Exhibit DNH-1T

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of	)	
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST AND TCG SEATTLE,	)	**Docket No. UT-033035**
With	)	
QWEST CORPORATION	)	
Pursuant to 47 U.S.C. Section 252(b)	)	

DIRECT TESTIMONY OF

DOUGLAS N. HYATT

ON BEHALF OF AT&T COMMUNICATIONS OF THE

PACIFIC NORTHWEST, INC. AND TCG SEATTLE

ON DISPUTED ISSUE 5

SEPTEMBER 25, 2003

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Douglas N. Hyatt. My business address is 1875 Lawrence Street in Denver, Colorado.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by AT&T as a Supervisor in the Local Services and Access Management organization. My responsibilities include tracking, reviewing and analyzing local wholesale prices in the Qwest 14-state region, reviewing cost studies, and representing AT&T/TCG as a witness in state regulatory proceedings in the region relating to local wholesale price/cost issues.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I hold a Bachelor of Arts degree in Political Science from Colorado State University, a Master's of Business Administration from the University of Colorado at Denver, and a Master's in Telecommunications from the University of Denver.

In January 2001, I joined AT&T, where I work for the Local Services and Access Management organization, which is part of AT&T Network Services. The Local Services and Access Management organization has the responsibility of managing the costs that AT&T pays to connect to other networks. In this organization, I analyze and manage the expense to AT&T for local connectivity.

Prior to working at AT&T, I worked in Facilities Maintenance including three years with the U.S. Embassy in Budapest, Hungary. Beginning in 1995, I worked as a Telecommunications Analyst with AT&T Wireless, where I was responsible for the review and compilation of documentation for all circuits and cross-connections and related equipment, in preparation for the movement of two 5ESS switches. Additional responsibilities at AT&T Wireless included the performance of telecommunications financial and billing analysis for the Network Engineering organization in Denver. Beginning in 1996, I began working for First Data Corporation in Englewood, Colorado as a Senior Telecommunications Analyst where I was responsible for the Financial and Billing Analysis of First Data's global voice and data networks.

II. PURPOSE OF TESTIMONY & SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to describe AT&T's position with regard to disputed Issue 5 of the Disputed Issues List. Issue 5 basically involves a dispute over the interconnection agreement's definition of "exchange service"[1] and the ensuing problems associated with the implementation of the definition.

Q. PLEASE BRIEFLY SUMMARIZE AT&T'S POSITION ON ISSUE 5.

A. AT&T's position may be summarized into three main points as follows:

[1] Proposed Interconnection Agreement at § 4.

1) AT&T's proposed definition of "exchange service" is utterly consistent with how industry (including Qwest) determines whether calls are subject to access charges, reciprocal compensation or some other charge. That is, carriers today employ the NPA-NXX codes of the calling and called party to determine the inter-carrier compensation for the call.

2) Qwest should not be allowed to selectively enforce its definition to eliminate competition for its Foreign Exchange ("FX") services.

3) AT&T's foreign exchange-like (aka "VFX" or "VNXX") provisioning option is a competitive response to Qwest's FX service, and AT&T's provisioning option is used by its customers in the identical manner that Qwest's FX service is employed by Qwest customers. Furthermore, Qwest incurs no additional costs to transport any AT&T FX-like traffic that is different or more than any other local call, and Qwest should be compensated accordingly.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. First, I will describe the dispute that has arisen with respect to the definition of "exchange service," and then I will describe the industry's use of NPA-NXX codes to determine a call's jurisdiction for purposes of inter-carrier compensation. Based upon that discussion, I will then discuss reciprocal compensation and the appropriate charges for telecommunications traffic. Finally, I would like to address the interrelated foreign exchange issue and whether Qwest may selectively apply its definition of "exchange service" to increase the costs of its competition's foreign exchange service while not imputing such increased costs to its own service. Within the foreign exchange issue, there are two sub-categories of such service; that is, Internet Service Provider or "ISP" bound traffic and voice traffic. I will discuss each type in turn.

III. DISPUTED ISSUE 5

A. Definition Of Exchange Service

Q. PLEASE DESCRIBE ISSUE 5.

A. Issue 5 essentially involves two sub-issues. They are: (a) should the parties determine the jurisdiction and compensation of a call based upon the NPA-NXX codes of the originating and terminating numbers or the physical location of the end users (*i.e.*, which definition of "exchange service" should the parties adopt); and (b) should Qwest be allowed to preclude competing foreign exchange ("FX") services through its desire to apply access charges to AT&T's FX-like provisioning option and no access charges to its competing retail FX service? This first issue deals with how Qwest—and every carrier in the industry—determines the jurisdiction of and compensation for the calls and the second issue deals with how Qwest's vague definition of exchange service allows it to undermine the industry practice and selectively apply its local calling areas to its competitors so as to destroy any competition it faces for its FX service.

Q. WHAT ARE THE COMPETING DEFINITIONS?

A. Qwest would like the following vague definition adopted:

> "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the same local calling area as determined for Qwest by the Commission.

In contrast, AT&T would like the definition to reflect what is actually the industry practice, which is in use now and not contrary to the Commission-determined local calling areas; it is:

> "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the same Local Calling Area as determined by the calling and called NPA/NXXs.

B. Function And Use Of NPA-NXXs To Determine Call Jurisdiction

Q. WHAT IS AN "NPA-NXX CODE?"

A. "NPA-NXX" refers to the first six numbers of a 10-digit telephone number. For example, in the telephone number 360-236-1234, the Number Plan Area ("NPA") or area code is 360, the exchange or central office code is 236, and the NPA-NXX code is 360-236.

