

EXHIBIT

MP2-01

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| Sprint Communications Company, L.P., |) | |
| |) | |
| Complainant, |) | |
| |) | File No. EB-00-MD-002 |
| v. |) | |
| |) | |
| MGC Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 2000

Released: June 9, 2000

By the Commission:

1. In this order, we deny Sprint's claim that the exchange access rates charged by MGC Communications, Inc. are unjust and unreasonable, and violate section 201(b) of the Communications Act of 1934, as amended (the Act).¹ As discussed below, we find that, by relying solely on the rates of MGC's incumbent competitors to establish a benchmark for reasonableness, Sprint has failed to meet its burden in this proceeding.

I. FACTS

2. MGC Communications is a facilities-based competitive local exchange carrier (CLEC) with operations in Nevada, California, Illinois, Georgia and Florida.² It offers both terminating and originating switched access service to interexchange carriers (IXCs) under its Tariff FCC No. 1.³ Sprint Communications Company L.P. (Sprint) operates as a non-dominant

¹ 47 U.S.C. § 201(b).

² Complaint at 3, ¶ 6.

³ See Complaint at 4, ¶ 9 & Exh. 3. MGC's tariff states that its access service "provides a two-point communications path between [an IXC] designated premises and an end user's premises" and "provides for the ability to originate calls from an end user's premises to [an IXC] designated premises, and to terminate calls from [an IXC] designated premises to an end user's premises in the LATA where it is provided." MGC Tariff FCC No. 1, ¶ 6.1.

interexchange carrier (IXC) throughout the United States and receives interstate access services from MGC in the five states in which MGC operates.⁴

3. In July 1997, MGC began both sending originating access traffic onto Sprint's network and providing terminating access service by completing calls from Sprint's network.⁵ For each category of MGC's tariffed access service, its rates are substantially higher than those charged by the incumbent local exchange carriers (ILECs) with which MGC competes in its various service areas.⁶ Once Sprint began receiving MGC's access-charge bills, it began recalculating the bills, applying the ILEC's tariffed rate and paying only that amount.⁷ On January 11, 2000, Sprint filed its complaint, alleging that MGC's tariffed access rates are unreasonably high, in violation of section 201(b).⁸

II. DISCUSSION

4. Sprint argues that MGC's tariffed access rates are unjust and unreasonable under section 201(b)⁹ because they exceed the rates charged by the ILECs in the areas where MGC operates. Sprint bases its argument on language from our access charge reform docket stating, "terminating rates that exceed those charged by the incumbent LEC serving the same market *may suggest* that a competitive LEC's terminating access rates are excessive."¹⁰ From this passage, Sprint apparently seeks to create a *per se* rule, applicable to both terminating *and* originating access, under which *any* access rate that exceeds the competing ILEC rate would violate section 201(b). Thus, in its prayer for relief, Sprint requests that we declare that MGC's tariffed access rates are unjust and unreasonable "to the extent that they have exceeded the tariffed rates of the

⁴ Complaint at 3, ¶ 5

⁵ See MGC Complaint at 5, ¶ 12, admitted, in relevant part, in Sprint Answer at 5, ¶ 12.

⁶ According to evidence that Sprint submitted with its complaint, the average ILEC rate for local switching in MGC's service areas is approximately \$0.004747, while MGC's tariffed rate is \$0.0700. This amounts to a difference of approximately 1400%. Similarly, MGC's rates for local transport exceed the average ILEC rate by approximately 260%; its rates for an inquiry of the 800-number database exceed the average ILEC rate by approximately 150%. See Complaint at 5-6. See also Exhs. 1 & 2 to Complaint (providing side-by-side rate comparisons for different categories of service).

⁷ MGC challenged Sprint's refusal to pay the tariffed rates for access service in a complaint filed on December 3, 1999. See *MGC Communications Co. v. Sprint Communications Co., L.P.*, File No. EB-99-MD-033. That proceeding will be the subject of a subsequent order.

⁸ See Complaint at 7.

⁹ Section 201(b) provides, in relevant part that "[a]ll charges, practices, classifications and regulations for and in connection with [interstate] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

¹⁰ *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16142, ¶ 364 (1997) (emphasis added). See Sprint Opening Brief at 3.

former monopoly ILECs providing access services in the same areas as MGC.”¹¹ Similarly, in its proposed conclusions of law, Sprint argues that, “[b]ecause MGC’s tariffed interstate access rates exceed[] those of the former incumbent LECs providing access in the same areas as MGC,” they violate section 201(b).¹² Sprint also asserts that its reliance on the ILEC rate is supported by a series of decisions stretching back to 1938, in which the Commission set rates for international telegraph carriers to allow a fair rate of return to the lowest-cost, bellwether provider.¹³

5. As an initial matter, the parties disagree on which side bears the burden of proof with respect to Sprint’s 201(b) claims. Sprint argues that, in this proceeding, MGC must justify the reasonableness of its rates because Sprint has requested that, if we find MGC’s rates to be unreasonable under section 201(b), we then exercise our authority under section 205(a) of the Act and prescribe a reasonable rate to be charged on a prospective basis.¹⁴ The difficulty with Sprint’s argument on this point is that it presupposes a finding favorable to Sprint on the threshold question that it has raised in this complaint proceeding: whether MGC’s rates are reasonable. Section 205(a) empowers the Commission to prescribe a just and reasonable charge “[w]henver, after full opportunity for hearing, upon a complaint . . . the Commission shall be of opinion that a charge” violates the Act.¹⁵ On Sprint’s complaint, however, the first question that we must address is whether MGC’s rate is unreasonable. This question is presented in the context of a section 208 complaint challenging the rate under section 201(b). In such circumstances, it is well settled that the complainant bears the burden of establishing that the challenged rate is unreasonable.¹⁶

6. Relying, as it does, solely on the competing ILEC rate as a benchmark for what is just and reasonable, Sprint has failed to meet its burden in this action. We decline Sprint’s invitation to hold that any access rate that is higher than the ILEC’s is necessarily unjust and unreasonable under section 201(b). Nothing in the Commission’s existing rules or orders supports Sprint’s legal position. In particular, Sprint’s reliance on our access charge reform order

¹¹ Sprint Complaint at 7, ¶ 20.

¹² Complaint, Appendix A at 1. *See also* Complaint at 7, ¶ 18 (“MGC violates Section 201(b) of the Act by seeking to impose charges for access elements that exceed those of the former monopoly ILECs providing access services in the same areas as MGC.”); *id.* at 5, ¶ 11 (“MGC’s tariffed rates . . . exceeded those of the former monopoly incumbent local exchange carriers providing access services in the same areas as MGC. As such, they violate the requirements of Section 201(b) . . .”) (citation omitted)

¹³ Sprint Opening Brief at 4-5 (citing, *inter alia*, *Postal Telegraph-Cable Co.*, 5 FCC 524, 527 (1938)).

¹⁴ *See* Sprint Opening Brief at 9; Sprint Reply Brief at 6. In both of its briefs, Sprint relies on our order in *Resale and Shared Use of Common Carrier Facilities and Services*, Report and Order, 60 FCC2d 261, 284-85, ¶ 42 (1976).

¹⁵ 47 U.S.C. § 205(a).

¹⁶ *See AT&T Corp. v. Bell Atlantic Corp.*, 14 FCC Rcd 556, 594, 602, ¶¶ 88, 108 (1998); *Infonxx, Inc. v. New York Tel. Co.*, FCC 97-359, File No. E-96-26, 1997 WL 621592, ¶ 16 (1997); *Beehive Tel., Inc. v. Bell Operating Companies*, 10 FCC Rcd 10562, 10566, ¶¶ 23-24 (1995), *affirmed after voluntary remand*, 12 FCC Rcd 17930 (1997).

is misplaced. There, we noted only that CLEC terminating access rates higher than the competing ILEC rates “may suggest” that the CLEC rates are excessive; in no way did we announce a *per se* rule of the sort for which Sprint now contends. As a CLEC, MGC is not subject to our part 69 access-charge rules,¹⁷ nor is it required to file tariffs under part 61 of our rules.¹⁸ Indeed, to the extent a review of the reasonableness of a CLEC’s rates depends on a carrier-specific review of the costs of providing service, it is impossible to be categorical on this point since a CLEC’s costs may not be comparable to those of an ILEC.¹⁹ None of the rate-making decisions that Sprint cites is to the contrary.

III. CONCLUSION AND ORDERING CLAUSES

7. We deny Sprint’s complaint because we reject its argument that any access rate greater than that charged by an incumbent LEC is necessarily unjust and unreasonable within the meaning of section 201(b).

¹⁷ See 47 C.F.R. § 69.1, *et seq*.

¹⁸ See 47 C.F.R. § 61.1, *et seq*.

¹⁹ In the Access Charge Reform Docket, we acknowledged that CLEC access rates may “be higher due to the CLECs’ high start-up costs for building new networks, their small geographical service areas, and the limited number of subscribers over which CLECs can distribute costs.” *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14343, ¶ 244 (1999). However, we noted that requiring IXCs to bear these costs may “impose unfair burdens on IXC customers that pay rates reflecting these CLEC costs even though the IXC customers may not subscribe to the CLEC.” *Id.*

As Sprint notes, staff denied it discovery into the question of whether MGC may cross-subsidize certain portions of its operations with its access revenues. See Sprint Opening Brief at 8. See also February 17, 2000, letter of Jeffrey Dygert (FCC) to counsel for the parties. However, that decision was not based on the conclusion that such information necessarily would be irrelevant to the reasonableness of CLEC access rates. Rather, the discovery request was denied because it was irrelevant to the claim as Sprint pleaded it – that MGC’s rates were *per se* unreasonable because they exceeded the competing ILEC rates – and, under our rules, complainants are bound by the manner in which they plead their claims. Under rule 1.721, complaints are required to include citation to the portion of the Act alleged to have been violated, a “complete statement of facts which, if proven true, would constitute such a violation,” and “[p]roposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the complaint.” 47 C.F.R. § 1.721(a)(4) - (6). See also, e.g., *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report & Order, 12 FCC Rcd 22497, 22534, ¶ 82 (1997). By requiring parties to engage in fact pleading, rather than the notice pleading permitted in federal court, our rules require that the full basis for a claim be set out in a complaint. Having failed adequately to plead its cross-subsidy argument, Sprint was barred from seeking to raise it, or seeking discovery on it, later in the action.

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 201 and 208 of the Act, as amended, 47 U.S.C. §§ 154(i), 201 and 208, Sprint's formal complaint filed in this proceeding IS DENIED.

9. IT IS FURTHER ORDERED that both of the above proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

EXHIBIT

MP2-02



Tariffs

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Tariffs

Tariffs contain the rates, terms and conditions of certain services provided by telecommunications carriers. The most common tariff filed at the FCC is for interstate local access service. These tariffs are filed by local exchange carriers, or LECs.

Long-distance companies and others pay the rates set out in these tariffs to LECs for access to local networks at the originating and/or terminating ends of a long-distance call. Access services include:

- Switched access, used primarily for long-distance calls originating and/or terminating over a standard phone line.
- Special access, a dedicated line provided by a local phone company to a customer, which could be a long-distance company, for the customer's exclusive use.
- Access tariffs may also include rates and conditions for services that include DSL from certain carriers, packet-switched services, long-distance directory assistance access and other services.

Carriers do not file tariffs for local and intrastate service with the FCC, because the FCC's regulations govern only interstate and international services. Except in very limited circumstances, long-distance companies are not permitted to file tariffs for long-distance service because the FCC has determined that the long-distance market is competitive. Like long-distance service, many broadband services have been detariffed. Tariffs are optional for competitive LECs, but they may not file tariffs for switched access if the price does not comply with [benchmark rules](#).

Tariffs must be just and reasonable and may not be unreasonably discriminatory under [Sections 201\(a\)](#) and [202\(b\)](#) of the Communications Act of 1934, as amended.

Tariff Investigations

The FCC may investigate any tariff before or after it becomes effective. Investigations can be on the FCC's own initiative or in response to a complaint.

Tariffs are typically filed under a process that gives the public 15 days' notice on proposed price increases and seven days' notice on proposed price reductions. Any member of the public may file comments during the time allowed under the rules. Tariffs filed under this process are "deemed lawful," meaning that if an investigation subsequent to the effective date shows that tariffs are unlawful, the carrier is only liable prospectively.

[Part 61](#) of the FCC's rules detail other possible notice periods under which carriers can file tariffs, as well all other rules governing tariffs. Tariffs are administered by the [Pricing Policy Division](#).

Related Links

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How to Cancel a Tariff

In order to minimize their costs, non-dominant carriers may cancel several tariffs or revise several tariffs under one cover letter with the payment of one filing fee provided that each tariff has the same Issuing Carrier name and the Issue Date is identical for each tariff.

Non-dominant interexchange carriers filing on their own behalf may use the following examples as references for how to cancel their tariff(s):

- [Sample Cover Letter](#)
- [Sample Tariff Supplement](#)
- [Sample Check Sheet](#)

Organizations that file tariffs on behalf of multiple non-dominant carriers may request a waiver of applicable filing rules so that they may cancel the tariff(s) of multiple non-dominant carriers or file revisions to the tariff(s) of multiple non-dominant carriers under one Consolidated Cover Letter with the payment of one filing fee, provided that all the tariffs have the same Issue Date.

Waiver of the applicable filing rules for this purpose must be requested by filing an Application for Special Permission, including the applicable filing fee. Organizations are reminded that they must file the Consolidated Application for Special Permission and obtain approval prior to filing the Consolidated Cover Letter. Organizations filing on behalf of multiple non-dominant interexchange carriers may use the following examples as references for how to cancel multiple tariffs.

- [Sample Consolidated Application for Special Permission](#)
- [Consolidated Cover Letter Tariff](#)
- [Sample Tariff Supplement](#)
- [Sample Check Sheet](#)

Non-dominant interexchange carriers are reminded that all tariff filings (not Applications for Special Permission) must be made on either a 3 1/2 inch diskette or CD-ROM containing the complete tariff including the revised material. Applications for Special Permission must be submitted in paper format.

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Detariffing Information

7/31/2001

DOMESTIC INTEREXCHANGE SERVICE DETARIFFING

Effective July 31, 2000, all non-dominant carriers were required to cancel (detariff) their interexchange services and thereafter provide their domestic interstate interexchange services on a non-tariffed basis. For more details about mandatory detariffing and the limited use of permissive tariffing, [click here](#).

Additional Information:

- A. [Public Notice](#)
- B. [Order](#)

C. [List of Detariffing Orders](#)**International Detariffing Takes Effect January 28, 2002**

No later than January 28, 2002, all non-dominant carriers must cancel (detariff) their international interexchange tariffs and thereafter provide their international interexchange services on a non-tariffed basis. During the interim transition period from April 28, 2001 - January 28, 2002, carriers may file new or revised tariffs for mass market international interexchange services. Carriers may not file new or revised contract tariffs or tariffs for other long term international service arrangements. For more details about mandatory detariffing and the limited use of permissive tariffing, [click here](#).

Additional Information:

- A. [Public Notice](#)
- B. [News Release](#)

CLEC Permissive Detariffing and Application of the Benchmark Rate

CLECs may file tariffs or offer service on a permissively detariffed basis even on a detariffed basis, the rates and regulations are still subject to 201(b) and 202(a) of the Act. Switched access rates are subject to a benchmark rate requirement, also Truth-in-Billing precepts may apply.

Additional Information:

- A. [Truth-in-Billing](#)
- B. [CLEC Access Information](#)
- C. [Order](#)

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Electronic Tariff Filing System (ETFS)

The [Electronic Tariff Filing System \(ETFS\)](#) is a web-based system through which incumbent LECs must submit official tariffs and associated supporting materials to the FCC. The public may also use ETFS to view these tariffs and documents.

