

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J . MARTIN,
APPROVING IN PART AND DISSENTING IN PART**

Re: Starpower Communications, LLC v. Verizon South Inc.; Starpower Communications, LLC v. Verizon Virginia Inc., Memorandum Opinion and Order, File Nos. EB-00-MD-19 & EB-00-MD-20

I dissent in part from this Order, because I question its analysis of the two Verizon Virginia interconnection agreements. As the Order acknowledges, both of these agreements require the payment of reciprocal compensation for “Local Traffic,” and both agreements define “Local Traffic” in terms of where a call “terminates.” The Order finds that ISP-bound traffic is not “Local Traffic,” because, the Order concludes, under an “end-to-end” analysis, ISP-bound traffic does not terminate within a local service area. The Order does not offer any definition of “termination.”

This analysis is essentially the same as that employed by the Commission in its first declaratory ruling on reciprocal compensation, which was subsequently vacated by the D.C. Circuit. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling, 14 FCC Rcd 3689 (1999). In that ruling, the Commission applied an “end-to-end” analysis and concluded that calls to ISPs do not terminate at the ISP’s local server, but instead continue to the “ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state.” *Id.* ¶ 12.

The D.C. Circuit cast serious doubt on this analysis, concluding that the Commission had not adequately explained its reasoning. *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 5 (D.C. Cir. 2000). Among other things, the Court stated:

[U]nder 47 CFR § 51.701(b)(1), “telecommunications traffic” is local if it “originates and terminates within a local service area.” But, observes MCI WorldCom, the Commission failed to apply, or even to mention, its definition of “termination,” namely “the switching of traffic that is subject to section 251(b)(5) at the terminating carrier’s end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party’s premises.” *Calls to ISPs appear to fit this definition: the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the “called party.”*

Id. at 6 (citations omitted; emphasis added).

The current Order appears to suffer the same flaws as those identified by the D.C. Circuit. While this proceeding is not the appropriate place to reconsider the Commission’s treatment of reciprocal compensation – that issue is again before the D.C. Circuit – I am not comfortable supporting the use of the Commission’s end-to-end

analysis here without a better explanation and more full response to the questions raised by the D.C. Circuit. Accordingly, I dissent in part from this Order.