ATTACHMENT A: VERIZON NORTH INC.’s STATEMENT OF DISPUTED ISSUES

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VERIZON NORTH INC.’S STATEMENT OF DISPUTED ISSUES

Verizon North Inc. (‘‘Verizon MI’’), pursuant to 47 U.S.C. § 252(b)(3), hereby submits this Statement of Disputed Issues as Attachment A to its Answer to the Petition filed by TelNet Worldwide, Inc. (‘‘TelNet’’) on October 24, 2003.\(^1\)

\(^1\) The Parties have filed several stipulations with the Commission extending the negotiation window. The most recent stipulation required Verizon MI to file its response to all but a handful of unsettled issues by May 21, 2004. Verizon MI will respond to the remaining issues on June 9, 2004.
ISSUES 2 AND 3: LENGTH OF AGREEMENT; ELIMINATION OF THE GAP BETWEEN THIS ICA AND ITS SUCCESSOR (VERIZON MI ICA, GENERAL TERMS AND CONDITIONS §§ 2.1, 2.3; TELNET ICA, GENERAL TERMS AND CONDITIONS §§ 2.1, 2.3)

Statement of the Issues Presented

A. What should the term of the Agreement be? (General Terms and Conditions § 2.1)

B. Should the Agreement limit the period for negotiating a replacement agreement to one year following either Party’s notice of termination? (General Terms and Conditions § 2.3)

Summary of Verizon MI’s Position

A. The Agreement should have a two-year term. This will allow the Parties to renegotiate after a reasonable time, instead of locking them into a binding contract for up to four years or longer, as TelNet’s proposal would.

B. Yes. Limiting the period for negotiating a replacement agreement to one year following either Party’s notice of termination will give the Parties an important incentive to promptly negotiate a new agreement that accords with current law.

Summary of TelNet’s Position

A. The Agreement should have a three-year term “to afford TelNet the economic stability that it needs.”

B. No. TelNet’s “evergreen” provision will eliminate the “possible gap” between interconnection agreements.

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3 Id. at 3.
**Verizon MI’s Position**

Verizon MI proposes an initial, two-year contract term, and the contract would continue indefinitely if neither Party provides notice of termination. If Verizon MI or TelNet gives notice of termination in anticipation of the end of the two-year term, either Party may then request negotiations. The Agreement would remain in place while negotiations continue, for up to a year beyond the initial two-year term.

Verizon MI’s proposal for an initial two-year term and a one-year extension to allow negotiation of a new contract balances the Parties’ need for stability with the equally valid need to allow their relationship to evolve along with technological, market, and regulatory changes in the telecommunications market. Given the ever-quickening pace of such changes, it is crucial for the Parties to be able to negotiate a new agreement after a reasonable interval. In addition, imposing a definite limit on the life of the contract, as Verizon MI proposes, is the only way to provide appropriate incentives for the Parties to promptly commence and conscientiously pursue good faith negotiations to obtain a successor agreement within a reasonable time frame. Moreover, the net effect of Verizon MI’s proposal — a two-year term plus a one-year extension — has the same effect as the three-year initial term TelNet seeks.

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4 Verizon MI ICA, GTC § 2.1.

5 *Id.* § 2.3.

6 *Id.*

7 Including the 90-day notice of termination period, the Parties would have up to 15 months to negotiate a new contract. *Id.*

8 Under Verizon MI’s proposal, the Agreement would remain in force for less than three years only if the Parties’ subsequently negotiated ICA goes into effect less than one year after the Agreement terminates.
TelNet’s proposed evergreen provision, however, would allow the contract to continue indefinitely,\(^9\) removing any incentive for renegotiation of a new contract to keep pace with industry changes. Indeed, TelNet’s observation that the Parties’ prior agreement expired more than a year and a half ago underscores the importance of providing appropriate incentives for the Parties to focus on replacing outmoded contracts.

TelNet’s proposed language would effectively eviscerate the termination provisions of the Agreement, allowing it to continue indefinitely even after one Party has provided notice of termination to the other. Like many of TelNet’s proposals, its evergreen provision is designed to give TelNet a unique advantage over other CLECs. The Commission should reject TelNet’s effort to lock in special benefits for an indefinite period.

In a dynamic marketplace, locking carriers into the same contract for three years — or worse, allowing it to continue indefinitely — is plainly unreasonable and longer than necessary to meet legitimate needs for planning and “economic stability.”\(^{10}\) TelNet offers no persuasive evidence that it needs a longer period. Its claim that some interconnection agreements have three-year terms provides no useful guidance as to why this Agreement should not have a two-year term.\(^{11}\) In any event, many other agreements have two-year terms.\(^{12}\)

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\(^9\) TelNet ICA, GTC §§ 2.1, 2.3.

\(^{10}\) TelNet Petition, GTC at 2.

\(^{11}\) Id.

Nor is there any risk that Verizon MI’s proposal would create a potential gap between the Agreement and its successor, as TelNet claims. The Parties know the dates by which they must act in order to avoid any gap between this Agreement and its successor, and it will be within TelNet’s control to avoid any gap.

For these reasons, the Commission should adopt Verizon MI’s proposed language for General Terms and Conditions sections 2.1 and 2.3.

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13 TelNet Petition, GTC at 3.
ISSUES 5, 18A, AND 23: DISCONTINUATION OF SERVICES THAT ARE NO LONGER REQUIRED; WITHDRAWAL OF SERVICES; DEFINITION OF “APPLICABLE LAW” (VERIZON MI ICA, GENERAL TERMS AND CONDITIONS §§ 4.6, 4.7, 50.1; GLOSSARY § 2.8; TELNET ICA, GENERAL TERMS AND CONDITIONS §§ 4.6, 4.7, 50.1; GLOSSARY § 2.8)

Statement of the Issues Presented

A. If a change in the law materially affects a Party’s obligations under the Agreement, should the Parties be required to renegotiate and amend the relevant portions of the Agreement to conform the Agreement to the changed law? (General Terms and Conditions § 4.6)

B. Should the Agreement permit Verizon MI, on 30 days’ notice, to discontinue providing TelNet a service that Verizon MI is not legally obligated to provide? (General Terms and Conditions §§ 4.7, 50.1)

C. How should the Agreement define the “Applicable Law” that governs the Parties’ obligations under the Agreement? (GLOSSARY § 2.8)

Summary of Verizon MI’s Position

A. Yes. The Parties should be required to renegotiate the relevant portions of the Agreement to comply with changes in law that materially affect the Parties’ obligations under the Agreement (if the change in law eliminates Verizon MI’s obligation to provide a service, then section 4.7, discussed below, applies). If they do not reach agreement on an amendment within 30 days, the Parties should be able to pursue other remedies under the Agreement.

B. Yes. Where Verizon MI no longer has any legal obligation to provide a service, the Agreement should permit Verizon MI to discontinue that service on 30 days’ notice.

14 TelNet’s Petition lists Verizon MI’s proposed notice requirement in section 50.1 as 60 days. The redlined Agreement that TelNet attached to its Petition, however, lists this period as 30 days. The 30-day period accurately reflects Verizon MI’s proposal, and Verizon MI assumes the reference to 60 days in TelNet’s Petition is a typographical error.
C. The Agreement should define “Applicable Law” simply as the law applicable to each Party’s performance of its obligations under the Agreement. The definition should not include confusing and unnecessary references that could give TelNet a platform to delay or refuse to implement changes in law.

**Summary of TelNet’s Position**

A. No. TelNet does not contemplate renegotiation of provisions of the Agreement to comply with any changes in law.

B. No. Verizon MI should not be allowed to discontinue providing TelNet a service that Verizon MI is not legally obligated to provide, unless the order changing the law is “precedentially binding in Michigan” and “specifically authorizes Verizon to discontinue providing such services, payments or benefits before the expiration of an existing interconnection agreement.”\(^{15}\)

C. The Agreement should define “Applicable Law” to limit the application of changes in law to those that are “precedentially binding in Michigan” and that specifically “supersede the terms and conditions of existing interconnection agreements.”\(^{16}\)

**Verizon MI’s Position**

General Terms and Conditions Issues 5 and 18A concern Verizon MI’s proposed section 4.6, regarding the Parties’ negotiations following a change in the law materially affecting the Agreement, and proposed sections 4.7 and 50.1, regarding discontinuation of services or

\(^{15}\) TelNet ICA, GTC § 4.7.

\(^{16}\) TelNet Petition, Glossary at 2.
payment where the law does not require Verizon MI to provide such services or payment.\textsuperscript{17}

Glossary Issue 23 concerns Verizon MI’s proposed definition of “Applicable Law” in section 2.8.\textsuperscript{18}

As discussed below, the Commission should reject TelNet’s proposed modifications to Verizon MI’s language, because those proposals are intended to impermissibly delay or avoid amendments conforming the Agreement to governing law.

A. **Issue 5 (GTC § 4.6):** If a change in the law materially affects a Party’s obligations under the Agreement, should the Parties be required to renegotiate and amend the relevant portions of the Agreement to conform the Agreement to the changed law?

Verizon MI’s proposed section 4.6 requires the Parties to renegotiate portions of the Agreement that are materially affected by a change in applicable law.\textsuperscript{19} This change-in-law provision further provides that the Parties may pursue their remedies under the Agreement if renegotiation efforts fail within 30 days after the change in law.\textsuperscript{20} The proposed section ensures that the Agreement will continue to accurately reflect the law, while allowing the Parties to continue to operate under the Agreement.

TelNet’s counterproposals are unworkable and intended to avoid compliance with binding law. TelNet proposes (1) that the change in law be “mandatory and final” before the

\textsuperscript{17} General Terms and Conditions Issue 18B contains section 50.2, which provides for termination of intercarrier compensation payments. This section is discussed in conjunction with Interconnection Issue 53, which concerns modification of the FCC’s *ISP Remand Order*, below.

\textsuperscript{18} Additional issues relating to Verizon MI’s discontinuance of UNEs will be addressed in Verizon MI’s June 9, 2004 briefing.

\textsuperscript{19} Verizon MI ICA, GTC § 4.6.

\textsuperscript{20} *Id.*
Parties may renegotiate the contract; (2) that the word “material” be deleted from this section; and (3) that the Agreement state that the Parties “may,” rather than “shall,” renegotiate.21

The Commission must reject TelNet’s proposal to avoid implementing changes in law until they are “mandatory and final.” A change in law goes into effect according to its terms or the applicable rules, so it is, in fact, “mandatory and final” at that time. TelNet does not clearly explain its rationale for adding this confusing and unnecessary qualifier, but Verizon MI believes it is an attempt to allow TelNet to claim that it need not comply with a change in law until all appeals are exhausted.

As numerous state commissions have found, this approach is unacceptable, because it disregards effective law. The Florida Commission, for example, rejected a proposal like TelNet’s as “inconsistent with logic, as well as any known practice within our legal system. Laws are controlling from the time of the effective date.”22 Refusing to amend a contract until all appeals of the relevant change in law would “ignore the law, including effective orders of this Commission, FCC, and the courts.”23

The North Carolina Commission, likewise, concluded that “[t]he Parties’ contract should reflect changes in law. Parties should recognize changes in law rather than trying to predict the result of further proceedings or substitute their judgment for that of a decision-maker who has

21 TelNet ICA, GTC § 4.6.


23 Id. at *31.
not granted a stay.\textsuperscript{24} The FCC and other state commissions also have agreed that changes of
law should take effect immediately, unless otherwise stated in a particular ruling.\textsuperscript{25}

\textsuperscript{24} Recommended Arbitration Order, Petition of Global NAPs North Carolina, Inc. for
Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish An
Interconnection Agreement with Verizon South, Inc., Docket No. P-1141, SUB 1, 2002 NC
P.U.C. LEXIS 1272, at *87-88 (NC P.U.C. Nov. 27, 2002) (“NC GNAPs Order”).

\textsuperscript{25} See, e.g., Report and Order and Order on Remand and Further Notice of Proposed
Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange
Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of
1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, 18
United States Telecomm. Ass’n v. FCC, 359 F.3d 554 (D.C. Cir. 2004) (directing carriers to
begin “immediately to negotiate in good faith” to modify their interconnection agreements to
reflect the FCC’s new rules and noting that “it would be unreasonable and contrary to public
policy to preserve our prior rules for months or even years pending any reconsideration or appeal
of this Order”); Final Decision, Petition of Global NAPs, Inc. for Arbitration Pursuant to Section
252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With
Verizon New Jersey, Inc., f/k/a Bell Atlantic-New Jersey, Docket No. TO02060320 at 19 (NJ
B.P.U. Mar. 7, 2003) (“NJ GNAPs Order”)(“In the absence of any stay, the parties must
recognize any change in law on its effective date.”); Opinion and Order, Petition of Global NAPs
South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and
Conditions with Verizon Pennsylvania Inc., A-310771F7000, at 65 (PA P.U.C. Apr. 21, 2003)
(“PA GNAPs Order”) (rejecting CLEC’s proposal to delay implementation of a change in law
until appeals are exhausted); Final Order on Arbitration, Petition for Arbitration of Open Issues
Resulting From Interconnection Negotiations With Verizon Florida Inc. by DIECA
Communications, Inc. d/b/a Covad Communications Co., Docket No. 020960-TP, 2003 Fla. PUC
LEXIS 670, at *10 (FL P.S.C. Oct. 13, 2003) (“FL Covad Order”) (holding a change in law
should be implemented when the law takes effect); Arbitration Award, Petition by Global NAPs,
Inc. for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon
law takes effect, it would be unreasonable to wait until all appeals are exhausted before the law
applies to the agreement, especially when the appellate processes in key areas under the federal
Act can take longer to resolve than the life of the interconnection agreements they affect.”);
Order, Re: Global NAPs, Inc., Docket No. 02-107, 2002 WL 32063803 (NH P.U.C. Nov. 22,
2002) (“as a matter of law, decisions not stayed by their own terms or by a higher authority,
remain in effect and must be observed until such time as they are stayed or reversed”); Order,
Global NAPs Illinois, Inc. Petition for Arbitration Pursuant to Section 252(b) of the
Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North,
Inc., f/k/a GTE North Inc. and Verizon South, Inc., f/k/a GTE South Inc., Case No. 02-0253, 2002
Ill. PUC LEXIS 1069, at *62 (IL Commerce Comm’n Oct. 1, 2002) (“Verizon/Global IL
Decision”) (“when a change in law is effective, ‘the parties’ agreement must recognize it.”); Final
Arbitrator’s Report, Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an
Interconnection Agreement with Pacific Bell Telephone Co. and Verizon California Inc. f/k/a
It is not true, as TelNet claims, that Verizon MI’s proposal “creates too much uncertainty and is unfair.”26 In fact, Verizon MI’s proposal does just the opposite, by providing the Parties with the certainty that their Agreement will be updated promptly to conform to the law. TelNet’s claim that it is unfair to change the Agreement during its term assumes that an interconnection contract is a voluntary, freely negotiated, commercial contract. That, of course, is not true. The Agreement is a regulatory document, intended to embody the Parties’ rights and duties under the Act, the FCC’s implementing rules, and other, consistent state regulations. Verizon MI would not necessarily agree voluntarily to all of the obligations that the Act or implementing regulations impose, and so Verizon MI should not be required to comply with these obligations after the obligations are lifted. Therefore, if governing laws and regulations change during the term of the contract, the contract should change accordingly.

TelNet itself sees no barrier to changing the Agreement when a change in law takes effect (rather than when any appeals are exhausted), so long as the change in law benefits TelNet. As Verizon MI discusses in Interconnection Issue 53 below, TelNet proposes to give immediate effect to changes in law governing intercarrier compensation for ISP-bound traffic, if the changes will increase TelNet’s compensation.

Moreover, TelNet has inexplicably stricken the “materiality” condition Verizon MI proposed in section 4.6 for renegotiation of contract terms — that is, Verizon MI’s language limiting the obligation to renegotiate contract terms to those instances in which a change in the

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26 TelNet Petition, GTC at 6.

GTE California Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996, A.01-121-045, A.01-12-026, at 71 (CA P.U.C. May 15, 2002), adopting in part and modifying in part, Commission Decision, D.02-06-076 (June 27, 2002) (noting an order of the California “Commission or the FCC or the relevant court is effective unless stayed, and must be implemented by the parties”).
law is “material.”

“Materiality” is a well-understood contractual standard. Excluding it could require the Parties to renegotiate changes with respect to every minor change even remotely affecting the Agreement. Such a sweeping provision would be unduly burdensome and inefficient.

Finally, the Commission should reject TelNet’s language, which provides that the Parties “may” rather than “shall” negotiate an amendment, because it would allow a Party to obstruct negotiations or refuse to negotiate changes in law altogether. In contrast, Verizon MI’s proposal for section 4.6 would require the Parties to renegotiate portions of the Agreement affected by material changes in applicable law. By mandating renegotiation, this provision ensures that a Party cannot avoid its obligation to comply with governing law.

For all these reasons, the Commission should adopt Verizon MI’s proposed section 4.6.

B. Issues 5 and 18A (GTC §§ 4.7 and 50.1): Should the Agreement permit Verizon MI, on 30 days’ notice, to discontinue providing TelNet a service that Verizon MI is not legally obligated to provide?

Verizon MI’s sections 4.7 and 50.1 provide that, where Verizon MI is not required by applicable law to provide a service, it may discontinue that service upon 30 days’ notice to TelNet. These provisions are reasonable and necessary for the following reasons.

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27 Verizon MI ICA, GTC § 4.6.

28 TelNet ICA, GTC § 4.6.

29 Verizon MI ICA, GTC §§ 4.7, 50.1. Section 3.8 of the TRO Amendment provides a transition mechanism for any discontinued UNEs to be replaced by an analogous access service or other replacement service that TelNet may arrange. TelNet has not objected to Verizon MI’s proposed section 3.8 of the TRO Amendment, but that section will be discussed further in response to TelNet’s Issue 152 in Verizon MI’s June 9 briefing.
As noted, the purpose of an arbitrated interconnection agreement is to reflect Verizon MI’s obligations under federal law. As Verizon MI explained above, in the absence of those legal obligations, Verizon MI would not necessarily agree on a voluntary basis to provide the services mandated by an interconnection agreement at the prices and on the terms and conditions specified in the Agreement. Nor would Verizon MI necessarily agree on a voluntary basis to pay the compensation mandated by an interconnection agreement. There accordingly is no justification for requiring Verizon MI to continue to provide such services or pay such compensation after it no longer has an obligation under applicable federal law to do so.

Thus, Verizon MI’s section 4.7 accordingly ensures that “if, as a result of . . . any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit . . . then Verizon may discontinue the provision of any such Service, payment or benefit” upon providing 30 days’ notice to TelNet. For example, if the FCC concludes that Verizon MI no longer is required to provide a particular unbundled network element (“UNE”) under section 251(c)(3) and the FCC’s implementing rules, Verizon MI may withdraw that element on 30 days’ notice. State commissions have viewed this provision very favorably, routinely accepting Verizon’s language. Likewise, section 50.1 further ensures that Verizon

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30 Verizon MI ICA, GTC § 4.7. As to UNEs in particular, section 1.1 of the TRO Amendment specifies that Verizon may decline to provide a UNE to the extent provision of the UNE is not required by section 251(c)(3) and the FCC’s implementing rules, in which case section 3.8 of the TRO Amendment provides a transition mechanism.

MI may withdraw any service provided under the Agreement upon 30 days’ notice where applicable law does not require Verizon MI to provide that service, regardless of whether a change in law has occurred (for example, a clarification of facts by the Commission, FCC, or the Parties that eliminates Verizon MI’s obligation to provide a service).32

TelNet apparently seeks to avoid these provisions and potentially to force Verizon MI to provide a service long after its legal obligation to do so has ended — indeed, not only to the termination of the Agreement but even after that date. TelNet proposes in section 4.7 to require Verizon MI to continue to provide services under the Agreement unless the change in law is “(1) precedentially binding in Michigan; and (2) specifically authorizes Verizon to discontinue providing such services, payments or benefits before the expiration of an existing interconnection agreement.”33 TelNet further proposes to delete Verizon MI’s section 50.1.34

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32 In cases where the service to be discontinued is a, UNE that Verizon MI is no longer required to provide under section 251(c)(3) and the FCC’s implementing rules, section 3.8 of the TRO Amendment provides a mechanism for the UNE to be replaced by an analogous access service or other substitute service that TelNet may arrange.

33 TelNet Petition, GTC at 5-6.

34 TelNet ICA, GTC § 50.1. Verizon MI’s proposed section 50.1 provides, “Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law, Verizon may terminate its offering and/or provision of any Service under this Agreement upon thirty (30) days prior written notice to CLEC.” Verizon MI ICA, GTC § 50.1.
Like its proposal for section 4.6, TelNet’s proposed language for section 4.7 plainly is intended to avoid as much as possible having to implement a change in applicable law. The Commission should reject these confusing and unnecessary qualifiers in this provision as well. It is clear that, when the FCC issues a new rule, the states must abide by it, regardless of whether the FCC uses TelNet’s prescribed language specifically authorizing discontinuation of services before expiration of the interconnection agreement. For example, in the *Triennial Review Order* the Commission eliminated the requirement that ILECs provide unbundled access to their feeder loop plant as stand-alone UNEs. As a result, an ILEC’s subloop unbundling obligation is now limited to its distribution plant. TelNet has no right to ignore this change of law, or any other change the FCC (or the Commission) might prescribe during the term of the Agreement.

Verizon MI’s proposed language, on the other hand, provides clarity and certainty for the Parties. It also assures that any removal of Verizon MI’s obligation to provide a service will apply to the Parties to the Agreement, just as it applies to all others that it affects. Indeed, the Parties should be required to conform to any such change without having to wait for a rare pronouncement that the law specifically overrides existing interconnection agreements.

TelNet also mischaracterizes Verizon MI’s proposal in section 50.1 as giving Verizon MI the right “unilaterally” to terminate a service under the Agreement. TelNet fails to recognize that the Commission or the FCC — not Verizon MI — will make any decisions to relieve

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35 *See, e.g., City of New York v. FCC*, 486 U.S. 57, 64 (1988) (“The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof. Beyond that, however, in proper circumstances the agency may determine that its authority is exclusive and pre-empt any state efforts to regulate in the forbidden area.”); *Fidelity Fed. Sav. & Loan Assn. v. De la Cuesta*, 458 U.S. 141, 152-54 (1982).

36 *Triennial Review Order* ¶ 254.

37 TelNet Petition, GTC at 25.
Verizon MI of an obligation to provide a UNE or other service. These legal and policy decisions would occur only after the particular agency’s careful deliberation, with the participation of all affected interests. The FCC’s recent Triennial Review Order illustrates the degree of deliberation by federal and state regulatory agencies and the level of industry participation that occurs before any changes are made in ILECs’ legal obligations under the Act. Further, if TelNet believes that Verizon MI is required by applicable law to provide a particular service, TelNet may invoke the Agreement’s dispute resolution procedures, thereby allowing the Commission to make the decisions regarding Verizon MI’s legal obligation to TelNet.

Contrary to TelNet’s suggestion, section 313 of the Michigan Telecommunication Act (“MTA”) does not obviate the need for Verizon MI’s proposed section 50.1. Section 313 controls TelNet’s own discontinuation of service to its retail customers, and so it is irrelevant to sections 4.7 and 50.1, which address Verizon MI’s withdrawal of service to TelNet. Moreover, Verizon MI’s termination of a service to TelNet does not require TelNet to terminate service to its own customers. Alternative arrangements would be available; indeed, where the FCC removes the unbundling requirement for a particular network element, that means by definition that TelNet will be able to replace that element, either by self-provisioning, through another vendor, or through resale of a Verizon MI service. The 30-day notice requirements in sections 4.7 and 50.1 give TelNet adequate time to transition to new arrangements and to prevent service disruptions to its customers.

