ICC STAFF EXHIBIT 1.0

DIRECT TESTIMONY

OF

JAMES ZOLNIEREK

POLICY DEPARTMENT

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 06-0688

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Q. Please state your name and business address.

A. My name is James Zolnierek and my business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

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

A. I am employed by the Illinois Commerce Commission ("Commission" or "ICC") as the Interim Manager of the Policy Department within the Public Utility Bureau's Telecommunications Division.

Q. Please state your education background and previous job responsibilities.

A. I earned my Doctor of Philosophy degree in economics from Michigan State University in 1996. Prior to joining the Illinois Commerce Commission I was employed by the Federal Communications Commission ("FCC") as an Industry Economist in the Common Carrier Bureau, Industry Analysis Division.

Q. What is the purpose of your testimony?

A. Marion Telephone, LLC ("Marion Telephone" or "Marion") has petitioned the Commission to arbitrate certain terms and conditions of a proposed interconnection agreement between it and Verizon North, Inc. and Verizon South, Inc. ("Verizon").[1] Verizon presented a response to the Marion

[1] Petition of Marion Telephone, LLC, for Arbitration with Verizon under the Telecommunications Act of 1996 ("Marion Petition"), Filed October 23, 2006.

Petition which included Verizon's statement of the issues and a notice that the parties had eliminated all but five issues.[2] I will present relevant background and/or analysis regarding two issues in dispute between Marion Telephone and Verizon.

<u>Issue 4:</u> (Marion) Under Section 21, entitled "Insurance," should Verizon be able to require Marion Telephone to maintain for a period of two years after the term of the agreement all insurance and/or bonds required to satisfy its obligations under the Agreement and all insurance and/or bonds required by Applicable Law? (Marion Petition at 5) (Verizon) Should Marion be entitled, upon termination of the Agreement (or six months thereafter), to terminate insurance coverage for liabilities that arise out of acts, events or occurrences during the term of the agreement? (Verizon Response at 4)

Background and Analysis

Q. What is your understanding of Marion's position on this issue?

A. While it is not entirely clear to me, it appears that Marion agrees to obtain insurance that will allow Verizon to make claims up to two years after an unreported event even if the insurance has been cancelled sometime during the period between when the event occurs and two years following when the event occurs.[3] However, Marion takes the position that it should not be required to maintain active insurance beyond the period of its

[2] Verizon's Response to Marion's Petition for Arbitration, ("Verizon Response"), Filed January 29, 2007.

[3] Direct Testimony of James Keller On Behalf of Marion Telephone, LLC ("Keller Direct"), Filed February 16, 2007, at 3.

agreement with Verizon, but agrees to maintain such coverage for a period of no more than six months.[4]

Q. What is your understanding of Verizon's position on this issue?

A. It is my understanding that Verizon seeks to have Marion retain active coverage and prevent Marion from cancelling coverage for a period of two years after termination of the interconnection agreement.[5]

Q. Is there any difference in the risk that Verizon faces under the two differing proposals?

A. Mr. Keller's testimony gives the impression that there is very little dispute here, but I do not understand that to be the case. Mr. Keller indicates that "if a liability remains unknown, the insurance coverage will still pay even if the insurance company is not Marion's current provider." (Keller Direct at 3) It is not clear to me what this statement means regarding Verizon's exposure to risk. For example, suppose that a Marion employee takes an action that does no immediate damage to Verizon's network, but does cause damage to occur to Verizon's network one year later. Further suppose that Marion cancels its insurance policy sometime between the time of the action that gave rise to the damage to Verizon's network and the time the actual damage occurred. Under this scenario, it is not clear

[4] Marion Petition at 5; and Marion Petition titled on e-docket as "Red Line Copy of Verizon's Agreement (part 1)", Section 21 at 12.

[5] Direct Testimony of Thomas Ziegler On Behalf of Verizon North Inc. and Verizon South Inc., Exhibit 1.0 ("Ziegler Direct"), Filed February 25, 2007, at 4.

whether the coverage Mr. Keller states Marion will obtain will obligate the insurance company to pay for any damage Marion may have caused to the Verizon network. The degree of the difference between the companies' positions depends, in part, on whether or not the coverage Mr. Keller agrees Marion will obtain will obligate the insurance company to pay under a scenario like that above.

Q. What is the difference in the risk that Verizon faces under the two differing proposals if Marion's insurance company will pay under the scenario above?

A. If Marion's insurance company will pay for damages that occur after cancellation (but that are caused by actions taken prior to cancellation) then the proposals would differ only in a narrow sense. That is, Verizon's exposure to risk associated with any action taken by Marion during the term of the interconnection agreement would not differ based on whether or not Marion cancels its insurance policy following expiration of the interconnection agreement. However, Verizon would presumably be exposed to more risk with respect to any actions take by Marion during the period of time that begins when Marion cancels its insurance policy and ends two years following the expiration of the interconnection agreement. Mr. Ziegler has testified that "[i]t is Verizon's experience that other CLEC's have taken up to two years to remove equipment in other jurisdictions."[6] Therefore, it is possible that under Marion's proposal Marion might be doing work that exposes Verizon's network to damage with no insurance coverage reducing the exposure to such damage.