Q. PLEASE DESCRIBE WHAT YOU MEAN BY DETERMINING CALL COSTS USING NPA-NXXS.

A. AT&T believes the determination of whether a call originates and terminates within the same local calling area should be based on the Number Plan Area ("NPA") or area code and the exchange or central office code ("NXX") of the originating and terminating telephone numbers as has historically been the practice for all calls and not—as Qwest now suggests—the physical locations of the calling and called parties. I believe Qwest interprets its definition of

Exchange Service or Extended Area Service (EAS)/Local Traffic as requiring a local call to originate from and terminate to end users physically located within the same Qwest-defined local calling area. If the call does not, as, for example, is the case with Foreign Exchange calls, Qwest would rate the call as a toll call, which would be subject to access charges. That is, Qwest would rate AT&T's FX-like service as toll while leaving its own FX service free of toll charges for its customers.

Q. HOW DO THE NPA-NXX CODES DETERMINE CALL COSTS?

A. The determination of whether a call is local or toll, and hence the inter-carrier compensation for the call, should be based on the NPA-NXX codes of the originating and terminating telephone numbers and not on the physical location of the users. NPA-NXX codes have been and continue to be used by the industry to rate and bill calls, and presently, there is no viable alternative to the current system and no public policy reason to change that arrangement now for all calls or even a subset of calls such as Foreign Exchange calls.

Q. WHAT FUNCTION DOES THE NPA-NXX PLAY IN ROUTING TELEPHONE CALLS?

A. Telephone calls are routed electronically based on the numbers dialed by the originating caller. Each telephone number (NPA-NXX-XXXX) is assigned to a specific switch that serves that particular telephone number, such that dialing the telephone number correctly routes a call to the specific switch that serves the called party.

Q. WHAT FUNCTION DOES THE NPA-NXX PLAY IN RATING TELEPHONE CALLS?

A. NPA-NXX rating is the established industry-wide compensation mechanism. Carriers rate calls by comparing the originating and terminating NPA-NXX codes. By comparing the originating and terminating NPA-NXX codes, a carrier is able to identify a call as local or intraLATA toll or interLATA toll and to bill its customers and other carriers accordingly. Also, when customers get their bill, they look at the telephone numbers to see if they have been billed correctly.

Q. WHY DO CARRIERS RATE CALLS BY COMPARING ORIGINATING AND TERMINATING NPA-NXX CODES?

A. Telecommunications billing (whether between a telecommunications provider and its retail customers or between two telecommunications companies) is based on electronically generated and recorded data known as Automated Message Accounting ("AMA") information.[2] AMA records are automatically generated by telecommunications switches and include the information necessary to allow the originating and terminating carriers to generate bills, i.e., originating and terminating telephone numbers, switch identification and the length of the call. Interconnection billings for reciprocal compensation, access charges and end-users are based on these AMA records.

Using the NPA-NXX designations in the AMA records, and a database known as the Local Exchange Routing Guide, or LERG, calls are electronically sorted by

[2] AMA is the automated message accounting structure included in the switch that records telecommunication message information. AMA format is specified in Telcordia standard GR-1100-CORE, which defines the industry standard for message recording.

comparing the originating NPA-NXX with the terminating NPA-NXX in order to categorize the call as a local, EAS, intraLATA toll, interLATA toll, etc. The terminating carrier then bills the originating carrier based on this information. In addition, the originating and terminating LECs use this information to bill access charges to inter-exchange carriers.

Q. IS THE RATING AND BILLING OF TRAFFIC BASED ON AMA RECORDS UNIQUE TO AT&T AND QWEST?

A. No. This is the established industry-standard process used by all telecommunications companies to rate telecommunications traffic. Switches have been designed by their manufacturers to collect this information, and the carriers' billing processes and systems have been designed to allow the carriers to automatically and efficiently rate millions of telephone calls each month, and to bill that traffic to retail customers and to other carriers. There is no other workable method in existence at this time. Changing to a system based on the geographic location of the customers, communicating that information to every interconnecting local service provider and inter-exchange carrier, and merging that data with the current industry billing processes would require an enormous developmental effort on an industry-wide basis that would take years to complete.

Q. HAS QWEST OFFERED ANY RATIONALE THAT EXPLAINS WHY THE JURISDICTION TEST THE INDUSTRY HAS HISTORICALLY USED TO RATE CALLS FOR WHOLESALE AND RETAIL BILLING PURPOSES IS NOW INAPPROPRIATE TO USE FOR DETERMINING ELIGIBILITY FOR RECIPROCAL COMPENSATION?

A. No. Historically, an end-to-end analysis using the physical location of the end users has been used to determine Federal versus State jurisdiction, but the originating and terminating NPA-NXX codes have been used to determine the application of rates to services for carrier and end-user billing. This is true for all services, including a host of services where the customer is not, or may not be, physically located in the local service area of the NPA-NXX code used, such as Foreign Exchange Service, Foreign Central Office Service, Answer Line Service, Centrex and PBX Off Premise Extensions, Call Forwarding, Remote Call Forwarding, and calls between private networks and the public switched network. In its position statements, Qwest has simply asserted that carriers could circumvent Commission established local and toll boundaries by assigning NPA-NXX codes without regard to where the customer is actually located.

Q. HOW DOES QWEST RATE CALLS TO ITS SUBSCRIBERS?

A. As I understand it, Qwest has and continues to rate calls as local or toll based on the NPA-NXX code of the originating telephone number and the NPA-NXX code of the dialed telephone number. This is true whether the calls are from customers served by Qwest, or a CLEC or an independent telephone company. This convention has always been used by Qwest and the industry for billing purposes and is embedded in the call recording, rating and billing software used by all carriers.

Q. WOULD A CHANGE TO USING THE PHYSICAL LOCATION OF THE CALLING AND CALLED PARTIES HAVE A MAJOR IMPACT ON THE TELECOMMUNICATIONS INDUSTRY?