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38 TelNet Petition, GTC at 24.
39 Id. at 5-6, 25.
40 The entire MTA will, in any event, be repealed effective December 31, 2005.
41 Or, in the case of a UNE, the transition mechanism for discontinued UNEs under section 3.8 of the TRO Amendment.
TelNet’s proposal to rewrite section 4.7 and delete section 50.1 is nothing more than an attempt to force Verizon MI to continue to provide, for as long as possible, services that regulators have determined that TelNet does not need and that Verizon MI has no legal obligation to provide. The Commission should thus adopt Verizon MI’s proposed sections 4.7 and 50.1.

C. Issue 23 (Glossary § 2.8): How should the Agreement define the “Applicable Law” that governs the Parties’ obligations under the Agreement?

Verizon MI’s proposal defines “Applicable Law” simply as “all effective laws, government regulations and government orders, applicable to each Party’s performance of its obligations under this Agreement.”

TelNet does not object to the existing language in section 2.8, but it proposes to follow it with an extensive and confusing paragraph intended to undermine the certainty of the agreed-upon paragraph. Specifically, TelNet proposes, as it did in General Terms and Conditions section 4.7 above, that a change in law be deemed “applicable” only where it (1) is precedentially binding in Michigan and (2) mandatory, which TelNet describes as meaning that a court or tribunal has indicated the change should “supersede the terms and conditions of existing interconnection agreements.”

TelNet’s proposal does not stop there; it seeks a one-sided approach to implementation of changes in the law. TelNet proposes that changes in law that are favorable to it will take effect in the following manner:

“Notwithstanding the above, nothing in this definition prevents TelNet from exercising any legal rights it may have . . . to adopt more favorable terms and conditions that Verizon offers to other

42 Verizon ICA, Glossary § 2.8. As to UNEs in particular, section 1.1 and other sections of the TRO Amendment specify that the applicable law is section 251(c)(3) and the FCC’s implementing rules.

43 TelNet Petition, Glossary at 2.
CLECs. TelNet also proposes that any change in law favoring it should be effective immediately. These efforts to pick and choose the changes that will or will not apply and when are unprincipled and unlawful. For the reasons discussed in detail in GTC sections 4.6 and 4.7 above, the Commission should reject them.

Verizon MI’s definition is not “vague and ambiguous” and will not encourage litigation, as TelNet suggests. To the contrary, Verizon MI’s clear and precise definition, including the specificity of the TRO Amendment as to UNEs, brings certainty to the Agreement and confirms that the Parties’ relationship under the contract will continue to reflect the governing law.

TelNet’s observation that sometimes FCC rulings may be suspended and later reinstated or remanded does not give the Parties license to ignore agency rulings when they are binding and effective. As discussed with respect to section 4.7 above, a change in law goes into effect according to its terms or the applicable rules. Companies cannot avoid compliance with such a change until all appeals are exhausted, a process that could take years. Moreover, to the extent TelNet suggests that Verizon MI’s language would require the Parties to implement an FCC ruling that has been “suspended” — that is, stayed — that is not true. An order that has been stayed is not “effective,” so it would not be implemented.

44 Id.
45 Id.
46 Id.
47 Id.
48 Id.
For these reasons, the Commission should adopt Verizon MI’s proposed language in General Terms and Conditions sections 4.6, 4.7, and 50.1, and Glossary section 2.8, and reject TelNet’s proposals in these sections.
ISSUE 8: LATE STATEMENTS (VERIZON MI ICA, GENERAL TERMS AND CONDITIONS § 9.5; TELNET ICA, GENERAL TERMS AND CONDITIONS § 9.5)

Statement of the Issue Presented

Should a Party be permitted to submit billing statements to the other Party at any time to receive money rightfully due to it, except as may be limited by applicable law?

Summary of Verizon MI’s Position

Yes. A Party should be able to collect money it is due, within the timeframes established by applicable law.

Summary of TelNet’s Position

No. A Party should lose the right to collect the money it is owed if it does not submit a billing statement to the other Party within 12 months after the charges are incurred.

Verizon MI’s Position

Verizon MI’s proposed section 9.5 of the General Terms and Conditions allows each Party to present bills to the other at any time, except as may be limited by applicable law.\(^ {49} \) This proposal recognizes the Parties’ legal right to be paid for services rendered.

TelNet’s proposed, forced waiver of a Party’s right to payment for charges submitted later than 12 months after they were incurred would disregard applicable law. All statutes of limitations potentially applicable to recovery of amounts due provide periods much longer than that TelNet has proposed. For example, Michigan provides for a six-year statute of limitations,\(^ {50} \) and the Act prescribes a two-year limitations period.\(^ {51} \)

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\(^ {49} \) Verizon MI ICA, GTC § 9.5.

\(^ {50} \) M ICH. COMP. LAWS ANN. § 600.5807.

\(^ {51} \) 47 U.S.C. § 415.
In the absence of a very compelling rationale, the Commission should not approve contract provisions that override state or federal statutes, including statutes of limitations, that would otherwise determine the permissible billing window. TelNet has offered no rationale at all for this departure from applicable law. It has not demonstrated any harm that would flow from applying the law, rather than the contractual limitation it suggests, nor has it provided any real-world examples to support adoption of its arbitrary billing timeframe.

TelNet’s sole argument in support of its proposal — that it advances “the interest of achieving certainty” by imposing a cut-off for billing\(^52\) — is meritless. Verizon MI’s proposal provides the same degree of certainty by referring to applicable law (state or federal, as the case may be) to set the permissible period. In any event, the billing provisions at issue should be directed not only at achieving “certainty,” but to the important objective of recognizing the Parties’ rights to be compensated for the services they provide under the Agreement. That is the public interest protected by the applicable statute(s) of limitations in these circumstances, and there is no good reason to disregard the balance struck by state and federal lawmakers, as TelNet urges. Other state commissions have upheld Verizon’s approach on this issue.\(^53\)

\(^{52}\) TelNet Petition, GTC at 10.

\(^{53}\) For example, the New York Public Service Commission rejected a CLEC’s proposed one-year limitation on previously unbilled charges, approving Verizon NY’s language instead. Arbitration Order, Petition of Covad Communications Co., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York Inc., Case No. 02-C-1175, at 7-9 (N.Y. P.S.C. Jun. 26, 2003) (“Verizon is right that in the absence of special provisions, the six-year statute of limitations . . . governs. There is no generic provision departing from the six-year statute in the context of interconnection agreements, and [the CLEC’s] one instance of a serious difficulty provides no basis for requiring a specific departure from the six-year statute in its case. Verizon’s proposed wording should be used.”); see also Opinion, Joint Petition of Verizon North Inc., Verizon South Inc. and CAT Communications Int’l., Inc. for Approval Pursuant to 47 U.S.C. §§ 252 (a)(1) and 252(e), of an Interconnection Agreement, 03-0178, 2003 III. PUC LEXIS 450, at *6-7 (IL Commerce Comm’n May 21, 2003) (approving ICA containing Verizon’s proposed General Terms and Conditions sections 9.3 and 9.5); Opinion, Joint Petition of Verizon North Inc., Verizon South Inc. and Cat
For these reasons, the Commission should adopt Verizon MI’s proposed language in section 9.5 of the Agreement’s General Terms and Conditions and reject TelNet’s proposed language.

ISSUE 11: INDEMNIFICATION REGARDING QUALITY OF SERVICE RULES (Telnet ICA, General Terms and Conditions § 20.5)

Statement of the Issue Presented

If TelNet violates the Commission’s Quality of Service Rules and claims that Verizon MI was either partly or wholly responsible for TelNet’s violation, should Verizon MI be required to indemnify and reimburse TelNet for any resulting fines or “other costs?”

Summary of Verizon MI’s Position

No. There is no legal basis for TelNet’s extraordinary proposal that Verizon MI should indemnify and reimburse TelNet for fines or unspecified “other costs” when TelNet claims that it violated the Commission’s service quality rules. TelNet’s vague and ambiguous proposal is, moreover, unworkable from a practical standpoint and inconsistent with other provisions in the Agreement to which TelNet has agreed.

Summary of TelNet’s Position

Yes. If TelNet violates the Commission’s Quality of Service Rules and alleges that “Verizon caused the problem in whole or part,” Verizon MI should be required to indemnify and reimburse TelNet for TelNet’s “fines or other costs.”

Verizon MI’s Position

TelNet’s proposed section 20.5 would impose on Verizon MI other sanctions over and above those already provided under the law and the Agreement, if TelNet is found to have violated the Commission’s Quality of Service Rules and alleges that Verizon MI caused that

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54 TelNet ICA, GTC § 20.5.

55 Id.
violation “in whole or in part.” Specifically, TelNet would require Verizon MI to also indemnify and reimburse TelNet for any resulting “fines or other costs.”

The Commission should reject TelNet’s proposal to impermissibly and inexplicably expand the scope of the Commission’s Quality of Service Rules. The rules are expressly limited to carriers’ relationships with their retail customers; they plainly do not apply to contractual arrangements between carriers. TelNet may not, through its contracts or otherwise, force the Commission to change its policy and expand the breadth of its rules.

TelNet’s proposal also conflicts with, and impermissibly would expand the scope of, Verizon MI’s obligations under both the indemnification and limitation of liability provisions of the Agreement, to which the Parties already have agreed. First, the Parties have already agreed that under section 20.1 each Party is liable only for “grossly negligent or intentionally wrongful acts” resulting in death, bodily injury, or property damage. TelNet’s proposal that Verizon MI

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56 Id.
57 Id.
58 See generally, Opinion and Order, On the Commission’s Own Motion to Promulgate Rules Governing the Quality of Telecommunications Services, Case No. U-13013 (MI P.S.C. Mar. 31, 2003), Exhibit A, Department of Consumer and Industry Services, Michigan Public Service Commission, Quality of Service Rules (Aug. 1, 2003). The Commission, in fact, reconsidered and deleted its previous “recourse” rules, which had required underlying providers to reimburse a customer’s provider for “any credits granted or charges waived as a result of the underlying provider’s failure to provide service in conformity with the rules.” Opinion and Order, On the Commission's Own Motion to Promulgate Rules Governing the Quality of Telecommunications Services, Case No. U-13013, at 7-8 (MI P.S.C. Jan. 21, 2003).
indemnify TelNet where Verizon MI simply “cause[s]” TelNet to violate the Commission’s Quality of Service rules directly conflicts with this agreed-upon provision. For example, under TelNet’s language, Verizon MI could be required to indemnify TelNet where Verizon MI merely acted negligently in its provision of service to TelNet — circumstances that would not warrant indemnification under section 20.1.

Second, the Parties have agreed to limit their liability for service failures under the Agreement to the “pro rata applicable monthly charge” for the services subject to the service failure. TelNet’s proposal, however, would conflict with this limitation because it would force Verizon MI to indemnify TelNet for a service failure that “cause[s]” TelNet to violate the Commission’s Quality of Service Rules, and would require Verizon MI to pay not only a pro rata credit of the monthly charge, but other undefined “costs.”


60 TelNet ICA, GTC § 20.5.
61 Verizon MI ICA, GTC § 20.1; TelNet ICA, GTC § 20.1.
62 Verizon MI ICA, GTC § 25.2; TelNet ICA, GTC § 25.2.
63 TelNet ICA, GTC § 20.5.
Indeed, TelNet’s proposed sanctions conflict with the well established rule that a telecommunications carrier may limit its liability for lapses in service by excluding consequential or other damages. For example, similar to the Parties’ agreed-upon liability provision described above, both Verizon MI’s and TelNet’s retail tariffs limit the carriers’ liability to providing a customer pro rata credits on his monthly bill for time out of service.64 Similarly, Verizon’s FCC tariff for facilities for interstate access prescribes the same kind of pro rata credit for “damages associated with the installation, provision, termination, maintenance, repair or restoration of” facilities for interstate access; that tariff expressly excludes any liability for special and consequential damages.65 Finally, even the Commission’s Quality of Service Rules provide only for a credit for retail customers experiencing service losses and do not hold Verizon MI responsible for consequential damages if Verizon MI falls short of the requirements of those rules.66 TelNet has failed to offer any legal or policy basis for expanding these rules to provide TelNet with special treatment.

In any event, if TelNet contends that Verizon MI has fallen short of meeting the standards governing the Parties’ interconnection contract, both the Agreement and applicable law provide remedies. For example, TelNet may avail itself of the Agreement’s dispute resolution provisions, to which the Parties already have agreed.67 And if TelNet is claiming that it cannot meet a particular Quality of Service Rule because of Verizon MI’s actions, it can petition the

66 Mich. Admin. Code § 484.455(2) (Providing for a credit of 1/30th of the customer’s monthly charge for each day or portion of each day for the second and third days of an “out-of-service incident,” and a credit of $10.00 for each day thereafter until service is restored).
67 Verizon MI ICA, GTC § 14; TelNet ICA, GTC § 14.
Commission for a “permanent or temporary waiver or exception” from the Rules where “circumstances beyond [its] control . . . render compliance impossible.”

Putting aside the fact that each Party has already agreed to limit its liability to the other, TelNet’s vague and ambiguous proposal is, moreover, a recipe for continuing controversy and litigation. Undoubtedly, the Parties will disagree over which Party is to blame for an alleged violation of a service quality rule and therefore will require the Commission to conduct endless proceedings to determine who is at fault. In addition, TelNet seeks to recover not just fines the Commission may impose on it but any “other costs” — an undefined term that could include damages or anything else TelNet claimed, whether or not it even related to the alleged harm TelNet may suffer.

Accordingly, the Commission should reject TelNet’s proposed General Terms and Conditions section 20.5.

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68 MICH. ADMIN. CODE § 484.471(1).

69 The Commission, of course, lacks the authority under Michigan law to enforce the automatic payment provisions TelNet proposes, absent a complaint, notice, and hearings. MICH. COMP. LAWS ANN. § 484.2205 (2004).

70 See TelNet ICA, GTC § 20.5.

Statement of the Issue Presented

A. Should the Agreement require both Verizon MI and TelNet to maintain the same levels of general liability and workers’ compensation insurance coverage even though their circumstances differ significantly?

B. Should TelNet be required to comply with Verizon’s standard insurance requirements?

Summary of Verizon MI’s Position

A. No. The Agreement’s general liability and workers’ compensation insurance requirements should not apply to Verizon MI because Verizon MI already maintains a sound insurance program and bears a disproportionate amount of the risk of the Parties’ interconnection arrangements.

B. Yes. TelNet should be required to meet Verizon’s standard insurance requirements.

Summary of TelNet’s Position

A. Yes. The Agreement should require Verizon MI and TelNet to maintain the same levels of general liability and workers’ compensation insurance coverage, even though their circumstances differ significantly.

B. No. TelNet should not be required to meet Verizon’s standard insurance requirements.
Verizon MI’s Position

A. **Issue 12 (GTC § 21.1):** Should the Agreement require both Verizon MI and TelNet to maintain the same levels of general liability and workers’ compensation insurance coverage even though their circumstances differ significantly?

Verizon MI’s proposed section 21.1 requires TelNet but not Verizon MI to obtain and keep in force particular insurance coverages, discussed below. Section 21.1 does not apply to Verizon because it already has an extensive, financially sound insurance program for its liability and property exposures, which far exceeds those that Verizon MI proposes apply to TelNet.\footnote{In its Petition, TelNet incorrectly posits that Verizon MI self-insures. TelNet Petition, GTC at 17. This is not the case.} Verizon is a large and financially stable company with substantial assets and resources upon which it can draw in the event of a loss. In contrast, TelNet is a relatively small company with relatively few assets and resources.

TelNet’s proposal to make the Agreement’s general liability and workers’ compensation provisions apply to Verizon MI as well as TelNet misses the point of these coverage requirements in the Agreement.\footnote{TelNet ICA, GTC § 21.1; TelNet Petition, GTC at 15-17.} The risk to TelNet from Verizon MI’s activities arising out of the Agreement therefore is not commensurate with the risk Verizon MI faces from TelNet’s activities under the Agreement. Indeed, in the *Virginia Arbitration Order*, the Bureau acknowledged this asymmetry in rejecting a CLEC’s proposal that Verizon’s insurance obligations be mutual: “While there may be some risk that Verizon’s actions could cause harm
to [the CLEC’s] network, [the CLEC] simply has not established that this risk warrants extending the same insurance provisions to Verizon.”73

TelNet’s proposal to impose on Verizon specified minimum levels of insurance therefore should be rejected.

B. **Issue 12 (GTC §§ 21.1-21.7):** Should TelNet be required to comply with Verizon’s standard insurance requirements?

Because Verizon MI is required by federal law to enter into an interconnection agreement with TelNet, and because Verizon MI and TelNet operate in an industry in which either Party could be held jointly or severally liable for the negligent or wrongful acts of the other, Verizon MI has included insurance and related provisions in the Agreement that protect Verizon MI’s network, equipment, personnel, and other assets in the event TelNet’s financial resources are insufficient to cover a liability or loss. These provisions are reasonable because Verizon MI faces considerable risks of loss arising out of its dealings with TelNet. The interconnection of TelNet’s network with Verizon MI’s network and TelNet’s collocation at Verizon MI’s facilities,

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The Virginia Arbitration Order is not an FCC order and does not bind this Commission. The FCC has described the Virginia Arbitration Order as an “interlocutory staff ruling” and noted that the FCC “has not yet ruled on . . . whether the Virginia Arbitration Order reflects agency policy.” Brief of Federal Communications Commission and United States of America, at 30-32, *Mountain Communications, Inc. v. FCC*, No. 02-1255 (D.C. Cir. filed June 19, 2003). Furthermore, the Order is now pending reconsideration by both the Bureau and the FCC itself, making it very much a work in progress.
for example, increase Verizon MI’s risks in various ways, including the risks of injury to
employees, damage to or loss of its facilities, fire or theft, security breaches, and interference
with or failure of the network. As the carrier with greater assets and resources, Verizon MI
faces a risk that it will be forced to pay for TelNet’s wrongful acts arising out of the Agreement.

Verizon’s insurance and related provisions are commercially reasonable and consistent
with industry standards. They are also consistent with the coverages Verizon MI itself maintains
and requires of other carriers in its tariffs. Specifically, to cover the risks described above, in
section 21.1 Verizon MI proposes that TelNet be required to maintain at least $2 million in
commercial general liability, as well as excess liability (umbrella) insurance of at least $10
million, for a total of $12 million. These coverage limits mirror those in Verizon MI’s
currently effective collocation tariff, which requires commercial general liability insurance with
a policy aggregate per location of $2 million, along with $10 million in excess liability
coverage. These limits are reasonable; indeed, it is not unusual for individuals to carry
personal liability coverage of $1 million or greater.

74 See, e.g., NY GNAPs Order at *27 (noting Verizon MI’s insurance requirements therefore
are “reasonable in light of the potential for network damage or tort liability when network
interconnection or physical collocation takes place”).

75 See, e.g., Verizon North Inc., Tariff M.P.S.C. No. 20R §2.7.

76 The umbrella coverage requirement protects Verizon MI further in the event that TelNet
causes a loss that exceeds its primary coverage limits. For example, TelNet’s equipment could
malfunction and cause a fire in a Verizon MI central office, resulting in millions of dollars in
damage. TelNet’s commercial general liability coverage would be insufficient in such a case,
and thus an umbrella policy would be necessary to fully cover or at least help offset Verizon
MI’s loss.

77 Verizon North Inc., Tariff M.P.S.C. No. 20R §2.7.1; see Opinion, Petition of Global
NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to
Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon
Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts,

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Verizon MI also proposes in section 21.1.2 that TelNet maintain $2 million in vehicle insurance to protect Verizon MI and the public where TelNet’s employees or subcontractors operate vehicles or equipment in or around Verizon MI facilities. Section 21.1.4 requires TelNet to carry $2 million in employer’s liability insurance to protect Verizon MI against the increasing number of claims in this area.\(^78\) A claim of negligence, for example, could arise out of an allegation of an unsafe work environment (\textit{i.e.}, not issuing hard hats or safety glasses); indeed, claims activity and lawsuits are increasing in this area. Verizon MI’s remaining insurance requirements are set forth in sections 21.1.5-21.7.\(^79\)

In short, Verizon MI’s insurance requirements benefit Verizon MI and the public because they help ensure that carriers that do business in Michigan have adequate insurance to cover injury or damage arising out of their activities. For example, in the event a TelNet employee causes an auto accident, injuring or killing another driver, Verizon MI’s requirements will ensure that TelNet will have the proper insurance to cover any losses. In addition, Verizon MI’s proposed insurance requirements benefit TelNet itself, ensuring that TelNet is adequately covered in the event of a loss.

The FCC and state commissions consistently have approved Verizon’s insurance requirements.\(^80\) As the FCC found, “LECs are justified in requiring interconnectors to carry a general liability and workers’ compensation insurance requirements as “reasonable” because they were identical to those in the tariff).\(^78\)

TelNet does not dispute that the Agreement should require workers’ compensation insurance as required by applicable law. TelNet ICA, GTC § 21.1.

Verizon MI ICA, GTC §§ 21.1.5-21.7.

\(^80\) \textit{See, e.g.}, \textit{NJ GNAPs Order} at 16 (recommending that “Section 21 of the General Terms and Conditions proposed by Verizon be adopted in its entirety”); Final Order on Arbitration, \textit{Petition by Global NAPS, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions With Verizon Florida, Inc.}, Docket No. 011666-TP, 2003 WL
reasonable amount of liability insurance coverage.” Accordingly, the FCC specifically approved ILEC insurance requirements of up to $5 million for general liability coverage, up to $10 million for excess liability coverage, up to $2 million for employer’s liability coverage, and up to $5 million in automobile liability insurance, as well as statutory levels of coverage for workers’ compensation insurance. Verizon MI’s proposal would require insurance at or below these FCC-approved levels for each type of coverage. And both the FCC and state commissions have also found ILEC automobile insurance requirements to be reasonable. As the New Jersey Board of Public Utilities pointed out in adopting Verizon’s proposed insurance requirements, “all

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81  Second Report and Order ¶ 345.

82  Id. ¶¶ 344-347.

... boards [except one] have found the insurance requirements proposed by Verizon to be reasonable and to be normal within industry standards."

The Commission therefore should reject TelNet’s proposals to reduce, and in some cases, eliminate, Verizon MI’s proposed insurance requirements. TelNet offers no reason for many of its proposed deletions. In particular, TelNet’s proposal to replace all of Verizon MI’s specific insurance requirements with a requirement of only $5 million for general liability insurance is unreasonable. For the reasons detailed above, all of Verizon MI’s proposed coverage levels are necessary to protect Verizon MI from the risks TelNet’s activities under the Agreement pose to Verizon MI’s network, equipment, facilities, and personnel. For example, damage to Verizon MI’s network or assets, or injury to a Verizon MI employee resulting from any single occurrence, or tort judgments in Michigan, including costs of legal fees, could easily exceed $5 million.

Likewise, the Commission should reject TelNet’s proposal to replace Verizon MI’s language with provisions from other agreements. The Coast-Ameritech, Level 3, and BRE agreements are no precedent here because the insurance issues in those agreements were

84  *NJ GNAPs Order* at 16 (recommending adoption of Verizon’s insurance requirements section “in its entirety”).

85  TelNet ICA, GTC §§ 21.1-21.7. For example, TelNet proposes, without more, to eliminate commercial motor vehicle liability and all risk property insurance requirements. TelNet ICA, GTC §§ 21.1.2, 21.1.5. TelNet also offers no reason for deleting Verizon MI’s proposed section 21.2, which would permit Verizon MI to reject TelNet’s retentions and provide that TelNet is responsible for all retentions; TelNet states only that it “objects to Verizon’s proposed language that would give Verizon the discretion to reject TelNet’s deductibles and other retentions.” TelNet Petition, GTC at 17.