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last reviewed/updated on July 24, 2009

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EXHIBIT

MP2-03

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Tuesday, February 19, 2008 10:03 AM
To: Penny Petersen
Cc: Moore, Jaque A (Jake); Freet, Leslie L
Subject: RE: Dispute Notification-Orbitcom Interstate Rates

Penny,

We reject your denial of our Interstate rate dispute on several grounds. The statute of limitations for disputing overbilled charges is 2 years, per the Communications Act of 1934. In section 415 of the Act, it states, "(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after." The disputed charges fall within this 2 year window and are thus disputable. I have not even been able to find a filed copy of Orbitcom's Switched Access Interstate Tariff. If you have a copy of a filed Interstate tariff or a link, please provide one.

We also dispute Orbitcom setting its aggregate rate to \$0.006 as the ILEC benchmark. Qwest's aggregate for Local Switching, Common Trunk Port, Tandem Transport Facility and Termination, Common Transport MUX, and Tandem Switching only comes to \$0.00557. This does not mean that Orbitcom can fairly charge this rate in all cases. The FCC's Eighth Report and Order mandates that CLEC's may only charge for rating elements that are consistent with the specific service they are providing. For example, if a CLEC is not performing the Tandem Switching function, it may not charge the IXC for that element. As a 100% UNEP provider, Orbitcom is entitled to bill only elements that it actually provides to Verizon Business depending on whether the traffic is direct routed, tandem routed or routed through a remote end office.

We are amending our initial dispute to reflect this methodology. For the end offices which Orbitcom is billing VZB for, VZB has DEOT's with 86.8% of these end offices. This traffic is direct routed. The remaining 13.2% of billed traffic would be tandem routed, unless routed through a remote end office. We have rerated Orbitcom's billed Local Switching minutes of usage with a weighted aggregate which is determined by whether the traffic is DEOT routed, Tandem Routed or Host/Remote Routed to determine which elements are applicable. All individual elements excluding Local Switching billed prior to the 7/12/07 invoice cycle are disputed at 100% because these elements are included in the weighted aggregate rate. The total amount now disputed is \$283,207.41. Please review the attached dispute and contact me if you have any questions.

Also, when might we expect the CDR's I requested for following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

Can you also provide an explanation for the PIU shift that occurred on the 7/07 invoice? We were being billed consistently a PIU of 34% prior to 7/07 and then it dropped to less than 1%. How does Orbitcom calculate PIU?

Respectfully,
Jaque Moore
Line Cost
Verizon Business
Phone: (918)590-2474
Fax: (918)590-1996

| Element | Qwest Rates |
|----------------------------|--------------------|
| Common Trunk Port | 0.00074700 |
| Local Switching | 0.00197400 |
| Tandem Facility Over 50 | 0.00001500 |
| Tandem Termination Over 50 | 0.00024000 |
| Common MUX | 0.00003600 |
| Tandem Switching | 0.00254500 |

UNE-P Qwest Aggregate Rate

| | |
|--|------------|
| DEOT Routed Traffic-Includes Local Switching | 0.00197400 |
| Host Remote Traffic-Includes Local Switching, Tandem Facility and Termination | 0.00222900 |
| Tandem Routed Traffic- Includes Common Trunk Port, Local Switching, Tandem Facility and Termination, Common MUX, and Tandem Switching | 0.00555700 |

EXHIBIT
MP2-04.0

Qwest FCC #5

| | | | |
|---------------------|--------------------|----------|---|
| Local Switching | 0.001974 | 0.001974 | |
| Port | 0.000747 | 0.000747 | These three items comprise the tandem equivalent |
| Mux | 0.000036 | 0.000036 | |
| Tandem Switching | 0.002545 | 0.002545 | |
| Tandem Equivalent | 0.003328 | 0.003328 | |
| | | 0.005302 | Subtotal LS + TE |
| Tnspt Term | - 0 mile | | This is a fixed rate depending on distance. So one of the four always goes into the cost. This example is twelve miles from CO to tandem, so we use the 8 to <25 miles rate |
| | 0.000180 <=8 mile | | |
| | 0.000231 <=25 mile | 0.000231 | |
| | 0.000238 <=50 mile | | |
| | 0.000240 >50 mile | | |
| | | 0.005533 | Subtotal LS + TE +TT |
| Tnspt Mileage | - 0 mile | | This varies per mile, since it is the actual miles times the rate from the band the mileage falls into. |
| | 0.000048 <=8 mile | | |
| | 0.000027 <=25 mile | 0.000324 | |
| | 0.000017 <=50 mile | | |
| | 0.000015 >50 mile | | |
| | | 0.005857 | Subtotal LS +TE+TT+TM |
| | | | See attached chart for an idea of the entire totals of "The Benchmark" |
| 800 data base query | 0.004053 | | |

| Miles | per mile | Variable Benchmark | Fixed Benchmark | Total Benchmark |
|-------|----------|-----------------------|--------------------|--------------------|
| 1 | 0.000048 | 0.000048 | 0.005482 | 0.00553 |
| 2 | 0.000048 | 0.000096 | 0.005482 | 0.005578 |
| 3 | 0.000048 | 0.000144 | 0.005482 | 0.005626 |
| 4 | 0.000048 | 0.000192 | 0.005482 | 0.005674 |
| 5 | 0.000048 | 0.00024 | 0.005482 | 0.005722 |
| 6 | 0.000048 | 0.000288 | 0.005482 | 0.00577 |
| 7 | 0.000048 | 0.000336 | 0.005482 | 0.005818 |
| 8 | 0.000027 | 0.000216 | 0.005533 | 0.005749 |
| 9 | 0.000027 | 0.000243 | 0.005533 | 0.005776 |
| 10 | 0.000027 | 0.00027 | 0.005533 | 0.005803 |
| 11 | 0.000027 | 0.000297 | 0.005533 | 0.00583 |
| 12 | 0.000027 | 0.000324 | 0.005533 | 0.005857 |
| 13 | 0.000027 | 0.000351 | 0.005533 | 0.005884 |
| 14 | 0.000027 | 0.000378 | 0.005533 | 0.005911 |
| 15 | 0.000027 | 0.000405 | 0.005533 | 0.005938 |
| 16 | 0.000027 | 0.000432 | 0.005533 | 0.005965 |
| 17 | 0.000027 | 0.000459 | 0.005533 | 0.005992 |
| 18 | 0.000027 | 0.000486 | 0.005533 | 0.006019 |
| 19 | 0.000027 | 0.000513 | 0.005533 | 0.006046 |
| 20 | 0.000027 | 0.00054 | 0.005533 | 0.006073 |
| 21 | 0.000027 | 0.000567 | 0.005533 | 0.0061 |
| 22 | 0.000027 | 0.000594 | 0.005533 | 0.006127 |
| 23 | 0.000027 | 0.000621 | 0.005533 | 0.006154 |
| 24 | 0.000027 | 0.000648 | 0.005533 | 0.006181 |
| 25 | 0.000017 | 0.000425 | 0.00554 | 0.005965 |
| 26 | 0.000017 | 0.000442 | 0.00554 | 0.005982 |
| 27 | 0.000017 | 0.000459 | 0.00554 | 0.005999 |
| 28 | 0.000017 | 0.000476 | 0.00554 | 0.006016 |
| 29 | 0.000017 | 0.000493 | 0.00554 | 0.006033 |
| 30 | 0.000017 | 0.00051 | 0.00554 | 0.00605 |
| 31 | 0.000017 | 0.000527 | 0.00554 | 0.006067 |
| 32 | 0.000017 | 0.000544 | 0.00554 | 0.006084 |
| 33 | 0.000017 | 0.000561 | 0.00554 | 0.006101 |
| 34 | 0.000017 | 0.000578 | 0.00554 | 0.006118 |
| 35 | 0.000017 | 0.000595 | 0.00554 | 0.006135 |
| 36 | 0.000017 | 0.000612 | 0.00554 | 0.006152 |
| 37 | 0.000017 | 0.000629 | 0.00554 | 0.006169 |
| 38 | 0.000017 | 0.000646 | 0.00554 | 0.006186 |
| 39 | 0.000017 | 0.000663 | 0.00554 | 0.006203 |
| 40 | 0.000017 | 0.00068 | 0.00554 | 0.00622 |
| 41 | 0.000017 | 0.000697 | 0.00554 | 0.006237 |
| 42 | 0.000017 | 0.000714 | 0.00554 | 0.006254 |
| 43 | 0.000017 | 0.000731 | 0.00554 | 0.006271 |
| 44 | 0.000017 | 0.000748 | 0.00554 | 0.006288 |
| 45 | 0.000017 | 0.000765 | 0.00554 | 0.006305 |
| 46 | 0.000017 | 0.000782 | 0.00554 | 0.006322 |
| 47 | 0.000017 | 0.000799 | 0.00554 | 0.006339 |
| 48 | 0.000017 | 0.000816 | 0.00554 | 0.006356 |
| 49 | 0.000017 | 0.000833 | 0.00554 | 0.006373 |
| 50 | 0.000015 | 0.00075 | 0.005542 | 0.006292 |
| 75 | 0.000015 | 0.001125 | 0.005542 | 0.006667 |
| 100 | 0.000015 | 0.0015 | 0.005542 | 0.007042 |
| 150 | 0.000015 | 0.00225 | 0.005542 | 0.007792 |
| 200 | 0.000015 | 0.003 | 0.005542 | 0.008542 |
| 250 | 0.000015 | 0.00375 | 0.005542 | 0.009292 |

EXHIBIT
MP2-04.1

| CLLI | Miles to Tandem | Transport Mileage Rate | Transport Mileage Charge | Local Switching | Tandem Equivalent | Transport Termination Local | Rate Per Minute |
|-------------|-----------------|------------------------|--------------------------|-----------------|-------------------|-----------------------------|-----------------|
| ABRDSDCODS0 | 150 | 0.000015 | 0.002250 | 0.001974 | 0.003328 | 0.000240 | 0.007792 |
| ARTNSDCORS1 | 60 | 0.000015 | 0.000900 | 0.001974 | 0.003328 | 0.000240 | 0.006442 |
| BLFRSDCORS1 | 51 | 0.000015 | 0.000765 | 0.001974 | 0.003328 | 0.000240 | 0.006307 |
| BLHKSDCERS1 | 5 | 0.000048 | 0.000240 | 0.001974 | 0.003328 | 0.000180 | 0.005722 |
| CHBLSDCORS1 | 132 | 0.000015 | 0.001980 | 0.001974 | 0.003328 | 0.000240 | 0.007522 |
| CLMNSDCORS1 | 31 | 0.000017 | 0.000527 | 0.001974 | 0.003328 | 0.000238 | 0.006067 |
| DESMDCORS1 | 71 | 0.000015 | 0.001065 | 0.001974 | 0.003328 | 0.000240 | 0.006607 |
| ELPNSDCORS1 | 59 | 0.000015 | 0.000885 | 0.001974 | 0.003328 | 0.000240 | 0.006427 |
| FTPRSDCERS1 | 190 | 0.000015 | 0.002850 | 0.001974 | 0.003328 | 0.000240 | 0.008392 |
| HLCYSDCORS1 | 20 | 0.000027 | 0.000540 | 0.001974 | 0.003328 | 0.000231 | 0.006073 |
| HRBGSDCORS1 | 7 | 0.000048 | 0.000336 | 0.001974 | 0.003328 | 0.000180 | 0.005818 |
| HURNSDCODS1 | 93 | 0.000015 | 0.001395 | 0.001974 | 0.003328 | 0.000240 | 0.006937 |
| IRQSSDCORS1 | 80 | 0.000015 | 0.001200 | 0.001974 | 0.003328 | 0.000240 | 0.006742 |
| LEADSDCORS1 | 32 | 0.000017 | 0.000544 | 0.001974 | 0.003328 | 0.000238 | 0.006084 |
| MDSNSDCERS1 | 37 | 0.000017 | 0.000629 | 0.001974 | 0.003328 | 0.000238 | 0.006169 |
| MLBNSDCORS1 | 115 | 0.000015 | 0.001725 | 0.001974 | 0.003328 | 0.000240 | 0.007267 |
| MLLRSDCORS1 | 131 | 0.000015 | 0.001965 | 0.001974 | 0.003328 | 0.000240 | 0.007507 |
| MTCHSDCODS1 | 66 | 0.000015 | 0.000990 | 0.001974 | 0.003328 | 0.000240 | 0.006532 |
| ORVLMNORRS8 | 57 | 0.000015 | 0.000855 | 0.001974 | 0.003328 | 0.000240 | 0.006397 |
| PIRRSDCODS6 | 190 | 0.000015 | 0.002850 | 0.001974 | 0.003328 | 0.000240 | 0.008392 |
| RDFSDCORS1 | 128 | 0.000015 | 0.001920 | 0.001974 | 0.003328 | 0.000240 | 0.007462 |
| RPCYSDCODS1 | 0 | 0.000048 | 0.000000 | 0.001974 | 0.003328 | 0.000180 | 0.005482 |
| RPVYSDCORS1 | 6 | 0.000048 | 0.000288 | 0.001974 | 0.003328 | 0.000180 | 0.005770 |
| SPRFSDCORS1 | 33 | 0.000017 | 0.000561 | 0.001974 | 0.003328 | 0.000238 | 0.006101 |
| STRGSDCORS1 | 27 | 0.000017 | 0.000459 | 0.001974 | 0.003328 | 0.000238 | 0.005999 |
| SXCYIADTDS1 | 74 | 0.000015 | 0.001110 | 0.001974 | 0.003328 | 0.000240 | 0.006652 |
| SXFLSDCODS2 | 0 | 0.000048 | 0.000000 | 0.001974 | 0.003328 | 0.000180 | 0.005482 |
| SXFLSDSERS1 | 1 | 0.000048 | 0.000048 | 0.001974 | 0.003328 | 0.000180 | 0.005530 |
| SXFLSDSWDS0 | 5 | 0.000048 | 0.000240 | 0.001974 | 0.003328 | 0.000180 | 0.005722 |
| TEA SDCORS1 | 8 | 0.000048 | 0.000384 | 0.001974 | 0.003328 | 0.000180 | 0.005866 |
| TMLKSDCORS2 | 251 | 0.000015 | 0.003765 | 0.001974 | 0.003328 | 0.000240 | 0.009307 |
| VLNTNENWDS0 | 171 | 0.000015 | 0.002565 | 0.001974 | 0.003328 | 0.000240 | 0.008107 |
| VOLGSDCORS1 | 55 | 0.000015 | 0.000825 | 0.001974 | 0.003328 | 0.000240 | 0.006367 |
| VRMLSDCODS0 | 54 | 0.000015 | 0.000810 | 0.001974 | 0.003328 | 0.000240 | 0.006352 |
| WHWDSDCORS1 | 33 | 0.000017 | 0.000561 | 0.001974 | 0.003328 | 0.000238 | 0.006101 |
| WRWKSDCORS1 | 11 | 0.000027 | 0.000297 | 0.001974 | 0.003328 | 0.000231 | 0.005830 |
| WTTWSDCODS0 | 95 | 0.000015 | 0.001425 | 0.001974 | 0.003328 | 0.000240 | 0.006967 |
| YNTNSDCODS1 | 57 | 0.000015 | 0.000855 | 0.001974 | 0.003328 | 0.000240 | 0.006397 |
| | | | | | | AVG | 0.006597 |