A. Yes, it absolutely would. Such change would have a major impact on the call routing, recording, rating and billing systems used by Qwest, other CLECs and the independent companies, and could affect the determination of the carrier that handles a call and how the call is routed. For example, if a call is deemed to be toll as opposed to local, then the LEC serving the calling party would hand the call off to the calling party's pre-subscribed intraLATA long distance carrier at the carrier's point of presence, or POP, for completion. On the other hand, if the call were deemed local, the originating LEC would handle the call end to end if it served the called party, or would hand the call off at the point of interconnection, or POI, to the terminating carrier, if the called party were served by another LEC. All of this special handling would have to be done on a "line level," that is, on a ten-digit basis, not on the traditional comparison of the NPA-NXX codes in originating and terminating telephone numbers. Also note that LECs will have to exchange customer information on a frequent basis so that calls originated to subscribers with telephone numbers that do not match their physical location can be properly routed, rated and billed as local or toll as the case may be. While the carrier that provides the telephone number to the subscriber may know or be able to determine this information, other LECs need to be given this information so they can properly route and rate calls as local or toll, including carrier and end user billing.

Clearly, this change would be a costly endeavor for the industry and would have an adverse impact on consumers.

Q. HAS AT&T ATTEMPTED TO ESTIMATE THE FULL COST OF USING THE PHYSICAL LOCATIONS OF THE CALLING AND CALLED PARTIES FOR CALL RATING AND BILLING?

A. No. Such a change would involve changing the routing, rating, and billing for a number of different services including Foreign Exchange Service, Foreign Central Office Service, Answer Line Service, Centrex and PBX Off Premise Extensions, Call Forwarding, Remote Call Forwarding and calls between private networks and the public switched network. In all of these cases, the customer may not reside in the rate center associated with the NPA-NXX used for the call. Of course, in some cases like private networks, it will not be possible to determine the physical location of the customer on a call-by-call basis. It would also require the carriers to interact and exchange more data that they do today. Clearly, the cumulative cost, incorporating all of these factors, would be substantial.

Q. THE FCC, THROUGH THE WIRELINE COMPETITION BUREAU, HEARD THE VIRGINIA ARBITRATION BETWEEN AT&T AND VERIZON. DURING THAT ARBITRATION, DID THE ISSUE OF USING THE PHYSICAL LOCATION OF THE END USERS VERSUS THE NPA-NXX ARISE?

A. Yes it did. In the Virginia Arbitration Proceeding[3] Verizon asserted that calls to Virtual FX customers should be rated based on their geographical end points and not on the NPA-NXX codes.

Q. HOW DID THE FCC, THROUGH THE WIRELINE COMPETITION BUREAU, RULE ON THIS ISSUE?

A. It rejected Verizon's language that would rate calls according to their customers' physical locations. The Bureau stated:

> We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[4]

The Bureau added:

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[3] *In the Matter of the Petition of ATTCI Communications of Virginia, 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.*, Memorandum Opinion and Order, CC Docket No. 00-251, DA 02-1731 (Rel. July 17, 2002) at ¶ 286 ("*Virginia Arbitration Order*").

[4] *Id*. at ¶ 301.

> Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.[5]

Q. WHAT IS YOUR RECOMMENDATION ON HOW THE WASHINGTON COMMISSION SHOULD RESOLVE THE ISSUE OF USING THE NPA-NXX CODES VERSUS THE CUSTOMERS' PHYSICAL LOCATIONS TO RATE CALLS?

A. As a practical matter, the Commission should direct the parties to continue using the methodology that is in place today, that is, the parties should be directed to use the originating and terminating NPA-NXXs to rate calls. The Commission should reject any proposal by Qwest to use the physical locations of customers to rate calls. First, as I've explained, the support systems and processes that would be required to implement rating of calls by their geographical starting and ending points are not in place today and would be very expensive to implement. As the FCC observed, "[t]he parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time."[6]

Furthermore, it would be highly discriminatory to single out one subset of traffic, for example Foreign Exchange-like arrangements, for disparate rating treatment. If it is appropriate and in the public interest to rate calls based on the geographic end points, then, such rating should be applied even-handedly to all services where customers do not reside in the rate center associated with the NPA-NXX code, as opposed to the singular exception that Qwest believes benefits it. The

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[5] *Id*. at ¶ 302.
[6] *Id*. at ¶ 301.

Commission should reject any attempt by Qwest to use regulation to selectively handicap a competitor by saddling it with a disparate call rating scheme.

C. Reciprocal Compensation And The Correct Inter-Carrier Compensation For "Telecommunications Traffic"

Q. HOW IS RECIPROCAL COMPENSATION CONNECTED TO THIS ISSUE?

A. Under current FCC rules, all *telecommunications traffic*, except traffic subject to § 251(g) of the Act, is subject to reciprocal compensation.[7] As I discuss later in my testimony, "exchange access, information access, or exchange services for such access" are the types of traffic that are "carved out" by § 251(g) and are excluded from reciprocal compensation. All of the services specified in § 251(g) have one thing in common: they are all access services or services associated with access.

Q. WOULD YOU PLEASE DISCUSS MORE FULLY AT&T'S POSITION ON RECIPROCAL COMPENSATION STARTING WITH A DEFINITION OF RECIPROCAL COMPENSATION?

A. Certainly. As defined in 47 C.F.R. § 51.701(e), reciprocal compensation is a compensation arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

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[7] 47 C.F.R. § 51.701.

Q. WHAT IS YOUR UNDERSTANDING OF THE ACT'S SECTION 251 "CARVE OUT?"

A. In its *ISP Remand Order*, the FCC stated that it had erred in attempting to distinguish between local and long distance traffic for the purpose of determining when reciprocal compensation should apply.[8] The FCC said "the term 'local,' not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g)."[9] The FCC expressly stated that:

> Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, -- *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations. Section 251(g) provides:
>
> On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree or regulation, order, or policy of the [Federal Communications] Commission, until such restrictions and obligations are explicitly superceded by regulations prescribed by the Commission after such date of enactment.[10]

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[8] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand & Report and Order, CC Docket Nos. 96-98 & 99-68, FCC 01-131 (Rel. Apr. 27, 2001) at ¶ 26 ("ISP Remand Order").
[9] *Id*. at ¶ 34.
[10] *Id*. at ¶ 32 (footnote omitted).