86  TelNet ICA, GTC § 21.1.

87  TelNet Petition, GTC at 16-17.
negotiated, not submitted to arbitration.\textsuperscript{88} Moreover, there is no evidence that the Parties here are similarly situated or face similar risks from their arrangements as the Parties in the other agreements, and TelNet does not argue otherwise.\textsuperscript{89}

TelNet’s claim that it would be “difficult” to procure Verizon MI’s proposed insurance coverage only proves Verizon MI’s point: if TelNet has trouble obtaining insurance from third Parties, then it poses a risk to Verizon MI, making Verizon MI’s insurance requirements even more important.\textsuperscript{90}

TelNet’s claim that it may not know the names of Verizon MI’s affiliates provides no justification for refusing to name them as additional insureds.\textsuperscript{91} Verizon MI affiliates should be entitled to coverage under the Agreement, and Verizon MI’s provision would impose no significant burden on TelNet.\textsuperscript{92} TelNet need only state that it names Verizon MI’s affiliates as additional insureds; it need not list the affiliates or otherwise identify them individually.

\textsuperscript{88} \textit{Id.; see Notice of Decision of Arbitration Panel, Petition of Coast to Coast Telecommunications, Inc. for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan, Case No. U-12382 (MI P.S.C. Jun. 29, 2000); Decision of Arbitration Panel, Petition of BRE Communications, L.L.C., for Arbitration of Interconnection Terms, Conditions, and Prices From GTE North Incorporated and Contel of the South, Inc., d/b/a GTE Systems of Michigan, Case No. U-11551 (MI P.S.C. Dec. 18, 1997). TelNet itself notes that its agreement with Level 3 “was negotiated at arms length in the free market.” TelNet Petition, GTC at 16-17.}

\textsuperscript{89} TelNet Petition, GTC at 16-17.

\textsuperscript{90} \textit{Id.} at 16-17. Notably, Verizon MI is not asking TelNet to purchase an entirely new insurance policy. Rather, Verizon MI simply would require TelNet to include Verizon MI as an additional insured on policies TelNet already \textit{should} possess, to carry such insurance with reliable insurers, and to maintain sufficient limits to protect Verizon MI’s equipment, network, facilities, and personnel.

\textsuperscript{91} \textit{Id.} at 17.

\textsuperscript{92} \textit{Id.}
Nor is there any merit to TelNet’s contention that Verizon MI’s interests are adequately protected by having TelNet state that it will be responsible for its contractors. TelNet’s contractors’ obligation is to TelNet and not Verizon MI; Verizon MI does not hire, manage, or control TelNet’s contractors. A TelNet contractor may cause damage to Verizon MI’s equipment, network, or facilities, or it may harm Verizon MI’s personnel. If the contractor lacks adequate coverage for a loss, a claimant will turn to Verizon MI and TelNet, and that may mean turning to Verizon MI as the deep pocket, especially if TelNet is bankrupt or its insurance policy is otherwise unavailable to its contractors. TelNet’s insurance policy accordingly must cover the potential risks of its contractors’ activities.

Finally, Verizon MI’s proposed requirements are necessary to enforce the indemnification obligation in section 20.1 of the Agreement, where TelNet already has agreed to indemnify Verizon MI for any death, bodily injury, or property damage TelNet causes as a result of its gross negligence or intentionally wrongful acts. Verison MI’s proposed insurance requirements in section 21 therefore provide the financial guarantee to support TelNet’s commitments and promises.

For these reasons, the Commission should reject TelNet’s proposals and should adopt Verizon MI’s proposed General Terms and Conditions sections 21.1-21.7.

93 Verizon MI ICA, GTC § 20.1; TelNet ICA, GTC § 20.1.
94 Id.
ISSUES 18(B) AND 53: CHANGE OF LAW PROVISION FOR INTERCARRIER COMPENSATION (VERIZON MI ICA, GENERAL TERMS AND CONDITIONS § 50.2; TELNET ICA, GENERAL TERMS AND CONDITIONS § 50.2, INTERCONNECTION ATTACHMENT § 7.1.7)

Statement of the Issue Presented

Should the Agreement permit Verizon MI, on 30 days’ notice, to terminate payment to TelNet of compensation related to traffic, including reciprocal compensation and compensation for termination of ISP-bound traffic, where Verizon MI no longer has any legal obligation to pay such compensation?

Summary of Verizon MI’s Position

Yes. The Agreement should reflect the fact that Verizon MI has the right to discontinue paying TelNet compensation that is no longer required under the law. In appropriate circumstances, Verizon MI proposes that the Parties negotiate substitute compensation arrangements and, if they cannot agree on such arrangements, invoke the Agreement’s dispute resolution provisions.

Summary of TelNet’s Position

No. “There is no reason a CLEC should agree to permit Verizon, on 30 days’ notice, to unilaterally terminate a service” if the law changes. However, any change in the law that entitles TelNet to receive increased intercarrier compensation should be effective immediately.

Verizon MI’s Position

Each Party has proposed a specific change of law provision relating to intercarrier compensation. Section 50.2 of Verizon MI’s proposal allows Verizon MI, upon 30 days notice, to cease making intercarrier compensation payments that no longer are legally required. This

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95 TelNet Petition, GTC at 25.
96 Verizon MI ICA, GTC § 50.2.
provision also requires the Parties to negotiate substitute compensation where required by law, and allows either Party to invoke the Agreement’s dispute resolution provisions if these negotiations are unsuccessful. Verizon MI’s proposal ensures that Verizon MI’s intercarrier compensation obligations promptly track changes in the applicable law.

Verizon MI’s specific change of law provision with respect to intercarrier compensation is critically important, given the industry’s history of controversy concerning intercarrier compensation, and the potentially substantial compensation flows involved. Verizon MI’s experience in the wake of the FCC’s *ISP Remand Order* 97 (where the FCC confirmed that reciprocal compensation does not apply to Internet-bound traffic) demonstrates the need for a specific change of law provision concerning intercarrier compensation. In that context, many CLECs argued that general change of law provisions in their agreements with Verizon MI did not permit Verizon MI to cease reciprocal compensation payments for Internet-bound traffic and that negotiation of specific contract provisions would be necessary to implement the *ISP Remand Order*. CLECs, of course, had no incentive to promptly pursue negotiation of contract amendments to end compensation flows they were receiving from Verizon MI. That led to protracted disputes and litigation. Verizon MI’s section 50.2 is necessary to ensure that changes in intercarrier compensation law are expeditiously implemented, rather than being the subject of long and expensive battles before state commissions. Safeguarding against this possibility is

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particularly important at this time given the FCC’s ongoing rulemaking to comprehensively examine (and likely make changes to) intercarrier compensation.98

Verizon MI’s proposal will allow the Parties to promptly and efficiently address changes in intercarrier compensation law by requiring adjustment of only the affected compensation provisions, rather than negotiating a completely new provision. Verizon MI’s language also makes clear that Verizon MI does not agree to continue to be contractually bound to an intercarrier compensation scheme after that scheme has been superseded, and definitively eliminates opportunities to extend that scheme beyond what the law requires.

TelNet’s petition proposes to delete section 50.2 of Verizon MI’s proposal in its entirety. Although it does not say so, TelNet presumably relies on the same theory it offered in opposing Verizon MI’s proposed section 50.1, which would allow Verizon MI to terminate service on 30 days’ notice where it no longer has a legal obligation to provide that service. There, TelNet stated only that “[t]here is no reason a CLEC should agree to permit Verizon, on 30 days notice, to unilaterally terminate a service.”99 But as discussed with respect to Issue 18(a), that argument has no merit. Verizon MI’s interconnection contracts with CLECs are not voluntary commercial arrangements. Rather, they reflect Verizon’s specific legal obligations to provide interconnection and UNEs under the Act and the FCC’s implementing rules. Where Verizon MI no longer has any legal obligation to provide a service or compensation, there is no reason to maintain that obligation in the interconnection contract. Indeed, to require Verizon MI to continue to provide services or compensation in the absence of any legal obligation to do so would nullify the requirement that the contract comply with federal law.

99 TelNet Petition, GTC at 25 (emphasis added).
By proposing to delete section 50.2 in its entirety, TelNet seeks merely to delay the effectiveness of changes in applicable law that may benefit Verizon MI. For example, if Verizon MI is no longer legally obligated to pay intercarrier compensation to TelNet as a result of a change in law, TelNet’s proposal would give TelNet the opportunity to prolong its receipt of such compensation.

TelNet itself agrees on the need for a change of law provision governing intercarrier compensation, and it proposes such language. But TelNet’s proposal is one-sided. TelNet proposes that any changes in the law by which “the total compensation due for ISP-bound traffic is increased” should take effect “on the date such modifying order . . . becomes effective as a matter of law.” According to TelNet, if “total compensation [for ISP-bound traffic] is increased, TelNet does not believe it should be required to abide by the terms of the [ISP Remand Order] for the remaining term of the Agreement, if the FCC’s [ISP Remand Order] is modified prior to the expiration of the instant agreement.” While TelNet is correct that the Parties should not be bound by legal rules that have been superseded or modified, this is true for all changes in applicable law. As explained in connection with Issue 5, new FCC rules are immediately effective and binding, unless otherwise stated. There is no legal basis for TelNet’s proposal to promptly implement only changes in the law that work to its benefit.

Further, TelNet’s attempt to preserve as much reciprocal compensation as possible for as long as possible is directly contrary to the FCC’s goal of reducing intercarrier compensation for such traffic. For example, the FCC proposed the transitional compensation regime in the ISP

100 TelNet ICA, Interconnection Attach. § 7.1.7.
101 Id. (emphasis added).
102 TelNet Petition, Interconnection Attach. at 24.
Remand Order as a way-station to eliminating or at least reducing intercarrier compensation generally, and has proposed moving from a calling-party’s-network-pays regime to a bill-and-keep regime, under which each carrier would recover its costs only from its own customers and not from other carriers.103

There is no law or policy supporting TelNet’s blatantly self-serving proposal to quickly implement changes in law in its favor, but to indefinitely delay those that are not. The Commission should thus reject TelNet’s proposed section 7.1.7 to the Interconnection Attachment and adopt Verizon MI’s proposed section 50.2 to the General Terms and Conditions Attachment. This action will ensure that all changes to the law governing intercarrier compensation (for ISP-bound traffic as well as all other forms of traffic) are implemented quickly and fairly.

103 See ISP Remand Order ¶ 2 (initiating “a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as ‘bill and keep’ . . . [and] modifications to existing payment regimes, in which the calling party’s network pays the terminating network, that might limit the potential for market distortion”); Intercarrier Compensation NPRM.
ISSUE 19: PICK AND CHOOSE (TELNET ICA, GENERAL TERMS AND CONDITIONS § TBD, PAGE 26)

Statement of the Issue Presented

Should the Agreement contain a specific pick-and-choose provision?

Summary of Verizon MI’s Position

No. TelNet’s specific pick-and-choose provision is redundant because another section of the Agreement already gives TelNet the right to adopt services and arrangements that Verizon MI has with other carriers to the extent required by section 252(i) of the Act.

Summary of TelNet’s Position

Yes. Verizon MI’s Agreement with TelNet should include exactly the same pick-and-choose provision as the Ameritech/Coast Agreement does, to permit TelNet to obtain services and UNEs available to its competitors.104

Verizon MI’s Position

The Commission should reject TelNet’s proposal. Verizon MI agrees that it must make available to TelNet services and arrangements Verizon MI has made available to other CLECs under their interconnection contracts, in accordance with section 252(i) and the FCC’s implementing rules. But the Parties have already agreed to language which requires them to comply with section 252(i) of the Act.105 Section 252(i), in turn, requires local exchange carriers to “make available any interconnection, service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the

104 TelNet Petition, GTC at 26.
105 Verizon MI ICA, GTC § 46.1; TelNet ICA, GTC § 46.1.
agreement.” Accordingly, there is no need for TelNet’s redundant proposal, which essentially repeats the requirements of section 252(i) and adds a portion of the FCC’s pick-and-choose rule that lists conditions under which an ILEC need not comply with the pick-and-choose requirements. Because these additional provisions are part of the FCC’s rules, the Parties must already abide by their terms, and indeed already have agreed to do so.

Because the draft contract already includes agreed-upon language allowing TelNet to obtain services and UNEs available to its competitors, TelNet’s only stated reason for insisting on including its duplicative language is that it “is from the approved Ameritech/Coast ICA.” Of course, the mere fact that TelNet’s agreement with another carrier may include TelNet’s proposed provision is no justification for ordering it in this case. There is no legal requirement for all contracts in a state to have the same provisions. On the contrary, Congress prescribed a framework for negotiation of individual agreements precisely so that carriers could settle on arrangements to fit their particular circumstances. In addition, urging adoption of one provision from another carrier’s contract without considering other relevant differences in the contracts is disingenuous. For instance, the Ameritech/Coast agreement did not include language making clear that the Parties agreed to abide by section 252(i) of the Act, as Verizon MI and TelNet have already agreed to do under their contract.

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107 TelNet ICA, GTC § TBD; 47 C.F.R. § 51.809.
108 Verizon MI ICA, GTC § 4.2; TelNet ICA, GTC § 4.2 (“Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement”).
109 TelNet Petition, GTC at 26.
TelNet, however, seeks more than the law requires. Unlike the FCC’s pick-and-choose rule, TelNet’s proposal requires Verizon MI to amend the Agreement within 30 days of a TelNet request, to allow TelNet to obtain a service or arrangement in another carrier’s agreement with Verizon MI. Neither section 252(i) nor the FCC’s rules include any such requirement, and there is no justification for approving this expansion of Verizon MI’s legal obligations for TelNet’s benefit. There is no indication that Verizon MI has failed to comply in a timely manner with its pick-and-choose obligations under the FCC’s rules — and TelNet makes no such allegation — so there is no need for TelNet’s language to remedy a non-existent problem.

Indeed, this is not the time to sanction any expansion of the FCC’s often-criticized pick-and-choose requirements, because the FCC itself has become convinced that these requirements impede the meaningful commercial negotiations that Congress intended as the primary means of transition to a competitive marketplace. In the Triennial Review Order, the FCC tentatively concluded that it should modify its existing pick-and-choose rule, because it “discourages the sort of give-and-take negotiations that Congress envisioned.” The Agreement should not attempt to memorialize a specific FCC rule that the FCC itself intends to overhaul in the near future. Particularly in light of the FCC’s pending rulemaking, the Commission should adopt Verizon MI’s more flexible approach, which will continue to require compliance with any FCC pick-and-choose provision, without the need for a specific amendment to assure such compliance.

111 TelNet ICA, GTC § TBD.

For these reasons, this Commission should reject TelNet’s proposed pick-and-choose provision in the General Terms and Conditions.
Statement of the Issue Presented

Should the rates for services under the Agreement be governed in the first instance by Verizon’s tariffs, with rates updated as required by any orders of this Commission or the FCC?

Summary of Verizon MI’s Position

Yes. The rates for services under the Agreement should be governed by a party’s tariffs, in the first instance. If there is no relevant tariff for a particular service, the price stated in the Agreement’s Pricing Attachment (Appendix A) should govern. Any charges stated in the Pricing Attachment should be automatically superseded by applicable tariff charges, as well as by relevant orders of this Commission or the FCC. This pricing hierarchy, which looks to tariffs as the primary source of prices, ensures nondiscriminatory pricing for all CLECs, in accordance with the Act and Michigan law. It also protects against the unfair and anticompetitive rate arbitrage opportunities that TelNet proposes to secure for itself.

Summary of TelNet’s Position

No. Prices for services should be established exclusively by the Agreement, rather than tariffs, and should not be updated for any reason, except where a new Verizon cost study “becomes effective during the pendency of this Agreement.” In that case, the prices derived from the new cost study should supersede the rates in the Agreement.
Verizon MI’s Position

Verizon MI’s proposed language in sections 1.3 through 1.8 of the Pricing Attachment establishes a hierarchy of sources for rates for services provided under the Agreement. First, rates shall be those stated in the providing Party’s tariffs, to the extent a tariff applies.113 Second, in the absence of a tariffed rate, the rate shall be as stated in Appendix A of the Pricing Attachment.114 Third, when a rate stated in Appendix A applies, that rate will be superseded by a rate ordered, approved, or otherwise permitted to go into effect by the Commission or the FCC.115 Finally, if a rate for a service is found in neither a tariff nor Appendix A, the rate shall be (in descending order of preference) the one expressly provided for elsewhere in the Agreement, the FCC — or Commission — approved charge, or a charge mutually agreed to by the Parties in writing.116

Verizon MI’s proposal ensures that its prices are set and updated in a manner that is efficient, consistent, fair, and nondiscriminatory for all CLECs, as required by the Michigan Telecommunications Act and the Act.117 It allows applicable tariffs and Commission or FCC actions, including generic rate setting, automatically to supersede the prices in Appendix A to the Pricing Attachment. If the Commission approves a revised Verizon tariff during the term of the

113 See Verizon MI ICA, Pricing Attach. § 1.3.
114 Id. § 1.4.
115 Id. § 1.5.
116 Id. §§ 1.6 - 1.7.
117 See 47 U.S.C. §§ 251(c)(2)(D), (c)(3), (c)(6) (requiring provision of interconnection, unbundled access, and collocation on “rates, terms, and conditions that are just, reasonable, and nondiscriminatory”); MICH. COMP. LAWS ANN. § 484.2102(y) (2003) (“‘Reasonable rate’ or ‘just and reasonable rate’ means a rate that is not inadequate, excessive, or unreasonably discriminatory.”).
Agreement, or if it or the FCC otherwise changes the rates for services provided under the Agreement, section 1 of Verizon MI’s proposed Pricing Attachment ensures that the Agreement remains up-to-date without the need for further amendment.

For example, if there is a generic rate order under which the FCC or the Commission determines Verizon MI’s permissible rates under the Act’s section 252(d) pricing standards, the Agreement’s references to tariffs or Commission action will avoid the need to revisit or relitigate applicable prices. TelNet, of course, will have the right to participate in any such generic proceeding, and will be afforded all of the due process and other protections present in such a proceeding.

The Commission should reject TelNet’s proposal for sections 1.3 through 1.7 of the Pricing Attachment, which would make Appendix A to the Pricing Attachment, rather than the universally applicable Commission-approved rates, the default rate sheet for the Agreement.118 TelNet’s proposal would not allow even Commission — or FCC — ordered rates to supersede Appendix A rates. In fact, the only situation in which TelNet’s language would permit new rates to go into effect automatically would be if Verizon performs a new cost study from which new rates are derived, presumably because TelNet assumes those new rates would be lower than those in the Agreement.119 Under TelNet’s language, TelNet could even argue that Verizon would be precluded from invoking the Agreement’s change of law provisions to implement FCC — or Commission — ordered rate changes because TelNet’s specific language in sections 1.3 through 1.7 of the Pricing Attachment might be interpreted to control over the Agreements’ more general change of law provision.

118 TelNet ICA, Pricing Attach. § 1.3.
119 TelNet Petition, Pricing Attach. at 1.
TelNet likewise proposes adding to the Collocation Attachment language that would prevent Verizon MI from incorporating tariffed rates for collocation services, to the extent a tariff applies. TelNet also seeks, in its proposed addition to the General Terms and Conditions, the contractual right to choose between buying any Verizon service, resale or retail, from the relevant tariff or from the Agreement’s Pricing Attachment.

All of TelNet’s pricing proposals are part of an obvious effort to secure unique rate arbitrage opportunities that are not available to any other Michigan CLEC. TelNet seeks the right to pick and choose between rates in Verizon’s tariffs and in the Agreement, thus allowing it to benefit from price reductions, but avoid potential price increases that would apply to all other CLECs. TelNet’s proposal to freeze obsolete rates that are more favorable than the tariffed rates that apply to all other CLECs in Michigan is plainly unreasonable and anticompetitive.

In addition to its serious policy drawbacks, TelNet’s proposals present obvious legal problems. TelNet’s language purports to lock in current prices, even when the Commission — or the FCC — orders price changes. But an interconnection agreement cannot preempt state or federal regulatory orders, and this Commission should not, in any event, approve language allowing Parties to override its mandates. Freezing current contract rates, without regard to future tariffs or Commission mandates, could also violate Michigan law requiring above-cost pricing. Under MCLS sections 484.2102(y) and 484.2321, a provider of a regulated

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120 TelNet Petition, Collocation Attach. at 25. TelNet proposes stating, “Rates and Charges: Except as otherwise described herein, the rates for Company collocation services [are] provided pursuant to this Agreement.” Id. TelNet asserts that “[t]his provision is in substitution of Section 2.14.1 in Verizon’s Local Network Access Services Tariff, MPSC No. 20R, Section 2, 2nd Revised Sheet 36.” Id. TelNet appears to be suggesting an amendment of Verizon MI’s tariff outside of the normal tariff review process and that, of course, would be impermissible. TelNet’s proposed language accordingly should not be added to the Agreement.

121 TelNet ICA, GTC § TBD, page 27.
telecommunication service may not charge less than the total service long run incremental cost of providing the service.\textsuperscript{122} Freezing contract prices could prevent Verizon from recovering its cost of providing services to TelNet, in violation of Michigan law.

Furthermore, TelNet’s proposals would undermine the tariff process. TelNet and other CLECs have the right to participate in Commission review of Verizon MI’s tariffs. Under TelNet’s proposal, it would get “two bites at the apple.” TelNet may first object to Verizon MI’s tariff filings by participating in the Commission review. Then, if it is unhappy with the result of that review, TelNet may avoid it by continuing to claim the benefit of frozen interconnection agreement rates. Because any CLEC would be able to adopt TelNet’s rate-freezing provisions if this Commission approves them, the tariff process could eventually be rendered moot.

Numerous state decision makers have rejected CLECs’ attempts, like TelNet’s here, to secure rate arbitrage opportunities.\textsuperscript{123} For example, in New Jersey, the Board recognized that

\textsuperscript{122} M ICH. COMP. LAWS ANN. § 484.2102(y) (“A rate is inadequate if it is less than the total service long run incremental cost of providing the service.”); id. § 484.2321 (“Except as otherwise provided under section 304a, a provider of a regulated telecommunication service shall not charge a rate for the service that is less than the total service long run incremental cost of providing the service.”).

specifying prices in an interconnection agreement, rather than incorporating pricing sheets or Commission orders by reference, would improperly allow a CLEC to “freeze” any current Commission-approved prices in its favor.\textsuperscript{124} The New York Commission also has a policy that “interconnection agreement[s] should be allowed to absorb tariff amendments and changes.”\textsuperscript{125} The Delaware Commission, likewise, agrees that allowing tariff changes to update contract rates “eliminates the inherent arbitrage potential that would be created if a CLEC had, in effect, a right to choose between the changed tariff and the one ‘frozen’ by an interconnection agreement.”\textsuperscript{126}

Because Verizon MI’s proposal assures nondiscriminatory treatment of all CLECs and prevents anticompetitive rate arbitrage, the Commission should adopt its proposed language for sections 1.3 through 1.7 of the Pricing Attachment and reject TelNet’s additional proposed language for the General Terms and Conditions Attachment and the Collocation Attachment.

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\textsuperscript{124} New Jersey GNAPs Order at 15.

\textsuperscript{125} Arbitration Order, Petition of Covad Communications Company, Pursuant to Section 252 (b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., Case 02-C-1175, at 46 (N.Y. P.S.C. June 26, 2003).

ISSUE 21: SUCCESSOR AGREEMENT (TelNet ICA, General Terms and Conditions § TBD, PAGE 28)

Statement of the Issue Presented

Should the Parties be required to retain the terms of the arbitrated Agreement after its expiration unless a Party can prove any proposed changes to the Agreement are “reasonable and in the public interest?”

Summary of Verizon MI’s Position

No. No one can predict the regulatory or other changes that may occur in the years until this Agreement expires, and so it makes no sense to require the Parties to use the Agreement as the basis for their future, successor agreement. Moreover, TelNet’s proposal would unlawfully override the Act’s standards for approval of arbitrated agreements.

Summary of TelNet’s Position

Yes. The Parties’ negotiations of a successor interconnection agreement will be more efficient and orderly if they begin with the current Agreement as a baseline.

