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FEDERAL COMMUNICATIONS COMMISSION
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Magalie Roman Salas, Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket Nos. 00-218, 00-249 and 00-251

Dear Ms. Salas:

In accordance with procedures established by FCC Public Notice DA 01-270 (dated February 1, 2001), enclosed for filing in the above-referenced proceeding please find an original and four exact copies of the "Response of Verizon Virginia Inc. to Prefiling Memorandum." A copy of this letter and response is being served today on all parties listed on the attached service list.

Please contact the undersigned if you have any questions regarding this matter.

Very truly yours,

Karen Zacharia

Karen Zacharia
Counsel for Verizon

No. of Copies rec'd 0+4
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	)	CC Docket No. 00-218
In the Matter of Petition of Cox Virginia Telecom, 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 Arbitration	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

RESPONSE OF VERIZON VIRGINIA INC. TO PREFILING MEMORANDUM

Verizon Virginia Inc. ("Verizon") submits this response to the Prefiling Memorandum filed by AT&T Communications of Virginia ("AT&T"), Cox Virginia Telecom, Inc. ("Cox") and WorldCom, Inc. ("WorldCom") (collectively "the Petitioners"). Because the Petitioners did not

extend the courtesy of a telephone call or other correspondence to Verizon prior to filing their Prefiling Memorandum, their scheduling and pricing proposals were made without any input from Verizon, and they are not acceptable. The proposals are not, as the Petitioners claim, intended to permit this arbitration to proceed "in a fair and efficient manner,"[1] but are a unilateral attempt to gain unfair advantage.

Status of Interconnection Negotiations, Including Any Unresolved Issues.

The Petitioners described the status of their interconnection negotiations with Verizon. The descriptions of the status of the Cox and AT&T negotiations are reasonably accurate. In contrast, the purported history of the Virginia interconnection negotiations between Verizon and WorldCom is highly selective and inaccurate.

WorldCom served its request to negotiate a new interconnection agreement for Virginia with Verizon on March 3, 2000. On March 7, Verizon sent WorldCom a copy of its updated interconnection agreement, including the proposed amendment to implement the Commission's then-recently released Unbundled Network Element Remand Order.[2] WorldCom rejected Verizon's updated standard agreement in its entirety on March 13, 2000, and insisted on using the previous 1997 Virginia agreement with Verizon as a starting point for negotiations.[3] On

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[1] March 13, 2001 letter from the Petitioners to Ms. Faroba and Mr. Dygert.

[2] See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (November 5, 1999).

[3] WorldCom suggests in the Prefiling Memorandum that Verizon should have concurred with this approach because a similar approach had been followed in Maryland. WorldCom's suggestion is inaccurate. WorldCom fails to disclose that in Maryland the parties' negotiations involved the **initial** interconnection agreement between the parties, and that both parties had earlier agreed to use the Virginia agreement as the basis for the initial agreement in Maryland and other states. The parties never agreed, however, to use the Virginia agreement subsequently

(continued . . .)

March 15, 2000, Verizon objected to negotiating from the technically and legally outdated 1997 agreement and assured WorldCom that it was willing to negotiate WorldCom's requested requirements in the context of Verizon's updated agreement. WorldCom rejected this proposal as well.

On March 21, 2000, WorldCom withdrew its proposal to negotiate from the 1997 agreement. In its place, WorldCom sent Verizon its own new template agreement. Before Verizon could even react or comment on WorldCom's new template, on April 3, 2000, WorldCom filed with the Virginia State Corporation Commission ("Va. SCC") a Motion Requesting Mediation, in which it reverted to its initial position of proposing to use the 1997 agreement as the basis for negotiations. Notwithstanding many intervening discussions between Verizon and WorldCom regarding negotiations for interconnection agreements in Virginia and other jurisdictions, on August 10, 2000, without any prior notice to Verizon or any further attempt to determine and resolve any issues in Virginia, WorldCom simply filed its arbitration petition with the Va. SCC. With this arbitration petition, WorldCom filed yet a third proposed agreement: a combination of the 1997 agreement, the revised agreement it had submitted on March 23, 2000, and a substantial number of other provisions that Verizon had never seen.