Thus, the FCC concluded that, under the Act, *all traffic* is subject to reciprocal compensation under section 251(b)(5), unless it falls within the exemptions established in the section 251(g) carve out.[11]

Q. QWEST CITES ¶ 1035 OF THE FCC'S FIRST REPORT AND ORDER OR THE *LOCAL COMPETITION ORDER* AS SUPPORTIVE OF ITS POSITION. DO YOU AGREE THAT ¶ 1035 SUPPORTS QWEST'S POSITION?

A. No, I don't agree with Qwest's assessment of ¶ 1035. In fact, Qwest is likely referring to the following provision in the FCC's *Local Competition Order*[12]:

> With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.[13]

However, the FCC's *ISP Remand Order,* which was released on April 27, 2001, modified regulations adopted in the 1996 *Local Competition Order*. As a result, Qwest cites to an FCC finding in the 1996 *Local Competition Order* that has been superseded and is no longer valid. In the *ISP Remand Order,* at paragraph 26, the FCC states "[u]pon further review, we find that the Commission erred in focusing on the nature of the service (*i.e.*, local or long distance) …"[14] The FCC said "the term 'local,' not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or

[11] *Id*. at ¶ 46.
[12] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* First Report and Order, CC Docket Nos. 96-98 & 95-185, FCC 96-325 (Rel. Aug. 8, 1996) ("*First Report and Order or Local Competition Order*").
[13] *Id.* at 1035.
[14] *ISP Remand Order*, at ¶ 26.

section 251(g)."[15] The FCC went on to say "[i]n the *Local Competition Order*, as in the subsequent *Declaratory Ruling*, use of the phrase "local traffic" created unnecessary ambiguities, and we correct that mistake here."[16]

As I explained above, in its revised analysis in the *ISP Remand Order,* the FCC concluded that, under the Act, *all traffic* is subject to reciprocal compensation under § 251(b)(5), unless it falls within the exemptions established in the § 251(g) carve out.[17]

Q. DID THE FCC REVISE ITS RULES TO REFLECT ITS FINDINGS IN THE *ISP REMAND ORDER*?

A. Yes. The FCC amended 47 C.F.R. Part 51, Subpart H, to eliminate use of the term "local" and revised 47 C.F.R. § 51.701(b)(1) to change the definition of services subject to § 251(b)(5) of the Act. <u>Prior to this amendment</u>, under 47 C.F.R. § 51.701(b)(1), reciprocal compensation applied to "[t]elecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission." <u>Now</u>, under 47 C.F.R. § 51.701(b)(1), as amended by the FCC in the *ISP Remand Order*,[18] reciprocal compensation applies to "[t]elecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access,

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[15] *Id*. at ¶ 34.
[16] *Id*. at ¶ 46.
[17] *Id*. at ¶ 46.
[18] *Id*. at ¶ 112.

information access, or exchange services for such access." These historic exceptions are known as the § 251(g) "carve out" items.

Q. DOES TRAFFIC ORIGINATING ON AT&T'S NETWORK THAT ORIGINATES AND TERMINATES IN A COMMISSION APPROVED LOCAL CALLING AREA FALL WITHIN THE ACT'S SECTION 251(G) CARVE OUT?

A. No, traffic originating on AT&T's network that terminates in a Commission approved local calling area is not toll traffic and is not "exchange access." The FCC's Rules state that "'[e]xchange access' means the offering of access to telephone exchange services or facilities *for the purposes of originating or terminating telephone toll services*."[19] "Telephone toll service," in turn, is defined in FCC Rules as "telephone service between stations in different exchange areas for which there is made a *separate charge* not included in contracts with subscribers for exchange service."[20] When an AT&T local service customer dials a number within a Commission approved local calling area, there is no "separate charge" made. Therefore, by definition, calls within the Commission approved local calling area are not toll calls and therefore are not exchange access and do not fall within the § 251(g) carve out. Therefore, such traffic is subject to reciprocal compensation.

Q. PLEASE SUMMARIZE YOUR TESTIMONY REGARDING RECIPROCAL COMPENSATION.

A. In its revised analysis in the *ISP Remand Order*, the FCC concluded that, under the Act, *all traffic* is subject to reciprocal compensation under § 251(b)(5), unless

[19] 47 U.S.C. § 153(16).
[20] 47 U.S.C. § 153(48) (emphasis added).

it falls within the exemptions established in the § 251(g) carve out. As I explained above, by definition, calls within the Commission approved local calling area are not toll calls and therefore are not exchange access and do not fall within the § 251(g) carve out. Therefore, such traffic is subject to reciprocal compensation under § 251(b)(5).

D. Competing Foreign Exchange Services And Qwest's Anticompetitive Use Of The Definition Of Exchange Service

Q. WHAT IS FOREIGN EXCHANGE SERVICE?

A. A good working definition of FX service is found in Newton's Telecom Dictionary, 17th edition. It states:

> FX. *Provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area.* In its simplest form, a user picks up the phone in one city and receives a dial tone in the foreign city. He will also receive calls dialed to the phone in the foreign city. *This means that people located in the foreign city can place a local call to get the user.* The airlines use a lot of foreign exchange service. Many times, the seven digit local phone number for the airline you just called will be answered in another city, hundreds of miles away.[21]

Q. DOES QWEST OFFER SUCH A SERVICE?

A. Yes. Traditional FX service, which is offered by Qwest, involves the provision of local dial tone to a customer from a remote local switch; that is, a switch other than the switch from which the customer would ordinarily receive local dial tone. An FX arrangement simply allows a customer to be assigned a telephone number and to receive calls as if he or she was located in a given exchange, regardless of

[21] Harry Newton, *Newton's Telecom Dictionary,* 287 (CMP Books, 17th ed., 2001)(emphasis added).

the physical location of the customer. In the Qwest network, this is accomplished via the provision of remote dial tone – that is dial tone from the foreign switch (*i.e.,* in a distant serving wire center or foreign rate center) that is connected to the customer's native serving wire center (*i.e*., in the home rate center) via an interoffice private line facility for which the FX subscriber pays.