EXHIBIT
MP2-04.2



BILL NO 605 R24-0018 018
 INVOICE NO P240018018-05158
 BILL DATE [REDACTED]
 PAGE 51

*** DETAIL OF USAGE CHARGES FOR OFFICE MDSNSDCERS1 ***

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

INTERSTATE

| RATE CATEGORY | ZN | QUANTITY | RATE | AMOUNT |
|-----------------------------|----|----------|----------|--------------|
| SWITCHED TRANSPORT | | | | |
| TRANSMISSION VARIABLE | | | | |
| HOST TO REMOTE | | | | |
| TANDEM SXFLSDC009T | | | | |
| AN 1015004 | | | | |
| ORIGINATING MINUTES | | | | |
| SXFLSDCODS1- 37 MI | | 117 | .0000170 | .07 (0.0736) |
| HOST TO REMOTE SUBTOTAL | | 117 | | .07 |
| TOTAL TRANSMISSION VARIABLE | | 117 | | .07 |
| TRANSMISSION FIXED | | | | |
| HOST TO REMOTE | | | | |
| TANDEM SXFLSDC009T | | | | |
| AN 1015004 | | | | |
| ORIGINATING MINUTES | | | | |
| SXFLSDCODS1- 37 MI | | 117 | .0002380 | .03 |
| HOST TO REMOTE SUBTOTAL | | 117 | | .03 C.0278 |
| TOTAL TRANSMISSION FIXED | | 117 | | .03 |

x 37
 .000629

BILL NO
INVOICE NO
BILL DATE
ACNA

605 R24-0018 018
R240018018-05158
PAGE 32

*** DETAIL OF USAGE CHARGES FOR OFFICE MDSNSDCERS1 ***
*** **

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

| RATE CATEGORY | INTERSTATE | | RATE | AMOUNT |
|-----------------------------------|------------|----------|----------|--------|
| | ZN | QUANTITY | | |
| TANDEM SWITCHING CHARGE | | | | |
| AN 1015004 ORIGINATING MINUTES | | 117 | .0025450 | .30 |
| TOTAL TANDEM SWITCHING CHARGES | | 117 | | .30 |
| TOTAL SWITCHED TRANSPORT CHARGES | | | | .40 |

(.2977)

||



BILL NO
INVOICE NO
BILL DATE
ACNA

605 R24-0018 018
R240018018-05158
PAGE 33

*** DETAIL OF USAGE CHARGES FOR OFFICE MDSNSDCERS1 ***

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

| RATE CATEGORY | INTERSTATE | | RATE | AMOUNT |
|-----------------------------------|------------|----------|----------|--------|
| | ZN | QUANTITY | | |
| END OFFICE | | | | |
| LOCAL SWITCHING | | | | |
| AN 1015004 ORIGINATING MINUTES | | 117 | .0019740 | .23 |
| LOCAL SWITCHING SUBTOTAL | | 117 | | .23 |
| SHARED TRUNK PORT | | | | |
| AN 1015004 ORIGINATING MINUTES | | 117 | .0007470 | .09 |
| SHARED TRUNK PORT SUBTOTAL | | 117 | | .09 |
| TOTAL END OFFICE CHARGES | | | | .32 |



BILL NO
INVOICE NO
BILL DATE
ACNA

605 R24-0018 018
R240018018-05158
PAGE 34

*** DETAIL OF USAGE STATISTICS FOR OFFICE MDSNSDCERS1 ***

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

INTERSTATE

ORIGINATING PIU LUP PDR RECRDED MOU MESSAGES AT/MSG MIN/AT FACTORD MOU

TANDEM

M4X .000036 - too small to register

AN 1015004

MTS

117

13 0.0000

.0000

117

TOTAL

117

13

117

TOTAL INTERSTATE USAGE CHARGES FOR OFFICE MDSNSDCERS1

.72

*.00615 per
minute
Total
Rounding
error*

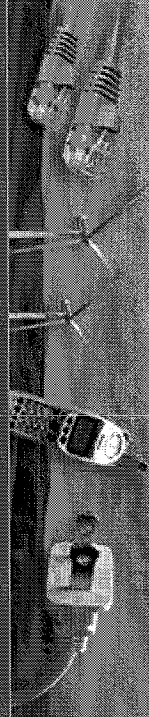
*Actual elements add
to .006169*

||

EXHIBIT

MP2-05

South Dakota Public Utilities Commission

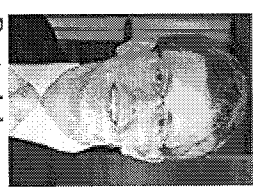


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Listen LIVE to the Commission Meeting! Aug. 25, 9:30 a.m. (CDT)

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Chairman
Elected 2004
Term Ends 2010



Steve Kolbeck
Vice Chairman
Elected 2006
Term Ends 2012



Gary Hanson
Commissioner
Elected 2002, 2008
Term Ends 2014

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South Dakota Public Utilities Commission



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Public Utilities Commission
Capitol Building, 1st floor
500 E. Capitol Ave.
Pierre, SD 57501-5070
Phone: (605) 773-3201
Toll-free: Fax: 1-866-757-6031

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Telecommunications | previous page

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- AT&T Communications of the Midwest, Inc.
- Armour Independent Telephone Company d/b/a Golden West Telecommunications (See LECA Tariff)
- Adventure Communication Technology L.L.C. d/b/a Adventure Communications
- Beresford Municipal Telephone Company (See LECA Tariff)
- Bridgewater-Canistota Independent Telephone d/b/a Golden West Telecommunications (See LECA Tariff)
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- Bullseye Telecom
- Capital Telephone
- Cheyenne River Sioux Tribe Telephone Authority (See LECA Tariff)
- City of Brookings Municipal Telephone Company d/b/a Swiftel Communications (See LECA Tariff)
- City of Faith Telephone Company (See LECA Tariff)
- Comtel Telecom Assets LP, d/b/a VarTec Telecom, also d/b/a Excel Telecommunications
- FiberComm, L.C.
- Golden West Telecommunications Cooperative, Inc. (See LECA Tariff)
- Granite Telecommunications, LLC
- Hills Telephone Company, Inc. (See LECA Tariff)
- Interstate Telecommunication Cooperative, Inc. (See LECA Tariff)
- Ionex Communications North, Inc.
- James Valley Cooperative Telephone Company (See LECA Tariff)
- Jefferson Telephone LLC d/b/a Long Lines (See LECA Tariff)
- Kadoka Telephone Company d/b/a Golden West Telecommunications (See LECA Tariff)
- Kennebec Telephone Company (See LECA Tariff)
- Knology of the Black Hills, LLC
- Knology Community Telephone, Inc.
- Knology of the Plains, Inc.
- Level 3 Communications, LLC
- Local Exchange Carrier Association, Inc. (LECA)
- Long Lines Metro, LLC
- Matrix Telecom, Inc. d/b/a Matrix Business Technologies
- McCook Cooperative Telephone Company (See LECA Tariff)
- MCI Metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services
- McLeodUSA Telecommunications Service
- Metropolitan Telecommunications of South Dakota, Inc.
- Midcontinent Communications, Inc.
- Midstate Telecom, Inc.
- Northern Valley Communications, LLC
- NOS Communications, Inc.
- OrbitCom, Inc.
- Qwest Corporation
- RC Communications, Inc. d/b/a RC Services (See LECA Tariff)
- Roberts County Telephone Cooperative Association (See LECA Tariff)
- Sate Telecom, Inc.

EXHIBIT

MP2-06

909A - ORBITCOM

BAN 8080SD0555
Invoice 00016929
Company Code 909A
Invoice Date Jan 12, 2006

Switched Access Service
Feature Group D

BAR: 8080SD000000000

Billing Company:
ORBITCOM, INC., FKA VP TELECOM
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Billing Inquiries Contact:
CABS Support (605) 977-6900

Addressed To:
MCI WORLDCOM
REGION 6
PO BOX 2039
MECHANICSBURG PA 17055

UNBUNDLED BILLING
Balance Due Information

| Explanation | Amount |
|---------------------|------------------------|
| Previous Balance | \$ 22,492.44 |
| Adjustments | |
| Dec 14 CASH PAYMENT | 10,821.29 R |
| Balance Forward | \$ 11,671.15 |

Detail Of Current Charges

| Explanation | Amount |
|------------------------|--------------|
| SOUTH DAKOTA | |
| Usage Charges | |
| 8080 - ORBITCOM | |
| IntraState - IntraLATA | 7,043.51 |
| IntraState - InterLATA | 0.14 |
| InterState - IntraLATA | 0.13 |
| InterState - InterLATA | 3,086.62 |
| Total Usage Charges | \$ 10,130.40 |
| Total Current Charges | \$ 10,130.40 |

Remit Payment To: 909A - ORBITCOM
ORBITCOM, INC., FKA VP TELECOM
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Total Due By 02/12/2006 \$ 21,801.55

R:136 G:000 S:000000 P:000000

EXHIBIT

MP2-07

DO NOT ACCEPT THIS CHECK UNLESS YOU SEE A TRUE WATERMARK THAT DISPLAYS THE VERIZON IMAGE WHEN HELD TO THE LIGHT. FACE OF DOCUMENT HAS A TWO COLOR BACKGROUND.

With major technological advances, VeriCheck is the only



22001 Loudoun County Parkway
Ashburn, VA 20147

Wachovia Bank, N.A.
Controlled, Disbursement Account
Winston-Salem, NC

66-1561531

Check No

1006170276

Date

04/28/2008

\$ *****73,739.94*

*** SEVENTY-THREE THOUSAND SEVEN HUNDRED THIRTY-NINE
USD and NINETY-FOUR Cents ***

Void After 120 Days

VP TELECOM DBA ORBITCOM
ATTN CABS DEPT
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Catherine J. Webster

TO THE ORDER OF

⑈ 1006170276⑈ ⑆053101561⑆ 2079900576197⑈

VERIFY AUTHENTICITY BY RUBBING THE GRAY VERIZON IMAGE ON BACK OF CHECK. SEE BACK FOR ADDITIONAL SECURITY INFORMATION.

4-29-08

DO NOT ACCEPT THIS CHECK UNLESS YOU SEE A TRUE WATERMARK THAT DISPLAYS THE VERIZON IMAGE WHEN HELD TO THE LIGHT. FACE OF DOCUMENT HAS A TWO COLOR BACKGROUND.



22001 Loudoun County Parkway
Ashburn, VA 20147

Check No

1007097238

Date

01/02/2009

65 156/531

Wachovia Bank N.A.

Controlled Disbursement Account

Winston-Salem, NC

\$*****41,521.80*

PAY EXACTLY

*** FORTY-ONE THOUSAND FIVE HUNDRED TWENTY-ONE USD and
EIGHTY Cents ***

Void After 120 Days.

TO THE ORDER OF VP TELECOM DBA ORBITCOM
ATTN CABS DEPT
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Catherine J. Webster

⑆ 1007097238⑆ ⑆053101561⑆ 2079900576197⑆

VERIFY AUTHENTICITY BY RUBBING THE GRAY VERIZON IMAGE ON BACK OF CHECK. SEE BACK FOR ADDITIONAL SECURITY INFORMATION.

1-9-09

EXHIBIT

MP2-08

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
MARYLAND**

**COMPLAINT OF CAVALIER TELEPHONE)
MID-ATLANTIC, LLC FOR BREACH OF)
INTERCONNECTION TERMS BY)
VERIZON INC. AND REQUEST FOR)
IMMEDIATE RELIEF REQUIRING PAYMENT)
OF ACCESS CHARGES)**

Case No. 9046

**IN THE MATTER OF THE COMPLAINT OF)
VERIZON MARYLAND INC.)
FOR BREACH OF INTERCONNECTION)
AGREEMENT AGAINST CAVALIER TELEPHONE)
MID-ATLANTIC, LLC)
)**

Case No. 9094

**TESTIMONY OF WILLIAM MUNSELL
ON BEHALF OF VERIZON MARYLAND INC.**

April 20, 2007

1
2 **INTRODUCTION AND PURPOSE OF TESTIMONY**
3

4 **Q. Please state your name and business address.**

5 A. My name is William Munsell. My business address is 600 Hidden Ridge,
6 Irving, Texas 75038.

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed by Verizon Services Corporation and represent Verizon
9 Communications Inc. operating telephone company affiliates in
10 negotiations with competitive local exchange carriers ("CLECs") for
11 interconnection, resale, and unbundled elements pursuant to section 251 of
12 the Communications Act of 1934, as amended by the Telecommunications
13 Act of 1996 ("the Act"). My services in my current position also have
14 included working to resolve disputes with CLECs, as well as providing
15 expert testimony, as in this case.

16 **Q. Please describe your educational background and professional**
17 **experience.**

18 A. I received an undergraduate degree in Economics from the
19 University of Connecticut, and a Master's degree from Michigan
20 State University in Agricultural Economics. I joined the company
21 (then GTE) in 1982. During the course of my career, I have held
22 positions of increasing responsibility in the following groups:
23 Demand Analysis and Forecasting, Pricing, Product Management,
24 the Open Market Program Office, and Contract Negotiations.
25

1 **Q. Please provide additional detail regarding your Company work**
2 **experience.**

3 A. I started my career with the company in the Demand Analysis and
4 Forecasting group, where I spent approximately five years. In my position
5 with that group, I was primarily responsible for developing access line and
6 network usage forecasts, including access minute forecasts. I then moved
7 to the Pricing organization, where I served as a Pricing Analyst, a position
8 in which I was responsible for developing intrastate intraLATA toll prices
9 and intrastate switched access rates. Later, I was promoted into a higher
10 level position in the Product Management organization as the Product
11 Manager for GTE's intraLATA toll product line.

12 In 1989, I accepted a position with the company's Telephone Operations
13 group in Irving, Texas as a Senior Product Manager for intraLATA toll
14 calling plans for all of the states in which the company operated. In 1994,
15 I became a Senior Product Manager for the Switched Access Service
16 organization. In this role, I was responsible for managing the switched
17 access rates for Verizon (then GTE) North Inc. I also had responsibility
18 for the systems development and rollout of intrastate intraLATA equal
19 access in all states served by GTE.

20 In 1996, I became a Product Manager for interconnection matters,
21 a position in which I helped GTE develop practices and systems
22 capabilities to comply with the Act. In December 1997, I was promoted to
23 a position within a new program office that was created to develop

1 solutions to the many systems issues that GTE faced in the new
2 competitive environment. I focused on numerous issues in that position,
3 including those related to Local Number Portability (“LNP”) and
4 interconnection between GTE and other carriers (including CLECs and
5 interexchange carriers or “IXCs”). In addition, I attended numerous
6 meetings of the Alliance for Telecommunications Industry Solutions’
7 (“ATIS”) Ordering & Billing Forum (“OBF”), specifically in the Billing
8 and Message Processing subcommittees (including the Multiple Exchange
9 Carrier Access Billing or “MECAB” subcommittee). In the spring of
10 1999, I accepted my present position as a manager in Verizon Services
11 Corporation’s Interconnection Services Policy and Planning group.

12 **Q. What is the purpose of your testimony?**

13 A. I will explain the purpose behind Cavalier’s obligation to provide EMI records
14 under the parties’ interconnection agreement. I will also explain how Verizon
15 was damaged by Cavalier’s failure to provide those records, including how
16 Verizon was unable to bill interexchange carriers (IXC’s) for calls originated by
17 Cavalier without the EMI records, and how Verizon calculated the approximate
18 amount of revenue lost as a result of its inability to bill IXCs for these calls.

THE IMPORTANCE OF EMI RECORDS

19 **Q. What is the origin of Cavalier’s obligation to provide EMI records?**

20 A. Cavalier is a facilities-based CLEC that operates in the mid-Atlantic area,
21 including Maryland. On March 1, 2000 Verizon and Cavalier entered into an
22 interconnection agreement (“ICA”) by which Cavalier adopted the terms of a

1 November 3, 1999 interconnection agreement between Verizon and Sprint
2 Communications Company, LP. This agreement was subsequently approved
3 by and filed with the Commission. Attachment 6, Section 2.9 to the ICA requires
4 that “[Cavalier] will provide [Verizon] with the Switched Access Summary Usage
5 Data (category 1150XX records) on magnetic tape or via such other media as the
6 parties may agree to, no later than ten (10) business days after the date of its
7 rendering of the bill to the relevant IXC, which bill shall be rendered no less
8 frequently than monthly. [Cavalier] will send such data to the location specified
9 ‘by BA.’ This obligation is consistent with MECAB standards and is routinely
10 included in Verizon’s interconnection agreements.