Verizon MI’s Position

In a proposed new section in the General Terms and Conditions, TelNet would require the Parties to use the Agreement under arbitration as “the baseline agreement” for negotiation of a successor agreement in the future.127 Under TelNet’s approach, if a Party proposed any change to the Agreement, it would have “the burden of persuasion to show that the change is reasonable and in the public interest.”128 The Commission should reject this extreme proposal to make the Agreement under arbitration the presumptive successor agreement, as well.

127 TelNet ICA, GTC § TBD, p. 28
128 TelNet Petition, GTC at 28.
No one can predict legal, market, technological, and other changes that may occur in the years during which this Agreement will be in effect. Given that, the Parties must retain the flexibility to use whatever negotiating template best meets their needs at the time they begin negotiation of a successor agreement.

TelNet would require the Parties to use the Agreement not just as a starting point for future negotiations, but as the presumptive ending point as well, unless a Party could prove a proposed change is “reasonable and in the public interest.” Rather than promoting efficiency and creating order, as TelNet argues, its proposal would waste the Parties’ time and resources by eliminating their flexibility to easily tailor the next agreement to the law and the Parties’ circumstances at the time. Like other of TelNet’s proposals, this one is intended to allow TelNet to lock in provisions that have been superseded by regulatory or market changes.

TelNet’s language, moreover, purports to change the legal standard governing approval of arbitrated interconnection agreements under the Act. If the Parties do not agree on a particular change to the “baseline” Agreement and they ask the Commission to arbitrate the issue, then TelNet’s language would require the Party proposing the change to bear the burden of proving that the change was “reasonable and in the public interest.” But section 252(c) of the Act requires state commissions to ensure that the resolution of arbitration issues “meet[s] the requirements of section 251.” That is the test the Commission must apply, not whether a change from an existing provision is reasonable or in the public interest.

TelNet’s proposal to straitjacket future negotiations is contrary to the Act’s preference for negotiations as a means of achieving fair and open competition, as well as the FCC’s recent

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129 Id.

130 47 U.S.C. § 252(c)
emphasis on solving network access disputes through negotiation of commercial arrangements, rather than litigation. The Commission should reject TelNet’s unnecessary, burdensome, and unlawful provision removing the Parties’ flexibility to negotiate a successor agreement that best meets their needs and complies with the law at the time.
Statement of the Issue Presented

Should the Agreement give TelNet an unqualified right to use the UNEs that it purchases from Verizon MI to provide services to other telecommunications carriers?

Summary of Verizon MI’s Position

No. TelNet may use UNEs to provide services to other telecommunications carriers only in accordance with 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 and in accordance with the terms of the TRO Amendment.

Summary of TelNet’s Position

Yes. The Agreement should give TelNet an unrestricted right to use the UNEs it purchases from Verizon MI in the provision of services to other telecommunications carriers.

Verizon MI’s Position

Verizon MI’s proposed definition of “Customer,” is straightforward and consistent with the Act and implementing rules: “A third party residence or business end-user subscriber to Telecommunications Services provided by either of the Parties, provided, however, the term ‘Customer’ does not include a Party.”

TelNet, through its proposed definition of “Customer,” is impermissibly attempting to create an unrestricted right to use the UNEs it purchases from Verizon MI to provide services to other telecommunications carriers. Specifically, TelNet proposes to expand Verizon MI’s definition to include telecommunications carriers as well as end-users by adding the statement

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131 Verizon MI ICA, Glossary § 2.28. Verizon MI agreed to change the phrase “Telephone Exchange Services” to “Telecommunications Services” in its proposal at TelNet’s request.
that “[a]nother carrier may be a customer.” TelNet has admitted during the Parties’ negotiations that its proposed definition is intended to give TelNet the right to purchase UNEs to lease or resell to other carriers.

TelNet’s proposal is overly broad and inconsistent with the Act. First, the Act explicitly prohibits TelNet from reselling Verizon UNEs — either on a standalone basis or as an input to other services — to other carriers. It entitles TelNet to obtain UNEs only “for the provision of a telecommunications service.” The term “telecommunications service,” in turn, is defined as “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.” Thus, TelNet would not be using the UNEs to provide “telecommunications services” to the other carrier. The Act defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing.” Therefore, if TelNet simply resells the facility to another carrier, it is not providing a telecommunications service because it is not providing a transmission function.

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132 TelNet ICA, Glossary § 2.28.

133 47 U.S.C. § 251(c)(3) (emphasis added).

134 Id. § 153(46) (emphasis added).

135 Id. § 153(43) (emphasis added).

136 See, e.g., Memorandum Opinion and Order, Qwest Communications International Inc. and U S WEST, Inc., 15 FCC Rcd 11909 ¶¶ 11, 13 (2000) (provision of dark fiber by itself does not include the activity of “transmission” necessary to render it “telecommunications” under the Act); Report and Order, International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes, 104 F.C.C.2d 208 ¶ 64 n.134 (1986) (IRU or lease of fiber capacity makes holder a “facilities-based” carrier and not a reseller of services).
Second, while TelNet might argue that, in certain circumstances, it is permitted under the Act to use a UNE in the provision of a service to another carrier, based on the definitions in the Act discussed above, it cannot argue that its right to do so is unqualified. Section 1.2 of the TRO Amendment to the Agreement, which TelNet has not challenged, properly sets forth the circumstances in which TelNet may lease a UNE, by stating that TelNet “may lease a UNE, Combination, or Commingling only for those purposes for which Verizon is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide such UNE, Combination, or Commingling to [TelNet].”137 This agreed-upon language makes clear that Verizon MI will not be required to provide UNEs under this agreement where the Act and the FCC’s rules do not require it to do so, and ensures that “the availability of UNEs is not boundless and is appropriately limited to the furtherance of clear statutory purposes.”138 TelNet’s proposed definition of “Customer” would conflict with this provision by potentially giving TelNet an unrestricted right to use UNEs to provide services to other carriers. On the contrary, Verizon MI’s definition of “Customer “ is not designed to, and in fact does not, limit the class of customers that TelNet may serve; instead, that limitation is expressed in the TRO Amendment.139

Finally, because the term “Customer” is used throughout the Agreement, and was not designed for the limited usage to which TelNet’s proposed definition is aimed, TelNet’s proposal would create problems in a number of other sections of the Agreement that use the term “Customer.” For example, section 7 of the Interconnection Attachment provides that

[t]he Party originating Reciprocal Compensation Traffic shall compensate the terminating Party for the transport and termination of such traffic to its Customer

137 Verizon MI ICA, TRO Amend. § 1.2.

138 Triennial Review Order ¶ 151.

139 See, e.g., Verizon MI ICA, TRO Amend. § 1.2.
in accordance with Section 251(b)(5) of the Act at the equal and symmetrical rates stated in the Pricing Attachment[.]

If TelNet’s proposed definition were adopted, TelNet could argue that Verizon MI owes TelNet (and vice versa) reciprocal compensation not only for calls from a Verizon MI customer to a TelNet customer, but also calls from a Verizon MI customer to the customer of a third-party carrier that passes through TelNet’s network. TelNet offers no legal basis for such an absurd result.

The Commission should therefore adopt Verizon MI’s proposed language in section 2.28 of the Agreement’s Glossary and reject TelNet’s proposed language.

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140 Verizon MI ICA, Interconnection Attach. § 7.1.
ISSUES 32, 33, 40, 41, AND 47: INTERCARRIER COMPENSATION FOR VIRTUAL FOREIGN EXCHANGE (“VNXX”) TRAFFIC (VERIZON MI ICA, INTERCONNECTION ATTACHMENT §§ 6.5, 7.2.1, 7.2.9, GLOSSARY §§ 2.46, 2.60, 2.99, 2.100; TELNET ICA, INTERCONNECTION ATTACHMENT §§ 6.5, 7.2.1, 7.2.9, GLOSSARY §§ 2.46, 2.60, 2.99, 2.100)

Statement of the Issue Presented

Should the Agreement require payment of reciprocal compensation for virtual NXX (“VNXX”) traffic which terminates in a different local calling area from the one in which it originates?141

Summary of Verizon MI’s Position

No. Under federal law, interexchange traffic, including VNXX traffic, is not subject to reciprocal compensation. The FCC has ruled that Verizon has no obligation to pay reciprocal compensation on VNXX traffic, so this Commission cannot reach the opposite result, as TelNet asks it to.

Summary of TelNet’s Position

Yes. VNXX traffic should be subject to reciprocal compensation.

Verizon MI’s Position

Verizon MI’s proposal correctly reflects that VNXX traffic is not subject to reciprocal compensation under federal law.142 Verizon MI’s language also makes clear that VNXX traffic bound for Internet service providers (“ISPs”) is not subject to the transitional compensation regime the FCC established as an alternative to reciprocal compensation in the ISP Remand.

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141 The Parties have agreed that the resolution of this substantive question will control the outcome of Issues 33, 40, 41, and 47.

142 Verizon MI ICA, Interconnection Attach. § 6.5.
Rather, all VNXX calls are interexchange as determined by their geographic endpoints and are thus subject to access charges, like any other “long distance” traffic. In the following sections, Verizon MI explains the nature of VNXX traffic and why it must be exempt from reciprocal compensation (and the FCC’s transitional compensation rules) under the Parties’ Agreement. TelNet’s position — that Verizon MI is obligated to pay reciprocal compensation on VNXX traffic — is directly contrary to FCC precedent declaring that Verizon has no such duty.

1. Definition of VNXX Traffic.

Verizon MI defines VNXX traffic (also called “V/FX” traffic) as “calls in which a TelNet Customer is assigned a telephone number with an NXX Code . . . associated with an exchange that is different than the exchange . . . associated with the actual physical location of such Customer’s station.” A VNXX number thus permits a called party (i.e., the TelNet customer) to appear to be in the same local calling area as the calling party (typically a Verizon MI customer), when in fact the called party is in a distant local calling area.

For example, a florist in Detroit, whose shop would normally have a telephone number with a 313 area code (or “NPA”) and a 226 prefix (or “NXX”), could instead obtain an 801-751-XXXX number that makes him appear to be in Flint. The virtual phone number would allow his customers in Flint to call the Detroit shop without incurring interexchange toll charges, because the central office switch would perceive that the calling party was dialing another local telephone

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143 Verizon MI ICA, Interconnection Attach. § 6.5; see also ISP Remand Order.
144 Verizon MI ICA, Interconnection Attach. § 7.2.9.
145 Id.
number in Flint. Nevertheless, the call is an interexchange call, just like an ordinary long distance call, because its geographic endpoints are in different local calling areas.


Section 251(g) of the 1996 Act and FCC Rule 51.701(b)(1) exempt “interstate or intrastate exchange access, information access, or exchange services for such access” from reciprocal compensation. Because VNXX calls are interexchange (in that they always begin and end in different local calling areas), they are “exchange services for . . . access” — the third of the three categories of traffic that are exempt from reciprocal compensation. The FCC has ruled that “exchange services for . . . access” and the other categories of traffic listed in section 251(g) are services associated with access services, so all of these interexchange services are carved out from reciprocal compensation:

All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access. Before Congress enacted the 1996 Act, LECs provided access services to IXC s and to information service providers in order to connect calls that travel to points — both interstate and intrastate — beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these preexisting relationships. Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).

VNXX calls undeniably fall within this carve-out and therefore, as the FCC concluded, are not subject to reciprocal compensation. In a VNXX call, Verizon MI’s network is used “to connect calls that travel to points . . . beyond the local exchange”; hence, the call is “excluded” from reciprocal compensation. Phrased in terms of section 251(g) and FCC Rule 51.701(b)(1)’s

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146 47 C.F.R. § 51.701(b)(1); 47 U.S.C. § 251(g); ISP Remand Order ¶ 34.
147 ISP Remand Order ¶ 37 (emphasis added) (footnotes omitted).
list of categories, VNXX calls involve “exchange services for . . . access,” defined by the FCC as “the provision of services in connection with interexchange communications.”

TelNet’s petition ignores this legal analysis and instead concludes that Verizon MI is “obligated to pay reciprocal compensation” on VNXX traffic. TelNet is wrong. Indeed, in its March 2003 decision granting Verizon’s application to provide long-distance service in Maryland, West Virginia, and the District of Columbia, the FCC found nothing in its rules or precedent suggesting that ILECs have a duty to pay CLECs reciprocal compensation for VNXX traffic.

As a number of other states have recognized, because VNXX calls are interexchange calls, intrastate access charges apply to them, just as they do with any other intrastate,

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148 Id. (emphasis added).

149 TelNet Petition, Interconnection Attach. at 23.


151 See, e.g., NJ GNAPs Order at 10 (“A carrier access charge should apply to inter LATA traffic for traffic across the boundaries of Verizon’s local calling areas. To rule otherwise could amount to Verizon subsidizing Global’s operations.”); Order on Arbitration, Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Docket No. 2002-181-C, 2002 S.C. PUC LEXIS 9, at *41 (SC P.S.C. Aug. 30, 2002) ("SC US LEC Order") ("[T]he only sensible result is that [the CLEC] should compensate Verizon for the services that it continues to provide [in connection with a VNXX call] — i.e., Verizon should continue to receive at least a portion of the toll charges that it would otherwise receive from its customer in the form of access charges paid by [the CLEC]."); Final Order, Investigation as to Whether Certain Calls are Local, Docket Nos. DT 00-223, DT 00-054, 2002 N.H. PUC LEXIS 165, at *60 (NH P.U.C. Oct. 28, 2002); Arbitration Award, Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, 2002 Ohio PUC LEXIS 426, at *26 (OH P.U.C. May 9, 2002) ("OH GNAPs Order").
interexchange call. As the FCC pointed out, because Congress explicitly intended to avoid disrupting the access regimes that pre-dated the Act, it exempted all interexchange traffic from reciprocal compensation obligations under section 251(b)(5).  

The appropriateness of applying access charges to VNXX traffic is apparent when VNXX is compared to another form of toll-free, inbound, interexchange calling: 1-800 service. VNXX service is the functional equivalent of 1-800 service. VNXX simply has a different toll-free number — specifically, one that tricks the originating party’s central office switch into perceiving that the VNXX customer is located in the same local calling area as the calling party. If a Verizon MI subscriber made an interexchange call to a TelNet 1-800 customer, there is no dispute that TelNet would be required to pay Verizon MI access charges for its use of Verizon MI’s network. Verizon MI is equally entitled to this compensation for performing the same work for TelNet where TelNet has assigned its customer a virtual NXX number.

3. The Overwhelming Majority of States Have Held that Reciprocal Compensation Does Not Apply to VNXX Traffic.

The FCC’s holding that ILECs have no duty to pay reciprocal compensation on VNXX calls is consistent with the decisions of the overwhelming majority of states that have addressed this issue. To date, at least 21 states have concluded that VNXX traffic is not subject to reciprocal compensation. These states include Colorado, Connecticut, Delaware.

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152 ISP Remand Order ¶ 39.


154 See Decision, Application of MCI WorldCom Communications, Inc., et al., for Arbitration, Docket No. 00-04-35RE01, 2002 Conn. PUC LEXIS 216 (CT Dep’t Pub. Util. Control Nov. 13, 2002); Decision, DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities, Docket No. 01-01-29RE01,
Florida, Georgia, Illinois, Iowa, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode

159  Final Decision and Order, Sprint Communications Company L.P., and Level 3 Communications, LLC, Docket Nos. SPU-02-11, SPU-02-13, 2003 Iowa PUC LEXIS 229, at *12 (IA Utils. Bd. Jun. 6, 2003) (“[U]sing an end-to-end analysis considering only the use of the public switched telephone network . . . the VNXX call is interexchange.”).


162  Final Order, Consideration of the Provision of In-Region Mississippi Public Service InterLATA Services by Commission BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96, Docket No. 97-AD-321, at 45 (MS P.S.C. Oct. 4, 2001) (“The Commission agrees that FX traffic is long distance traffic and therefore not subject to reciprocal compensation.”).

163  Arbitration Order, Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., For Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-2001-455, 2001 Mo. PSC LEXIS 368, at *60 (MO P.S.C. June 7, 2001) (finding that VNXX traffic should “not be classified as a local call”).

164  Order Adopting Revised Arbitration Decision, Petition of PAC-WEST Telecomm, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Nevada Bell et al., Docket Nos. 98-10015, 99-1007, ¶ 64 (NV P.U.C. Apr. 12, 1999) (finding that “a local call is based on the physical location of the originating and terminating parties . . . [t]o define a local call based on the rate center of the NXX codes as proposed by Pac-West and ATG would subvert industry custom and practice. It could allow them to avoid access charges for toll calls and interLATA calls as well.”).

165  Final Order, Investigation As To Whether Certain Calls Are Local, Docket Nos. DT 00-223, DT 00-054, 2002 N.H. PUC LEXIS 165, at *58 (NH P.U.C. Oct. 28, 2002) (“NH Order”) (stating that non-ISP-bound VNXX traffic “shall continue to be defined as local or toll by the physical location of end-users”).

166  NJ GNAPs Order at 12.
Island, South Carolina, Tennessee, Texas, and Vermont. This Commission should, likewise, confirm that VNXX calls are not subject to reciprocal compensation.

167 Arbitration Award, Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon North Inc., Case No. 02-876-TP-ARB, 2002 Ohio PUC LEXIS 776 (OH P.U.C. Sept. 5, 2002); Arbitration Panel Report, Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc., Case No. 02-876-TP-ARB, 2002 Ohio PUC LEXIS 644 (OH P.U.C. July 22, 2002); Entry on Rehearing, Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, 2002 Ohio PUC LEXIS 636 (OH P.U.C. July 18, 2002); OH GNAPs Order; Arbitration Panel Report, Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, 2002 Ohio PUC LEXIS 282 (OH P.U.C. Mar. 28, 2002); Arbitration Award, Allegiance Telecom of Ohio, Inc.’s Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Ameritech Ohio, Case No. 01-724-TP-ARB, 2001 Ohio PUC LEXIS 712 (OH P.U.C. Oct. 4, 2001).


171 Interim Order of Arbitration Award, Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc.
4. The Commission Decision in the Ameritech/Metrocom Arbitration Provides No Useful Guidance in This Case.

Before most other states had considered the issue, and before the FCC had ruled that ILECs have no obligation to pay reciprocal compensation on VNXX traffic, this Commission directed Ameritech and Metrocom to apply reciprocal compensation to VNXX traffic under their interconnection agreement.\textsuperscript{174} For a number of reasons, this arbitration decision from 2001 provides the Commission no useful guidance for its deliberations on the VNXX issue in this arbitration.

First, as explained, eighteen months after this Commission issued its ruling in the Ameritech arbitration, the FCC held that ILECs are under no obligation to pay reciprocal compensation on VNXX traffic. Thus, the Commission cannot make the opposite decision here — that is, that Verizon MI is under an obligation to pay reciprocal compensation on VNXX traffic. Doing so would contravene federal law (and would be out of step with the decisions of virtually every other state that has addressed this issue).


Second, in addressing this issue previously, the Commission did not consider the specific question Verizon MI presents here — that is, whether VNXX traffic constitutes “exchange services for . . . access.” As noted above, the FCC defines “exchange services for . . . access” as “the provision of services in connection with interexchange communications.”\textsuperscript{175} The Commission did not discuss whether VNXX traffic satisfies this definition; instead, it concluded only that VNXX traffic is not “exchange access” because no separate charge is assessed on a VNXX call, which is what the Commission read the Act’s definition of this term to require.\textsuperscript{176} The Commission’s prior, limited analysis therefore does not preclude a finding here, in a different case and in response to a different argument, that VNXX traffic is exempt from reciprocal compensation because it represents “exchange services for . . . access.”

Third, the Commission’s conclusion in the Ameritech arbitration was based in part on a concern about the feasibility of identifying VNXX traffic for intercarrier compensation purposes.\textsuperscript{177} However, the Commission expressly clarified that it had not considered any of the evidence in this regard itself, stating, “to avoid any misunderstanding the Commission affirmatively states that it has not considered the disputed facts in its rendering of a decision on this issue.”\textsuperscript{178} Instead, the Commission alluded to facts from an even earlier case that also involved Ameritech, in which the Commission had ruled that VNXX traffic could be subject to reciprocal compensation in part because Ameritech had not addressed “how the carriers would make the necessary changes to their billing systems or whether the changes would be technically

\textsuperscript{175} ISP Remand Order ¶ 37 n.65 (emphasis added).
\textsuperscript{176} September 7, 2001 Order at *40-41.
\textsuperscript{177} Id. at *41.
\textsuperscript{178} Id.
feasible at an affordable cost for both Ameritech Michigan and the CLECs.” As discussed in subsection 6 below, there is a feasible, inexpensive, and accurate means of identifying VNXX traffic. Accordingly, the practical concern the Commission cited in the Ameritech decision over two years ago is absent here, so a different conclusion is justified.

This Commission should not consider its 2001 decision in the Ameritech/Metrocom case as controlling the VNXX compensation issue in this case. Indeed, that decision provides no useful guidance here, where the evidentiary record is different and the scope of the Act’s reciprocal compensation obligation has been clarified through subsequently issued FCC and state commission rulings.

5. The FCC’s Transitional Compensation Regime Does Not Apply to ISP-Bound VNXX Traffic.

As discussed above, VNXX traffic is not eligible for reciprocal compensation. This includes all VNXX traffic, whether or not it is delivered to an Internet service provider (“ISP”).

TelNet, however, may try to erroneously claim that ISP-bound VNXX traffic is subject to the transitional compensation the FCC established in the ISP Remand Order. In the ISP Remand Order, the FCC established a compensation regime for certain ISP-bound traffic, relying on a set of gradually declining caps on the volume of such traffic that is eligible for compensation and on the rates that can be charged for that traffic. The FCC made clear that this transitional compensation regime applies only “to the delivery of calls from one LEC’s end-user customer to an

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180 See ISP Remand Order ¶ 8.
ISP in the same local calling area that is served by a competing LEC—traffic that, under Verizon MI’s proposal, would be defined as “Measured Internet Traffic.” Courts and other state commissions have acknowledged this limitation on the scope of the transitional rules. Because VNXX traffic, by definition, involves an end user and an ISP server that are located in different local calling areas, the FCC’s transitional compensation regime does not apply to ISP-bound VNXX traffic, under the plain terms of the ISP Remand Order.

6. The Parties Can Identify VNXX Traffic to Ensure Proper Intercarrier Compensation.

There are several ways to ensure that the proper form of intercarrier compensation is applied to VNXX traffic. For example, in section 6.5 of the Agreement, Verizon MI proposes that TelNet inform Verizon MI of VNXX traffic received by TelNet customers, including the telephone number and geographic location of the customer receiving the calls, so that those minutes can be excluded from the reciprocal compensation bills. Alternatively, the Parties can perform periodic traffic studies to estimate the amount of VNXX traffic terminated, so that their reciprocal compensation, transitional ISP compensation, and access charge bills may be adjusted

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181 Id. ¶ 13 (emphasis added).
182 Verizon MI ICA, Glossary Attach. § 2.60; see also subsection 7(a) infra.
183 See WorldCom, Inc. v. FCC, 288 F.3d 429, 430 (D.C. Cir. 2002) (stating that in the ISP Remand Order, the FCC “held that under § 251(g) of the Act it was authorized to ‘carve out’ from § 251(b)(5) calls made to internet service providers (‘ISPs’) located within the caller’s local calling area”) (emphasis added), cert. denied sub nom. Core Communications, Inc. v. FCC, 123 S. Ct. 1927 (2003); VT GNAPs Order at *32-33 (stating that the ISP Remand Order “focused on calls to ISPs within a local calling area for which the terminating party would otherwise receive reciprocal compensation payments,” and observing that the ISP Remand Order contains “no discussion of changes to the rules applicable to . . . ISP-bound traffic that originates outside of the ISP’s local calling area”) (emphasis added).
184 See Verizon MI ICA, Interconnection Attach. § 6.5.
accordingly. Through such traffic studies, the Parties can develop a factor representing an estimate of the volume of VNXX traffic that each Party terminates going forward.