Qwest offers its FX service as ***exchange and network services*** **(not an access service and not a toll service)** in its Tariff.[22] Thus, when an Qwest customer dials a number assigned to the customer's own rate center and Qwest routes that call to a Qwest FX customer who is physically located in a different rate center, Qwest treats the call as a local call, not as a toll call. That is, the Qwest end user that originated the call pays Qwest's local charges for that call. Qwest also offers its Market Expansion Line ("MEL") service that provides a "Local presence in new market".[23] Qwest's MEL service provides its customers with the same functionality as FX service.[24]

Importantly, under the FCC's long-standing separations policies, all retail FX revenue is deemed to be basic local service revenue (47 C.F.R. § 36.212(B)).

[22] Qwest Exchange and Network Services Tariff, State of Washington, Section 5.1.4. See **Exhibit DNH-2**.
[23] Qwest Small Business Products and Services, Qwest Internet Website, Accessed on September 24, 2003, http://www.qwest.com/pcat/small_business/product/1,1354,117_3_17,00.html . Qwest Large Business Products and Services, Qwest Internet Website, Accessed on September 24, 2003, http://www.qwest.com/pcat/large_business/product/1,1354,117_4_25,00.html. See **Exhibit DNH-3**.
[24] Qwest Exchange and Network Services Tariff, State of Washington, Section 5.4.4. See **Exhibit DNH-4.**

Q. DOES AT&T OFFER A COMPETING FX-LIKE PROVISIONING OPTION?

A. Yes it does. The primary difference between AT&T's provisioning option and Qwest's service is the network architecture over which each is offered. That is, AT&T does not provide its FX-like provisioning option using a remote dial tone configuration.

As I will explain below, because of the differences in network architecture, it is not necessary for AT&T to use a remote dial tone configuration to provide a competing FX-like provisioning option that provides its customers with the identical functionality as Qwest's FX service. Just like Qwest's service, AT&T's FX-like provisioning option provides AT&T's customers with the option to be assigned a telephone number in a location that is different from the customer's actual location. This FX-like provisioning option is not, however, an FX service in the traditional sense because the NPA-NXX codes assigned to AT&T, including the "foreign" exchange NPA-NXX code and the "native" NPA-NXX code associated with the customer's physical location, all reside in the same AT&T switch (wire center). This is true because in AT&T's network architecture, the NPA-NXX codes associated with many Qwest legacy rate centers and switches commonly reside in one AT&T switch, which has much broader geographic coverage than Qwest's individual switches. Therefore, AT&T does not require private line arrangements such as those used by Qwest to connect two separate wire centers, the one serving the customer and the one serving the foreign NPA-NXX.

While the networks over which Qwest's FX and AT&T's FX-like provisioning option are different, and the calls are provisioned differently, the end result for the end user is the same. That is, FX service and FX-like provisioning option both allow a customer to be assigned a telephone number and to receive calls as if he or she were located in a given exchange, regardless of the physical location of the customer.

Q. PLEASE DESCRIBE THE ISSUE WITH QWEST'S FOREIGN EXCHANGE SERVICE AND AT&T'S FX-LIKE PROVISIONING OPTION.

A. This issue concerns how carriers should be compensated for a call when one or both of the parties to the call is physically located outside of the exchange in which the customer is assigned a number. This situation occurs, for example, when one or both customers subscribe to FX service provided by Qwest or the competitive "FX-like" provisioning option provided by AT&T.

Qwest argues that since AT&T's FX-like traffic does not originate and terminate in the same local calling area, as determined by the physical locations of the customers, it is not subject to reciprocal compensation, but instead is subject to Qwest's intrastate access charges. AT&T believes the parties should continue to use the NPA-NXX codes and not the physical locations of the customers to rate calls.

Q. IS AT&T'S FX-LIKE PROVISIONING OPTION CURRENTLY A TOLL SERVICE?

A. No. AT&T's FX-like provisioning option is comprised of a single switch (a single wire center) and the local loop. In AT&T's network, dial tone is provided by the customer's native switch, not a foreign switch. Since AT&T's switch serves a much broader geographic area than do Qwest's individual local switches, AT&T is able to terminate traffic to customers within different Qwest rate centers at comparable cost. Hence, from the perspective of AT&T's network, there is no difference in function or cost to terminate a call in one rate center versus another, and thus AT&T can offer this provisioning option at no additional charge to the customer as part of its local service offering. This is an important distinction, because the Act defines telephone toll service as follows:

> The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.[25]

Thus, AT&T's FX-like provisioning option is not a toll service and is not subject to access charges that apply to toll services.

Q. IS THIS ISSUE RELATED TO THE CALLING PARTY'S NETWORK PAYS REGIME?

A. Yes. The FCC stated in the *Intercarrier Compensation NPRM*, "Existing access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC, or CMRS, to compensate the called party's carrier for terminating the call. Hence, these interconnection

[25] 47 U.S.C. §153(48).

regimes may be referred to as "*calling-party's-network-pays*" (or CPNP)."[26] This is also the basis for compensation under the SGAT Qwest has filed in Washington.

The fundamental principle of the CPNP regime is that the party collecting the revenue for a call (*i.e*., the originating party in the case of local exchange service) compensates the other party for the use of its network. Under the CPNP regime, AT&T is entitled to recover its costs to terminate local exchange traffic originating on Qwest's network.

AT&T's position in this case is fully consistent with the CPNP regime proposed in the SGAT. However, Qwest's position that CLECs should compensate Qwest in the form of access charges for AT&T's FX-like traffic when, in fact, Qwest is collecting the revenue for these calls turns the CPNP regime on its head.

There is simply no public interest or equity reason that this Commission should rule that AT&T's FX-like traffic is an exception to the CPNP regime. The Commission should come to the conclusion that AT&T's FX-like traffic should be compensated in the same manner as all other telecommunications traffic, including Qwest's FX service.

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[26] *Intercarrier Compensation NPRM*, ¶ 9.