11 **Q. What is MECAB?**

12 A. MECAB refers to a detailed set of standards developed by the Billing
13 Committee of the OBF (Ordering and Billing Forum) of the Alliance for
14 Telecommunications Industry Solutions, the industry group responsible
15 for developing industry standard procedures. The OBF’s mission is to
16 “provide[] a forum for customers and providers in the telecommunications
17 industry to identify, discuss and resolve national issues which affect
18 ordering, billing, provisioning and exchange of information about access
19 services, other connectivity, and related matters.”¹ The OBF generally
20 resolves industry issues through consensus of a wide variety of carriers,
21 including IXCs, CLECs, Wireless providers, and ILECs like Verizon. I
22 have been a Verizon representative on the Billing and Message Processing

¹ See <http://www.atis.org/obf/index.asp>.

1 committees of the OBF, and worked on many issues involving standards
2 for the processing and billing of usage data in the post-Act environment. I
3 do not believe that Cavalier participates in the OBF.

4 **Q. How do the MECAB standards affect Cavalier's obligation to provide EMI**
5 **records?**

6 A. The origin of the EMI obligation is the MECAB documentation setting forth the
7 industry standards with respect to billing. Verizon's contracts and Verizon's
8 switches are set up according to MECAB standards reflecting the consensus in the
9 industry as to which carriers generate records for which calls. Section 6 of
10 MECAB, "Usage and Data Exchange", sets forth the standards for the
11 recording of usage sensitive services and the exchange of such call records
12 between service providers. Specifically, section 6.1 provides "Regardless of
13 the MPB option selected and where contractual relationships exist, the
14 detailed usage records should be passed to the other provider(s) to
15 process.....When providers do not have the detailed recordings available for
16 billing the IXC, the official recording company will provide the detailed
17 usage record based on contractual relationships. The official recording
18 company is defined as the following:
19 contractual obligation to provide EMI records is consistent with the industry
20 1. The end office company for originating traffic." Therefore, Cavalier's
21 contractual obligation to provide EMI records is consistent with the industry
22 standard.

1 **Q. How are the EMI records generated?**

2 A. EMI records from the end office carrier are produced from originating AMA
3 records that are generated when a switched access (or exchange access) call is originated.
4 They are essential to bill interexchange carriers (IXCs) because the originating AMA
5 record is designed to capture the Carrier Identification Code "CIC" code that identifies
6 the long distance provider selected by the end user for each call. It is the CIC code that
7 local service providers like Cavalier and Verizon utilize in determining which IXC to
8 bill the switched access charges to. When an exchange access call is routed from
9 the end office to the access tandem (an originating switched access call), the CIC of the
10 IXC selected by the end user is signaled to the access tandem. It is the CIC code
11 that the access tandem relies on to determine which IXC to route the call to, since
12 the called telephone number provides no information about what IXC the end user
13 has selected as their toll provider. In the terminating direction (when an IXC
14 delivers an exchange access call to the access tandem for routing to the end office
15 serving the called number), there is no like requirement that the IXC delivering
16 the call insert their CIC in the signaling stream. This is because in the terminating
17 direction the call can be routed to the called party based on the called telephone
18 number alone, without reference to a CIC.

19 **Q. Do Verizon's switches create an AMA record when the call originates from a**
20 **CLEC for delivery to an IXC via an access tandem switch of Verizon?**

21 A. When calls originate with a CLEC and transit Verizon's network for delivery to
22 IXCs, Verizon's switch does not generate an AMA record, consistent with
23 MECAB standards. In fact Verizon does not create an originating access record

EXHIBIT

MP2-01

1 at the tandem switch for Verizon's own traffic.

2 **CAVALIER'S PERFORMANCE UNDER THE CONTRACT**

3 **Q. Did Cavalier ever comply with its obligations under Section 2.9 of**
4 **Attachment 6?**

5 A. Immediately after the contract was entered, Cavalier complied with its obligation
6 to provide EMI records. At that time, summary EMI records were provided in
7 accordance with the MECAB standards that were then in effect. I understand that
8 Cavalier paid New York Access Billing LLC (known as the New York Access
9 Pool or "NYAB Pool") to handle its billing and sent all AMA call records it
10 generated to the NYAB Pool. The NYAB Pool then used the appropriate Cavalier
11 records to bill IXC's on Cavalier's and Verizon's behalf.

12 **Q. Did Cavalier stop sending EMI records to Verizon pursuant to Section**
13 **2.9 of Attachment 6?**

14 A. In early 2001 the MECAB standards pertaining to EMI records were changed to
15 specify that detailed EMI records should be provided, rather than summary EMI
16 records, and that the exchange of summary EMI records would be discontinued
17 effective August 31, 2002. The summary EMI records merely provided a
18 standard way to consolidate the detailed EMI records (which are created for every
19 originating exchange access call) and thereby reduce the number of records
20 exchanged. Around the same time, I understand that Cavalier decided to handle
21 its own billing rather than paying the NYAB Pool for billing services. When
22 Cavalier took over this billing, it stopped providing records to the NYAB
23 Pool and has never sent any EMI records for originating exchange access traffic

1 directly to Verizon. Upon information and belief, Cavalier generates the records
2 necessary to bill their access charges to the IXC's, but has chosen not to spend
3 the resources to generate comparable records for Verizon and to send
4 them.

5 **Q. When did Cavalier stop providing EMI records?**

6 A. Cavalier has not provided any EMI records since February of 2002.

7 **Q. Has Verizon requested that Cavalier resume its provisioning of EMI records**
8 **to Verizon?**

9 A. Verizon personnel have made numerous requests to Cavalier to fulfill its
10 contractual obligations and to provide EMI records.

11 **VERIZON IS DAMAGED BY CAVALIER'S FAILURE TO PROVIDE EMI**

12 **Q. Given that the calls are routed from Cavalier through Verizon, why can't**
13 **Verizon generate EMI records for the traffic at issue?**

14 A. Verizon does not have a process in place to bill IXCs access charges when the end
15 office carrier does not provide EMI records.

16 Verizon access tandem switches do not generate an originating AMA
17 record for originating exchange access calls that transit its network on access
18 trunks. Verizon could set up the trunks that carry the exchange access traffic
19 that Cavalier originates and routes to the Verizon access tandems to generate an
20 AMA record, but the record that would be generated would be a terminating
21 access record, not an originating access record, and therefore would not contain
22 the CIC code of the IXC. Instead, it would contain Cavalier's CIC code. This
23 record therefore could not be used to bill IXCs.

1 **Q. How did Verizon estimate its damages in this case?**

2 A. In order to estimate the damages that Verizon experienced due to Cavalier not
3 providing the required EMI records, in October of 2006 I requested and obtained
4 a study of the SS7 signaling data for the month of October 2006. Specifically, the
5 SS7 data provided all calls that Cavalier routed to Verizon MD access tandem
6 switches and which contained a CIC code in the SS7 signaling. The presence of
7 the CIC code in the SS7 signaling is what uniquely identifies this traffic as
8 exchange access traffic for which Cavalier should be supplying Verizon with EMI
9 records. For calls that could be assigned a jurisdiction (interstate or intrastate)
10 based on the calling and called numbers, I relied on that information. For calls where a
11 jurisdiction could not be determined, for example 800 calls, I relied on jurisdiction
12 factors specific to that type of traffic. This resulted in a quantification for the month of
13 October of the number of interstate and intrastate exchange access minutes that Cavalier
14 routed to IXC's via Verizon access tandem switches in MD. To each of these quantities I
15 applied an average rate per minute ("ARPM") for just those switched access rates that
16 Verizon would have been able to bill to the IXC's had Cavalier provided the EMI
17 records as required. I then multiplied the resulting monthly figure by the
18 number of months between April 15, 2003 and February 15, 2007.

19 **Q. Can Verizon get the information necessary to bill IXCs through the SS7 data
20 that Verizon collects and maintains?**

21 A. Verizon theoretically has access to billing information through SS7 data.
22 However, in order to use this data to bill IXCs Verizon would have to constantly
23 monitor all Cavalier calls, develop a process for pulling out the IXC calls and

1 develop a second process for turning the SS7 data into call records that would be
2 accepted by Verizon's Carrier Access Billing System (CABS) , in order to bill the
3 IXC. This would involve extensive resources to monitor the calls, as well as to
4 design the interface between the SS7 data source and CABS, and would cost
5 Verizon tens of millions of dollars to implement for all third party originating
6 exchange access traffic. Also, this would not be an industry standard method of billing.
7 Verizon does not use SS7 data for billing, but rather only for validation and
8 dispute resolution purposes.

9 **Q. Would IXCs accept as valid bills generated of the SS7 data?**

10 A. I do not know. Verizon has not attempted to bill any IXC using only SS7
11 data, and I am not aware of any other carrier that has just only SS7
12 data to bill IXCs.

13 **Q. Does this conclude your testimony?**

14 A. Yes.

EXHIBIT

MP2-09

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]

Sent: Thursday, February 14, 2008 3:36 PM

To: Penny Petersen

Cc: Moore, Jaque A (Jake)

Subject: Dispute Notification-Orbitcom Interstate Rates

Penny,

I have completed a review of Orbitcom's Interstate rates. We are disputing Orbitcom's Interstate rates for being non compliant with the FCC's 7th Order by exceeding the ILEC benchmark. The attached dispute report provides a dispute breakdown by BAN and billing element. We are disputing \$268,935.55 going back to the January 2006 invoice cycle. If you have any questions, please contact me.

Could you also provide CDR's for the following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

Respectfully,

Jaque Moore

Line Cost

Verizon Business

Phone: (918)590-2474

Fax: (918)590-1996

| INV_D | ST_CO_C | BAN_N | ST_C | JUR_J | R_ELMT_C | R_TYP_J | USE_R | QWEST RATE | DIFFERENCE | MI_Q | REC_NUM_EO_C | BL_CYC_FR_D | BL_CYC_TO_D | USE_Q | USE_A | DISPUTE |
|------------------|---------|-------|------|-------|----------|---------|------------|------------|------------|------|--------------|-------------|-------------|--------------|-------------|---------|
| 1/12/2007 Total | | | | | | | 1,324,400 | | | | | | | \$12,290.52 | \$11,142.19 | |
| 2/12/2007 Total | | | | | | | 1,534,919 | | | | | | | \$14,220.75 | \$12,872.60 | |
| 3/12/2007 Total | | | | | | | 1,864,186 | | | | | | | \$17,185.61 | \$15,535.96 | |
| 4/12/2007 Total | | | | | | | 2,244,201 | | | | | | | \$20,655.85 | \$18,665.00 | |
| 5/12/2007 Total | | | | | | | 1,876,393 | | | | | | | \$17,476.27 | \$15,836.20 | |
| 6/12/2007 Total | | | | | | | 2,025,665 | | | | | | | \$18,874.28 | \$17,117.84 | |
| 7/12/2007 Total | | | | | | | 57,785 | | | | | | | \$347.13 | \$322.61 | |
| 8/12/2007 Total | | | | | | | 84,059 | | | | | | | \$504.85 | \$338.46 | |
| 9/12/2007 Total | | | | | | | 109,007 | | | | | | | \$654.37 | \$438.78 | |
| 10/12/2007 Total | | | | | | | 96,973 | | | | | | | \$594.17 | \$398.35 | |
| 11/12/2007 Total | | | | | | | 112,715 | | | | | | | \$676.57 | \$453.64 | |
| 12/12/2007 Total | | | | | | | 96,100 | | | | | | | \$588.90 | \$394.81 | |
| 1/12/2008 Total | | | | | | | 92,448 | | | | | | | \$554.86 | \$371.87 | |
| Grand Total | | | | | | | 11,522,761 | | | | | | | \$104,624.13 | \$83,805.31 | |

| INV_D | ST_CO_C | BAN_N | ST_C | JUR_J | R_ELMT_C | R_TYP_J | USE_R | QWEST RATE | DIFFERENCE | MI_Q | REC_NUM_LEO_C | BL_CYC_FR_D | BL_CYC_TO_D | USE_Q | USE_A | DISPUTE |
|------------------|---------|-------|------|-------|----------|---------|-------|------------|------------|------|---------------|-------------|-------------|------------|--------------|--------------|
| 11/2/2006 Total | | | | | | | | | | | | | | 1,475,012 | \$13,765.22 | \$12,566.55 |
| 2/12/2006 Total | | | | | | | | | | | | | | 1,656,039 | \$15,417.69 | \$14,063.59 |
| 3/12/2006 Total | | | | | | | | | | | | | | 1,506,380 | \$14,098.96 | \$12,868.45 |
| 4/12/2006 Total | | | | | | | | | | | | | | 1,812,918 | \$16,689.57 | \$15,217.36 |
| 5/12/2006 Total | | | | | | | | | | | | | | 1,691,390 | \$15,651.81 | \$14,283.18 |
| 6/12/2006 Total | | | | | | | | | | | | | | 2,115,091 | \$19,576.19 | \$17,875.96 |
| 7/12/2006 Total | | | | | | | | | | | | | | 2,057,690 | \$19,047.50 | \$17,381.17 |
| 8/12/2006 Total | | | | | | | | | | | | | | 1,925,223 | \$17,725.29 | \$16,176.79 |
| 9/12/2006 Total | | | | | | | | | | | | | | 2,106,492 | \$19,394.14 | \$17,687.62 |
| 10/12/2006 Total | | | | | | | | | | | | | | 1,591,042 | \$14,612.19 | \$13,321.83 |
| 11/12/2006 Total | | | | | | | | | | | | | | 1,435,346 | \$13,123.52 | \$11,983.43 |
| 12/12/2006 Total | | | | | | | | | | | | | | 1,387,120 | \$12,806.37 | \$11,704.31 |
| Grand Total | | | | | | | | | | | | | | 20,762,735 | \$191,910.45 | \$175,130.24 |