Verizon MI’s evidence in this case — which, as discussed, is different from the evidence in the Ameritech case over two years ago — demonstrates that traffic studies are feasible, inexpensive, and routinely relied on by CLECs and ILECs alike for ensuring correct compensation between carriers. For example, most recently, AT&T urged another state commission to approve the use of traffic studies employing traffic factors to estimate the volume of VNXX traffic, proposing that the parties in that case “mutually agree to assign a Percentage of FX Usage (PFX) which shall represent the estimated percentage of minutes of use that is attributable to all FX traffic in a given month.” And AT&T actually performed a study of VNXX traffic in Connecticut. Cox Communications conducted a traffic study that was even more focused; in November 2002, it calculated the amount of VNXX traffic sent to its ISP customers by Verizon’s customers for four different time periods. Cox’s ability to conduct a successful and detailed traffic study that required it to target a specific subset of VNXX traffic (ISP-bound VNXX traffic) demonstrates the potential for TelNet to do so as well.

In at least four states — Florida, New Jersey, Oregon, and Virginia — Verizon has conducted traffic studies to estimate the volume of traffic CLECs routed to Verizon’s foreign exchange (“FX”) numbers. These traffic studies, each of which cost less than $1,000 and took less than one month to complete, involved simply matching records of calls (which identify the

185 IL AT&T Order at *303.


187 Verizon MI’s “FX” service also enables customers to receive calls from distant exchanges, but through the use of dedicated facilities rather than through number assignment.
originating and terminating telephone numbers of the calls) originating from facilities-based CLECs with a list of the telephone numbers assigned to Verizon’s FX customers. If one of these FX numbers was also listed as the terminating telephone number involved in a CLEC-originated call, then the call was identified as an FX call, meaning that the calling and called parties were physically located in different local calling areas, despite having telephone numbers that made it appear as if they were in the same local calling area. The number of minutes of such calls were then totaled to derive the total amount of CLEC traffic terminated to Verizon FX numbers. A similar methodology could be employed to measure the amount of VNXX traffic that flows from Verizon to CLECs assigning their customers VNXX numbers.

A number of other states considering similar evidence have confirmed that traffic studies are a feasible method of identifying VNXX traffic. For example, a New Jersey arbitrator found “that traffic studies are commonly used in the industry to harmonize the law’s requirement to base intercarrier compensation on actual geographic end points with the practical difficulties of doing so.” Accordingly, the arbitrator determined that CLECs should “cooperate with Verizon, whether through traffic studies or otherwise in developing a way for the parties to bill intercarrier compensation that is based on actual endpoints of the traffic.”189 Likewise, the Massachusetts Department of Telecommunications and Energy concluded that Verizon’s traffic study proposal was “an acceptable starting point to develop the cooperative billing process necessary to properly rate VNXX calls.”190 Similarly, the South Carolina Public Service Commission concluded that a traffic study represented “a practical method for distinguishing

188 New Jersey GNAPs Decision at 12.
189 Id. at 11-12.
190 Mass. DTE Order at 35.
[VNXX] traffic from traffic that is subject to reciprocal compensation” that “could inexpensively be implemented” in that state.\textsuperscript{191}

In any event, any alleged difficulty in performing traffic studies would not excuse TelNet (or any other CLEC) from complying with the correct compensation rules. Indeed, the FCC has already rejected, \textit{at a CLEC’s own urging}, the argument that difficulty complying with FCC rules excuses non-compliance. In \textit{AT&T Corp. v. Bell-Atlantic-Pennsylvania}, various carriers contended that carriers that were overbilling could not defend themselves by pointing to their inability to identify and measure the relevant traffic, arguing that the carriers’ “deliberate choices to disable themselves from properly measuring [the traffic at issue] is no defense,” and that the FCC had “permitted use of ‘reasonable estimation techniques’ to measure traffic.”\textsuperscript{192} The FCC agreed that obstacles to compliance with its rules do not relieve companies of liability for non-compliance.\textsuperscript{193} This Commission should likewise conclude that TelNet must comply with the law and exclude VNXX traffic from reciprocal compensation (and transitional ISP compensation). Verizon MI’s traffic study proposal presents a viable, inexpensive method for ensuring this compliance with FCC rules.

\textbf{7. Terms and Definitions Relating to VNXX Traffic.}

If the Commission adopts Verizon MI’s proposed language providing that VNXX traffic is not subject to reciprocal compensation, it also should adopt the defined terms below that Verizon MI has proposed.

\textsuperscript{191} \textit{SC US LEC Order} at 25, 28-29.


\textsuperscript{193} \textit{See id.} ¶ 93.
a. “Internet Traffic” (Issue 32) and “Measured Internet Traffic” (Issue 33)

Verizon MI defines “Internet traffic” as “[a]ny traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.”\textsuperscript{194} This language reflects common industry understanding of this term.

“Measured Internet Traffic” is the particular category of Internet Traffic that is subject to the transitional compensation rules set forth in the FCC’s \textit{ISP Remand Order}. Verizon MI defines that term as “[d]ial-up, switched Internet Traffic originated by a Customer of one Party on that Party’s network at a point in a Verizon local calling area, and delivered to a Customer or an Internet Service Provider served by the other Party, on that other Party’s network at a point in the same Verizon local calling area.”\textsuperscript{195} Verizon MI’s definition of Measured Internet Traffic explicitly excludes VNXX traffic, because VNXX traffic is delivered to a point \textit{outside} the originating party’s local calling area.\textsuperscript{196} As discussed above, the FCC expressly limited its transitional compensation rules to traffic delivered to ISP servers located in the same local calling area as the originating end user.\textsuperscript{197} Verizon MI’s proposed definition of “Measured Internet Traffic” recognizes this key aspect of the transitional rules.

TelNet does not deny that the transitional compensation rules are limited to intraexchange ISP-bound calls — that is, “Measured Internet Traffic,” as defined by Verizon MI. Nor does

\textsuperscript{194} Verizon MI ICA, Glossary Attach. § 2.46.

\textsuperscript{195} \textit{Id.} § 2.60.

\textsuperscript{196} \textit{Id.} (“For the avoidance of any doubt, Virtual Foreign Exchange Traffic . . . does not constitute Measured Internet Traffic.”).

\textsuperscript{197} \textit{See ISP Remand Order} ¶ 13 (stating that the transitional compensation rules apply only “to the delivery of calls from one LEC’s end-user customer to an ISP \textit{in the same local calling area} that is served by a competing LEC”) (emphasis added).
TelNet suggest that Verizon MI’s proposed definition of “Internet Traffic” is factually incorrect. Instead, TelNet objects to the use of these terms in the Agreement solely on the basis of the *Virginia Arbitration Order.*

Putting aside the facts that the *Virginia Arbitration Order* is not an FCC order and does not bind this Commission, TelNet misstates the Bureau’s ruling on this issue. TelNet claims the Bureau found that Verizon used the terms “Internet Traffic” and “Measured Internet Traffic” too expansively in the Virginia arbitration. That is not so. The Bureau did not address the merits of either of these definitions, nor did it consider whether the FCC’s transitional compensation extended to traffic bound for ISP servers located outside the originating local calling area. The Bureau rejected Verizon’s “Measured Internet Traffic” language because it perceived that Verizon had not timely submitted evidence that calls could be billed for intercarrier compensation purposes based on their physical endpoints.

As noted above, since the Bureau’s ruling, the FCC declined to apply a reciprocal compensation obligation for VNXX traffic and many states have concluded that VNXX traffic *can* be identified for intercarrier compensation purposes. Accordingly, the Bureau’s decision concerning the term “Measured Internet Traffic” provides no support for TelNet’s position.

Moreover, TelNet’s alternative proposal makes no sense. TelNet proposes deleting the terms “Internet Traffic” and “Measured Internet Traffic” and instead using only the term “ISP-

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198 See TelNet Petition, Glossary Attach. at 12 (citing *Virginia Arbitration Order*).

199 See 73 supra.

200 See TelNet Petition, Glossary Attach. at 11-12.

201 *Virginia Arbitration Order* ¶¶ 301-02.
TelNet would define this term as traffic having “the meaning as defined by the FCC in the Remand Order.” But the FCC did not define “ISP-bound traffic” in the *ISP Remand Order*. In addition, the FCC’s transitional compensation scheme applies only to calls to ISP servers in the same local calling area as the end user, and TelNet’s proposal ignores this fact.

In short, TelNet’s proposed language is too vague to define the Parties’ intercarrier compensation obligations with respect to traffic bound for ISPs, and could be construed in a manner that is inconsistent with the law. Verizon MI’s proposals, in contrast, track applicable law. The Commission therefore should adopt Verizon MI’s proposed language and reject TelNet’s.

b. “Traffic Factor 1” (Issue 40) and “Traffic Factor 2” (Issue 41)

Verizon MI proposes that, where calling party number information is not available, the Parties will use “Traffic Factor 1” to identify the traffic that is subject to interstate access charges. Verizon MI defines Traffic Factor 1 as follows: “For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the number of minutes of interstate traffic (excluding Measured Internet Traffic) by the total number of minutes of interstate and intrastate traffic.” This definition ensures that interexchange Internet traffic (which includes, but is not limited to, ISP-bound VNXX traffic) is accounted for in the calculation of traffic subject to interstate access charges. In order to identify the traffic that is subject to intrastate access charges, Verizon MI proposes that the Parties use a factor it terms “Traffic Factor 2,” which Verizon MI defines as follows: “For traffic exchanged via Interconnection Trunks, a

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202 TelNet ICA, Glossary Attach. § 2.46.
203 Id.
204 Verizon MI ICA, Glossary Attach. § 2.99.
percentage calculated by dividing the combined total number of minutes of Reciprocal Compensation Traffic and Measured Internet Traffic by the combined total number of minutes of intrastate traffic and Measured Internet Traffic.” This definition ensures that “Reciprocal Compensation Traffic” and “Measured Internet Traffic” are not subject to intrastate access charges. Verizon MI’s proposed definitions for both of these terms contain precise mathematical formulas for calculating the amount of traffic subject to interstate and intrastate access charges.

TelNet rejects the use of these terms and definitions, stating only that it “prefers” the definitions adopted by the Bureau in the Virginia Arbitration Order. The terms that TelNet proposes for the factors used to identify traffic subject to interstate and intrastate access charges are “Percent Interstate Usage” (or “PIU”), and “Percent Local Usage” (or “PLU”), respectively. The corresponding definitions of these terms, however, do not accomplish what TelNet intends. First, although TelNet states that the PIU factor is “used to determine the interstate portion of minutes of traffic” exchanged by the Parties, it does not accomplish this, because it does not account for minutes of Internet traffic, which is interstate in nature. Second, TelNet’s proposed PLU term states that it is “used to determine the portion of minutes . . . that are Local Traffic and ISP-bound Traffic” and that it is developed on the basis of “the calling and called NPA/NXXs.” But this language is inconsistent with the principle, explained above, that it is the geographic endpoints of a call, rather than the NPA-NXXs, that determine whether a call is subject to access charges or reciprocal compensation.

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205 Id. § 2.100.
206 TelNet Petition, Glossary Attach. at 20.
207 TelNet ICA, Glossary Attach. § 2.99.
208 Id. § 2.100.
Because Verizon MI’s proposed terms and definitions for the factors used to identify the traffic that is subject to interstate and intrastate access charges are consistent with the law and more precise than those proposed by TelNet, the Commission should adopt Verizon MI’s proposed language and reject TelNet’s corresponding proposals.

8. Conclusion

The Commission should approve Verizon MI’s proposed language regarding the treatment of VNXX traffic. The Commission should conclude that VNXX traffic is geographically interexchange traffic, just like other long-distance telephone traffic, and represents “exchange services for . . . access,” which is exempt from reciprocal compensation under section 251(g) of the Act and the FCC’s implementing rules. The Commission should also acknowledge that the FCC’s transitional compensation rules do not apply to ISP-bound VNXX traffic, because VNXX traffic crosses local exchange boundaries.

The Commission should reject TelNet’s proposals, which disregard federal law. The Commission cannot approve TelNet’s position that Verizon MI has an obligation to pay reciprocal compensation on VNXX calls because the FCC held just the opposite last year.
ISSUES 34 AND 45(A): LOCATION OF THE POI (VERIZON MI ICA, INTERCONNECTION ATTACHMENT § 1, GLOSSARY § 2.71; TELNET ICA, INTERCONNECTION ATTACHMENT §§ 2.1.1, 2.1.5; GLOSSARY § 2.71)

Statement of the Issue Presented

Should the Agreement make clear, and consistent with applicable law, that TelNet’s switch locations, or facilities leased or provided by Verizon MI to those locations, are not within Verizon MI’s network for purposes of TelNet’s selection of POIs?

Summary of Verizon MI’s Position

Yes. The Act and implementing regulations state that the POI must be on Verizon MI’s network, and TelNet’s switch locations by definition are not within Verizon MI’s network.

Summary of TelNet’s Position

No. TelNet should have the right to force Verizon MI to deliver its traffic to a POI located at TelNet’s switch.

Verizon MI’s Position

Under the Act and the FCC’s rules, Verizon MI must allow TelNet to interconnect its network “at any technically feasible point within” Verizon MI’s network:

An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC’s network . . . [a]t any technically feasible point within the incumbent LEC’s network[.]209

Thus, although TelNet may designate a POI, that POI must not only be “technically feasible,” but also “within [Verizon MI’s] network.” Consistent with this legal requirement, which the FCC confirmed in its Triennial Review Order, Verizon MI’s proposal makes clear that Verizon MI’s network, for purposes of establishing a POI, does not include the dedicated

209 47 C.F.R. § 51.305(a) (emphasis added); see also 47 U.S.C. § 251(c)(2)(B).
facilities Verizon MI has built out to TelNet’s network, including TelNet’s switches. Under Verizon MI’s proposed language, an appropriate POI “would not include a TelNet Wire Center, TelNet switch or any portion of a transport facility provided by Verizon to TelNet or another party[].”

TelNet acknowledges that the POI must be on Verizon’s network: “TelNet does not disagree that TelNet is required to bring its traffic to a POI that is on Verizon’s network.” But TelNet’s proposed language deletes Verizon MI’s listed examples of permissible locations on Verizon MI’s network for POIs, and instead states that the default POI for Verizon MI’s traffic will be “at each respective TelNet Switch serving the terminating TelNet end user.”

TelNet’s position is contrary to federal law and must be rejected. Facilities Verizon MI builds to TelNet’s switches at TelNet’s request are not “within [Verizon MI]’s network.” Verizon MI’s proposed language tracks the FCC’s finding, in its Triennial Review Order, that:

[T]ransmission links that simply connect a competing carrier’s network to the incumbent LEC’s network are not inherently a part of the incumbent LEC’s local

210 See Verizon MI ICA, Interconnection Attach. § 1.

211 Id.

212 TelNet Petition, Interconnection Attach. at 10 (emphasis deleted).

213 TelNet ICA, Interconnection Attach. § 2.1.1 (emphasis added); see also id., Glossary § 2.71 (deleting examples of locations on Verizon MI’s network from definition of “POI”).

214 In addition, TelNet’s proposal does not clearly define the traffic for which Verizon MI is financially responsible. TelNet proposes that the POI demarcate financial responsibility for “Exchange Service Interconnection Traffic (“ESIT”) (i.e., applicable traffic carried over Traffic Exchange Trunks) originating on TelNet’s network to Verizon.” TelNet ICA, Interconnection Attach. § 2.1.1. But TelNet does not define what the term “applicable” means in this context, and does not provide a more detailed definition of ESIT anywhere else in its proposal. In any event, TelNet’s language is unnecessary. Both Verizon MI’s proposal and section 1 of TelNet’s proposal already state that the parties shall interconnect for the purpose of exchanging “Telephone Exchange Service” and “Exchange Access.” See TelNet ICA, Interconnection Attach. § 1; Verizon MI ICA, Interconnection Attach. § 1.
Rather, they are transmission facilities that exist outside the incumbent LEC’s local network.\footnote{Triennial Review Order ¶ 366 (emphasis added).}

Although the D.C. Circuit remanded for further consideration the issue of whether the FCC had correctly classified these transmission facilities under the literal terms of the Act, the court nevertheless found nothing in the record that would appear to justify unbundling them:

\begin{quote}
[N]o party offers an explanation as to why ILECs rather than CLECs construct these facilities. If (as appears) they exist exclusively for the convenience of the CLECs, it seems anomalous that CLECs do not themselves provide them.\footnote{United States Telecom Ass’n v. FCC, 359 F.3d at 586 (emphasis in original).}
\end{quote}

The D.C. Circuit’s logic (as well as the FCC’s rule, which was not vacated) applies here. Any facilities that Verizon MI builds out to TelNet’s switches at TelNet’s request will “exist exclusively for the convenience of [TelNet].”\footnote{Id.} Given that, according to the D.C. Circuit, it would be “anomalous” for Verizon MI to build such facilities for TelNet,\footnote{Id.} there is no reason to consider them to be part of Verizon MI’s network for the purpose of TelNet’s selection of the POI under the Parties’ interconnection agreement.

Moreover, the FCC’s still-effective rule on permissible locations for a POI provides that the locations “within the incumbent LEC’s network” could include “the line-side of a local switch,” “the trunk-side of a local switch,” “the trunk interconnection points for a tandem switch,” and “[c]entral office cross-connect points.”\footnote{47 C.F.R. § 51.305(a)(2).} Such locations are all on Verizon MI’s own switches. The FCC’s list does not include any dedicated facilities that Verizon MI has either built or might build to other carriers’ networks for their benefit.
The FCC’s rule regarding meet point arrangements likewise supports Verizon MI’s position. That rule provides:

In a meet point arrangement, the ‘point’ of interconnection for purposes of sections 251(c)(2) and 251(c)(3) remains on ‘the local exchange carrier’s network’ (e.g., main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection.\(^{220}\)

This language demonstrates that the FCC contemplated that the POI would be within the ILEC’s common transport network, unless the Parties agree otherwise, and that dedicated facilities built out to TelNet’s local switch locations are not part of this common network. The FCC has similarly concluded in its section 271\(^{221}\) and universal service\(^{222}\) proceedings that UNEs


\(^{221}\) Under section 271 of the 1996 Act, a Bell Operating Company (“BOC”) seeking entry into the long distance market must show that it has satisfied the Act’s “Track A” requirement by proving that it has entered into interconnection agreements with competing carriers that are providing service “exclusively” or “predominantly over their own telephone exchange service facilities.” 47 U.S.C. § 271(c)(1)(A) (emphasis added). In its order rejecting SBC’s section 271 application for Michigan, the FCC found that, for the purposes of satisfying “Track A,” CLECs providing service using UNEs were providing service “over their own telephone exchange service facilities.” Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543 ¶¶ 86-101 (1997).

\(^{222}\) To be eligible to receive universal service support, a carrier must “offer the services that are supported by Federal universal service support mechanisms under section 254(c) . . . either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” 47 U.S.C. § 214(e)(1)(A) (emphasis added). The FCC concluded that the phrase “own facilities” in section 214(e) includes UNEs (including, specifically, transport) obtained from an ILEC. Report and Order, Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776 ¶¶ 153-59 (1997), aff’d in part, rev’d in part sub nom., Texas Office Of Pub. Util. Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999). Similarly, the FCC has recognized that UNEs confer on CLECs the right of exclusive use, one of the key practical attributes of “ownership”: “[a] telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility.” 47 C.F.R. § 51.309(c) (emphasis added).
used by CLECs are the CLEC’s facilities; thus, a transport UNE connecting a Verizon MI switch to a TelNet local switch is not within Verizon MI’s network.

Other decision-makers have rejected language, like TelNet’s, that fails to restrict a CLEC’s selection of a POI to a location on the ILEC’s network. The Florida Public Service Commission, for example, agrees that an ILEC’s “network” for the purposes of interconnection does not include the facilities connecting an ILEC to a CLEC’s switch. In an arbitration between Verizon Florida and US LEC of Florida, the Florida Commission held that the POI must be “within Verizon’s network,” and rejected US LEC’s demand that Verizon Florida be responsible for carrying its traffic to US LEC’s switch. A Hearing Examiner in Maryland rejected the same language proposed by TelNet in an arbitration between Verizon and AT&T:

The Arbitrator finds convincing Verizon’s argument AT&T cannot force Verizon to enlarge its network simply by locating a POI at or near one of AT&T’s switches. AT&T’s switches are not reasonably part of Verizon’s network — otherwise no party would have its own network, for the networks would simply blend together.

And in New Jersey, the Board of Public Utilities rejected GNAPs’ POI language because it did “not explicitly limit Global’s choice of the POI to any ‘technically feasible point within Verizon’s network,’ which is required by Section 251(c)(2) of the 96 Act.”

NJ GNAPs Order at 6-7.

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225 NJ GNAPs Order at 6-7.
Delaware, and Pennsylvania Commissions have also ruled that a CLEC is entitled to
interconnection only at points on or within Verizon’s network.226

As a policy matter, too, a finding that the dedicated facilities TelNet buys or leases from
Verizon MI are part of Verizon MI’s network would make no sense. If the Commission adopts
TelNet’s position, TelNet could effectively control the size of Verizon MI’s network simply by
ordering facilities from Verizon MI out to TelNet’s switches — an absurd result that the FCC
could not have intended. TelNet’s proposal would also allow it to game the system and engage
in regulatory arbitrage. For example, TelNet could order an access facility (with a small amount
of capacity) from Verizon MI’s network to TelNet’s switch location, requiring Verizon MI to
build dedicated facilities to TelNet’s premises. At that point, TelNet could cancel the access
service, but, pointing to the access facility, claim the right to designate the POI at its switch
location because that switch was now “on Verizon MI’s network.” As a result, Verizon MI
would be stuck with the significant costs of constructing high capacity dedicated facilities for
TelNet and — once the TelNet switch was designated as the POI — the costs of transporting
traffic from Verizon MI’s network to TelNet’s switch. And, as TelNet’s traffic increased,
Verizon MI would be forced to bear the costs of adding facilities to accommodate this increased
traffic. Thus, TelNet (or any carrier that adopted TelNet’s agreement) could use this strategy to
shift potentially enormous costs to Verizon MI.

226 See Arbitration Decision, Arbitration of the Interconnection Agreement Between Global
Island GNAPs Order”); Order No. 6124, Petition by Global NAPs South Inc., for the Arbitration
of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware Inc., PSC
Docket No. 02-235, at 2 (DE P.S.C. Mar. 18, 2003), approving Arbitration Award, PSC Docket
No. 02-235 ¶ 15 (Dec. 18, 2002); Opinion and Order, Petition of Global NAPs South, Inc. for
Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with
Finally, if the Commission were to (incorrectly) decide that TelNet may force Verizon MI to establish a POI at TelNet’s premises, Verizon MI should be permitted to self-provision transport to TelNet’s switch, and TelNet should be required to provide Verizon MI access to its premises on reasonable terms and conditions.\textsuperscript{227} Specifically, the Commission should use its authority under state law\textsuperscript{228} to require TelNet to provide Verizon MI with terms and conditions (including rates) that are comparable in operational effect to the ones TelNet has demanded that Verizon MI provide TelNet when it places its equipment (i.e., collocates) on Verizon MI’s premises.\textsuperscript{229} This finding is necessary because TelNet’s proposal would allow it to refuse to allow Verizon MI to build its own transport facilities into TelNet’s premises to deliver traffic, thus forcing Verizon MI to purchase transport from TelNet, with no guarantee that those transport rates would be reasonable.\textsuperscript{230} Permitting Verizon MI to locate its equipment at TelNet’s switch on reasonable terms and conditions is thus necessary to ensure that Verizon MI will have a reasonable, cost-efficient option for delivering traffic to TelNet’s switch locations, if it is (wrongly) required to do so by the Commission.\textsuperscript{231}

\textsuperscript{227} In order to exchange traffic at a POI located on TelNet’s premises, Verizon MI either would have to lease transport facilities from TelNet or a third party, or build its own transport facilities into TelNet’s central office and then place equipment on TelNet’s premises.