Q. IS QWEST'S POSITION ON AT&T'S FX-LIKE PROVISIONING OPTION CONSISTENT WITH QWEST'S TREATMENT OF ITS OWN FX SERVICE?

A. No. Qwest's position in negotiations on this issue is inconsistent with the manner in which Qwest rates calls to its FX customers today. Qwest rates its FX calls as local or toll based on the customer's selected (foreign) rate center NPA-NXX, not on the physical location of the customer. If the NPA-NXX code of the FX customer is located in the same local calling area as the called party, Qwest treats that call as local. Therefore, following the practice that Qwest has had in place for many years, the NPA-NXX code of AT&T's FX-like customer, not the physical location of the customer, should be used to determine the rating of AT&T's calls.

Q. IF ACCESS CHARGES WERE IMPOSED ON AT&T'S FX-LIKE TRAFFIC, WOULD IT HARM COMPETITION?

A. Yes. The imposition of access on AT&T's FX-like traffic would be anti-competitive, and hence harm consumers in Washington by raising costs to AT&T and ultimately to consumers if they kept AT&T's service. AT&T would be unable to take advantage of the innate efficiencies of its network architecture and would be disadvantaged competitively. It would essentially destroy competition for customers who want a local presence in a 'foreign exchange'. To the extent, however, that competition survived because Qwest also would have to impute access charges to its own FX service, it would be necessary to implement costly tracking mechanisms to identify this traffic if AT&T continued to offer an FX-like arrangement as a service provisioning option. These two factors (access charges and implementation costs) would clearly increase AT&T's cost of providing FX-like provisioning options and thus would either require AT&T to either institute a charge to customers associated with provisioning these options or withdraw from provisioning these options altogether. In either case, consumers would be denied the benefit of the innate efficiencies of AT&T's network architecture and competition.

Q. IS AT&T'S FX-LIKE PROVISIONING OPTION IN THE PUBLIC INTEREST?

A. Yes. Customers' desires and needs create the demand for Qwest's FX service and AT&T's FX-like provisioning option and all local exchange carriers in Washington should be allowed to compete to meet these customers needs. This should be the case regardless of their differing network configurations and carriers should be able to take advantage of their innate network efficiencies. To find otherwise, is to allow a monopoly stranglehold on customers desiring such service to the detriment of consumers and competitors alike.

Q. WHY IS IT APPROPRIATE TO USE THE NPA-NXX CODES TO RATE CALLS FOR INTERCARRIER COMPENSATION PURPOSES?

A. First, it is consistent with the standard national industry practice that rates calls today for retail and intercarrier compensation purposes based upon the NPA-NXX codes of the calling and called numbers. That is, if the NPA-NXX codes of the originating and terminating parties are within the local calling area, the call is a local call and reciprocal compensation applies.

Second, Qwest's costs to deliver a call to a particular AT&T NPA-NXX code do not vary depending on whether the call is destined to a customer physically located in the legacy Qwest rate center associated with the NPA-NXX code or to a customer physically located in a foreign rate center. <u>The cost to Qwest is exactly the same</u>. This is true because Qwest delivers all traffic bound to the same AT&T NPA-NXX code to the same AT&T POI where traffic is exchanged with Qwest's network. In other words, AT&T specifies a single POI for an NPA-NXX code, regardless of the physical location of the AT&T terminating customer. Since the POI to which Qwest delivers traffic is the same, Qwest's network costs to deliver traffic to that POI are necessarily the same. Where there are any additional costs between AT&T's switch and the customer to complete such traffic, such costs are borne by AT&T. Thus, from the standpoint of reciprocal compensation, Qwest should be financially indifferent as to where calls are terminated within the AT&T network, since the physical location of the customer has no effect on the rates Qwest pays for transport and termination of the calls.

Q. IF QWEST SHOULD BE FINANCIALLY INDIFFERENT ON THIS ISSUE, WHY DO YOU THINK IT IS OPPOSED TO AT&T'S POSITION?

A. I stated that Qwest should be financially indifferent as to where local calls are terminated within AT&T's network, since the physical location of AT&T's customer has no effect on the reciprocal compensation rates Qwest pays for transport and termination of the calls. Thus, Qwest's costs are not affected. One cannot say the same thing for their revenues, however, because, as Qwest will likely point out in its testimony, it is losing toll or access revenues on such calls. Thus, we begin to see what this issue is really about. This issue is really about Qwest attempting to recover ***competitive losses*** it is suffering due to competition from AT&T and other CLECs. Moreover, Qwest's claims regarding the loss of toll or access revenues are dubious at best since (a) it is unlikely that such calls would be made absent the FX-like arrangement or (b) if Qwest provided the FX arrangement, Qwest would not receive toll or access revenues.

One of the clear benefits of opening the local market to competition is the incentive this action gives the participants in the market to deploy the most advanced, efficient facilities possible. It also imposes a strong incentive on the incumbent to "catch-up" by installing its own more efficient network, or to at least offer and price services as if it had deployed that network. Deployment of different network architectures is a major way that new entrants differentiate themselves and their service offerings from the incumbent. The Commission should not consider Qwest's network or its architecture as preeminent, or the CLEC's network as subordinate, nor should the Commission assign any preferential value to Qwest's network, its local calling areas, or its network architecture. It is the marketplace that will determine which network, or services best address the customers' needs.

Q. IF THE COMMISSION NEVERTHELESS ENTERTAINS QWEST'S PROPOSAL TO RATE CALLS BASED ON THE PHYSICAL LOCATIONS OF THE CUSTOMERS, SHOULD THE COMMISSION CONSIDER VOICE AND ISP-BOUND TRAFFIC SEPARATELY?

A. Yes, if the Commission does entertain Qwest's proposal to rate calls based on the physical locations of the customers, the Commission should recognize that FX and FX-like traffic consists of two categories of traffic: voice and Internet Service Provider ("ISP") bound traffic and each category must be addressed separately. Further, as I will explain, whether or not such traffic is "local" is not determinative of whether or not reciprocal compensation applies.