EXHIBIT

MP2-10

| Account Name | Account Code | Cur. Bal. | 30 Days | 60 Days | 90 Days | 120 Days | 150 Days | 180 Days | Total |
|--------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|--------------|
| MCI WORLDCOM | 914AND0555 | \$19,485.69 | \$19,194.34 | \$18,036.33 | \$33,157.23 | \$16,480.85 | \$14,868.21 | \$135,730.86 | \$256,953.51 |
| MCI WORLDCOM | 912AOD0555 | \$248.61 | \$201.73 | \$260.79 | \$218.80 | \$344.73 | \$257.66 | \$2,890.85 | \$4,423.17 |
| MCI WORLDCOM | 912AOD0222 | \$224.69 | \$85.18 | \$64.18 | \$72.58 | \$185.84 | \$174.04 | \$2,276.12 | \$3,082.63 |
| MCI WORLDCOM | 914AND0222 | \$8,777.45 | \$8,188.46 | \$8,530.84 | \$8,954.31 | \$3,886.05 | \$3,747.53 | \$34,617.86 | \$76,702.50 |
| MCI WORLDCOM | 911AMD0555 | \$2,248.13 | \$1,679.00 | \$1,770.68 | \$1,633.20 | \$1,692.81 | \$1,487.21 | \$8,355.12 | \$18,866.15 |
| MCI WORLDCOM | 8080SD0222 | \$12,245.62 | \$11,921.30 | \$11,954.27 | \$10,917.65 | \$9,502.58 | \$8,775.26 | \$72,612.61 | \$137,929.29 |
| MCI WORLDCOM | 8080SD0555 | \$24,894.11 | \$23,977.29 | \$24,172.11 | \$28,248.85 | \$35,158.12 | \$32,540.44 | \$341,659.88 | \$510,650.80 |
| MCI WORLDCOM | 910AID0222 | \$2,401.30 | \$1,977.43 | \$1,954.83 | \$2,685.40 | \$1,973.91 | \$1,243.29 | \$10,259.69 | \$22,495.85 |
| MCI WORLDCOM | 910AID0555 | \$6,104.30 | \$6,077.21 | \$5,429.54 | \$6,222.89 | \$7,726.29 | \$7,286.51 | \$58,443.73 | \$97,290.47 |
| MCI WORLDCOM | 913AED0222 | \$4,078.39 | \$3,599.68 | \$2,771.71 | \$3,593.02 | \$3,626.58 | \$3,413.06 | \$27,275.41 | \$46,357.85 |
| MCI WORLDCOM | 913AED0555 | \$12,913.86 | \$13,169.56 | \$10,772.64 | \$15,291.51 | \$15,459.87 | \$15,635.46 | \$136,639.05 | \$219,881.95 |
| MCI WORLDCOM | 915AWD0222 | \$1,291.78 | \$1,082.35 | \$771.97 | \$1,752.11 | \$3,787.02 | \$3,422.54 | \$36,926.98 | \$49,034.75 |
| MCI WORLDCOM | 915AWD0555 | \$9,481.32 | \$9,894.36 | \$9,926.14 | \$11,191.10 | \$19,009.91 | \$17,964.76 | \$174,427.79 | \$251,895.38 |
| MCI WORLDCOM | 8080SD0987 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.69 | \$0.69 |
| MCI WORLDCOM | 911AMD0222 | \$1,247.39 | \$987.81 | \$1,105.99 | \$925.04 | \$781.39 | \$485.93 | \$3,287.12 | \$8,820.67 |
| MCI WORLDCOM | 915AWD0987 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$2.42 | \$1.61 | \$0.85 | \$4.88 |
| MCI WORLDCOM | 915AWD0220 | \$0.00 | \$0.00 | \$0.00 | \$0.01 | \$0.00 | \$0.07 | \$0.44 | \$0.52 |
| MCI WORLDCOM | 911AMD0550 | \$0.25 | \$0.45 | \$0.16 | \$0.27 | \$0.30 | \$0.03 | \$1.89 | \$3.35 |
| MCI WORLDCOM | 377CCD0555 | \$143.49 | \$134.26 | \$125.79 | \$135.87 | \$221.06 | \$216.64 | \$1,460.45 | \$2,437.56 |
| MCI WORLDCOM | 377CCD0222 | \$48.49 | \$29.12 | \$12.98 | \$15.94 | \$50.06 | \$71.43 | \$292.31 | \$520.33 |
| MCI WORLDCOM | 915AWD0550 | \$1.10 | \$0.39 | \$0.41 | \$0.39 | \$0.16 | \$0.81 | \$12.81 | \$16.07 |
| MCI WORLDCOM | 955DXD0555 | \$94.02 | \$70.04 | \$60.86 | \$71.28 | \$151.59 | \$144.16 | \$1,262.14 | \$1,854.09 |
| MCI WORLDCOM | 955DXD0222 | \$16.11 | \$11.08 | \$11.56 | \$17.42 | \$29.58 | \$27.08 | \$543.88 | \$656.71 |
| MCI WORLDCOM | 913AED0987 | \$0.07 | \$0.05 | \$0.06 | \$0.07 | \$0.04 | \$0.47 | \$3.64 | \$4.40 |
| MCI WORLDCOM | 913AED0550 | \$0.71 | \$0.60 | \$0.53 | \$0.68 | \$0.62 | \$0.49 | \$36.14 | \$39.77 |
| MCI WORLDCOM | 957DWD0222 | \$2,159.68 | \$1,728.98 | \$1,572.22 | \$1,273.22 | \$1,225.89 | \$1,122.93 | \$4,016.72 | \$13,099.64 |
| MCI WORLDCOM | 957DWD0555 | \$5,315.72 | \$4,417.36 | \$3,406.83 | \$753.01 | \$1,096.60 | \$994.43 | \$8,441.82 | \$24,425.77 |
| MCI WORLDCOM | 552CID0222 | \$20.10 | \$19.06 | \$17.11 | \$19.42 | \$62.92 | \$51.22 | \$589.32 | \$779.15 |
| MCI WORLDCOM | 251DOD0222 | \$92.84 | \$74.57 | \$134.43 | \$94.97 | \$97.17 | \$0.00 | \$462.03 | \$956.01 |
| MCI WORLDCOM | 552CID0555 | \$58.56 | \$52.10 | \$41.51 | \$31.35 | \$87.61 | \$69.97 | \$177.06 | \$518.16 |
| MCI WORLDCOM | 251DOD0555 | \$147.22 | \$76.79 | \$69.39 | \$29.87 | \$53.98 | \$85.12 | \$39.65 | \$502.02 |
| MCI WORLDCOM | 915AWD0321 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.32 | \$0.32 |
| MCI WORLDCOM | 915AWD0832 | \$0.07 | \$0.08 | \$0.08 | \$0.00 | \$0.12 | \$0.00 | \$0.12 | \$0.47 |

| | | | | | | | | | |
|--------------|------------|---------|---------|----------|------------|----------|----------|----------|------------|
| MCI WORLDCOM | 8080SD5957 | \$71.48 | \$91.53 | \$80.51 | \$73.21 | \$180.37 | \$132.00 | \$669.63 | \$1,298.73 |
| MCI WORLDCOM | 913AED5957 | \$56.23 | \$56.12 | \$49.68 | \$43.68 | \$94.92 | \$67.68 | \$441.29 | \$809.60 |
| MCI WORLDCOM | 251DOD0550 | \$6.95 | \$0.05 | \$0.43 | \$0.06 | \$0.00 | \$4.46 | \$0.00 | \$11.95 |
| MCI WORLDCOM | 914AND0220 | \$0.13 | \$0.00 | \$0.06 | \$0.04 | \$0.07 | \$0.25 | \$0.00 | \$0.55 |
| MCI WORLDCOM | 914AND0321 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.19 | \$0.00 | \$0.19 |
| MCI WORLDCOM | 914AND0550 | \$0.06 | \$0.04 | \$0.06 | \$0.05 | \$0.00 | \$3.78 | \$0.00 | \$3.99 |
| MCI WORLDCOM | 956DUD0222 | \$0.81 | \$0.84 | \$5.75 | \$0.07 | \$10.99 | \$0.00 | \$0.00 | \$18.46 |
| MCI WORLDCOM | 954DAD0222 | \$27.93 | \$22.88 | \$70.38 | \$0.39 | \$40.43 | \$0.00 | \$0.00 | \$162.01 |
| MCI WORLDCOM | 954DAD0555 | \$84.53 | \$65.24 | \$81.60 | \$1,115.66 | \$0.00 | \$0.00 | \$0.00 | \$1,347.03 |
| MCI WORLDCOM | 956DUD0555 | \$14.24 | \$12.03 | \$246.47 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$272.74 |

\$1,756,130.13

43 BANS

EXHIBIT

MP2-11

consistently a PIU of 34% prior to 7/07 and then it dropped to less than 1%. How does Orbitcom calculate PIU?

Respectfully,
Jaque Moore
Line Cost
Verizon Business
Phone: (918)590-2474
Fax: (918)590-1996

From: Penny Petersen [mailto:ppetersen@svtv.com]
Sent: Friday, February 15, 2008 10:45 AM
To: Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Interstate Rates

Jaque -

We are charging .006 per minute which is the ILEC benchmark.
Also, we can not accept disputes that are outside of the 90 day window.
Please let me know if you have further questions.

Thanks,
Penny

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Thursday, February 14, 2008 3:36 PM
To: Penny Petersen
Cc: Moore, Jaque A (Jake)
Subject: Dispute Notification-Orbitcom Interstate Rates

Penny,

I have completed a review of Orbitcom's Interstate rates. We are disputing Orbitcom's Interstate rates for being non compliant with the FCC's 7th Order by exceeding the ILEC benchmark. The attached dispute report provides a dispute breakdown by BAN and billing element. We are disputing \$268,935.55 going back to the January 2006 invoice cycle. If you have any questions, please contact me.

Could you also provide CDR's for the following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

Respectfully,
Jaque Moore
Line Cost
Verizon Business
Phone: (918)590-2474
Fax: (918)590-1996

EXHIBIT

MP2-12

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]

Sent: Tuesday, February 19, 2008 10:03 AM

To: Penny Petersen

Cc: Moore, Jaque A (Jake); Freet, Leslie L

Subject: RE: Dispute Notification-Orbitcom Interstate Rates

Penny,

We reject your denial of our Interstate rate dispute on several grounds. The statute of limitations for disputing overbilled charges is 2 years, per the Communications Act of 1934. In section 415 of the Act, it states, "(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after." The disputed charges fall within this 2 year window and are thus disputable. I have not even been able to find a filed copy of Orbitcom's Switched Access Interstate Tariff. If you have a copy of a filed Interstate tariff or a link, please provide one.

We also dispute Orbitcom setting its aggregate rate to \$0.006 as the ILEC benchmark. Qwest's aggregate for Local Switching, Common Trunk Port, Tandem Transport Facility and Termination, Common Transport MUX, and Tandem Switching only comes to \$0.00557. This does not mean that Orbitcom can fairly charge this rate in all cases. The FCC's Eighth Report and Order mandates that CLEC's may only charge for rating elements that are consistent with the specific service they are providing. For example, if a CLEC is not performing the Tandem Switching function, it may not charge the IXC for that element. As a 100% UNEP provider, Orbitcom is entitled to bill only elements that it actually provides to Verizon Business depending on whether the traffic is direct routed, tandem routed or routed through a remote end office.

We are amending our initial dispute to reflect this methodology. For the end offices which Orbitcom is billing VZB for, VZB has DEOT's with 86.8% of these end offices. This traffic is direct routed. The remaining 13.2% of billed traffic would be tandem routed, unless routed through a remote end office. We have rerated Orbitcom's billed Local Switching minutes of usage with a weighted aggregate which is determined by whether the traffic is DEOT routed, Tandem Routed or Host/Remote Routed to determine which elements are applicable. All individual elements excluding Local Switching billed prior to the 7/12/07 invoice cycle are disputed at 100% because these elements are included in the weighted aggregate rate. The total amount now disputed is \$283,207.41. Please review the attached dispute and contact me if you have any questions.

Also, when might we expect the CDR's I requested for following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

Can you also provide an explanation for the PIU shift that occurred on the 7/07 invoice? We were being billed

| INV_D | ST_CO_C | BAN_N | ST_C | JUR_I | R_ELMT_C | R_TYP_I | USE_R | REC_NUM | EQ_C | EQUIP | HOST_REMOTE_YN | BL_CYC_FR_D | BL_CYC_TO_D | USE_A | VALID BILL AMOUNT | TANDEM DEOT BISP |
|------------------|---------|-------|------|-------|----------|---------|------------|---------|------|-------|----------------|-------------|-------------|--------------|-------------------|------------------|
| Total | | | | | | | 1,476,012 | | | | | | | \$13,765.22 | \$546.37 | \$13,218.85 |
| Total | | | | | | | 1,656,039 | | | | | | | \$15,417.69 | \$611.16 | \$14,806.53 |
| Total | | | | | | | 1,500,380 | | | | | | | \$14,096.96 | \$659.43 | \$13,437.53 |
| Total | | | | | | | 1,812,918 | | | | | | | \$16,688.57 | \$672.63 | \$16,016.94 |
| Total | | | | | | | 1,691,390 | | | | | | | \$15,651.81 | \$629.86 | \$15,021.95 |
| Total | | | | | | | 2,115,091 | | | | | | | \$19,676.19 | \$790.56 | \$18,885.63 |
| Total | | | | | | | 2,067,680 | | | | | | | \$19,047.50 | \$768.93 | \$18,278.57 |
| Total | | | | | | | 1,925,223 | | | | | | | \$17,725.29 | \$717.00 | \$17,008.29 |
| Total | | | | | | | 2,106,492 | | | | | | | \$19,394.14 | \$780.45 | \$18,613.69 |
| Total | | | | | | | 1,691,042 | | | | | | | \$14,612.19 | \$587.76 | \$14,024.44 |
| Total | | | | | | | 1,425,348 | | | | | | | \$13,123.52 | \$530.59 | \$12,592.93 |
| Total | | | | | | | 1,397,120 | | | | | | | \$12,806.37 | \$515.02 | \$12,291.35 |
| Total | | | | | | | 1,324,400 | | | | | | | \$12,290.52 | \$493.37 | \$11,797.15 |
| Total | | | | | | | 1,534,819 | | | | | | | \$14,220.75 | \$571.88 | \$13,648.87 |
| Total | | | | | | | 1,864,186 | | | | | | | \$17,185.61 | \$688.03 | \$16,497.58 |
| Total | | | | | | | 2,244,201 | | | | | | | \$20,655.55 | \$827.01 | \$19,828.54 |
| Total | | | | | | | 1,876,383 | | | | | | | \$17,476.27 | \$702.56 | \$16,773.72 |
| Total | | | | | | | 2,025,665 | | | | | | | \$18,874.28 | \$760.42 | \$18,113.86 |
| Total | | | | | | | 57,785 | | | | | | | \$347.13 | \$139.44 | \$207.69 |
| 7/12/2007 Total | | | | | | | 84,069 | | | | | | | \$604.85 | \$202.77 | \$302.08 |
| 8/12/2007 Total | | | | | | | 109,007 | | | | | | | \$654.37 | \$262.83 | \$391.44 |
| 9/12/2007 Total | | | | | | | 96,973 | | | | | | | \$594.17 | \$238.62 | \$355.55 |
| 10/12/2007 Total | | | | | | | 112,716 | | | | | | | \$676.57 | \$271.80 | \$404.77 |
| 11/12/2007 Total | | | | | | | 96,100 | | | | | | | \$588.90 | \$236.33 | \$352.57 |
| 12/12/2007 Total | | | | | | | 52,448 | | | | | | | \$554.88 | \$222.25 | \$332.63 |
| Grand Total | | | | | | | 32,285,496 | | | | | | | \$296,534.58 | \$13,327.17 | \$283,207.41 |

| Element | Qwest Rates |
|----------------------------|--------------------|
| Common Trunk Port | 0.00074700 |
| Local Switching | 0.00197400 |
| Tandem Facility Over 50 | 0.00001500 |
| Tandem Termination Over 50 | 0.00024000 |
| Common MUX | 0.00003600 |
| Tandem Switching | 0.00254500 |

UNE-P Qwest Aggregate Rate

| | |
|--|------------|
| DEOT Routed Traffic-Includes Local Switching | 0.00197400 |
| Host Remote Traffic-Includes Local Switching, Tandem Facility and Termination | 0.00222900 |
| Tandem Routed Traffic- Includes Common Trunk Port, Local Switching, Tandem Facility and Termination, Common MUX, and Tandem Switching | 0.00555700 |

EXHIBIT

MP2-13

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|--------------------|--------------|
| LeRoy Koppendrayer | Chair |
| Marshall Johnson | Commissioner |
| Ken Nickolai | Commissioner |
| Thomas Pugh | Commissioner |
| Phyllis A. Reha | Commissioner |

In the Matter of the Complaint of PrairieWave
Telecommunications, Inc. Against AT&T
Communications of the Midwest

ISSUE DATE: February 8, 2006

DOCKET NO. P-442/C-05-1842

ORDER FINDING FAILURE TO PAY
TARIFFED RATE, REQUIRING FILING,
AND NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On November 21, 2005, PrairieWave Telecommunications, Inc. (PrairieWave), a competitive local exchange carrier serving customers in ten Minnesota exchanges, filed a complaint under Minn. Stat. § 237.462 against AT&T Communications of the Midwest, Inc. (AT&T), an interexchange carrier. The complaint claimed that AT&T was refusing to pay PrairieWave's tariffed rates for intrastate access services, thereby failing to meet its obligations as a telecommunications carrier under Minnesota law and inhibiting local retail competition. The complaint asked the Commission to order AT&T to pay PrairieWave's tariffed access rates.

On December 15, 2005, AT&T filed an answer and counterclaim. The answer admitted that AT&T had not paid monthly invoices submitted by PrairieWave and that it had denied PrairieWave's requests for payment. The counterclaim alleged that PrairieWave's tariffed access rates were unjust, unreasonable, discriminatory, anti-competitive, and therefore illegal and unenforceable. The counterclaim asked the Commission to dismiss the complaint, open an investigation into PrairieWave's access rates, find those rates to be unjust, unreasonable, and harmful to the public interest, and set new rates at just and reasonable levels.

On December 30, 2005, PrairieWave filed an answer to the counterclaim, denying its allegations.