\textsuperscript{228} See MICH. COMP. LAWS ANN. § 460.6 (“The public service commission is vested with power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities.”).

\textsuperscript{229} See Issues 69-84, infra.

\textsuperscript{230} See TelNet ICA, Interconnection Attach. § 2.1.5.

\textsuperscript{231} Although the Bureau rejected Verizon’s proposal in the Virginia Arbitration that CLECs should be subject to the same general collocation obligations to which Verizon is subject under section 251(c)(6), it did not address the position advocated by Verizon MI in this proceeding — that is, if TelNet’s POI proposal were (wrongly) adopted, a state commission has authority under state law to require that TelNet’s proposal also includes just and reasonable conditions.
The Commission should therefore adopt Verizon MI’s proposed language in section 1 of the Agreement’s Interconnection Attachment and section 2.71 of the Agreement’s Glossary, and reject TelNet’s proposed language.

(including rates) governing Verizon MI’s placement of equipment at TelNet’s premises. See Virginia Arbitration Order ¶ 75.
Statement of the Issue Presented

Can Verizon MI be required to provide reciprocal compensation to TelNet for traffic that applicable law exempts from the reciprocal compensation regime?232

Summary of Verizon MI’s Position

No. TelNet may not collect reciprocal compensation for terminating traffic that the Act and the FCC’s rules exempt from that regime. In order to minimize future disputes, the Agreement should expressly and accurately set forth the categories of traffic that are not eligible for reciprocal compensation.

Summary of TelNet’s Position

Yes. Verizon MI is attempting to unduly restrict its obligation to pay reciprocal compensation.

Verizon MI’s Position

As noted with respect to Issues 43 and 47, section 251(g) of the Act and FCC rule 51.701(b)(1) state that reciprocal compensation applies to “[t]elecommunications traffic exchanged between a LEC and a telecommunications carrier . . . , except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services

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232 Issue 37 concerns the Agreement’s definition of “reciprocal compensation traffic” in section 2.80 of the Glossary — that is, the types of traffic that are subject to reciprocal compensation. Issue 51 concerns the substantive provisions in section 7.2 of the Interconnection Attachment describing the types of traffic that are not subject to reciprocal compensation. Because of this overlap, the Parties have agreed that the resolution of Issue 51 will control the resolution of Issue 37.
The Agreement should define what types of traffic fall within these three exempt categories in order to avoid — or at least minimize — future disagreements that will likely bring the Parties before the Commission again. As the Commission is well aware, intercarrier compensation issues have generated an enormous amount of litigation. Because TelNet apparently agrees that avoiding future litigation is desirable, there is no legitimate reason for it to oppose Verizon MI’s language, which would do just that.

Verizon MI’s proposed contract language enumerates the types of traffic that fall within the categories that are exempt from reciprocal compensation under the Act and the FCC’s implementing rules. These provisions are contained in Verizon MI’s proposed definition of “reciprocal compensation traffic” (section 2.80 of the Glossary) and in the operative provisions concerning reciprocal compensation in Verizon MI’s proposed language (section 7.2 of the Interconnection Attachment). All of this proposed language tracks applicable law, and in some instances, quotes it verbatim. Accordingly, the Commission should find that the following categories of traffic are ineligible for reciprocal compensation:

1. Exchange Access, Information Access, or Exchange Services for Exchange Access or Information Access (Interconnection Attach. § 7.2.1): Verizon MI’s proposed section 7.2.1 states that “Reciprocal Compensation shall not apply to interstate or intrastate Exchange Access . . ., Information Access, or exchange services for Exchange Access or

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233 47 C.F.R. § 51.701(b)(1) (emphasis added); see also 47 U.S.C. § 251(g); ISP Remand Order ¶ 34.

234 See, e.g., TelNet Petition, Glossary Attach. at 2.

235 See Verizon MI ICA, Glossary Attach. § 2.80.

236 See Verizon MI ICA, Interconnection Attach. § 7.2.
This section reflects *verbatim* the legal authorities that primarily (and indisputably) govern the Parties’ reciprocal compensation obligations — specifically, 47 U.S.C. § 251(g) and 47 C.F.R. § 51.701(b)(1). Quoting the law in this context is necessary as a “catch-all” provision, in the event that the list of specific categories of traffic below proves incomplete as the law evolves.

2. **Internet Traffic (Interconnection Attach. § 7.2.2; Glossary § 2.80(1)):**

Verizon MI’s proposed section 7.2.2 states that “Reciprocal Compensation shall not apply to Internet traffic.”

This language repeats the FCC’s ruling in its *ISP Remand Order* that Internet traffic (including traffic bound for ISPs) “is not subject to the reciprocal compensation obligations of section 251(b)(5).” In place of reciprocal compensation, the FCC established a transitional compensation regime under which payments would decrease over three years, in accordance with FCC-mandated rates and caps on the amount of compensable traffic.

Although the *ISP Remand Order* was appealed, the court did not vacate these transitional compensation rules, and they therefore continue to apply (although the FCC will be required to articulate a different rationale to support them). TelNet would strike this language in its entirety, possibly permitting it to receive reciprocal compensation for Internet traffic, in direct contravention of federal law.

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237 Verizon MI ICA, Interconnection Attach. § 7.2.1.
238 *Id.* § 7.2.2. The Parties’ dispute regarding the definition of “Internet Traffic” is discussed in connection with Issue 32 (G-11).
239 *ISP Remand Order* ¶ 3.
240 *See generally id.* ¶¶ 77-88.
3. **Toll Traffic (Interconnection Attach. § 7.2.3; Glossary § 2.80(3)):** Verizon MI’s proposed section 7.2.3 states that “Reciprocal Compensation shall not apply to Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual-dialed (10XXX/101XXX) basis.” TelNet’s proposed deletion of Verizon MI’s proposed provision conflicts with both the terms of the Act and TelNet’s own concession that toll traffic is not subject to reciprocal compensation. Toll traffic is “exchange access” that is exempt from reciprocal compensation under section 251(g) of the Act and FCC Rule 51.701(b)(1): the Act defines “exchange access” as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” TelNet elsewhere agrees that toll traffic is not subject to reciprocal compensation: the Parties have agreed to define “Toll Traffic” as “Traffic that is originated by a Customer of one Party on that Party’s network and terminates to a Customer of the other Party on that other Party’s network and is not Reciprocal Compensation Traffic.”

4. **Optional Extended Local Calling Area Traffic (Interconnection Attach. § 7.2.4; Glossary § 2.80(4)):** Verizon MI’s proposed section 7.2.4 states that “Reciprocal Compensation shall not apply to Optional Extended Local Calling Area Traffic.” Such traffic is excluded from reciprocal compensation for the same reasons “Toll Traffic” is excluded. An optional extended local calling arrangement allows a customer to pay a separate charge in addition to the amount he pays for local exchange service, in order to be able to make toll-free telephone calls.

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242 Verizon MI ICA, Interconnection Attach. § 7.2.3.


244 TelNet ICA, Glossary Attach. § 2.97 (emphasis added); see also Verizon MI ICA, Glossary Attach. § 2.97 (same).

245 Verizon MI ICA, Interconnection Attach. § 7.2.4.
calls across a broader geographic area. Optional extended local calling is thus a specific form of
toll service; the customer in effect pays for an unlimited amount of toll calling one time per
month rather than paying on a per-call basis. Accordingly, it is “exchange access” that is
exempt from reciprocal compensation.

TelNet’s revisions to Verizon MI’s proposed language could be interpreted to permit it to
receive reciprocal compensation for optional extended local calling area traffic. This result is
contrary to the statutory definition of exchange access and must be rejected.

5. Special Access, Private Line, or Any Other Traffic That Is Not Switched by
the Terminating Party (Interconnection Attach. § 7.2.5; Glossary § 2.80(5)): Under Verizon
MI’s proposed section 7.2.5, reciprocal compensation would not apply to “special access, private
line, or any other traffic that is not switched by the terminating party.” Customers use
facilities such as special access and private lines for exchange access, bypassing the local
exchange network in order to reach an interexchange carrier. As such, this traffic falls squarely
within the “exchange access” exemption from reciprocal compensation, and TelNet’s proposal to
delete this provision (and claim compensation for terminating such traffic) is unlawful.

6. Tandem Transit Traffic (Interconnection Attach. § 7.2.6; Glossary § 2.80(6)):
Verizon MI’s proposed section 7.2.6 states that “Reciprocal Compensation shall not apply to
Tandem Transit Traffic.” As a general matter, reciprocal compensation is paid only by an
originating carrier to a terminating carrier. A carrier that provides only tandem switching of

246 This is in contrast to a non-optional extended local calling area service, which a customer
is able to make toll-free calls without the attendant charge that substitutes for a toll charge.
Verizon MI’s proposed language provides that such traffic is subject to reciprocal compensation.
See Verizon MI ICA, Glossary § 2.80.

247 Verizon MI ICA, Interconnection Attach. § 7.2.5.

248 Id. § 7.2.6.
traffic between two other carriers neither originates nor terminates that transit traffic; by
definition, such traffic originates on TelNet’s network, is transported to a Verizon MI tandem,
and is then terminated by a carrier “other than Verizon.” TelNet agrees with this definition of
tandem transit traffic. Because Verizon MI is not the party that originates tandem transit
traffic, but is merely the intermediary between the originating and terminating carriers, it is not
required under the Act, the FCC’s rules, or any rule of the Commission to pay reciprocal
compensation on such traffic. TelNet’s revisions to the Agreement would permit it to charge
Verizon MI reciprocal compensation for tandem transit traffic, even though there is no legal
basis for this result.

7. **Voice Information Service Traffic (Interconnection Attach. § 7.2.7;**

**Additional Services Attach. § 5.1; Glossary § 2.80(7)):** Verizon MI’s proposed section 7.2.7
states that voice information service traffic is not subject to reciprocal compensation. As
explained above with respect to Issue 43 (AS-2), such traffic is “information access” — which
the FCC has defined to include all traffic routed to or from providers of information services —
and therefore is exempt from reciprocal compensation by section 251(g) of the Act and FCC
Rule 51.701(b)(1). TelNet’s revisions to the Agreement would entitle it to receive reciprocal
compensation for voice information services traffic, which is contrary to the Act and the FCC’s
rules.

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249 Verizon MI ICA, Interconnection Attach. § 12.1; see also id. (“Neither the originating
nor terminating customer is a Customer of Verizon.”).

250 See TelNet ICA, Interconnection Attach. § 12.1.

251 Verizon MI ICA, Interconnection Attach. § 7.2.7. Similarly, Verizon MI’s proposed
section 5.1 in the Additional Services Attachment provides that “Voice Information Service
Traffic is not subject to Reciprocal Compensation charges under Section 7 of the Interconnection
Attachment.” Verizon MI ICA, Additional Services Attach. § 5.1.
8. Traffic That Is Not Subject to Reciprocal Compensation Under Section 251(b)(5) of the Act (Interconnection Attach. § 7.2.8): Verizon MI’s proposed language makes explicit the uncontroversial fact that reciprocal compensation does not apply to traffic “that is not subject to reciprocal compensation under section 251(b)(5) of the Act” (the provision in the Act that sets forth the general reciprocal compensation obligation). This language also serves as a “catch-all” to ensure that the traffic currently enumerated in Verizon MI’s proposed Agreement is not the exclusive list of traffic that is not subject to reciprocal compensation.

9. Virtual Foreign Exchange (“VNXX”) Traffic (Interconnection Attach. § 7.2.9; Glossary § 2.80(8)): Verizon MI’s proposal excludes virtual foreign exchange traffic (also known as “VNXX” traffic) from reciprocal compensation. As explained with respect to Issue 47, the FCC has held that ILECs have no duty to pay reciprocal compensation for VNXX traffic. Rather, because VNXX calls represent “the provision of services in connection with interexchange communications” as measured by their originating and terminating endpoints, they must be considered “exchange services for . . . access” that are exempt from reciprocal compensation under section 251(g) of the Act and FCC Rule 51.701(b)(1). TelNet’s proposal to delete this language ignores federal law exempting VNXX traffic from reciprocal compensation.

10. Traffic That Does Not Originate and Terminate in the Same Verizon Local Calling Area (Glossary § 2.80(2)): Verizon MI’s proposed definition of “reciprocal compensation traffic” excludes “traffic that does not originate and terminate within the same Verizon local calling area as defined by Verizon, and based on the actual originating and terminating endpoints.”

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terminating points of the complete end-to-end communication” — that is, traffic that is geographically interexchange.\textsuperscript{253} Most of the traffic enumerated in categories above fits this description (for example, toll traffic and VNXX traffic indisputably originate and terminate in different local calling areas), but Verizon MI’s language is necessary to ensure that all such traffic is covered. For the reasons discussed in connection with those issues, the Commission should adopt this language as a limitation on the traffic that is eligible for reciprocal compensation.

* * *

TelNet proposes that all of Verizon MI’s proposed sections cited above be deleted. Specifically, TelNet seeks to delete the operative reciprocal compensation provision in Verizon MI’s proposed section 7.2 of the Interconnection Attachment, and to replace it with the circular statement that reciprocal compensation “shall not apply to any type of traffic for which a party is not required to pay reciprocal compensation under Applicable law.”\textsuperscript{254} In addition, TelNet argues that Verizon MI’s proposed detailed definition of “reciprocal compensation traffic” in section 2.80 of the Glossary should be replaced with the statement that such traffic “[s]hall have the meaning prescribed by the FCC.”\textsuperscript{255}

The Commission should reject TelNet’s proposals. First, they would create unnecessary ambiguity with respect to the Parties’ reciprocal compensation obligations and could be interpreted to allow TelNet impermissibly to receive compensation for certain traffic that is not within the scope of the reciprocal compensation regime under the 1996 Act and the FCC’s

\textsuperscript{253} Verizon MI ICA, Glossary Attach. § 2.80(2).

\textsuperscript{254} TelNet ICA, Interconnection Attach. § 7.2.

\textsuperscript{255} TelNet ICA, Glossary Attach. § 2.80.
implementing rules. While Verizon MI proposes to establish in the Agreement the current state of the law (but permitting changes as necessary pursuant to the Agreement’s change-of-law provisions), TelNet’s vague and ambiguous language is an invitation to future litigation, and is completely inadequate to the task of defining the scope of the Parties’ reciprocal compensation obligations.

TelNet fails to explain why its vague language is superior to Verizon MI’s itemized listing of what the law actually requires. While a simple reference to “applicable law” (as TelNet proposes here) may suffice in some circumstances, it does not do so in the context of intercarrier compensation, given the uncertainty regarding the future applicability of the FCC’s ISP Remand Order, as well as past experience with protracted and expensive disputes over the scope of the Act’s reciprocal compensation obligation. The ISP Remand Order, which contains the FCC’s discussion of the exclusions from the obligation to pay reciprocal compensation, remains valid, but it has been remanded to the FCC and is subject to change. TelNet itself recognizes this possibility in its petition, and even proposes a special contract provision designed to ensure that certain changes in the law are implemented as quickly as possible due to “the great significance of this decision.” In light of the fluctuating state of the law in this area, it is essential that the Agreement state as precisely as possible the boundaries of the Parties’ reciprocal compensation obligations, as Verizon MI’s proposed language does.

Second, TelNet makes no substantive objection to most of the language it seeks to delete. In fact, TelNet does not even attempt to question the merits of excluding eight (8) of the ten (10) categories enumerated above from reciprocal compensation. TelNet mentions only two (2) of

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256 See WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002).

257 TelNet Petition, Interconnection Attach. at 24.
those ten (10) categories — VNXX traffic and voice information services traffic — but TelNet’s cursory arguments ignore governing federal law. Because TelNet has stated no specific rationale for deleting Verizon MI’s language relating to the other eight (8) categories of traffic, the Commission should approve Verizon MI’s language.

Rather than address the merits of Verizon MI’s specific arguments, TelNet broadly asserts that Verizon MI is “attempting to restrict its obligation to pay reciprocal compensation for certain types of traffic for which it is otherwise obligated to pay reciprocal compensation.” TelNet’s claim is contradicted by the requirements of federal law, which exempts all of the traffic listed by Verizon MI from reciprocal compensation. In fact, it is TelNet that is attempting to expand its right to receive compensation, by proposing language that could permit it to bill Verizon MI for terminating traffic, in violation of federal law.

TelNet mentions in passing the Wireline Competition Bureau’s discussion, in the Virginia Arbitration Order, of language proposed by Verizon Virginia Inc. in its arbitration with certain CLECs that is similar to the language proposed here by Verizon MI. TelNet’s reliance on the Bureau’s Virginia Arbitration Order is misplaced. First, the Virginia Arbitration Order is not binding precedent. The FCC itself has described that Order as merely an “interlocutory staff ruling” by one of its subdivisions, and noted that the FCC “has not yet ruled on . . . whether the Virginia Arbitration Order reflects agency policy.” Moreover, the Virginia Arbitration Order remains a work in progress and is not yet even a final decision by the Bureau.

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258 TelNet Petition, Interconnection Attach. at 23; see also id. at 15 (asserting that Verizon MI’s proposed definition of “reciprocal compensation” contains “a subtle attempt to limit the meaning of reciprocal compensation”).

259 TelNet Petition, Glossary at 17 (referencing Virginia Arbitration Order).

resolves several pending motions for reconsideration filed by the Parties to that proceeding,\(^{261}\) the *Order* will be subject to review by the FCC itself, which is under no obligation to follow the Bureau’s decision.

Second, the Bureau’s discussion of the language excluding various categories of traffic from reciprocal compensation is largely superfluous given its rulings on other issues in that arbitration. For example, the Bureau found that there was no need for it to decide on the proper treatment of voice information services traffic because no such traffic existed in Virginia,\(^{262}\) and the Bureau declined to consider excluding VNXX traffic because of what it believed was a deficiency in the evidentiary record.\(^{263}\) Once the Bureau made these case-specific findings (albeit erroneously), there was no need for it to consider the additional language identifying which *other* types of traffic are not subject to reciprocal compensation; rather, by taking two of these issues off the table, the Bureau rendered any further consideration of that language unnecessary.

In addition, the *Virginia Arbitration Order* is internally inconsistent on this point. Despite questioning the use of section 251(g) to exclude certain categories of traffic from

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\(^{261}\) See 47 U.S.C. § 155(c)(4) (providing that any order or decision issued pursuant to the FCC’s delegation powers is subject to review by the entire Commission); 47 C.F.R. § 1.106 (providing that a person may seek reconsideration of a final action taken pursuant to authority delegated by the FCC and of a final action taken by the Commission itself); Verizon Petition for Clarification and Reconsideration and WorldCom’s Application for Review, were filed Aug. 16, 2002, in CC Docket No. 00-218, AT&T’s Petition for Reconsideration was filed Aug. 16, 2002, in CC Docket No. 00-251, Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251.

\(^{262}\) *Virginia Arbitration Order* ¶ 314.

\(^{263}\) See id. ¶¶ 301-02.
reciprocal compensation, the Bureau expressly recognized that the *ISP Remand Order* was not vacated and continued to supply the governing law for purposes of the Parties’ contract. 264 Indeed, the Bureau explained that, as a general matter, the rules set forth in an FCC order that is remanded but not vacated “remain in effect pending further action by the Commission in response to the court’s order.” 265 This includes 47 C.F.R. § 51.701(b)(1), which implements the reciprocal compensation exclusion described in the *ISP Remand Order*. It is the Bureau’s latter holding, not the former one, that accurately describes the state of the law.

In short, the reciprocal compensation carve-out remains good law, as all Parties to this arbitration (as well as the Bureau in the Virginia arbitration) agree. The Commission must apply that carve-out as it exists today, and conclude that the categories of traffic listed above are exempt from the reciprocal compensation regime. Accordingly, the Commission should adopt Verizon MI’s proposed section 7.2 of the Interconnection Attachment and section 2.80 of the Glossary, and reject TelNet’s corresponding proposals.

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264 *Id.* ¶ 245 (stating that the D.C. Circuit “did not . . . vacate the compensation regime that the [*ISP Remand Order*] established, nor did it reverse the Commission’s conclusion that ISP-bound traffic is not subject to section 251(b)(5),” and noting that the *ISP Remand Order* thus remains the “existing law”).

265 *Id.* ¶ 4.
ISSUE 43: VOICE INFORMATION SERVICES TRAFFIC (VERIZON MI ICA, ADDITIONAL SERVICES ATTACHMENT § 5.1; TELNET ICA, ADDITIONAL SERVICES ATTACHMENT § 5.1)

Statement of the Issue Presented

Is voice information services traffic subject to reciprocal compensation?

Summary of Verizon MI’s Position

No. Voice information services traffic is “information access,” which is exempt from reciprocal compensation under the Act and the FCC’s rules.

Summary of TelNet’s Position

Yes. “There is no basis for excluding voice information service from reciprocal compensation obligations.”

Verizon MI’s Position

Voice information services consist of recorded voice announcement information (for example, weather forecasts) and vocal discussion programs open to the public (such as 976 chat services). Such traffic constitutes “information access” and is therefore excluded from the reciprocal compensation regime under the Act and the FCC’s implementing rules.

Section 251(g) of the 1996 Act and FCC Rule 51.701(b)(1) state that the reciprocal compensation obligation set forth in section 251(b)(5) of the Act does not apply to “interstate or intrastate exchange access, information access, or exchange services for such access.” The

266 TelNet Petition, Additional Services Attach. at 1.

267 The Parties agree that such services are “voice information services.” See Verizon MI ICA, Additional Services Attach. § 5.1; TelNet ICA, Additional Services Attach. § 5.1.

268 47 U.S.C. § 251(g) (emphasis added); 47 C.F.R. § 51.701(b)(1); ISP Remand Order ¶ 34 ("We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5). Thus, the statute does not mandate reciprocal compensation for ‘exchange access, information access, and exchange services for such access’ provided to IXC's and information services.

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The definition of “information access” encompasses all information services. The FCC has stated that the reference to “information access” has the same meaning as it did in the 1982 consent decree divesting the Bell operating companies from AT&T. That definition describes “information access” as “the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services.” The Parties define “information access” using virtually identical language. The FCC has explained that “this definition of ‘information access’ was meant to include all access traffic that [is] routed by a LEC ‘to or from’ providers of information services.” This plainly encompasses services providing access to recorded voice announcements and vocal discussion programs.

The Act’s definition of “information services” is similarly expansive, including “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving,
utilizing, or making available information via telecommunications.\textsuperscript{273} This broad definition also clearly includes the voice-based information services at issue here.

Furthermore, “information services” have universally been understood to include voice-based services — which is not surprising, since the consent decree initially setting forth the definition of “information access” pre-dated the explosion in Internet-based services by approximately fifteen years. The FCC has repeatedly made clear, for example, that the term “information services” extends beyond “e-mail and other Internet services” to include a whole array of voice-based services, such as “voice mail, . . . interactive voice response, [and] audiotext information services.”\textsuperscript{274} This reflects universal industry practice as well: The Bell companies’ “information service” offerings — as illustrated by the Comparably Efficient Interconnection (“CEI”) plans they must file for every service falling into that category\textsuperscript{275} — include voice-based offerings such as voice-mail services,\textsuperscript{276} interactive voice response services,\textsuperscript{277} interactive audio

\textsuperscript{273} 47 U.S.C. § 153(20).


\textsuperscript{275} See, e.g., Report and Order, Amendment of Section 64.702 of the Commission’s Rules and Regulations, 104 F.C.C.2d 958 ¶¶ 154-66 (1986), vacated and remanded on other grounds sub nom. California v. FCC, 905 F.2d 1217 (9th Cir. 1990). A Comparably Efficient Interconnection plan describes the service at issue and explains how it complies with the relevant legal requirements.