1. <u>ISP-Bound Traffic</u>

Q. DOES AT&T BELIEVE FX AND FX-LIKE TRAFFIC MUST BE SEPARATED INTO VOICE AND ISP-BOUND TRAFFIC CATEGORIES?

A. Yes. In its *ISP Remand Order*,[27] the FCC reaffirmed its previous conclusion[28] that traffic delivered to an ISP is predominantly interstate access traffic, subject to FCC jurisdiction under §201 of the Act. In that order the FCC also established an intercarrier compensation mechanism for the exchange of such traffic. In paragraph 82, the FCC spoke clearly and succinctly: "Because we now exercise our authority under section 201 to determine the appropriate compensation for ISP-bound traffic, however, state Commissions will *no longer have authority* to

[27] *ISP Remand Order* at ¶ 1.
[28] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999) ("Declaratory Ruling or Intercarrier Compensation NPRM").

address this issue."[29] The FCC recently reaffirmed its position that "ISP-bound traffic is jurisdictionally interstate" in *In the Matter of Starpower Communications v. Verizon South, Inc. (Starpower II)*, File No. EB-00-MD-20, FCC 02-105 (2002). Also, as recently as April 7, 2003, this preemption was recognized and cited by the Ninth Circuit Court of Appeals in its Opinion in *Pacific Bell v. Pac-West Telecom, Inc.*, 325 F. 3d 1114 (9th Cir. 2003).

Thus, it is AT&T's position that ISP-bound traffic, including ISP-bound FX-like traffic, is subject to the FCC's intercarrier compensation mechanism and not state commission jurisdiction. On the other hand, intrastate voice FX-like traffic is subject to the jurisdiction of the state commissions and the reciprocal compensation rates they establish for the exchange of such traffic.

Q. HAVE OTHER STATE COMMISSIONS RECOGNIZED THAT ISP-BOUND TRAFFIC IS SUBJECT TO THE FCC'S JURISDICTION?

A. Yes, for example, Connecticut, Illinois, New Hampshire, North Carolina, Ohio, Oregon and Wisconsin all determined that they lacked jurisdiction. See **Exhibit DNH-5**.

Q. PLEASE EXPLAIN THE FCC'S INTERCARRIER COMPENSATION MECHANISM.

A. Using its authority under § 201 of the Act, the FCC developed an intercarrier compensation mechanism that provides for two payment options for ISP-bound traffic. An ILEC may offer to exchange both voice traffic subject to § 251(b)(5) and ISP-bound traffic at rate caps established for certain periods – *i.e.*, $.0015 per

[29] *ISP Remand Order* at ¶ 82 (emphasis added).

minute of use (MOU) from June 13, 2001 to December 13, 2001; $.0010 per MOU from December 14, 2001 to June 13, 2003; and $.0007 per MOU from June 14, 2003, until the Commission issues a further order on intercarrier compensation. If an ILEC chooses not to exchange both traffic subject to § 251(b)(5) and ISP-bound traffic under the FCC rate cap mechanism, then the FCC requires that the ILEC and CLEC exchange ISP-bound traffic at the state-adopted reciprocal compensation rate.

In addition, the FCC imposed a cap on the total ISP-bound minutes for which a local exchange carrier (LEC) may receive intercarrier compensation.

Q. WHAT WAS THE FCC'S BASIS FOR EXCLUDING ISP-BOUND TRAFFIC FROM SECTION 251(B)(5) TRAFFIC?

A. The FCC expressly stated that *all* traffic is subject to reciprocal compensation unless it falls within the exceptions set forth in § 251(g) of the Act ("§ 251(g) carve out"). The FCC believed that ISP-bound traffic fell within the carve out because ISP-bound traffic was a form of "information access"[30] traffic subject to the § 251(g) carve out.

The Commission then established an intercarrier compensation mechanism for the exchange of such traffic.

Q. WAS THE ISP REMAND ORDER APPEALED?

A. Yes. The D.C. Circuit Court of Appeals held that the FCC could not subject ISP-bound traffic to the § 251(g) carve out because that carve out was meant to

[30] *ISP Remand Order* at ¶ 32.

preserve certain compensation mechanisms that were in effect when Congress implemented the Act, *i.e*., access payments, and was not meant to create new classes of service within the meaning of the § 251(g) carve out.[31] The court declined to vacate the FCC's intercarrier compensation mechanism, however, giving the FCC the opportunity to readdress the issue, which the FCC intends to do in its NPRM *In the Matter of Developing a Unified Intercarrier Compensation Regime*.[32]

Q. HOW SHOULD THE COMMISSION RESOLVE THE ISSUE OF INTERCARRIER COMPENSATION PAYMENTS FOR ISP-BOUND TRAFFIC?

A. The Commission should confirm that all ISP-bound traffic, including FX-like traffic, is subject to the FCC's jurisdiction and the intercarrier compensation mechanism set forth by the FCC in its *ISP Remand Order*.

2. Voice Traffic

Q. WHAT IS AT&T'S POSITION REGARDING COMPENSATION FOR VOICE (NON-ISP) FX-LIKE TRAFFIC?

A. Again, under the FCC's *ISP Remand Order*, *all* traffic is subject to reciprocal compensation unless the traffic falls within the exemptions established in § 251(g) of the Act. As explained below, Voice FX-like traffic does not fall within the § 251(g) carve out. Moreover, the FCC has declined to use the local/non-local distinction to determine whether reciprocal compensation applies.

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[31] *WorldCom, Inc. v. FCC*, 2002 WL 832541 (D.C. Cir. May 3, 2002).

[32] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rule Making, CC *Docket No. 01-92*, FCC 01-132 (Rel. Apr.27, 2001) ("*Intercarrier Compensation NPRM*").

Q. WHY IS THE LOCAL/NON-LOCAL DISTINCTION NOT PERTINENT TO DETERMINING WHETHER RECIPROCAL COMPENSATION APPLIES OR DOES NOT APPLY TO TRAFFIC?