On January 4, 2006, the Minnesota Department of Commerce (the Department) filed comments on the complaint and counterclaim. The Department argued that the complaint turned on legal and policy issues best resolved through argument and analysis and that the counterclaim turned on factual issues best resolved through an evidentiary proceeding.

On January 12, 2006, the case came before the Commission. At that time AT&T admitted that it had refused to pay PrairieWave's tariffed access rates on grounds that they were excessive, had failed to pay the portion AT&T considered non-excessive for an undetermined period of time, and did not have in hand an accurate accounting of the amounts of money at issue.

After the Commission deliberated and determined, among other things, that AT&T was legally obligated to pay PrairieWave's tariffed access rates, AT&T and PrairieWave reached an agreement on the treatment of disputed billings from the filing of AT&T's counterclaim. The two parties agreed that AT&T would establish a private escrow account into which it would deposit the disputed portion of PrairieWave's access charge billings, beginning with the date on which the counterclaim was filed and continuing through the pendency of this proceeding.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission finds that AT&T is obligated to pay PrairieWave's tariffed access rates and that it has failed to do so. The Commission rejects AT&T's contention that it was authorized to withhold payment on the basis of its belief that the tariffed rates were excessive, unjust, unreasonable, and therefore illegal.

The Commission will treat AT&T's counterclaim that PrairieWave's tariffed access rates are excessive, unjust, unreasonable, and therefore illegal, as a complaint under Minnesota Rules 7812.2210, subp. 17 and will refer it to the Office of Administrative Hearings for evidentiary development.

These actions will be explained in turn.

II. AT&T Was and Is Obligated to Pay Tariffed Access Rates

The filed rate doctrine is the longstanding regulatory principle that common carriers are bound by the terms of their tariffs; they cannot make side agreements with individual customers, and any side agreements they do make will be stricken. *Black's Law Dictionary*¹ defines the filed rate doctrine in this way:

Filed rate doctrine. Doctrine which forbids a regulated entity from charging rates for its services other than those properly filed with the appropriate federal regulatory authority.

¹ *Black's Law Dictionary*, sixth edition.

Although state and federal policy initiatives promoting competition in the local telecommunications market now give carriers unprecedented flexibility in pricing their services, the filed rate doctrine remains intact. No matter how flexible pricing decisions may become, prices and rates must be filed with the Commission and charged uniformly throughout carriers' service areas,² including prices and rates subject to adjustment in response to unique cost, geographic, or market factors or unique customer characteristics.³

PrairieWave therefore lacked the right to accede to AT&T's request to retroactively adjust its access rates, and AT&T lacked the right to pay any rate other than the tariffed rate.

Further, AT&T had a duty to promptly pay all access charges incurred. Both the seamless telecommunications network on which the public depends and the competitive telecommunications marketplace that state and federal policymakers seek, require the prompt satisfaction of inter-carrier financial obligations.

Failing to promptly satisfy these obligations threatens the integrity of the network by creating grounds for disconnection⁴ and jeopardizes competition by depriving unpaid carriers of the funds they need to stay in business. For these reasons, the Commission has long viewed prompt payment of access charges as an integral part of providing adequate service.⁵

The Commission will therefore require AT&T to make a filing permitting the Commission, the Department, and the parties to this case to determine AT&T's unpaid access charge obligation to PrairieWave. At a minimum, this filing must set forth all amounts billed by PrairieWave since this dispute began, all amounts paid by AT&T, and the difference between the two amounts.

² Minn. Stat. § 237.074; Minn. Stat. §§ 237.07 and 237.09, applicable to telecommunications carriers under Minn. Stat. § 237.035 (e); Minnesota Rules 7812.2100, subps. 2,3, 5, 8, and 9.

³ Minn. Stat. § 237.07, subd. 2, applicable to telecommunications carriers under Minn. Stat. § 237.035 (e); Minnesota Rules 7812.2210, subps. 2 and 5 A and B.

⁴ Disconnection requires Commission approval under Minn. Stat. §§ 237.12, subd. 2 and 237.74, subd. 6 (a) (2) and subd. 9, applicable to telecommunications carriers under Minn. Stat. § 237.035 (e) and under Minnesota Rules 7812.2210, subp. 11.

⁵ In the *Matter of Three Petitions to Discontinue Service to Access Plus*, Docket No. P-999/CI-92-1061, P-421/EM-92-999, P-3006/M-92-1032, P-478/EM-92-1031, ORDER PERMITTING DISCONTINUANCE OF SERVICE, REQUIRING 30-DAY WAIVER OF NONRECURRING CHARGES, AND REQUIRING ACCESS PLUS TO SHOW CAUSE (September 4, 1994) and ORDER ACCEPTING LATE-FILED PETITIONS, GRANTING INTERVENTION PETITION, DENYING PETITIONS FOR RECONSIDERATION, AND REVOKING CERTIFICATE OF AUTHORITY (January 14, 1993).

Pursuant to the parties' agreement, the difference between the two amounts from the date of the filing of the counterclaim through the conclusion of this proceeding will be placed in escrow by AT&T.

III. AT&T's Counterclaim Merits Investigation

The counterclaim filed by AT&T alleges that PrairieWave's intrastate access rates are excessive, unreasonable, discriminatory, anti-competitive, and harmful to the public. PrairieWave concedes that these rates are approximately 100% higher than the intrastate access rates charged by the State's largest local exchange carrier, but argues that they are not excessive in light of PrairieWave's costs and other factors.

AT&T raises serious allegations that require investigation. The Commission will therefore treat AT&T's counterclaim as a complaint under Minnesota Rules 7812.2210, subp. 17 and will refer it to the Office of Administrative Hearings for evidentiary development, as set forth below.

NOTICE AND ORDER FOR HEARING

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over PrairieWave's provision of intrastate telecommunications services under the Minnesota Telecommunications Act, Minnesota Statutes Chapter 237, including the following specific grants of jurisdiction: Minn. Stat. §§ 237.035 (e), 237.16, 237.081, 237.461, 237.462, and 237.74.

The Commission finds that it cannot resolve the issues raised in the counterclaim on the basis of the record before it. Those issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

The issue in this case is whether PrairieWave's intrastate access rates are unreasonable, excessive, unduly discriminatory, anti-competitive, harmful to the public, or otherwise unlawful. Minnesota Rules 7812.2210, subp. 8 authorizes the Commission to change competitive carriers' rates or take other appropriate action upon complaint and upon finding that the rate complained of:

- unreasonably restricts resale;
- is unreasonably discriminatory;
- is deceptive, misleading, fraudulent, or otherwise unlawful;
- impedes the development of fair and reasonable competition or reflects the absence of an effectively competitive market; or
- has caused or will result in substantial customer harm.

Before making these findings the Commission must conduct an investigation under Minnesota Rules 7812.2210, subp. 17. The investigation may proceed by notice and comment or by contested case proceedings, as in this case.

Minn. Stat. § 237.74, subd. 4 also authorizes the Commission to take remedial action whenever it finds that any rate charged by a telecommunications carrier is unreasonably discriminatory or that any service provided by a telecommunications carrier is inadequate or cannot be obtained.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the counterclaim.

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200, and the Commission's rules governing complaints against competitive local exchange carriers, Minnesota Rules 7812.2210, subp. 17.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2218; or Lisa Crum, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities: Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are AT&T, PrairieWave, and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will inform the parties of its time and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

Both PrairieWave and AT&T emphasized their need for prompt resolution of this dispute. AT&T is harmed by uncertainty regarding its financial obligations, and PrairieWave is harmed by uncertainty regarding its revenue stream.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these concerns and requests that the Administrative Law Judge submit his final report as expeditiously as possible.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

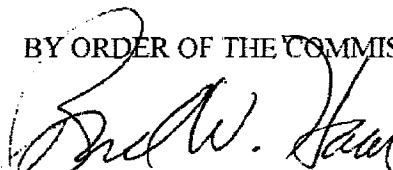
V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. AT&T shall promptly make a filing permitting the Commission, the Department, and the parties to this case to determine AT&T's unpaid access charge obligation to PrairieWave. At a minimum, the filing must set forth all amounts billed by PrairieWave since this dispute began, all amounts paid by AT&T, and the difference between the two amounts.
2. The Commission hereby refers the issues raised in AT&T's counterclaim to the Office of Administrative Hearings for contested case proceedings, as set forth above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(SEAL)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Complaint of PrairieWave MPUC Docket No. P-442/C-05-1842
Telecommunications, Inc. Against AT&T
Communications of the Midwest OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Steve M. Mihalchick, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 349-2544

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____

P442/C-05-1842, ListID# 1 AT&T: In the matter of a Complaint Against AT&T for Unpaid Intrastate Switched Access Services

10:
MN PUC

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Sioux Falls SD 57108

EXHIBIT

MP2-14

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | |
|--|---|------------------------|
| In the Matter of |) | |
| |) | |
| Access Charge Reform |) | CC Docket No. 96-262 |
| |) | |
| Reform of Access Charges Imposed by |) | |
| Competitive Local Exchange Carriers |) | |
| |) | |
| Petition of Z-Tel Communications, Inc. |) | CCB/CPD File No. 01-19 |
| For Temporary Waiver of Commission Rule |) | |
| 61.26(d) to Facilitate Deployment of Competitive |) | |
| Service in Certain |) | |
| Metropolitan Statistical Areas |) | |

**EIGHTH REPORT AND ORDER AND
FIFTH ORDER ON RECONSIDERATION**

Adopted: May 13, 2004

Released: May 18, 2004

By the Commission: Chairman Powell issuing a statement.

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I. INTRODUCTION

1. As part of its effort to establish a pro-competitive, deregulatory national policy framework for the United States telecommunications industry, the Commission, in the *CLEC Access Reform Order*, adopted a new regulatory regime for interstate switched access services provided by competitive local exchange carriers (competitive LECs) to interexchange carriers (IXCs).¹ Specifically, the Commission limited to a declining benchmark the amounts that competitive LECs may tariff for interstate access services, restricted the interstate access rates of competitive LECs entering new markets to the rates of the competing incumbent local exchange carrier (incumbent LEC), and established a rural exemption permitting qualifying carriers to charge rates above the benchmark for their interstate access services.² In this Fifth Order on Reconsideration, we resolve seven petitions for clarification and/or reconsideration of the *CLEC Access Reform Order*.³ As explained in further detail below, we clarify certain aspects of the *CLEC Access Reform Order* and deny the petitions for reconsideration.⁴ We also address and deny a pending petition seeking a temporary waiver of section 61.26(d) of the Commission's rules.⁵ In the Eighth Report and Order, we decline to set a separate access rate for originating 8YY traffic

¹ See *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Red 9923 (2001) (*CLEC Access Reform Order*).

² See generally *id.*

³ A complete list of the pleadings filed is contained in Appendix B.

⁴ In addition to the petitions for clarification and/or reconsideration, several parties requested that the Commission stay the *CLEC Access Reform Order* pending reconsideration or judicial review. See Mpower Communications Corp. and North County Communications, Inc., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Emergency Petition for Stay of Order, June 18, 2001 (Mpower Petition for Stay); TDS Metrocom, Inc., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Petition for Stay Pending Reconsideration, June 28, 2001 (TDS Petition for Stay); Letter from Jonathan E. Canis, Counsel to Business Telecom, Inc. et al., to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 96-262 (filed May 25, 2001) (requesting that the Commission stay the effective date of the *CLEC Access Reform Order* on its own motion) (Joint CLEC May 25 *Ex Parte*). After the Commission did not act on the request for a stay, Mpower and North County sought a stay from the D.C. Circuit Court of Appeals. On June 28, 2001, the D.C. Circuit denied the request for a stay. See *Mpower Communications Corp., et al. v. FCC*, No. 01-1280, Order dated June 28, 2001. We now deny as moot the Mpower Petition for Stay.

⁵ See *In the Matter of Petition of Z-Tel Communications, Inc. and Z-Tel Communications of Virginia, Inc. for Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Services in Certain Metropolitan Statistical Areas*, filed Aug. 3, 2001 (Z-Tel Waiver Petition).

and allow it to be governed by the same declining benchmark as other competitive LEC interstate access traffic.

II. BACKGROUND

2. In the *CLEC Access Reform Order*, the Commission addressed a variety of issues arising from market disputes between IXCs and competitive LECs over the level of competitive LEC interstate access rates.⁶ The Commission observed that competitive LEC access rates varied dramatically, and that access rate disputes between IXCs and competitive LECs created significant financial uncertainty for both groups of carriers.⁷ Moreover, the Commission found that carrier disputes appeared likely to threaten network ubiquity, a result that the Commission concluded could have significant public safety ramifications.⁸ In order to ensure that competitive LEC access rates are just and reasonable, the Commission sought to eliminate regulatory arbitrage opportunities that previously existed with respect to tariffed competitive LEC access services.⁹

3. The Commission concluded that the market structure for access services prevented competition from effectively disciplining prices.¹⁰ It explained that an IXC has no competitive alternative for access to a particular end-user and, because the IXC pays for access charges and recovers those costs through averaged rates, the end-user has no incentive to avoid high-priced providers for access services.¹¹ The Commission found that certain competitive LECs used the tariff system to set access rates that were subject neither to negotiation nor to regulation designed to ensure their reasonableness, and then relied on their tariff to demand payment from IXCs for access services that the long distance carriers likely would have declined to purchase at the tariffed rate.¹²

4. To address this market failure, the Commission revised its tariff rules to align tariffed competitive LEC access rates more closely with those of the incumbent LECs.¹³ The Commission set a benchmark rate for competitive LEC access rates and concluded that competitive LEC access rates at or below the benchmark would be presumed just and reasonable.¹⁴ Under the rules the Commission adopted, a competitive LEC may not tariff interstate access charges above the higher of (1) the competing incumbent LEC rate, or (2) the benchmark rate or the lowest rate the competitive LEC tariffed for interstate access service within the six months preceding the effective date of the order, whichever is

⁶ For a more detailed background, see *CLEC Access Reform Order*, 16 FCC Rod at 9926-30, paras. 8-20.

⁷ *Id.* at 9931-32, paras. 22-23.

⁸ *Id.* at 9932-33, para. 24.

⁹ See *id.* at 9924-25, paras. 2-3. The Commission limited its application of the tariff rules to competitive LEC interstate access services (defined only as interstate switched access services unless otherwise specified to the contrary). *Id.* at 9924, para. 2 & n.2.

¹⁰ *Id.* at 9936, para. 32.

¹¹ *Id.* at 9935, para. 31.

¹² *Id.* at 9925, para. 2.

¹³ See 47 C.F.R. § 61.26.

¹⁴ *CLEC Access Reform Order*, 16 FCC Rod at 9925, para. 3.

lower.¹⁵ Competitive LEC access charges above the benchmark (or above the competing incumbent LEC rate, if it is higher) are mandatorily detariffed and may be imposed only pursuant to a negotiated agreement.¹⁶ During the pendency of negotiations, or if the parties cannot agree, the competitive LEC must charge the IXC the appropriate benchmark rate.¹⁷ The Commission also concluded that an IXC would violate section 201(a) of the Act by refusing to complete a call to, or accept a call from, an end-user served by a competitive LEC charging rates at or below the benchmark.¹⁸

5. In order to avoid too great a disruption for competitive carriers, the Commission implemented the benchmark in a way that allows competitive LEC rates to decrease over time until they reach the rate charged by the competing incumbent LEC.¹⁹ The benchmark was set at 2.5 cents per minute for the first year after the *CLEC Access Reform Order* became effective, and moved to 1.8 and 1.2 cents per minute in the second and third years, respectively.²⁰ At the end of the third year, the rate will parallel the access rate charged by the competing incumbent LEC.²¹ Additionally, the Commission ruled that competitive LECs may tariff the benchmark rate only for service in the Metropolitan Statistical Areas (MSAs) where they were serving customers on June 20, 2001, the effective date of the new rules.²² In those MSAs where a competitive LEC initiates service after the effective date of the order, it may not tariff a rate higher than the applicable incumbent LEC rate (the "CLEC new markets rule").²³

6. The Commission also adopted a rural exemption to the benchmark regime. The exemption is available for a competitive LEC that competes with a non-rural incumbent LEC, where no portion of the competitive LEC's service area falls within: (1) any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (2) an urbanized area, as defined by the Census Bureau.²⁴ If a competitive LEC originates traffic from or terminates traffic to end-users located within either of these two types of areas, the carrier is ineligible for the rural exemption to the benchmark rule.²⁵ In recognition of the substantially higher loop costs incurred by competitive LECs in rural areas, competitive LECs qualifying for the rural exemption are permitted to tariff rates up to the highest rate band in the National Exchange Carriers Association (NECA) tariff, minus the NECA tariff's carrier common line (CCL) charge.²⁶

¹⁵ 47 C.F.R. § 61.26(b).