Q. What is your recommendation in this scenario?

A. I would recommend that Marion, following termination of the agreement, be required to maintain insurance coverage for six months or until such time as it has removed all equipment used in conjunction with this interconnection agreement, whichever is longer.

Q. What is the difference in the risk that Verizon faces under the two differing proposals if Marion's insurance company will not pay under the scenario above?

A. If Marion's insurance company will not pay for damages that occur after cancellation (but that are caused by actions taken prior to cancellation) then the proposals differ more substantially. In this case, Marion's insurance plan, once cancelled, will not cover Verizon for damage that occurs after cancellation of the insurance policy, but that was caused by Marion action taken at any time over the life of the interconnection agreement.

Q. What is your recommendation in this scenario?

A. As above, I would recommend that Marion, following termination of the agreement, be required to maintain insurance coverage for six months or

[6] Ziegler Direct at 4-5.

until such time as it has removed all equipment used in conjunction with this interconnection agreement, whichever is longer. The question arises, however, whether in this case Marion should be required to maintain coverage even after this period, for a total time period of two years after termination, in order to reduce Verizon's exposure to risk from damage attributable to Marion that does not actually occur until after Marion no longer has contact with Verizon's network.

To answer whether and how long Marion should be required to continue its policy to protect from damages caused by prior actions after it no longer is in a position to take action that might cause damage requires the Commission to evaluate the risk to Verizon from cancellation of the policy versus the cost to Marion for continuing the policy. Unfortunately, there is very little information in the record on either point. Regarding the costs of insurance, Marion has provided some limited, but not well specified information on costs, stating "[t]he cost of to maintain this insurance is in the tens of thousands of dollars range."[7] Regarding the potential for damage, Mr. Ziegler has provided some examples of how actions taken by Marion before cancellation could, hypothetically, cause damage to Verizon's network at a future point after cancellation.[8] However, Verizon

[7] Marion Petition at 5.
[8] Ziegler Direct at 4.

has indicated that there is no known history of any losses associated with the type of events of the sort at issue here in Illinois.[9]

The fact that there is no history of any interconnected competitor taking actions of the nature at issue with respect to the instant dispute that cause damage to Verizon's network suggests that the probability of such occurrence is low. Furthermore, the possibility that Marion is the underlying source of some damage to Verizon's network that does not actually occur until after Marion has ceased contact with Verizon's network would appear remote in the extreme. To be clear, the risk I am describing is the risk of damage to Verizon's network, attributable to Marion, that occurs after Marion's interconnection agreement has expired and it has removed all of its equipment from Verizon's office. Based on the information currently in the record, there does not appear to be sufficient evidence of risk to Verizon to warrant expenditure by Marion in the tens of thousands of dollars. Therefore, I do not recommend that Marion be required to maintain active insurance coverage after the interconnection agreement expires and Marion removes all of its equipment from Verizon's offices.

Recommendation

Q. Please summarize your recommendation with respect to this issue?

[9] Verizon Response to Staff Data Request JZ 1.02.

A. Based on the information currently available regarding this issue, and for the reasons stated above, I would recommend that Marion only be required to maintain coverage following termination of the interconnection agreement for a period of six months or until such time as Marion has removed all equipment used in conjunction with this interconnection agreement, whichever is longer.

Issue 14: (Marion) In Section 2.3 of the Interconnection Attachment ("One Way Interconnection Trunks"), is it reasonable for Verizon to limit the total number of tandem interconnection trunks to a maximum of 240 trunks? (Marion Petition at 7) (Verizon) May Marion require Verizon to route all traffic through its tandem, or may Verizon employ direct end office trunking where the traffic to a particular end office exceeds 240 trunks. (Verizon Response at 6)

Background and Analysis

Q. What is your understanding of Marion's position on this issue?

A. It is my understanding that Marion takes the position that there should be no limit on the number of Marion trunks that go through a Verizon tandem.[10]

Q. What is your understanding of Verizon's position on this issue?

A. Verizon's position is not entirely clear to me. In its issue description, Verizon indicates that Marion should employ direct office trunking where

[10] Keller Direct at 8-9.

the traffic to a particular end office exceeds 240 trunks.[11] However, Mr. Thomas indicates that Marion should employ direct office trunking where the traffic to a particular tandem exceeds 240 trunks.[12] These are distinctly different propositions. For example, if a Verizon tandem has two subtending end offices, its position as stated in the Petition Reply would allow Marion up to 480 trunks to the tandem while the position stated by Mr. Thomas would allow only 240. I assume that Mr. Thomas' representations more accurately describe Verizon's position as his statement is consistent with the language of the proposed interconnection agreement.[13]

Q. Has the Commission addressed a similar issue in prior arbitration proceedings?

A. Yes. In Docket No. 01-0007, concerning an arbitration between Illinois Bell Telephone Company and Verizon Wireless, the Commission determined that:

> Allowing Verizon to interconnect at the tandem in every instance it chooses could cause significant adverse impacts on [Illinois Bell Telephone Company's] network. (47 C.F.R. §51.5).[14]

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[11] Verizon Response at 6.