Verizon agrees with the statement in the Prefiling Memorandum at page 3 that "no substantive discussions of issues ever took place between the parties [Verizon and WorldCom]." Given that there have been no substantive negotiations, Verizon remains perplexed as to how WorldCom will fulfill the requirements contained in the Arbitration Procedures for the Petitions for Arbitration, including:

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in any jurisdiction. By contrast, WorldCom has now agreed to use Verizon's standard agreement in negotiations in all other jurisdictions **except** Virginia.

- the requirement in Section 2.1(c) to list "every unresolved issue, categorized by subject matter, and the position of each of the parties on each issue (Statement of Unresolved Issues);"
- the requirement in Section 2.1(d) to list "the issues that have been resolved by the parties;" and
- the requirement in Section 2.1(e) to provide the "most current version of the interconnection agreement being negotiated by the parties, if any, containing both the agreed upon language and the disputed language each party proposes."[4]

Particularly problematic as to the latter is the fact that there is essentially no agreed upon language between Verizon and WorldCom. The arbitration process contemplated by the Act and the Commission's Arbitration Procedures is designed to resolve open issues – not to craft the entire interconnection agreement for the parties.

Consolidation of Proceedings.

The Petitioners advocate consolidation of these three proceedings when consolidation would be beneficial to the Petitioners, such as in the schedule of the proceeding, but urge individual treatment when that serves their purposes, such as the suggestion to have a different set of staff members for each of the five segments they propose.

Verizon does not object to having several segments within this consolidated proceeding if the procedures are fairly established and if such segmentation allows for the presentation of issues in a logical progression. When setting deadlines or time limits, however, the Arbitrator should consider that Verizon is being asked to address the issues "times three." Even though a common issue may be identified, Petitioners suggest that they may or may not have a common position and may or may not suggest common contractual language. In short, the Petitioners

[4] The Arbitration Procedures provide, at section 2, that "[f]ailure to comply with these requirements may result in dismissal of the Petition for Arbitration."

support procedures in which they maximize their ability to pick and choose where they may share resources and "tag team" on presentation of issues while Verizon is left to try to keep up with their separate or combined presentations in multi-segments on concurrent tracks. This simply is not workable or fair to Verizon.

Moreover, the Petitioners' proposal to use separate arbitration staffs for each segment would not be efficient and could lead to inconsistent decisions within this consolidated arbitration. For example, the Petitioners suggest that each separate arbitration staff can assist in mediating discovery disputes and mediating scheduling issues. It will be most unwieldy if within this consolidated proceeding the parties are subject to independent decisions by five different sets of staff members as to how discovery should be conducted or how schedules should be created or modified. Within one proceeding, uniformity and consistency on both the process and the substantive issues will be essential, and the Arbitrator should be the only decision maker with regard to contested issues of discovery, scheduling, designation of issues and so forth. Verizon would expect the Arbitrator to use the Commission staff as needed in each segment, but the decision making authority for all segments of the arbitration should remain solely with the Arbitrator.

Verizon agrees with the Petitioners that recurring and non-recurring rates should be a separate segment in the consolidated proceeding. Verizon recommends, however, that the segment on rates not go forward at this time. First, new rates should not be set "during the limited period"[5] in which the appeal of the Commission's total element long-run incremental cost

[5] Motion for Partial Stay of Mandate Pending the Filing of a Petition for Writ of Certiorari, Iowa Utilities Bd v. FCC, No. 96-3321 (Aug. 30, 2000) at 2.

("TELRIC") regulations is pending in the Supreme Court.[6] Until the Supreme Court rules on the FCC's regulations, maintaining the status quo will avoid the considerable time and effort required to re-examine Verizon's rates now in effect in Virginia. Moreover, if this re-examination is undertaken on the basis of the existing FCC TELRIC regulations and the Supreme Court invalidates them, the effort will have been for naught; this ratemaking process would need to be completely stopped and restarted on the basis of the Supreme Court ruling. As the Commission has stated there is no good reason to undertake this "costly and potentially unnecessary"[7] analysis at this point when there is a reasonable likelihood that the Supreme Court's ruling would negate the entire effort within a matter of months.