¹⁶ *CLEC Access Reform Order*, 16 FCC Rcd at 9925, para. 3.

¹⁷ *Id.*

¹⁸ *Id.* at 9960-61, para. 94.

¹⁹ *Id.* at 9944-45, para. 52.

²⁰ 47 C.F.R. § 61.26(c).

²¹ *Id.*

²² *CLEC Access Reform Order*, 16 FCC Rcd at 9947, para. 58.

²³ 47 C.F.R. § 61.26(d).

²⁴ 47 C.F.R. § 61.26(a)(6), (e).

²⁵ *Id.* See also *CLEC Access Reform Order*, 16 FCC Rcd at 9954, para. 76.

²⁶ 47 C.F.R. § 62.26(e).

7. Seven parties petitioned for reconsideration or clarification of the *CLEC Access Reform Order*, and various parties filed oppositions, comments, and replies.²⁷ The petitioners challenge the validity of the CLEC new markets rule, the structure of the benchmark, and the transition period.²⁸ Further, the petitioners seek clarification regarding what access rates apply when more than one incumbent LEC operates within the competitive LEC's service area.²⁹ Another petitioner asks the Commission to clarify that a competitive LEC may charge only the portion of the benchmark rate that reflects the access services actually provided.³⁰ Several petitioners also challenge various aspects of the rural exemption. These challenges include arguments to expand the scope of the rural exemption, to make the rural benchmark available to competitive LECs entering new areas, and to add the carrier common line (CCL) charge as well as the multi-line business pre-subscribed interexchange carrier charge (PICC) to the rural exemption rate.³¹ Finally, certain petitioners request clarification or reconsideration regarding several other issues, including requirements under sections 201(a), 202(a), 203(c), and 214 of the Communications Act.³²

8. In a Further Notice of Proposed Rulemaking that accompanied the *CLEC Access Reform Order*, the Commission sought additional comment on whether access rates for originating toll-free, or 8YY, traffic should immediately be moved to the competing incumbent LEC rate, rather than following the declining benchmark over three years.³³ As discussed in more detail below, several parties commented on this issue.

9. For the reasons discussed below, we deny petitions for reconsideration of the *CLEC Access Reform Order* but address several issues raised in petitions for clarification. Specifically, we clarify that a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC's own end-users. We also find that the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions, and we amend our rules in accordance with this finding. We further clarify that any PICC imposed by a competitive LEC qualifying for the rural exemption may be assessed in addition to the rural benchmark rate if and only to the extent that the competing incumbent LEC charges a PICC. In addition, we identify permissible ways in which competitive LECs may structure their rates if they serve a geographic area with more than one incumbent LEC. We also clarify the source of our authority to impose IXC interconnection obligations under section

²⁷ See Appendix B for a complete list of pleadings filed. Both competitive LECs and IXCs have sought review of the *CLEC Access Reform Order* in the D.C. Circuit. See *AT&T Corp. v. FCC*, Case No. 01-1244 (filed May 31, 2001); *Sprint Corp. v. FCC*, Case No. 01-1263 (filed June 11, 2001); *Mpower Communications Corp. & North County Communications, Inc. v. FCC*, Case No. 01-1280 (filed June 22, 2001). The cases were consolidated and the court is holding the petitions for review in abeyance pending the Commission's completion of this reconsideration proceeding. See *AT&T Corp. v. FCC*, Case Nos. 01-1244, 01-1263, and 01-1280, Order (D.C. Cir. Jan. 8, 2002)(granting the Commission's motion to hold the appeals in abeyance).

²⁸ See Focal Petition at 2-6; TDS Petition at 7-9; Time Warner Petition at 2-9.

²⁹ See TelePacific Petition at 1-3.

³⁰ See Qwest Petition at 2-4.

³¹ See MCLEC Petition at 2-14; RICA Petition at 3-12.

³² See Qwest Petition at 4-6; RICA Petition at 12-15; RICA Reply at 8-9.

³³ See *CLEC Access Reform Order*, 16 FCC Rcd at 9962-64, paras. 99-104.

201(a) and we deny a pending petition for waiver of the CLEC new markets rule. Finally, we decline to set a separate access rate for originating 8YY traffic and allow it to be governed by the same declining benchmark as other competitive LEC interstate access traffic.

III. ORDER ON RECONSIDERATION

A. Accounting for Services Still Provided by the Incumbent LEC

10. Qwest asks the Commission to clarify the rules to ensure that a competitive LEC charges only the portion of the competing incumbent LEC rate that reflects the services that the carrier actually provides.³⁴ Qwest emphasizes that the competitive LEC's tariffed rate should exclude the amounts paid for access services necessary to connect an IXC to an end-user that are not provided by the competitive LEC.³⁵ Thus, when one or more of the services necessary to originate or terminate an interexchange call is provided by a carrier other than the competitive LEC, Qwest suggests that the benchmark rate should be correspondingly reduced.³⁶ For instance, Qwest argues that where the incumbent LEC still provides tandem switching, the IXC should have to pay that charge to the incumbent LEC only, and not to both the incumbent LEC and the competitive LEC.³⁷

11. ALTS opposes the requested clarification, arguing that Qwest's characterization of the services Qwest receives and for which it pays is incorrect.³⁸ According to ALTS, IXCs that exchange traffic with competitive LECs through the incumbent LEC tandem receive a service from both the incumbent LEC and the competitive LEC, and, accordingly, it is appropriate for both the competitive LEC and the incumbent LEC to bill such IXCs.³⁹ ALTS asserts that an IXC can avoid paying for incumbent LEC services by interconnecting directly with a competitive LEC, thereby bypassing the incumbent LEC network altogether.⁴⁰

12. ASCENT and Focal center their opposition on the administrative burden they allege would result from Qwest's proposed clarification.⁴¹ ASCENT argues that, as a policy matter, the Commission left competitive LECs with maximum flexibility to structure their charges as long as they did not "exceed a benchmark ultimately reflective of incumbent LEC charges," and that removing an access

³⁴ Qwest Petition at 2-4.

³⁵ *Id.* at 2.

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ ALTS Comments at 12.

³⁹ *Id.* See also ASCENT Reply at 4-5.

⁴⁰ ALTS Comments at 12. See also Letter from Richard M. Rindler, Counsel for US LEC Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92, filed Aug. 25, 2003 at 5-6 (US LEC Aug. 25 *Ex Parte* Letter).

⁴¹ See, e.g., Focal Comments at 7 (asserting that Qwest's request would "vitiating the benchmark as a simple, easy-to-administer guide identifying when CLEC access charges will be presumed reasonable").

component from competitive LEC rates would be inconsistent with the Commission's intent.⁴² Similarly, Focal argues that requiring the change advocated by Qwest "would essentially transform the benchmark from an overall measure of the reasonableness of a CLECs' rates that affords CLECs flexibility in setting rate structures, to a rate and rate structure prescription."⁴³ Z-Tel interprets Qwest's request as a requirement that competitive LECs mirror incumbent LEC access tariff elements, and it argues that such a requirement would be inappropriate because this may not accurately reflect how a competitive LEC's costs are incurred.⁴⁴ Z-Tel further argues that, particularly for UNE-P providers, Qwest's proposal may prevent competitive LECs from recovering their costs. Z-Tel explains that, because the per-minute and per-port components of UNE rates are determined by state commissions, and not necessarily in conjunction with this Commission's review of the same incumbent LEC's interstate tariff, it is possible that the cost of providing a minute of access over the UNE platform could exceed the per-minute interstate access rate for the same incumbent LEC.⁴⁵

13. We deny Qwest's request for clarification that the full benchmark rate is not available in situations when a competitive LEC does not provide the entire connection between the end-user and the IXC. Under section 61.26(b) of the Commission's rules, a competitive LEC's tariffed rate for "its interstate switched exchange access services" cannot exceed the benchmark.⁴⁶ Under section 61.26(a)(3), the term interstate switched exchange access services "shall include the functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching."⁴⁷ The rate elements identified in section 61.26(a)(3) reflect those services needed to originate or terminate a call to a LEC's end-user. When a competitive LEC originates or terminates traffic to its own end-users; it is providing the functional equivalent of those services, even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem. Consequently, because there may be situations when a competitive LEC does not provide the entire connection between the end-user and the IXC, but is nevertheless providing the functional equivalent of the incumbent LEC's interstate exchange access services, we deny Qwest's petition.⁴⁸

⁴² ASCENT Comments at 4. See also US LEC Aug. 25 *Ex Parte* Letter at 4, 6 (stating that the Commission's intent was to maintain rate structure flexibility for competitive LECs and to require only that the competing LEC's rate not exceed the benchmark).

⁴³ Focal Comments at 7.

⁴⁴ Z-Tel Opposition at 6.

⁴⁵ *Id.* at 6.

⁴⁶ 47 C.F.R. § 61.26(b).

⁴⁷ 47 C.F.R. § 61.26(a)(3).

⁴⁸ IXCs argue that paragraph 55 of the *CLEC Access Reform Order* could be read to suggest that the Commission intended the benchmark to be available only when the competitive LEC provided the full connection between the IXC and the end-user. See AT&T Opposition at 19; Letter from Robert J. Aamoth and Jennifer M. Kashatus, Counsel for ITC DeltaCom Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92, at 2 (filed Sept. 11, 2003). We find that this is not the best reading of paragraph 55. When read in conjunction with the definition contained in section 61.26(a)(3), we think the two lists of elements described in paragraph 55 were intended to illustrate what might be (continued...)

14. Although we deny Qwest's petition, we also reject the argument made by some competitive LECs that they should be permitted to charge the full benchmark rate when they provide any component of the interstate switched access services used in connecting an end-user to an IXC.⁴⁹ The approach advocated by these competitive LECs, in which rates are not tethered to the provision of particular services, would be an invitation to abuse because it would enable multiple competitive LECs to impose the full benchmark rate on a single call. It also would enable competitive LECs to discriminate among IXCs by providing varying levels of service for the same price.⁵⁰ As the Supreme Court clearly has stated, rates "do not exist in isolation. They have meaning only when one knows the services to which they are attached."⁵¹

15. Through pleadings in this proceeding, as well as a petition for declaratory ruling filed by US LEC,⁵² the Commission is aware that there have been a number of disputes regarding the appropriate compensation to be paid by IXCs when a competitive LEC handles interexchange traffic that is not originated or terminated by the competitive LEC's own end-users. Because neither the *CLEC Access Reform Order* nor other applicable precedent addressed the appropriate rate in this scenario, we now conclude that the benchmark rate established in the *CLEC Access Reform Order* is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. As explained above, a competitive LEC that provides access to its own end-users is providing the functional equivalent of the services associated with the rate elements listed in section 61.26(a)(3) and therefore is entitled to the full benchmark rate.

16. Some competitive LECs argue that they should be entitled to collect the full benchmark rate, even when they do not serve the end-user, if they enter into a joint billing arrangement with the carrier that does serve the end-user.⁵³ We acknowledge that there are situations where a competitive LEC

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considered the "functional equivalent" of incumbent LEC access services, rather than mandating the provision of a particular set of services.

⁴⁹ US LEC, for example, argues that a competitive LEC may charge the maximum benchmark rate even where that competitive LEC provides only some portion of the transport component of the switched access service, leaving other carriers to provide the bulk of the service, including (i) the connection between the caller and the local switch, (ii) end office switching, as well as, possibly, (iii) additional tandem-switched transport. See Letter from Patrick J. Donovan, Counsel for US LEC Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92 (filed April 29, 2003); see also TelePacific Sept. 25 *Ex Parte* Letter at 3 (arguing that the *CLEC Access Reform Order* permits competitive LECs to charge the benchmark rate for the access services they provide to IXCs regardless of the access functions or rate structure).

⁵⁰ Although unreasonable discrimination often takes the form of different pricing for the same service, the Supreme Court has made clear that providing different levels of service for the same tariffed price may be equally unreasonable. See *AT&T v. Central Office Telephone*, 524 U.S. 214, 223 (1998) ("An unreasonable 'discrimination in charges,' that is, can come in the form of a lower price for an equivalent service or in the form of an enhanced service for an equivalent price.").

⁵¹ *Id.*

⁵² See *Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, DA 02-2436 (rel. Sept. 30, 2002) (seeking comment on a petition for declaratory ruling filed by US LEC).

⁵³ See, e.g., White Paper on CMRS/CLEC Intercarrier Compensation, attached to Letter from Kathryn A. Zachem, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92, at 5-6 (filed Jan. 16, 2004) (Verizon Wireless White Paper); Letter from Patrick J. Donovan, Counsel for US LEC Corp., to Marlene H. Dortch, Secretary, Federal Communications (continued....)

may bill an IXC on behalf of itself and another carrier for jointly provided access services pursuant to meet point billing methods.⁵⁴ We note, however, that the validity of these joint billing arrangements is premised on each carrier that is party to the arrangement billing only what it is entitled to collect from the IXC for the service it provides.⁵⁵ In cases where the carrier serving the end-user had no independent right to collect from the IXC, industry billing guidelines do not, and cannot, bestow on a LEC the right to collect charges on behalf of that carrier. For example, the Commission has held that a CMRS carrier is entitled to collect access charges from an IXC only pursuant to a contract with that IXC.⁵⁶ If a CMRS carrier has no contract with an IXC, it follows that a competitive LEC has no right to collect access charges for the portion of the service provided by the CMRS provider.⁵⁷

17. Because of the many disputes related to the rates charged by competitive LECs when they act as intermediate carriers, we conclude that it is necessary to adopt a new rule to address these situations. Specifically, we find that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions.⁵⁸ We conclude that regulation of these rates is necessary for the all the reasons (Continued from previous page)

Commission, CC Docket Nos. 96-262 and 01-92, filed Aug. 25, 2003 at 6-7 (stating that US LEC may utilize meet point billing arrangements with the CMRS provider to jointly provision access service to the wireless end-user and that it is entitled to the benchmark rate).

⁵⁴ See *In the Matter of Access Billing Requirements for Joint Service Provision*, CC Docket No. 87-579, Phase II, Order, 65 Rad. Reg. 2d 650, paras. 2-5 (1988), *applications for review denied*, 4 FCC Rcd 7914 (1989). Indeed, the industry has developed standards, *i.e.*, the Multiple Exchange Carrier Access Billing Standard ("MECAB"), to govern meet point billing arrangements, and the Commission has required LECs to follow the MECAB standards. See, *e.g.*, *In the Matter of Waiver of Access Billing Requirements and Investigation of Permanent Modifications*, CC Docket No. 87-579, Memorandum Opinion and Order, 3 FCC Rcd 13, 16-17, paras. 29-31 (1987) (subsequent history omitted).

⁵⁵ See, *e.g.*, *In the Matter of Access Billing Requirements for Joint Service Provision*, CC Docket No. 87-579, Phase II, Order, 65 Rad. Reg. 2d 650, para. 87 (1988) ("We therefore conclude that those LECs whose current tariff provisions would allow a LEC to impose [termination] charges if that LEC is an intermediate, non-terminating carrier are required to modify their tariff provisions to preclude such charges in these circumstances.").

⁵⁶ See *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192 (2002) (*Sprint/AT&T Declaratory Ruling*), *petitions for review dismissed*, *AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003).

