind of traffic that today is terminated in far greater proportion by BA-MA's competitors. In other words, BA-MA wants to be saved from its commercial misjudgment by subsequent Departmental action.

In areas where there is a similar imbalance of traffic flows but the reciprocal compensation imbalance favors Bell Atlantic, however, BA-MA is perfectly happy to reap those benefits. For example, wireless traffic is typically originated by the wireless customer, and thus far more wireless traffic is terminated to BA-MA's wireline customers than is originated by them for termination to a CLEC's wireless customer. This is an example, therefore, of an imbalance of reciprocal compensation payments that currently favors Bell Atlantic. BA-MA does not suggest that this constitutes an unfair distortion of "real competition," however.

In sum, the fact that BA-MA has not been able to attract ISPs as customers is not a reason to permit Bell Atlantic to ignore the force of its existing ICAs, as approved by the Department after appropriate negotiations and arbitrations.

Conclusion.

For the reasons stated above, AT&T respectfully urges the Department to reinstate the October ISP Order, D.T.E. 97-116, and to vacate Orders D.T.E. 97-116-C and 97-116-D.

Respectfully submitted,

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Dated: May 5, 2000.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on May 5, 2000.

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1. [1] "Telephone exchange service" is defined as:

(A) a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange areas operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

47 U.S.C. § 153(47). Similarly, under 47 C.F.R. § 51.701(b)(1) "telecommunications traffic" is local if it "originates and terminates within a local service area."

2. [2] "Exchange access" is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(16).

3. [3] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, No. FCC 96-325, 11 FCC Rcd 15499, ¶¶ 1033-1034 (1996), construing 47 U.S.C. § 251(b)(5).