\textsuperscript{276} See, e.g., http://www.sbc.com/PublicAffairs/PublicPolicy/CEIplans/81535.pdf

\textsuperscript{277} See, e.g., http://www.sbc.com/PublicAffairs/PublicPolicy/CEIplans/81850.pdf
text services, customized announcement services, voice messaging services, and numerous other services. Thus, when TelNet or Verizon MI provides services in connection with the “origination, termination, transmission, switching, forwarding or routing” of traffic “to or from” the facilities of a provider of these types of voice-based information services, it necessarily is providing “information access” that is exempt from reciprocal compensation.

Verizon MI understands that, in an arbitration involving SBC, this Commission decided to apply reciprocal compensation to voice information services. However, Verizon MI urges the Commission not to adopt the same logic here, but to instead correct its prior reading of the applicable law. In the SBC arbitration, the Commission rejected the reasoning set forth above primarily on the basis of the FCC Wireline Competition Bureau’s *Virginia Arbitration Order* and specifically on that decision’s discussion of *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), in which the D.C. Circuit expressed doubt whether section 251(g) provided a proper basis for exempting traffic from the reciprocal compensation regime.

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278 *See, e.g.*, http://cei.qwest.com/cei.nsf/c650d8d42cb558f58825675a0072d9bf/ac7dd90047e0678a882568730072907e/$FILE/Audiotex+Services.pdf

279 *See, e.g.*, http://www.sbc.com/PublicAffairs/PublicPolicy/CEIplans/81853.pdf

280 *See, e.g.*, http://cei.qwest.com/cei.nsf/c650d8d42cb558f58825675a0072d9bf?OpenView

281 *See* http://cei.qwest.com/cei.nsf/c650d8d42cb558f58825675a0072d9bf?OpenView (listing Qwest’s CEI plans by plan name); http://www.sbc.com/public_affairs/0,,97,00.html (listing SBC’s CEI plans by plan name); http://www.verizon.com/disclose/cei.htm (listing Verizon’s CEI plans by plan name).


283 *See id.* at *65-67 (citing Virginia Arbitration Order).*
There are a number of problems with the analysis in the SBC arbitration. First, the decision did not address the FCC’s definition of “information access” set forth above, which excludes the voice-based information services at issue here from reciprocal compensation. The Commission is bound to follow the FCC’s rulings, including its decision that all “information access” — which by definition includes all information services — is exempt from reciprocal compensation. The Commission’s ruling to the contrary contravenes those binding FCC rulings.

Second, the Commission’s reliance on the Virginia Arbitration Order was improper. Aside from having no binding effect on this Commission, the Bureau’s discussion of this issue is dicta. The Bureau expressly declined to rule on whether voice information services traffic should be subject to reciprocal compensation. Although Verizon and WorldCom disagreed in the Virginia arbitration about whether reciprocal compensation applied to voice information services traffic, the Bureau determined that it “need not decide” this question and that any reference to such traffic in the agreement was “unnecessary,” given that “the Parties agree that this type of traffic does not currently exist in Virginia and that neither party intends to carry it

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284 See, e.g., City of New York v. FCC, 486 U.S. 57, 64 (1998) (“The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof. Beyond that, however, in proper circumstances the agency may determine that its authority is exclusive and pre-empts any state efforts to regulate in the forbidden area.”); Fidelity Federal Sav. & Loan Ass’n v. De la Cuesta, 458 U.S. 141, 152-54 (1982).

285 The Bureau’s ruling also does not reflect FCC policy; the FCC itself has described the Virginia Arbitration Order as an “interlocutory staff ruling” and noted that the FCC “has not yet ruled on . . . whether the Virginia Arbitration Order reflects agency policy.” Brief of Respondents Federal Communications Commission and United States of America at 30-32, Mountain Communications, Inc. v. FCC, No. 02-1255 (D.C. Cir. filed June 19, 2003). Furthermore, the Order is now pending reconsideration by both the Bureau and the full FCC, making it very much a work in progress.
absent a change in Virginia law.\textsuperscript{286} The Bureau thus struck both Verizon’s proposed language that would have specifically excluded information services traffic as traffic from reciprocal compensation and WorldCom’s proposed language providing the opposite.\textsuperscript{287} Accordingly, the Virginia Arbitration Order cannot serve as a basis for subjecting voice information services to reciprocal compensation.

Finally, regardless of the Bureau’s statement concerning the applicability of the ISP Remand Order, the exclusion for reciprocal compensation in section 251(g) and FCC Rule 51.701(b)(1) — including the exclusion for “information access” — remains in effect despite the D.C. Circuit’s decision in WorldCom. In WorldCom, the D.C. Circuit remanded to the FCC that agency’s conclusion that ISP-bound traffic fell within the exclusion from reciprocal compensation, but it specifically did not vacate the rule containing the exclusion. In fact, the court stated that “there may well be other legal bases for adopting the rules chosen by the [FCC].”\textsuperscript{288} The court continued that “there is plainly a non-trivial likelihood that the Commission has authority,” on other grounds, to exclude ISP-bound traffic from reciprocal compensation.\textsuperscript{289} The Commission must apply the law as it currently exists, which includes applying the still-valid reciprocal compensation carve-out in section 251(g) and FCC Rule 51.701(b)(1).

\textsuperscript{286} Virginia Arbitration Order ¶ 314.

\textsuperscript{287} See id. ¶ 261.

\textsuperscript{288} WorldCom, Inc. v. FCC, 288 F.3d 429, 430 (D.C. Cir. 2002).

\textsuperscript{289} Id. at 434. The court offered one possible theory — suggesting that the FCC could exempt ISP-bound traffic from reciprocal compensation under sections 251(b)(5) and 252(d)(B)(i) of the Act — but did not purport to identify the full range of alternative jurisdictional grounds. See id.
TelNet also states — without any support — that voice information services traffic “could not even be identified” and separated out from reciprocal compensation traffic. That is simply wrong. As the Pennsylvania Commission recently stated, a CLEC “knows who its Voice Information Services customers are” and “can easily distinguish such traffic from traffic subject to reciprocal compensation based on the telephone numbers it assigns to those customers.” The Pennsylvania Commission also recognized that carriers could identify this traffic by “estimat[ing] minutes of ‘Voice Information Services’ traffic or [using] another surrogate of actual use.” As explained in connection with Issue 47, the development of such a factor, through the use of a traffic study, is an inexpensive and efficient means of identifying traffic whose use has been widely endorsed by state commissions. Accordingly, there is no basis to TelNet’s claim that it could not identify its voice information services traffic in order to exclude it from reciprocal compensation.

TelNet’s proposed language — which would entitle it to reciprocal compensation for a subset of information access traffic — would violate federal law and produce a result directly contrary to the FCC’s stated goal of reducing incentives for regulatory arbitrage. In ruling that “information access” is exempt from reciprocal compensation, the FCC observed that the reciprocal compensation regime generally gives carriers “the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic” and no outgoing

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290 TelNet Petition, Additional Services Attach. at 1.


292 Id.
traffic.\textsuperscript{293} By accumulating such customers, a carrier could generate for itself a high level of reciprocal compensation revenue while minimizing its obligation to ever reciprocate those payments (since these customers will never make calls that another carrier would have to terminate). This imbalance in reciprocal compensation payments “may enable a carrier to offer service to its customers at rates that bear little relationship to its actual costs, thereby gaining an advantage over its competitors.”\textsuperscript{294} The result is a distortion of the competitive marketplace in which neither the customer nor the originating end user receives accurate price signals.\textsuperscript{295} The FCC concluded that abandoning the reciprocal compensation regime (in those jurisdictions in which it applied) for such traffic “may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery.”\textsuperscript{296}

The FCC’s policy rationale for excluding the subset of information access traffic at issue in the \textit{ISP Remand Order} (that is, intraexchange ISP-bound calls) applies with full force to the voice information services at issue here. Like ISP-bound calls, voice information services traffic is inbound-only — that is, you call for the weather forecast, but the weather forecast provider does not call you. This unidirectional traffic creates a significant opportunity for regulatory arbitrage: Carriers have an incentive to target voice information service providers and engineer large flows of reciprocal compensation revenue from their competitors.

\textsuperscript{293} \textit{ISP Remand Order} ¶ 68.

\textsuperscript{294} \textit{Id.}

\textsuperscript{295} See \textit{id.}

\textsuperscript{296} \textit{Id.} ¶ 74.
For all of these reasons, the Commission should reject TelNet’s proposed revisions to the Agreement and adopt Verizon MI’s proposed language, which is consistent with federal law and important policy considerations.
ISSUES 45(B) AND 48: MUTUAL EXCHANGE OF TRAFFIC AT POI AND RECIPROCAL COMPENSATION (VERIZON MI ICA, INTERCONNECTION ATTACHMENT §§ 1, 2.1, 7.1; TELNET ICA, INTERCONNECTION ATTACHMENT §§ 2.1.1, 2.1.2, 2.1.5-2.1.6, 7.1)

Statement of the Issue Presented

A. Should the Agreement make clear that the POI locations chosen by TelNet are for the mutual exchange of traffic?

B. Should TelNet be permitted to charge Verizon MI a dedicated transport rate in addition to the tandem or end office reciprocal compensation rates approved by the Commission when Verizon MI hands off its traffic at the same POI TelNet uses to hand off its traffic?

Summary of Verizon MI’s Position

A. Yes. POIs are for the mutual exchange of traffic, and TelNet may not pick one POI for handing off traffic to Verizon MI, but designate another POI for Verizon MI to hand off traffic to TelNet.

B. No. The Commission has already determined that the compensation for terminating another carrier’s traffic should consist of only the end office or tandem office reciprocal compensation rates.

Summary of TelNet’s Position

A. No. TelNet should have the right to deliver its traffic to a POI on Verizon MI’s network, and force Verizon MI to deliver its traffic to a separate POI on TelNet’s network.

B. Yes. TelNet should have the right to charge Verizon MI both reciprocal compensation and transport charges for terminating Verizon MI’s traffic.

Verizon MI’s Position

As discussed in Issues 34 and 45(a), Verizon MI does not dispute that TelNet is allowed to select the location of the POI(s) in a LATA. However, TelNet’s demand that Verizon MI hand off its traffic at TelNet’s switch if the Parties do not mutually agree that Verizon MI can
hand off its traffic at the same POI TelNet has selected to hand off its traffic to Verizon MI, violates the FCC’s rules in two regards. First, TelNet is not entitled to select a separate POI for Verizon MI’s traffic, and second, as discussed in Issue 45(a), TelNet is not entitled to pick its switches as that POI location. TelNet’s proposal to charge Verizon MI both the reciprocal compensation rates approved by the Commission and an additional transport charge when Verizon MI delivers its traffic to the same POI TelNet uses to deliver its traffic is likewise contrary to law. The Commission has already found that the compensation for terminating another carrier’s traffic should consist of only the end office or tandem office reciprocal compensation rates.

A. Issue 45(b) (Verizon MI ICA, Interconnection Attach. §§ 1, 2.1; TelNet ICA, Interconnection Attach. §§ 2.1.1, 2.1.2, 2.1.5-2.1.6): Should the Agreement make clear that the POI locations chosen by TelNet are for the mutual exchange of traffic?

The FCC’s rules clearly provide that POIs are for “the linking of two networks for the mutual exchange of traffic.”297 Thus, while TelNet has the right to select the location of the POI or POIs on Verizon MI’s network, Verizon MI must be permitted to hand off its traffic to TelNet at the same POI location on Verizon MI’s network chosen by TelNet; otherwise, a POI would not be a point of mutual traffic exchange. Accordingly, if TelNet chooses several POIs on Verizon MI’s network for handing off its traffic to Verizon MI, as permitted by the FCC,298 Verizon MI should be permitted to decide which one (or more) of those POIs on Verizon MI’s network to use to hand off its traffic to TelNet.

297 47 C.F.R. § 51.5 (emphasis added).

298 Id. § 51.305(a)(2); Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime, 16 FCC Rcd 9610 ¶ 112 (2001).
TelNet’s proposal is also inconsistent with the *Virginia Arbitration Order*, which recognized that, “under the petitioner’s proposals, each party would bear the cost of delivering its originating traffic to *the point of interconnection designated by the competitive LEC:*”\(^{299}\) The Bureau held further:

The “**single** point of interconnection” rule benefits the competitive LEC by permitting it to interconnect for delivery of *its* traffic to the incumbent LEC network at a single point. It does not preclude the Parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it.\(^{300}\)

The “single point of interconnection rule” entitles Verizon MI to deliver its traffic to the POI “designated by the competitive LEC” on Verizon MI’s network, unless Verizon MI agrees to deliver its traffic to other, alternative locations. In other words, it is Verizon MI’s choice, not TelNet’s, to request a different POI arrangement for delivering Verizon MI traffic to TelNet because logically, only Verizon MI, not TelNet, would be able to determine what interconnection arrangement is most efficient for Verizon MI.

In defense of its position, TelNet argues that it is not “responsible for establishing a part of the network to pick up Verizon’s traffic from Verizon,” and so TelNet should not be required to use the facilities it builds out to Verizon MI’s network to carry Verizon MI’s traffic from the

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\(^{299}\) *Virginia Arbitration Order* ¶ 53 (emphasis added).

\(^{300}\) *Id.* ¶ 71 (bold emphasis added). Although the Virginia Agreement contains the language proposed by TelNet here, for the reasons discussed above, that language is clearly inconsistent with applicable law and the Bureau’s own order. After rejecting Verizon Virginia’s GRIPs/VGRIPs proposal (which Verizon MI has not made in this case), the Bureau simply adopted TelNet’s language without considering whether it was consistent with other parts of the Bureau’s ruling. Verizon has sought reconsideration of that ruling. See Verizon’s Petition for Clarification and Reconsideration of July 17, 2002 Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, CC Docket No. 00-218 *et al.*, at 2-4 (filed Aug. 16, 2002).
POI back to the TelNet switch.\footnote{TelNet Petition, Interconnection Attach. at 10 (emphasis); see also id., Glossary at 13 ("Verizon is attempting to force TelNet to bear the cost of both delivering its traffic to Verizon and picking up Verizon’s traffic from Verizon").} According to TelNet, Verizon MI is attempting to burden TelNet with the obligation of building the facilities required to deliver Verizon MI’s traffic to TelNet.\footnote{Id. at 10-11.} TelNet argues further that “Verizon wants no network or cost responsibility to transport its own traffic from its own network to TelNet’s network.”\footnote{Id. at 12.}

TelNet is missing the point. The POI is the location where Verizon MI’s network and TelNet’s network meet, and the Parties agree that they each are responsible for bringing their own traffic to the POI. But as discussed, the FCC’s rules plainly state that the POI must be located on Verizon MI’s network, and that Verizon MI must be permitted to hand off its traffic at the same POI TelNet has selected to hand off its traffic. Therefore, TelNet has the responsibility to both deliver its originating traffic to the POI on Verizon MI’s network that it selected, and to pick up Verizon MI’s originating traffic at that same location.

Moreover, TelNet has the right to select the location of the POI(s) on Verizon MI’s network, and so it has every opportunity to consider whether it has adequate facilities to carry Verizon MI’s traffic from a potential POI location or locations. If TelNet is not capable of handling Verizon MI’s traffic at a particular location because it does not have enough capacity, it can and should choose another location for the POI where it has sufficient capacity. Even under Verizon MI’s proposed interconnection architecture, however, it will be Verizon MI, not TelNet, that frequently is required to bear unanticipated costs as a result of TelNet’s right to designate one or more technically feasible POIs on Verizon MI’s network: if TelNet selects a POI where
Verizon MI does not have enough facilities to carry TelNet’s traffic back to Verizon MI’s network, Verizon MI has no choice but to build additional facilities.

B. Issue 48 (Interconnection Attachment § 7.1): Should TelNet be permitted to charge Verizon MI a dedicated transport rate in addition to the tandem or end office reciprocal compensation rates approved by the Commission when Verizon MI hands off its traffic at the same POI TelNet uses to hand off its traffic?

TelNet’s proposal to charge Verizon MI for transport in addition to reciprocal compensation when Verizon MI delivers its traffic to the same POI chosen by TelNet for delivering its traffic to Verizon MI is impermissible. Under the Act and FCC rules, local exchange carriers are required to establish “reciprocal compensation” arrangements to compensate each other for terminating calls on their respective networks. The FCC has specified that the reciprocal compensation rates a CLEC charges an ILEC must be “equal to those that the incumbent LEC assesses upon the other carrier for the same services.” Thus, the reciprocal compensation rates that TelNet charges Verizon MI must be the same as the reciprocal compensation rates that the Commission has directed Verizon MI to charge TelNet. A CLEC may charge “asymmetrical rates” only if it “proves to the state commission on the basis of a [forward-looking] cost study . . . that a higher rate is justified.”

Verizon MI’s proposal is consistent with the FCC’s symmetry rule and the Commission’s orders. Under Verizon MI’s approach, both Verizon MI and TelNet would be permitted to charge only the Commission-approved end office or tandem office switch rates, as applicable,

304 47 C.F.R. § 51.711(a)(1).
305 Id. § 51.711(b).
for terminating a local call originating on the other carrier’s network. Compensation would be calculated based on the location of the POI where the Parties mutually exchange traffic. And because TelNet is entitled to select the location of the POI on Verizon MI’s network, it can minimize its transport costs by choosing a location as close as possible to its own terminating switch.

By contrast, TelNet inexplicably proposes deleting the language in Verizon MI’s proposal tying reciprocal compensation charges to the POI so that TelNet will be able to charge Verizon MI “transport charges” when TelNet transports and terminates a call originating on Verizon MI’s network. According to TelNet, “Verizon’s traffic is delivered far beyond the POI Verizon is advocating. If TelNet or a third carrier has to expend its resources to transport Verizon’s traffic beyond the POI, they should receive standard industry compensation.”

TelNet’s position is flawed in several respects. First, the Commission has already determined that reciprocal compensation for transport and termination should consist of only the end office or tandem office reciprocal compensation rates, so TelNet will, in fact, receive “standard industry compensation.” Those rates are determined by Verizon MI’s own costs, and are applied to TelNet as a proxy for the costs on their network. If TelNet believes that its

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307 Id.

308 TelNet Petition, Interconnection Attach. at 23.

309 Id.

310 See GTE Rate Order at *67.
costs are greater than Verizon MI’s and that it will not be adequately compensated by the current reciprocal compensation rates, it can submit a cost study demonstrating that the Commission-approved tandem or end office rates are not sufficient. It is inappropriate for TelNet to effectively request the Commission to change established reciprocal compensation rates in the context of an interconnection arbitration.

Second, even if this case were the appropriate forum in which to consider TelNet’s request, TelNet has provided absolutely no evidence that its costs are greater than Verizon MI’s and that it will not be adequately compensated by the current reciprocal compensation rates. Without such evidence, the Commission must reject TelNet’s assertion that the Commission-approved reciprocal compensation rates do not sufficiently recover TelNet’s transport costs.

Third, TelNet does not specify what form of “standard industry compensation” it believes should apply in addition to the Commission-ordered reciprocal compensation charges. To the extent that TelNet is arguing that Verizon MI’s UNE dedicated transport rate approved by the Commission in Case No. U-11832 should serve as a proxy for TelNet’s alleged transport costs, that claim should be rejected. The UNE dedicated transport rate approved in that proceeding is based on Verizon MI’s, not TelNet’s, costs. TelNet has produced no evidence that this rate (or any other rate that departs from existing reciprocal compensation rates) is warranted.

Finally, TelNet’s proposal to include an additional UNE transport rate in the reciprocal compensation rates, coupled with its proposal that it be permitted to choose a separate POI for Verizon MI’s traffic, is clearly designed to permit TelNet to game the system to ensure that it obtains as much payment from Verizon MI as possible and shifts as many costs as possible to Verizon MI. Under TelNet’s proposal, for example, TelNet could force Verizon MI to hand off its traffic at a POI far from TelNet’s terminating switch, and then charge Verizon MI for the
“dedicated transport” between that POI and TelNet’s terminating switch. At the same time, pursuant to TelNet’s legally unfounded view, TelNet could also select a POI for handing off its own traffic very close to Verizon MI’s terminating switch, allowing TelNet to avoid paying Verizon MI any dedicated transport charges. Thus, under TelNet’s approach, Verizon MI inevitably would pay TelNet for dedicated transport, but TelNet likely would not make any such payment to Verizon MI.

In sum, the Commission should reject TelNet’s request for additional, unjustified compensation. The FCC has established that the only rates that TelNet may assess on Verizon MI for terminating Verizon MI’s traffic are the reciprocal compensation rates established by the Commission. In addition, there is nothing in the record to support TelNet’s claim that the existing end office and tandem reciprocal compensation rates do not sufficiently cover TelNet’s termination costs. Accordingly, the Commission should reject TelNet’s proposal, which is not supported by any cost study, is not appropriate for this forum, and is inconsistent with rulings of the FCC and this Commission.

For these reasons, the Commission should adopt Verizon MI’s proposed language in sections 2.1.1, 2.1.2, 2.1.5-2.1.6, and 7.1 of the Agreement’s Interconnection Attachment and reject TelNet’s proposed language.

311 See 47 C.F.R. § 51.709(a).
ISSUE 45(d): Routing and Grooming Responsibilities of the Parties (Verizon MI ICA, Interconnection Attachment §§ 2.2, 2.3, 2.4)

Statement of the Issue Presented

Should the Agreement make clear that TelNet is obligated to help Verizon MI correctly route and groom the traffic originated by TelNet?

Summary of Verizon MI’s Position

Yes. TelNet has a responsibility to help Verizon MI manage TelNet’s traffic, and should be subject to appropriate charges if it fails to do so efficiently.

Summary of TelNet’s Position

TelNet appears to be arguing that it should not have any responsibility for managing its traffic on Verizon MI’s side of the network.

Verizon MI’s Position

The dispute between the Parties regarding sections 2.2, 2.3, and 2.4 of the Interconnection Attachment — all of which concern the Parties’ responsibility for establishing and monitoring interconnection trunks — is largely a function of TelNet’s failure to understand Verizon MI’s proposed language. TelNet appears to be concerned that Verizon MI is trying to “foist cost responsibility on TelNet for the completion of traffic on Verizon’s side of the POI.”\textsuperscript{312} But that is not the case. Under Verizon MI’s proposal, Verizon MI will have the responsibility to transport TelNet’s traffic on Verizon MI’s side of the POI to Verizon MI’s terminating switches. Verizon MI’s proposal simply makes clear that TelNet is obligated to work with Verizon MI to ensure that TelNet’s traffic is routed correctly and efficiently.

Verizon MI agrees that for traffic subject to reciprocal compensation, TelNet will not be charged for any interconnection transport or trunking that Verizon MI provides on Verizon MI’s

\textsuperscript{312} TelNet Petition, Interconnection Attach. at 13.
side of the POI beyond the Commission-approved reciprocal compensation rates. In other words, once TelNet hands off its traffic to Verizon MI at the POI, Verizon MI will assume operational responsibility for that traffic and TelNet’s only obligation will be to pay Verizon MI reciprocal compensation for the TelNet-originated traffic that Verizon MI terminates on its side of the POI. Given that TelNet acknowledges that it is required to pay Verizon MI reciprocal compensation for such traffic,313 there is in fact no disagreement between the Parties regarding TelNet’s financial obligations for engineering the traffic it originates.