Second, the Va. SCC adopted "permanent prices" for UNEs less than two years ago.[8] Although these rates clearly will be examined again one day, there is no reason to hold additional cost hearings so soon after the initial UNE rates were set.

Third, rates should not be set with input from only three CLECs. The Va. SCC's Final Order of April 15, 1999[9] held that those rates "shall be applied prospectively in existing BA-VA arbitrated interconnection agreements." Verizon has, in fact, applied these rates to not only the

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[6] Iowa Utilities Bd., et al. v. Fed. Communications Comm'n, 219 F.3d 744, 759 (8th Cir. 2000), *cert. granted in part*, 121 S.Ct. 878 (2001).

[7] Motion for Partial Stay of Mandate Pending the Filing of a Petition for Writ of Certiorari, Iowa Utilities Bd v. FCC, No. 96-3321 (Aug. 30, 2000) at 10.

[8] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: To determine prices Bell Atlantic - Virginia, Inc. is authorized to charge Competitive Local Exchange Carriers in accordance with the Telecommunications Act of 1996 and applicable State law, Case No. PUC970005, p.26 (April 15, 1999). This Commission found these UNE rates to be in compliance with its existing TELRIC regulations. See, *In the Matter of AT&T Corporation, Complainant v. Bell Atlantic Corporation, Defendant*, File No. E-98-05, Memorandum Opinion and Order, 15 FCC Rcd 17066 (August 18, 2000).

[9] Id. at 5.

then-existing interconnection agreements but also to all interconnection agreements negotiated subsequent to that 1999 Order. This pattern is similar to that in virtually all states around the country -- state commissions decide rates in generic proceedings that are then used for *all* carriers and *all* interconnection agreements. This approach is both efficient and fair, and applies equally to rates for carriers in Virginia.

Finally, Verizon cannot produce new cost studies by the time it files its response to the petitions, as the Arbitration Procedures provide at Section 2.1 (i), and would thus be forced to rely on the same studies that the Va. SCC used in establishing the current rates. There certainly is no basis for relitigating the question of rates without updated information, and the Petitioners will not be harmed by continuing to pay the existing rates – that all other CLECs in Virginia will be paying – for a short time. Verizon therefore recommends that the rate segment (Proposed Segment 2) of the consolidated proceeding be deferred and be reinstituted after the decision of the United States Supreme Court and, at that time, opened to all CLECs certificated in Virginia that choose to participate.

Procedures To Be Followed.

The Pre-filing Memorandum alternates between consolidated and individual treatment of issues as discussed above. The Petitioners state that when they identify common issues

> they will, to the extent they can, agree on the general principle(s) that underlie each such issue and include those principles in their arbitration petitions, together with CLEC-specific contract language which meets the individual business needs of each CLEC in a manner consistent with the agreed-upon principles.

(Prefiling Memorandum at 6.) The Petitioners have urged the consolidation of these proceedings and, as a result, if they are to present common general principles, then they should also present common contractual language that consistently implements the general principles. The

Arbitrator, as well as Verizon, will be burdened significantly if each general principle is expressed in a different contractual manner by each of the three Petitioners. The Arbitrator should insist upon common contractual language for common general principles or, at a minimum, a full explanation as to why one general principal requires two or three different contractual provisions to implement.

Verizon also agrees with the Petitioners' suggestion for "live" arbitration hearings and urges the use of panel presentations wherever possible. The Petitioners suggest that the hearings include "predetermined time limits for the presentation and the response" (Prefiling Memorandum at 7). Verizon supports that process so long as such predetermined time limits provide that Verizon has equivalent time to the collective time of the Petitioners since Verizon may be responding to two or three different proposals. In other words, if a particular panel is scheduled for one hour, Verizon should be assigned 30 minutes to present its position and the Petitioners assigned collectively 30 minutes. The Arbitrator has the authority to assign these time limitations pursuant to Section F.2 of the Arbitration Procedures.