A. As I explained earlier, in its *ISP Remand Order*, the FCC found that it had erred in attempting to distinguish between local and long distance traffic for the purpose of determining when reciprocal compensation should apply.[33] The FCC said "the term 'local,' not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g)."[34]

Specifically, in its revised analysis, the FCC expressly stated that:

> "Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, -- *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations. Section 251(g) provides:
>
> On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree or regulation, order, or policy of the [Federal Communications] Commission, until such restrictions and

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[33] *ISP Remand Order at* ¶ 26.
[34] *Id*. at ¶ 34.

> obligations are explicitly superceded by regulations prescribed by the Commission after such date of enactment."[35]

Thus, the FCC concluded that, under the Act, *all traffic* is subject to reciprocal compensation under § 251(b)(5), unless it falls within the exemptions.[36]

Q. DOES VOICE FX-LIKE TRAFFIC FALL WITHIN THE SECTION 251(G) CARVE OUT?

A. No. First, as noted above, I have been advised by counsel that the D.C. Circuit Court of Appeals, in ruling on an appeal of the *ISP Remand Order*, held that the § 251(g) carve out was meant to preserve certain compensation mechanisms that were in effect when Congress implemented the Act, and it was not meant to create new classes of service within the meaning of the § 251(g) carve out.

Therefore, I have been advised, § 251(g) temporarily "grandfathered" pre-existing federal compensation rules governing "exchange access" and "information access" traffic between, on the one hand, LECs and, on the other hand, IXCs or information service providers, for services which were in existence on February 8, 1996. Thus, it is AT&T's position that since there were no such rules with respect to voice FX-like traffic when the Act was passed, § 251(g) cannot be relied upon by Qwest to eliminate its payment of reciprocal compensation for this traffic or to require payment of access charges for such traffic.

It is also AT&T's position, however, that even if such pre-existing compensation rules for FX-like traffic had existed, they would not be grandfathered by § 251(g),

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[35] *Id*. at ¶ 32 (footnote omitted).
[36] *Id*. at ¶ 46.

because FX-like traffic is not "exchange access." "'[E]xchange access' means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[37] "Telephone toll service," in turn, is defined as "telephone service between stations in different exchange areas *for which there is made a separate charge* not included in contracts with subscribers for exchange service."[38] AT&T does not impose a separate charge on its end users for its FX-like arrangement, but instead includes it as part of its basic local service offering.

Further, I note that the FCC found in the Virginia Arbitration Order that for purposes of rating traffic, the NPA NXX codes of the calling and called party are the determining factors – not the physical location of the calling and called party.[39] Thus, a call would qualify as toll service if the originating and terminating NPA-NXX codes of the calling and called party were in different local calling areas, and if a separate charge – not included in exchange service offerings – was imposed. Therefore, by definition, AT&T FX-like traffic is not exchange access traffic but is subject to the reciprocal compensation requirement of § 251(b)(5).

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[37] 47 U.S.C. § 153(16).
[38] *Id.* at § 53(48) (emphasis added).
[39] *Virginia Arbitration Order*, ¶ 301.

Q. HOW SHOULD THE COMMISSION RESOLVE THE ISSUE OF INTERCARRIER COMPENSATION PAYMENTS FOR VOICE FX-LIKE TRAFFIC?

A. The Commission should conclude that voice FX-like traffic does not fall within the § 251(g) carve out and therefore is subject to the reciprocal compensation requirements of § 251(b)(5) of the Act.

While I have been advised by Counsel that, as a matter of law, FX-like traffic is subject to reciprocal compensation, as a practical matter, the characterization of traffic for rating purposes is based on the NPA-NXX codes of the originating and terminating telephone numbers. As I explained earlier in my testimony, telecommunications billing (whether between a telecommunications provider and its retail customers or between two telecommunications companies) is based upon electronically generated and recorded data known as AMA (Automated Message Accounting) information that includes the originating and terminating telephone numbers.[40]

Thus, as a practical matter, the Commission should direct the parties to continue using the methodology that is in place today. Specifically, the parties should be directed to use the originating and terminating NPA-NXX codes to determine if calls to FX and FX-like arrangements are toll. If they are, they should be handled

[40] AMA records are automatically generated by telecommunications switches and include the information necessary to allow the originating and terminating carriers to generate bills, i.e., originating and terminating telephone numbers, switch identification and the length of the call. Interconnection billings for reciprocal compensation, access charges and end-users are based on these AMA records. Switches have been designed by their manufacturers to collect this information and the carriers' billing processes and systems have been designed to allow the carriers to automatically and efficiently rate millions of telephone calls each month, and to bill that traffic to retail customers and to other carriers.

and rated as toll calls. If, based on the originating and terminating NPA-NXX codes they are not toll calls, then they are subject to Section 251(b)(5) reciprocal compensation.

Q. IF THE COMMISSION NEVERTHELESS RELIES ON THE LOCAL/NON-LOCAL DISTINCTION TO DETERMINE IF RECIPROCAL COMPENSATION APPLIES TO VOICE FX-LIKE TRAFFIC, HOW SHOULD IT DETERMINE WHETHER SUCH TRAFFIC IS LOCAL OR NON-LOCAL?

A. Even if the Commission were to rely on the local/non-local distinction to determine whether reciprocal compensation applies, the result would be the same because the characterization of traffic for rating purposes in both cases should be based on the originating and terminating telephone numbers. Thus, if the originating and terminating NPA-NXX codes fall within the same local calling area of the calling party, then the traffic would be subject to reciprocal compensation.

Categorizing and rating calls based on the physical location of the customer's premise, rather than the NPA-NXX information, would be a significant departure from the efficient and accurate process currently in place and used by the industry nationwide. Such a change would impose significant and unnecessary costs on AT&T, other CLECs and the independent companies. In fact, at present, there is no viable alternative to the current system under which carriers rate calls by comparing the originating and terminating NPA-NXXs.[41] Therefore, using other

[41] *Virginia Arbitration Order* at ¶ 301.

schemes such as the customer's physical location will be a costly endeavor impacting both customers and carriers with no corresponding public benefit.

IV. CONCLUSION

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.