⁵⁷ We reject the argument made by Verizon Wireless that the *Sprint/AT&T Declaratory Ruling* does not limit the ability of a CMRS provider to collect access charges from an IXC if the CMRS provider has a contract with an intermediate competitive LEC. See Verizon Wireless White Paper at 21. We will not interpret our rules or prior orders in a manner that allows CMRS carriers to do indirectly that which we have held they may not do directly. See *Sprint/AT&T Declaratory Ruling*, 17 FCC Rcd at 13198, para. 12 ("There being no authority under the Commission's rules or a tariff for Sprint PCS unilaterally to impose access charges on AT&T, Sprint PCS is entitled to collect access charges in this case only to the extent that a contract imposes a payment obligation."). Moreover, we also reject the argument by Verizon Wireless that IXCs taking service under certain competitive LEC tariffs are somehow bound by these competitive LEC/CMRS agreements. See Verizon Wireless White Paper at 22. Indeed, except in limited circumstances, the Commission's rules specifically prohibit cross-referencing other documents within a tariff. See 47 C.F.R. § 61.74(a).

⁵⁸ We note that competitive LECs continue to have flexibility in determining the access rate elements and rate structure for the elements and services they provide consistent with the *CLEC Access Reform Order*. See *CLEC Access Reform Order*, 16 FCC Rcd at 9946, para. 55. For this reason, we reject concerns expressed by some commenters that this constraint would require competitive LECs to adopt the incumbent LEC rate structure. See, (continued....)

that we identified in the *CLEC Access Reform Order*. Specifically, as competitive LECs and CMRS providers concede,⁵⁹ an IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier and it is necessary to constrain the ability of competitive LECs to exercise this monopoly power. This new rule regarding rates that may be charged when a competitive LEC is an intermediate carrier will apply on a prospective basis.⁶⁰

18. Neither the *CLEC Access Reform Order* nor the *Sprint/AT&T Declaratory Ruling* addressed the appropriate rate a competitive LEC may charge when it is not serving the end-user; therefore, during the time between the effective date of *CLEC Access Reform Order* and the effective date of this reconsideration order, general pricing principles must govern any dispute over the appropriate competitive LEC rate. As a rule, access rates, like all other tariffed rates, must be just and reasonable under section 201(b) of the Act, and access tariffs, like all other tariffs, must clearly identify each of the services offered and the associated rates, terms, and conditions.⁶¹ In this case, the Commission established only a single rate for each year of the transition period and did not state that this rate was available only if a competitive LEC served the end-user on a particular call. Accordingly, prior to this order on reconsideration, it would not have been unreasonable for a competitive LEC to charge the tariffed benchmark rate for traffic to or from end-users of other carriers, provided that the carrier serving the end-user did not also charge the IXC and provided that the competitive LEC's charges were otherwise in compliance with and supported by its tariff.⁶²

19. We reject the argument that Qwest's petition provides no basis for any change to the currently effective transitional benchmark rates. In an *ex parte* filing, US LEC argues that Qwest's request for clarification applies only to the final benchmark rates, as distinct from the transitional benchmark rates.⁶³ US LEC suggests that any clarification must be so limited and may apply only to the final benchmark rates at the competing incumbent LEC rate.⁶⁴ We disagree. The language and the arguments made in the petition suggest that Qwest's request is not limited in the manner suggested by US LEC. Although the petition requests that the Commission clarify the meaning of the "competing ILEC rate," it contains several statements that could apply equally to the transitional benchmark rates.⁶⁵ The

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e.g., Focal Comments at 6-7; Z-Tel Opposition at 3-6. See also US LEC Aug. 25 *Ex Parte* Letter at 2-3 (positing a number of arguments against imposing incumbent LEC rate structures on competitive LECs).

⁵⁹ See Verizon Wireless White Paper at 19 n.58 ("CMRS carriers wield as much 'monopoly power' here as CLECs do in the situations described in the [*CLEC Access Reform Order*].").

⁶⁰ See, *e.g.*, 5 U.S.C. § 551(4); *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208, 109 S. Ct. 468, 471-72 (1988).

⁶¹ 47 U.S.C. § 201(b). See also 47 C.F.R. § 61.2(a).

⁶² See *ITC DeltaCom Communications, Inc. v. US LEC Corp. et al.*, No. 3:02-CV-116-JTC (N.D. Ga. March 15, 2004) (holding that an IXC has no duty to pay a competitive LEC for transiting wireless toll-free calls where the terms of the competitive LEC's tariff cover only access to the competitive LEC's own end-users or transport of traffic that originates or terminates through a LEC switching system).

⁶³ See US LEC Aug. 25 *Ex Parte* Letter at 7.

⁶⁴ *Id.*

⁶⁵ For instance, Qwest requests that the competing LEC's "tariffed rate should exclude the amounts paid for access service that are . . . not provided by the competitive LEC." Qwest Petition at 2. In addition, even if Qwest intended its request to apply solely to the final benchmark rates, as US LEC suggests, we believe that clarifying the application of the transitional benchmark rates is a logical outgrowth of Qwest's proposal. See *City of* (continued....)

arguments presented by Qwest to support its request are equally applicable to the transitional benchmark rates. Therefore, we find no reason why the Commission is prevented from clarifying the application of the transition benchmark rates or amending its rules prospectively, as set forth above.

20. Finally, we address a request by NewSouth Communications, Inc. that we clarify the meaning of the term "competing ILEC rate" as it applies to a competitive LEC that originates or terminates calls to its end-users after the three-year transition period ends on June 21, 2004.⁶⁶ NewSouth argues that a competitive LEC should be permitted to charge for all of the competing incumbent LEC access elements (including tandem switching and end office switching) if its switch serves a geographic area comparable to the competing incumbent LEC's tandem switch.⁶⁷ AT&T and MCI oppose NewSouth's request and assert that a competitive LEC may assess access charges on IXCs only for those access services that the competitive LEC actually provides.⁶⁸

21. We agree with NewSouth that clarification of this issue is necessary to avoid litigation and uncertainty, but we decline to adopt NewSouth's proposal. A primary objective of the *CLEC Access Reform Order* is to ensure that competitive LEC access charges are more closely aligned with incumbent LEC access rates.⁶⁹ As noted by AT&T and MCI, our long-standing policy with respect to incumbent LECs is that they should charge only for those services that they provide.⁷⁰ Under this policy, if an incumbent LEC switch is capable of performing both tandem and end office functions, the applicable

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Stoughton v. United States EPA, 858 F.2d 747, 751 (D.C. Cir. 1988) (holding that an agency may make changes to a proposed rule if the changes are a logical outgrowth of a proposal and previous comments). In order for a final rule to be a logical outgrowth of a proposal, the agency must have provided proper notice of the initial proposal. *See Sprint Corp. v. FCC*, 315 F.3d at 376. Because Qwest's petition was properly noticed in the context of a rulemaking proceeding, the logical outgrowth analysis may be applied. *See Access Charge Reform*, CC Docket No. 96-262, Public Notice, Report No. 2490 (rel. June 29, 2001), 66 Fed. Reg. 35628 (2001).

⁶⁶ See Letter from Jake E. Jennings, Senior Vice President, Regulatory Affairs and Carrier Relations, NewSouth Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-262, at Attach. (filed Mar. 2, 2004) (attaching Letters from Jake E. Jennings, Senior Vice President, Regulatory Affairs and Carrier Relations, NewSouth Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 1 (filed Feb. 27, 2004).

⁶⁷ *Id.* at 1-2. NewSouth states that this is the standard that is applied pursuant to our reciprocal compensation rules for purposes of determining whether a competitive LEC may charge the tandem interconnection rate. *See* 47 C.F.R. § 51.711(a)(3).

⁶⁸ See Letter from Peter H. Jacoby, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-262, at 2-4 (filed Mar. 30, 2004) (AT&T Mar. 30 *Ex Parte* Letter); Letter from Henry G. Hultquist, MCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-262, at 2-3 (filed Mar. 22, 2004) (MCI Mar. 22 *Ex Parte* Letter). For example, they state that the functions performed by a competitive LEC switch when it subtends an incumbent LEC tandem are the same as those performed by an incumbent LEC end office, and therefore the competitive LEC should not be permitted to charge for tandem switching. *See* AT&T Mar. 30 *Ex Parte* Letter at 3; MCI Mar. 22 *Ex Parte* Letter at 2.

⁶⁹ *CLEC Access Charge Order*, 16 FCC Rcd at 9925, para. 3.

⁷⁰ See AT&T Mar. 30 *Ex Parte* Letter at 3 (citing *Bell Atlantic Telephone Companies*, 6 FCC Rcd 4794 (1991)); MCI Mar. 22 *Ex Parte* Letter at 2 (citing *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556 (1998)).

EXHIBIT

MP2-15

QWEST LOCAL SERVICES PLATFORM™ AGREEMENT
ATTACHMENT 2—QLSP™ Service Description

Qwest will provide Qwest Local Services Platform™ ("QLSP™") service offerings according to the following terms and conditions. Except as set forth in this Attachment, capitalized terms have the definitions assigned to them in the Agreement. CLEC may use QLSP Services to provide any Telecommunications Services, information Services, or both that CLEC chooses to offer.

1.1 General QLSP Service Description.

1.1.1. QLSP Services consist of local switching (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest switch) ("Local Switching") and Shared Transport in combination. Qwest Advanced Intelligent Network (AIN) Services such as remote access forwarding and Qwest Voice Messaging Services (VMS) may also be purchased with compatible QLSP Services. These Network Elements will be provided in compliance with all Telcordia and other industry standards and technical and performance specifications to allow CLEC to combine the QLSP Services with a compatible voicemail product and stutter dial tone. Qwest will provide access to 911 emergency Services and directory listings in accordance with the terms and conditions of CLEC's Interconnection Agreements ("ICAs"). As part of the QLSP Service, Qwest combines the Network Elements that make up QLSP Service with analog/digital capable Loops, with such Loops (including services such as line splitting) being provided in accordance with the rates, terms and conditions of the CLEC's ICAs as described below. CLEC may also purchase Qwest Commercial High Speed Internet (HSI) Service (also known as Qwest Digital Subscriber Line® (DSL)), under a separate Services agreement, to be used with compatible QLSP Service.

1.1.2. QLSP Service is available in six different service arrangements, each of which is described more fully below: QLSP Residential; QLSP Business; QLSP Centrex (including Centrex 21, Centrex Plus, and in Minnesota only Centron); QLSP ISDN BRI; QLSP Public Access Lines ("PAL"); QLSP PBX Analog DID and non-DID (one way and two way) trunks.

1.1.3 Nothing in this Agreement precludes Qwest from withdrawing availability of comparable, functionally equivalent services from its retail end user customers. In the event of such withdrawal and/or discontinuation, Qwest may also withdraw availability of the equivalent QLSP Service.

1.2 Combination of QLSP Service with Loops. Except as described below, the Loop will be provided by Qwest under the applicable ICAs in effect between Qwest and CLEC at the time the order is placed. As part of the QLSP Service, Qwest will combine the Local Switching and Shared Transport Network Elements with the Loop.

1.2.1 Due to the rules and regulations promulgated by the FCC pertaining to the availability of Unbundled Network Element ("UNE") Loops under Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in its *Report and Order-Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, FCC 05-170, WC Docket No. 04-223, (effective September 16, 2005) ("OFO"), Qwest will provide to CLEC the Loop element of QLSP Services purchased in

the following nine Omaha Nebraska Wire Centers under the terms of this Agreement: Omaha Douglas; Omaha IZard Street; Omaha 90th Street; Omaha Fort Street; Omaha Fowler Street; Omaha O Street; Omaha 78th Street; Omaha 135th Street; and Omaha 156th Street.

12.2 The following QLSP Service types will be combined with 2-wire loops: QLSP Business; QLSP Centrex (including Centrex 21); Centrex Plus; Centron in Minnesota Only; QLSP ISDN BRI; QLSP PAL; QLSP PBX Analog non-DID and 1-Way DID Trunks; and QLSP Residential.

1.2.3 QLSP PBX Analog 2-Way DID Trunks will be combined with 4 wire loops.

1.3 Local Switching. Local Switching encompasses Line Side and Trunk Side facilities including the basic switching function, plus the features, functions, and all vertical features that are loaded in Qwest's end office Switch. Vertical features are software attributes on end office Switches and are listed on the Qwest wholesale website. Local Switching components include analog line Port, digital line port supporting BRI ISDN, and analog trunk ports.

1.3.1 Line Port. Line Port attributes include: telephone number; dial tone; signaling (Loop or ground start); on/off hook detection; audible and power ringing; Automatic Message Accounting (AMA Recording); and blocking options.

1.3.2. Operator Services and Directory Assistance Services are provided under the terms and conditions of CLEC's ICAs.

1.3.3. Digital Line Port Supporting BRI ISDN. Basic Rate Interface Integrated Services Digital Network (BRI ISDN) is a digital architecture that provides integrated voice and data capability (2 wire). A BRI ISDN Port is a Digital 2B+D (2 Bearer Channels for voice or data and 1 Delta Channel for signaling and D Channel Packet) Line Side Switch connection with BRI ISDN voice and data basic elements. For flexibility and customization, optional features can be added. BRI ISDN Port does not offer B Channel Packet service capabilities. The serving arrangement conforms to the internationally developed, published, and recognized standards generated by International Telegraph and Telephone Union (formerly CCITT).

1.3.4. Analog Trunk Port. DS0 analog trunk Ports can be configured as DID, DOD, and two-way.

1.3.4.1 Analog trunk Ports provide a 2-Way Analog Trunk with DID, E&M Signaling and 2-Wire or 4-Wire connections. This Trunk Side connection inherently includes hunting within the trunk group.

1.3.4.2 All trunks are designed as 4-Wire leaving the Central Office. For 2-Wire service, the trunks are converted at the End User Customer's location.

1.3.4.3. Two-way analog DID trunks are capable of initiating out going calls, and may be equipped with either rotary or touch-tone (DTMF) for this purpose. When the trunk is equipped with DID call transfer feature, both the trunk and telephone instruments must be equipped with DTMF.

**QWEST LOCAL SERVICES PLATFORM™ AGREEMENT
ATTACHMENT 1- DEFINITIONS**

"Miscellaneous Charges" mean charges that Qwest may assess in addition to recurring and nonrecurring rates set forth in the Rate Sheet, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or nonrecurring rates. Miscellaneous Charges shall be contained in or referenced in the Rate Sheet.

"Network Element" is a facility or equipment used in the provision of Telecommunications Service or an information service or both. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for Billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service or an information service or both, as is more fully described in the Agreement.

"Operational Support Systems" or "OSS" mean pre-ordering, Provisioning, maintenance, repair and billing systems.

"Order Form" means service order request forms issued by Qwest, as amended from time to time.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office Switch but does not include Switch features. The Port serves as the hardware termination for line or Trunk Side facilities connected to the Central Office Switch. Each Line Side Port is typically associated with one or more telephone numbers that serve as the Customer's network address.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider and may take the form of a third party verification format.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services from the other with attendant acknowledgments and status reports.

"Public Switched Network" includes all Switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the North American Numbering Plan in connection with the provision of switched services.

"Serving Wire Center" denotes the Wire Center from which dial tone for local exchange service would normally be provided to a particular Customer Premises.

"Shared Transport" is defined as local interoffice transmission facilities shared by more than one Carrier, including Qwest, between End Office Switches, between End Office Switches and Tandem Switches (local and

Access Tandem Switches), and between Tandem Switches within the Local Calling Area, as described more fully in the Agreement.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Traffic," as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's End User Customers and terminates at an IXC Point of Presence, or originates at an IXC Point of Presence and terminates at one of the Party's End User Customers, whether or not the traffic transits the other Party's network.

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the FCC shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating Service of the character ordinarily furnished by a single exchange, and which is covered by the exchange Service charge, or comparable Service provided through a system of Switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of basic exchange Telecommunications Services and access Services, are located.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act or elsewhere in the Agreement, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

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Qwest QLSP Agreement