Basic fairness also requires several changes to the recommended schedule shown in the Prefiling Memorandum on page 10. While the Arbitration Procedures provide (p. 2) that one of the items for consideration at the Pre-Filing Conference is the "potential consolidation of arbitration proceedings," the Arbitration Procedures did not assume consolidation. The Petitioners have assumed consolidation, but have not recognized the consequences of consolidation. Thus, where Verizon would otherwise be required to respond to one Petition for Arbitration within 25 days, if it is required to respond to three Petitions for Arbitration filed simultaneously, Verizon must be allowed more time to respond. The Petitioners' proposed schedule only allows Verizon 25 days to respond to all three Petitions and that should be

lengthened to at least 50 days. Moreover, the Petitioners have proposed that discovery should begin at the time the arbitration petitions are filed. The only discovery that should begin at that time is any discovery that Verizon requires. The Petitioners should not be permitted to begin discovery until after Verizon files its Response to the Arbitration Petitions. This will assure that Verizon can devote its full attention to the Response rather than to responding to discovery requests (as the Petitioners will be able to do in producing their Arbitration Petitions).

Verizon recommends the following schedule for this consolidated proceeding:

April 20	CLECs file Arbitration Petitions; Verizon may begin discovery.
June 11	Verizon responds and raises any additional issues not raised in the CLECs petitions; CLECs may begin discovery.
July 9	CLECs respond to Verizon's additional issues if requested to do so by Arbitrator pursuant to Section A.4 of the Arbitration Procedures.
July 23	Parties submit issues lists for each segment, along with the Joint Decision Point List pursuant to Section D of the Arbitration Procedures.
July 30	Status conference.
August 31	Parties submit simultaneous Direct Testimony.
September 10	Last day to submit discovery requests.
September 25	All discovery responses due by this date.
September 28	Parties file simultaneous Rebuttal Testimony.
October 15 - November 9	Hearings for each of the four segments would occur during this time, with the separate hearing dates to be determined by the Arbitrator.
November 30	Simultaneous briefs (the Arbitrator may also decide to establish individual briefing dates for each segment).

This schedule is longer than the 135 day schedule "encouraged" by the Commission in its Order (pp. 3-4) of January 19, 2001 regarding its general regulations for arbitrations.[10] This additional time is necessary because of the consolidation of three arbitrations into this one proceeding and the added complexity and burden on Verizon that accompanies that consolidation.[11] Moreover, unlike most arbitrations, which are limited to a discrete number of specific issues, these arbitrations potentially include every aspect of the interconnection relationship, as well as the drafting of specific language for almost the entire agreement. Given that the parties (at least with respect to the WorldCom agreement) are starting at "ground zero," substantial time beyond the standard 135 day scheduled is necessary.

Discovery Procedures.

Verizon objects to the suggestion that any material in the possession of any Petitioner automatically will be considered as responsive to the discovery in this proceeding, as well as objects to an obligation on the producing party to update automatically all of that information. (Prefiling Memorandum at 10). Verizon has been involved in discovery in many states during the past several years with the Petitioners and no materials should be deemed automatically responsive to discovery in this proceeding. Instead, the material that is requested to be authenticated for this proceeding should be specifically identified by a party and the original producing party should have seven days to object to the use of that material in this proceeding.

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[10] *In the Matter of Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, Order, FCC 01-21 (rel. January 19, 2001).

[11] The Petitioners' proposed schedule also recognized that more time than 135 days would be necessary to conclude these arbitrations. See Prefiling Memorandum at 9, fn.8.

Conclusion.

With these proposed changes, Verizon believes this consolidated proceeding can go forward fairly and efficiently.

Respectfully submitted,

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Dated: March 21, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2001, copies of the foregoing "Response of Verizon Virginia Inc. to Prefiling Memorandum" were sent electronically and by overnight delivery, to the parties on the attached list.

Eric Fitzgerald Reed

* Via hand delivery.

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