[12] Direct Testimony of Warren Thomas On Behalf of Verizon North Inc. and Verizon South Inc., Exhibit 2.0 ("Thomas Direct"), Filed February 25, 2007, at 6.

[13] Section 2.2.6 of the Interconnection Attachment to the Interconnection Agreement (which shows up as deleted language) in the attachment to the Marion Petition titled on e-docket as "Red Line Copy of Verizon's Agreement (part 2)."

[14] Commission Order In the Matter of Verizon Wireless Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement

The Commission determined that the appropriate trigger point for taking traffic off the tandem is 864 Centum Call Seconds ("CCS" or the equivalent of one DS-1) during the busy hour for three consecutive months.[15]

Q. How does the Commission's determination in Docket No. 01-0007 compare with Verizon's proposed limitation?

A. The Commission's determination differs from Verizon's proposal in that the Commission's determination imposed a limitation on tandem connections based upon CLEC traffic flows to end offices subtending the tandems. Verizon's proposal, as I understand it, would impose a limitation based upon the combined traffic flows to all end offices subtending the tandem.

To see how the two limitations are different consider a tandem with 20 subtending Verizon end offices. Under the Commission's determination a CLEC could send 23 trunks worth of traffic to each end office through the tandem or 460 total trunks worth of traffic. Verizon's proposal would however limit the CLEC to only 240 total trunks worth of traffic. In this sense, Verizon's proposal is more restrictive than the Commission's earlier determination.

with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Docket No. 01-0007, May 1, 2001, at 7.

Under Verizon's proposal, however, a CLEC might have 240 trunks worth of traffic flowing through the tandem all destined for a single Verizon end office. The Commission's determination in Docket No. 01-0007 would prevent this. In this sense, Verizon's proposal is less restrictive than the Commission's earlier determination.

Thus, as these examples illustrate, whether or not Verizon's proposal for limiting tandem use is more or less restrictive than the solution adopted previously by the Commission will depend on the particular tandems, end offices, and traffic patterns involved in traffic flows between Marion and Verizon. This information is not present in the current record and likely to change over time in ways that cannot be easily predicted.

Q. What is your recommendation with respect to this issue?

A. As I explained above, the Commission has already determined that allowing a carrier to interconnect without limitation at the tandem can have adverse impacts on a carrier's network. Mr. Keller has presented evidence indicating that there has been a reduction in some forms of competition in or around the areas of interest to this issue, which I believe he interprets to indicate that tandem exhaust concerns are lessening over time.[16] I do not believe this evidence leads to such an interpretation. In particular, this evidence does not address ILEC, wireless traffic, VoIP

[15] Id.

[16] Keller Direct at 9.

traffic, or other forms of traffic that jointly determine issues of tandem exhaust. Therefore, it provides insufficient evidence for the Commission to alter its prior determination that allowing a carrier to interconnect without limitation at the tandem can have adverse impacts on a carrier's network. Because there is no evidence to indicate that the Commission's prior determination would not be applicable in this instance, I recommend the Commission adopt the Verizon proposal to limit the number of trunks that Marion connects to each Verizon tandem.

It is not, however, the case that the specific limitation proposed by Verizon is necessarily appropriate -- particularly as it deviates from that adopted by the Commission in the past. Verizon has presented no evidence to suggest that the Commission need impose a more strict limitation than it has in the past. However, as explained above, it is impossible to predict whether Verizon's limitation will be more or less strict than that previously imposed by the Commission. For this reason, I recommend that Marion be given the flexibility to meet the less restrictive of the two types of limitations. That is, I recommend that the Commission determine that Marion must limit the number of trunks going through a Verizon tandem to 240 trunks <u>or</u> take traffic destined for any Verizon end office subtending the tandem off the tandem for all subtending end offices where traffic delivered to that office exceeds 864 Centum Call Seconds ("CCS" or the equivalent of one DS-1) during the busy hour for three consecutive months. The Commission should determine that Marion must meet one of the criteria with respect to each Verizon tandem to which it sends traffic, but that it need not meet both.

Recommendation

Q. Please summarize your recommendation with respect to this issue?

A. Based on the information currently available in the record, I recommend that the Commission determine that Marion must limit the number of trunks going through a Verizon tandem to 240 trunks <u>or</u> take traffic destined for any Verizon end office subtending the tandem off the tandem for all subtending end offices where traffic delivered to that office exceeds 864 Centum Call Seconds ("CCS" or the equivalent of one DS-1) during the busy hour for three consecutive months.

Q. Does this conclude your testimony?

A. Yes.