TelNet, however, does have an obligation to help Verizon MI correctly manage TelNet’s traffic in accordance with the industry-standard LERG.314 Section 2.2.4 of Verizon MI’s proposed language states that TelNet is responsible for ordering the interconnection trunks needed to carry the traffic originated by TelNet:

TelNet shall establish, at the technically feasible Point(s) of Interconnection on Verizon’s network in a LATA, separate Interconnection Trunk group(s) between such POI(s) and each Verizon Tandem in a LATA with a subtending End Office(s) to which TelNet originates calls for Verizon to terminate.315

This provision is necessary to allow Verizon MI to route traffic to its customers correctly. When routing a call according to the LERG, a carrier (via its switch) is responsible for identifying the end office that serves the called party. If the carrier’s switch does not have a trunk group that permits it to route the call directly to that end office, the carrier’s switch must route the call to a trunk group connected to the tandem switch that serves that end office. The LERG identifies the

313 See TelNet ICA, Interconnection Attach. § 7.1.

314 The LERG is the “Local Exchange Routing Guide,” a “document which lists all North American Class 5 offices (Central Offices, or end offices) and which describes their relationship to Class 4 offices (Tandem Offices, Carriers use the LERG in the network design process.” Harry Newton, NEWTON’S TELECOM DICTIONARY 511-12 (16th ed. 2000).

315 Verizon MI ICA, Interconnection Attach. § 2.2.4.
tandem switch that serves each end office. Accordingly, translations are used in a tandem switch to deliver calls only to the end offices that subtend (i.e., are served by) that tandem. As a result, if a carrier delivers a call through a trunk that is directed to one tandem (“Tandem A”), and the call must in fact be terminated at an end office that subtends a second tandem (“Tandem B”), Tandem A’s translations will be unable to facilitate termination of the call and the call will fail. It is therefore necessary that all calls to one particular tandem be segregated from calls to another tandem. For this reason, TelNet must follow the LERG and establish separate trunk groups for each Verizon MI tandem in a LATA to which TelNet is sending traffic.

TelNet’s claim that this language would require TelNet to bear the costs for transporting TelNet’s traffic on Verizon MI’s side of the POI is not correct. According to TelNet, “[t]his provision shows that Verizon, contrary to certain of its statements, is NOT proposing to assume all cost responsibility on its side of the POI.”316 TelNet is wrong. Section 2.2.4 does not require TelNet to assume any additional financial responsibility beyond reciprocal compensation. It only requires TelNet to “establish” separate trunk groups to each Verizon MI tandem by ordering them from Verizon MI. TelNet will not be charged for ordering such trunks.

There is also no merit to TelNet’s concern regarding Verizon MI’s proposal for addressing underutilized trunks. Specifically, sections 2.3.2 (for one-way trunks) and 2.4.12 (for two-way trunks) of Verizon MI’s proposal require TelNet to “promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%).”317 If TelNet fails to submit the ASRs, Verizon MI “may

316 TelNet Petition, Interconnection Attach. at 13.
317 Verizon MI ICA, Interconnection Attach. §§ 2.3.1.2, 2.4.12.
bill TelNet for the excess Interconnection Trunks at the applicable Verizon rates.” 318 Verizon MI’s proposal gives it the right to charge TelNet only when TelNet has failed to ask Verizon MI to disconnect underutilized trunks.

In such cases, TelNet is not being charged for the costs of delivering traffic; it is being charged for the costs of the underutilized and inefficient facilities that Verizon MI must maintain on its network. TelNet’s unused interconnection trunks could tie up Verizon MI’s trunk ports and potentially lead to equipment exhaustion. This could have a negative impact on the quality of service provided by Verizon MI to all carriers if unneeded trunks are left in service for TelNet and all of the other CLECs that might opt into TelNet’s agreement.

Finally, TelNet’s claim that the Bureau rejected Verizon MI’s proposed language regarding underutilized trunks in the *Virginia Arbitration Order* is not correct. 319 In its order, the Bureau acknowledged that it was “sympathetic to Verizon’s arguments about network management,” but rejected language that would have permitted Verizon to disconnect underutilized trunks unilaterally. 320 In an effort to address the parties’ concerns, the Bureau “direct[ed] the parties to include in their compliance filing a requirement that, before disconnecting trunk groups, Verizon shall obtain a [firm order confirmation] from AT&T, which AT&T will provide within ten calendar days of receipt of Verizon’s ASR.” 321 Verizon MI’s proposed language in this proceeding addresses the Bureau’s concern because it does not give Verizon MI the unilateral authority to disconnect TelNet’s underutilized trunks. Instead,

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318 Id. § 2.4.12; see also id. § 2.3.2.

319 See TelNet Petition, Interconnection Attach. at 13.

320 See *Virginia Arbitration Order* ¶ 140.

321 Id.
Verizon MI’s proposal requires TelNet to submit an ASR asking Verizon MI to disconnect any underutilized trunks, and requires TelNet to pay for any excess interconnection trunks at the rates set forth in the Agreement.\textsuperscript{322}

For these reasons, the Commission should adopt Verizon MI’s proposed language in sections 2.2, 2.3, and 2.4 of the Agreement’s Interconnection Attachment and reject TelNet’s proposal.

\textsuperscript{322} Verizon MI ICA, Interconnection Attach. §§ 2.3.2, 2.4.12.
Statement of the Issue Presented

Should TelNet be required to establish direct end office trunks when its traffic exceeds the DS-1 level so that Verizon may manage its network efficiently?

Summary of Verizon MI’s Position

Yes. TelNet has an obligation to help prevent exhaustion of Verizon MI’s tandems by establishing direct end office trunks when TelNet’s traffic exceeds the DS-1 level.

Summary of TelNet’s Position

No. TelNet has no obligation to help Verizon MI prevent tandem exhaust.

Verizon MI’s Position

Verizon MI proposes that the Agreement ensure that the Parties establish direct end office interconnection trunks to carry traffic between Verizon MI’s end offices and the POI (rather than sending it through the tandem switch) when TelNet’s traffic exceeds the DS-1 level. This requirement ensures that Verizon MI’s network is operating efficiently. Indeed, Verizon MI follows the same protocol for its own trunks. TelNet’s refusal to abide by this reasonable standard for its interconnection trunks is therefore unfounded.

Verizon MI’s local network utilizes a hub-and-spoke (or spiderweb) design. At the outside of the network — the end of the spokes — are switches that directly serve customers, known as end offices. Verizon MI end offices may be connected directly one to another; a call from a customer served out of end office A to a customer served out of end office B may travel over direct trunks from end office A to end office B. Alternatively, traffic between two end offices may be routed through a tandem switch — the hub of the wheel — when there is not
enough traffic to justify establishment of direct trunks. Because tandem switches are connected to multiple end offices, they perform the function of consolidating traffic.

In engineering its own network, Verizon MI establishes direct trunks between two Verizon MI end offices when the traffic exchanged between the two offices exceeds the DS-1 level, or 200,000 minutes of use per month.\(^{323}\) This direct trunking between the two switches is more efficient than routing and switching the traffic first through a tandem switch, and then to the end office switch.

Verizon MI’s proposed language requires TelNet to apply the same standards of efficient traffic engineering in configuring its interconnection trunks with Verizon MI. TelNet has the choice to use either one-way or two-way interconnection trunks. One-way trunks only carry one party’s traffic. They are controlled, augmented, and maintained by the originating party. Two-way trunks are controlled by the CLEC, in this case TelNet, but all physical work needed to establish these trunk groups is handled by Verizon MI. If TelNet chooses to use one-way interconnection trunks, section 2.2.5 of Verizon MI’s proposal requires TelNet to establish a direct trunk group to a Verizon MI end office switch when TelNet-originated traffic destined to that switch reaches the DS-1 level. If TelNet elects to use two-way trunks, Verizon MI’s proposal requires TelNet to issue an ASR to Verizon MI if an augment needs to be done.

If TelNet chooses to use two-way interconnection trunks, section 2.2.5 requires TelNet to establish a new direct trunk group (or augment an existing trunk group) to the end office switch when both Parties’ traffic destined for a particular Verizon MI end office reaches the DS-1 level (i.e., 200,000 minutes of use) for a single month. Verizon MI’s language is necessary even when

\(^{323}\) A DS-1 can transport up to 24 individual (voice grade) trunks connecting two switches.
two-way trunks are being used because TelNet is the controlling party, and is thus responsible for monitoring and managing the traffic on such trunks.

If TelNet does not configure the interconnection trunks in this manner when traffic exceeds this level, the switching capacity of Verizon MI’s tandems will be used unnecessarily, and Verizon MI will be forced to operate its network inefficiently. That is because Verizon MI would be required to sort TelNet’s traffic by routing it through multiple switches (the end office switch and the tandem switch). When relatively large volumes of traffic are involved — that is, traffic at or above the DS-1 level — this switching is wasteful and contributes to the exhaustion of Verizon MI’s tandems. Indeed, Verizon MI’s tandems are exhausting rapidly because CLECs have connected a very large number of interconnection trunks to Verizon MI’s tandems over the last few years. In 2003 alone, the number of trunks connecting Verizon MI’s network to CLECs’ networks in Michigan increased by 32 percent, from 12,434 on January 1, 2003 to 16,498 on January 1, 2004. Additional trunks at Verizon MI’s tandem will contribute to tandem exhaust.

Moreover, TelNet’s proposal to allow it to deviate from the standard that applies to other CLECs and to Verizon MI’s own operations would impermissibly expand Verizon MI’s legal obligations. Under section 251(c)(2)(C) of the Act, Verizon MI is obligated to offer TelNet interconnection “that is at least equal in quality to that provided by the local exchange carrier to itself or to . . . any other party to which the carrier provides interconnection[.]”324 As discussed, Verizon MI simply is requiring TelNet to comply with the engineering practices for direct trunking that Verizon MI already has in place for itself and every other CLEC that uses Verizon MI’s network in Michigan, and is therefore providing TelNet with interconnection that is “equal in quality” to the interconnection Verizon MI provides to itself and other CLECs. Verizon MI,

however, has no obligation under the Act to permit TelNet to follow procedures that are more lenient than those Verizon MI utilizes for itself and other CLECs.

Other state commissions have agreed that Verizon MI’s direct end office trunk requirement is reasonable. For example, the New York Commission has held that CLECs “should be responsible for establishing direct trunking” when traffic volumes reach the DS-1 level, which is “a reasonable standard for triggering dedicated transport since it represents a standard unit of network capacity, is an efficient network design, and is generally acceptable to most parties.”325 The New York Commission has reaffirmed that position in two different recent arbitrations, holding that a CLEC’s failure to establish direct trunking when traffic volumes reach the DS-1 level would “put Verizon (and the network as a whole) at substantial disadvantage and risk,”326 and finding recently that “[t]he DS-1 standard for dedicated trunking is well grounded in precedent.”327

TelNet appears to be concerned that Verizon MI’s proposal would always require TelNet to establish two-way direct end office trunk groups when traffic exceeds the DS-1 level.328 TelNet’s concern is without merit. Indeed, the plain language of that section makes clear that, if

325 Order Establishing Requirements for the Exchange of Local Traffic, Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies, Case 00-C-0789, at 7 (N.Y. P.S.C. Dec. 22, 2000), available at http://www.dps.state.ny.us/fileroom/doc8995.pdf.


328 See TelNet Petition, Interconnection Attach. at 13.
TelNet elects to use one-way trunks and the traffic on those trunks exceeds the DS-1 level, TelNet must “establish new or augment existing End Office One-Way Interconnection Trunks groups between the Verizon End Office and the technically feasible Point of Interconnection on Verizon’s network.” Therefore, Verizon MI’s proposal requires only one-way direct end office trunks if TelNet chooses to use one-way trunks, and does not require TelNet to establish two-way trunks. Given that TelNet has conceded that it would not be concerned about this language if it “required only one-way trunks,” it is not clear why TelNet objects to Verizon MI’s proposal.

There is also no merit to TelNet’s claim that the Bureau rejected Verizon’s direct end office trunking requirements in paragraph 148 of the Virginia Arbitration Order. That paragraph concerns only the Parties’ obligations with respect to the costs of two-way trunks. It says nothing about a CLEC’s obligation to establish direct end office trunks when traffic goes above a manageable level, and so it is not at all relevant to this issue.

Finally, TelNet’s concern with section 2.2.6 of Verizon MI’s proposal, which limits the number of interconnection trunks between a POI and a Verizon MI tandem to 240, is also unfounded. Verizon MI needs that limitation to manage the usage and design of trunks at the tandem. Each tandem has only a limited number of connection points for trunks, and a number of carriers besides TelNet, including other CLECs, CMRS providers, IXCs, and SBC, will likely need to use many of the connection points on any given tandem. The 240-trunk limitation is necessary for Verizon MI to manage the demands of these carriers efficiently and is consistent

329 Verizon MI ICA, Interconnection Attach. § 2.2.5 (emphasis added).
330 TelNet Petition, Interconnection Attach. at 13.
331 Id.
with industry standards. TelNet claims that it cannot accept Verizon MI’s limitation because it needs more than 240 trunks, but TelNet has failed to justify its claim.

For these reasons, the Commission should adopt Verizon MI’s proposed language in sections 2.2.5 and 2.2.6 of the Agreement’s Interconnection Attachment and reject TelNet’s proposed language.
ISSUE 45(h): METHODS OF INTERCONNECTION (VERIZON MI ICA, INTERCONNECTION ATTACHMENT §§ 2.3, 2.4; TELNET ICA, INTERCONNECTION ATTACHMENT § 2.1.3)

Statement of the Issue Presented

Should the Agreement permit TelNet to interconnect with Verizon MI’s network using UNE dedicated transport provided by Verizon MI, in violation of applicable law?

Summary of Verizon MI’s Position

No. TelNet cannot interconnect with Verizon MI’s network using UNE dedicated transport provided by Verizon MI because the FCC has held that dedicated transport no longer includes facilities connecting a CLEC’s network and an ILEC’s network.

Summary of TelNet’s Position

Yes. TelNet should be permitted to interconnect with Verizon MI’s network using UNE dedicated transport provided by Verizon MI.

Verizon MI’s Position

Verizon MI’s proposed language permits TelNet to interconnect with Verizon MI’s network by either providing its own facilities to the POI or obtaining transport from Verizon MI or a third party at tariffed rates.332 By contrast, TelNet’s proposal includes UNE dedicated transport as one of its possible methods of interconnection with Verizon MI’s network:

TelNet, in its sole discretion, may specify one or more of the following methods to interconnect with the Verizon Network:

2.1.3.2 UNE dedicated transport provided by Verizon — such leased facilities shall be provided at the rates, terms, and conditions set forth in this Agreement and consistent with applicable law.333

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332 Verizon MI ICA, Interconnection Attach. §§ 2.3, 2.4. If TelNet chooses to purchase transport from Verizon, it would pay the applicable access rates, which are higher than UNE transport rates.

333 TelNet ICA, Interconnection Attach. § 2.1.3.
In other words, TelNet is demanding the right to interconnect with Verizon MI’s network by leasing facilities connecting TelNet’s switches to Verizon MI’s switches at wholesale rates instead of access rates.

TelNet’s proposed language is contrary to applicable law and must be rejected. The FCC held in the Triennial Review Order that “transmission links that simply connect a competing carrier’s network to the incumbent LEC’s network are not inherently a part of the incumbent LEC’s local network.” For this reason, the FCC found that the dedicated transport network element includes only those “features, functions, and capabilities” of equipment and facilities that coincide with the incumbent LEC’s transport network — the transmission links connecting incumbent LEC switches or wire centers.

Therefore, TelNet has no legal right to interconnect with Verizon MI’s network via UNE dedicated transport, as it proposes.

For this reason, the Commission should adopt Verizon MI’s proposed language in sections 2.3 and 2.4 of the Agreement’s Interconnection Attachment and reject TelNet’s proposed language.

334 Triennial Review Order ¶ 366 (emphasis added).

335 Id.

336 Although the D.C. Circuit remanded for further consideration the issue of whether the FCC had correctly classified these transmission facilities under the literal terms of the Act, the court did not vacate the FCC’s rule. See USTA, 359 F.3d at 586. It is well settled that regulations that are remanded but not vacated are “left . . . in place during remand.” National Lime Ass’n v. EPA, 233 F.3d 625, 635 (D.C. Cir. 2000). In addition, as discussed in Issues 34 and 45(a), the D.C. Circuit noted that while the FCC must explain its rationale for excluding these facilities from unbundling obligations better, it found nothing in the record that would appear to justify unbundling such facilities: “[N]o party offers an explanation as to why ILECs rather than CLECs construct these facilities. If (as appears) they exist exclusively for the convenience of the CLECs, it seems anomalous that CLECs do not themselves provide them[.]” USTA, 359 F.3d at 586 (emphasis in original).
ISSUE 45(I): TRUNK TYPES (Verizon MI ICA, Interconnection Attach. § 2.2; TelNet ICA, Interconnection Attachment § 2.2)

Statement of the Issue Presented

Should the Agreement include TelNet’s proposed language regarding trunk types even though it conflicts with other portions of the Agreement and makes no sense?

Summary of Verizon MI’s Position

No. TelNet simply copied its language from AT&T’s interconnection agreement in Virginia without any regard for context. As a result, much of TelNet’s proposed trunk type language does not make sense and is inconsistent with other parts of the Agreement.

Summary of TelNet’s Position

Yes. TelNet’s proposed language regarding trunk types should be adopted.

Verizon MI’s Position

Section 2.2 of Verizon MI’s proposed Interconnection Attachment contains a list of the different types of trunks “the Parties will use, as appropriate,” when interconnecting their networks. Rather than adopt Verizon MI’s list of trunks, TelNet proposes using the trunk type language contained in Verizon’s agreement with AT&T in Virginia, without explaining why it disagrees with Verizon MI’s proposal here.

Although Verizon MI and TelNet do not appear to disagree significantly as to the substance of the trunk type issue, only Verizon MI has proposed language that makes sense in the context of the Parties’ Agreement. TelNet has, on the other hand, taken its list of trunk types out of AT&T’s agreement without any attempt to adjust that language to fit the Agreement at issue here. Therefore, several aspects of TelNet’s proposed language make no sense. For

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337 Verizon MI ICA, Interconnection Attach. § 2.2.1.
338 TelNet ICA, Interconnection Attach. § 2.2.
example, TelNet’s proposed statement regarding “Meet Point Billing trunk groups” includes a reference to “Section 6,” but section 6 of the Interconnection Attachment has nothing to do with Meet Point Billing trunk groups. This reference, which likely means Section 6 in the Virginia Agreement, only introduces confusion into the Verizon MI/TelNet Agreement. TelNet’s proposed language contains similarly meaningless references to sections 5.6, 7 and 10.

Because TelNet has offered no rationale to support its alternate language, and because including confusing language is unacceptable from a contract drafting standpoint, the Commission should adopt Verizon MI’s proposed language in section 2.2 of the Agreement’s Interconnection Attachment and reject TelNet’s proposed language.
Statement of the Issue Presented

Should the Agreement simply state that TelNet is permitted to receive the higher tandem reciprocal compensation rate?

Summary of Verizon MI’s Position

No. TelNet is only permitted to receive the tandem reciprocal compensation rate if it meets the FCC’s test by demonstrating that its switches are capable of serving areas geographically similar to areas served by Verizon MI’s tandems. The Agreement must reflect the FCC’s limitation.

Summary of TelNet’s Position

Yes. The Agreement should state that TelNet is entitled to the tandem reciprocal compensation rate.

Verizon MI’s Position

The Parties agree that, as a general matter, when TelNet terminates an intraexchange call from a Verizon MI customer to a TelNet customer, Verizon MI is required to pay TelNet reciprocal compensation.339 The Parties, however, disagree as to whether the Agreement should contain a blanket assertion that TelNet is entitled to the higher tandem reciprocal compensation rate instead of the lower end office reciprocal compensation rate. TelNet’s proposed contract language sets out no standard at all, and would require Verizon MI to pay TelNet (and other CLECs that opt into TelNet’s Agreement) Verizon MI’s tandem reciprocal compensation rate in

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339 See 47 U.S.C. § 251(b)(5). However, the Parties disagree, for example, as to whether reciprocal compensation applies when TelNet terminates a VNXX call from a Verizon MI end user. See Issues 32, 33, 40, 41, and 47 infra.
all cases, regardless of whether TelNet has met the FCC’s test — that is, whether TelNet’s switches serve an area comparable to that served by Verizon MI’s tandem — for receiving the tandem reciprocal compensation rate. Even if TelNet does meet the FCC’s test for receiving the tandem rate, the Agreement should set forth the proper limitation in the event other CLECs — that may not meet the test — attempt to “opt in” to the TelNet agreement pursuant to section 252(i) of the Act.

The reciprocal compensation provisions of the Act allow the terminating carrier to recover its “costs associated with the transport and termination” of calls originating on another carrier’s network and states that the rates should represent “a reasonable approximation of the additional costs of terminating such calls.”\footnote{See 47 U.S.C. § 252(d)(2)(A).} The FCC’s rules, in turn, recognize that when the CLEC hands the call to the ILEC at the tandem switch, the ILEC must perform more switching (the call must pass through the tandem switch and then the end office switch) and more transport (the call must be transported from the tandem switch to the end office switch) than if the CLEC delivers the call directly to the ILEC’s end office that serves the customer being called.\footnote{See Local Competition Order ¶ 1090 (“We find that the ‘additional costs’ incurred by a LEC when transporting and terminating a call that originated on a competing carrier’s network are likely to vary depending on whether tandem switching is involved.”).} Accordingly, the FCC permits higher reciprocal compensation rates when CLECs hand calls to the ILEC at the ILEC’s tandem rather than at the end office switch.\footnote{Id.} The Commission approved both tandem and end office reciprocal compensation rates, based on cost studies Verizon MI submitted, in Case No. U-11832.\footnote{See GTE Rate Order at *69.}
Based on its recognition that CLECs have different network architectures than ILECs and typically do not deploy tandem switches, the FCC permits CLECs to receive the higher tandem rate “[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC’s tandem switch.”344 This rule is intended to recognize that, even though CLECs have different networks than ILECs, they may incur costs comparable to the ILECs when their switch serves a comparable area.345 Accordingly, Verizon MI’s proposal states that TelNet will charge Verizon MI the end office rate “unless Verizon is required under Applicable Law to pay the Tandem Reciprocal Compensation rate set forth in the pricing attachment.”346 TelNet’s proposal simply assumes that TelNet meets the FCC’s standard and thus is entitled to the higher tandem rate: “Because TelNet’s current switches serve geographic areas equivalent to geographic areas served by tandem switches, the parties acknowledge that under current law, Verizon is required to pay TelNet Tandem Reciprocal Compensation.”347 According to TelNet, it “has one or two switches located in each of Michigan’s five LATAs and each switch serves a very large geographic area, usually the entire LATA. SBC and Verizon use at least one tandem switch in each LATA.”348

344 47 C.F.R. § 51.711(a)(3) (emphasis added); see also Local Competition Order ¶ 1090.

345 See Local Competition Order ¶ 1090 (“Where the interconnecting carrier’s switch serves a geographic area comparable to that served by the incumbent LEC’s tandem switch, the appropriate proxy for the interconnecting carrier’s additional costs is the LEC tandem interconnection rate.”) (emphasis added).

346 Verizon MI ICA, Interconnection Attach. § 7.1.

347 TelNet ICA, Interconnection Attach. § 7.1.

348 TelNet Petition, Interconnection Attach. at 23.
TelNet’s failure to even recognize the FCC’s test is inconsistent with the FCC’s rules and must be rejected. Verizon MI of course recognizes that TelNet is entitled to receive the tandem rate when its switch “serves a geographic area comparable to the area served by” Verizon MI’s switch. But even if TelNet does meet the test set forth in Rule 51.711, the Agreement must still reflect the fact that the test exists. If, as TelNet proposes, the Agreement does not refer to the FCC’s test and simply states that TelNet is entitled to the tandem rate, any CLEC that opts into TelNet’s Agreement could claim that it too is entitled to the tandem rate, regardless of whether it actually meets the FCC’s test. For this reason, the Agreement must state that TelNet and every other CLEC that opts into the Agreement are entitled to the higher rate only as permitted under applicable law.

The Commission should therefore adopt Verizon MI’s proposed language in section 7.0 of the Agreement’s Interconnection Attachment and reject TelNet’s proposal.

349 47 C.F.R. § 51.711(a)(3).