

MISCELLANEOUS

Record Access

ISSUE V.14 This issue is exclusive to AT&T.

What should be the requirements for providing access to facilities records — including cable plats?

Witness: L. Fredrik Cederqvist
Attorney: G. Ridgley Loux

AT&T's Position:

Verizon is also hindering AT&T's ability to provide facilities-based local service by refusing to provide AT&T with direct access to Verizon's cable plats. AT&T's local entry strategy includes the provision of local service to multiple dwelling units ("MDUs") in Virginia. AT&T can provide service to MDUs through different methods. It can use a combination of unbundled network elements ("UNE-P"), lease only the loop and provide its own switching ("UNE-L"), or deploy facilities to the building and interconnect with (or occasionally deploy its own) house and riser cable. In fact, AT&T intends to use all of these methods to compete. For AT&T to determine the most efficient and economic way to provide service to MDUs (or other locations), it must have access to, and the ability to copy, Verizon's cable plats.²⁴⁷ Where AT&T decides that it would be advantageous to deploy facilities directly to the MDU (or other buildings, campuses,

²⁴⁷ AT&T uses the term "cable plats" or "plats" to refer generically to maps, plats and other network deployment related information and records.

etc.), access to the cable plats is also critical, as these allow AT&T to plan its network deployment into and at the building in a rational and cost-effective way.

Proposed Remedy:

AT&T has proposed contract provision Section 16.1 to implement its timely review of cable plats.

Verizon's Position:

AT&T is not entitled to cable records and maps. Cable records contain Verizon VA's confidential, proprietary information, as well as customer-specific information — information to which AT&T has no right or valid reason to access. Such access is not required by the Act and would serve no legitimate purpose.

Verizon VA is willing to give any requesting carrier the size and weight of any given cable so that the carrier can address its engineering concerns accordingly. Under no circumstances, however, does any carrier need access to cable records so that it can review and copy them.

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

Access to cable plats is required because the plats contain critical information regarding the layout of Verizon's facilities. For example, the plats contain information about the existence and location of cross connect points (and other technically feasible unbundling points) along the loop plant. This information is required in order for AT&T to determine where to place its outside plant facilities and where to best interconnect to

Verizon's plant. Plats identify the existence and location of Verizon's digital loop carrier ("DLC") devices along the loop path. This information is required by AT&T planners so that they can determine whether DSL can be deployed and if and where to place AT&T's own DLC electronics. Access to plats also allows AT&T to understand where Verizon has conduits entering a location. Such information is necessary in order for AT&T to determine whether it can economically provide service to the building through the use of its own or leased T1s. AT&T's deployment of facilities must also take into consideration the location of the Verizon facilities to which it would need to build, interconnect, or possibly build around. This cannot be done if AT&T lacks access to Verizon's plats. Finally, access to the plats will allow AT&T to understand the topology of Verizon's existing network facilities so that it can make architectural decisions in an informed and efficient manner, all to the ultimate benefit of the end-user customer.

The consequences of not having access to plats are serious and costly. Relying on Verizon to provide isolated bits of information about its network, through engineering queries or the like, as Verizon insists, would result in iterative questions between AT&T and Verizon in order for Verizon to understand AT&T's questions and for AT&T to understand Verizon's responses (the latter most likely being typically sparse in nature). AT&T should not have to play Twenty Questions to obtain the information it needs to design its plant efficiently, especially at the rates Verizon charges per inquiry. AT&T would also have to consult with Verizon engineers during the engineering and design phases of AT&T's network deployment, which would result in higher costs to AT&T and unnecessary disclosure of highly sensitive business information to Verizon. Absent complete information about the existing network with which AT&T is trying to

interconnect, AT&T will be unable to deploy facilities in an efficient and cost-effective manner or offer end-users potential network-based value propositions, including those related to route diversity. For example, MDUs owned by the same landlord on the same campus might be interconnected through intra-building facilities, which would be disclosed in the cable plats. This type of architecture will significantly impact how AT&T deploys facilities to the campus. In sum, designing a network blindly will inevitably result in higher engineering costs, inefficient deployment of cable, and sub-optimal use of precious conduit and right-of-way space. Such inefficiencies and unnecessarily higher costs will only raise the barriers to entry and undermine the viability of local exchange competition in Virginia.

As described above, AT&T simply cannot deploy facilities in an efficient and optimal manner if it lacks information about Verizon's plant. From a legal perspective, Verizon's refusal to provide access is unjustified. Access to the plats is required under the Telecommunications Act of 1996 ("1996 Act") and the Federal Communications Commission's implementing regulations. In the FCC's "First Report and Order" in *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, the FCC anticipated the difficulty CLECs might face in gaining access to conduits, poles and rights-of-way. To ensure that CLECs could deploy their networks and not have to become embroiled in time consuming and costly arguments with the incumbent LECs, the FCC held that "we expect a utility that receives a legitimate inquiry regarding access to its facilities or property to make its *maps, plats, and other relevant data available for inspection and copying by the requesting party,*

subject to reasonable conditions to protect proprietary information.”²⁴⁸ Thus, AT&T clearly has the right to review, in-person, Verizon’s cable plats.

The FCC further ensured a CLEC’s ability to obtain access to requisite network infrastructure information in the *UNE Remand Order*. In the *UNE Remand Order*, the FCC reaffirmed its definition of OSS as “pre-order, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC’s databases and information.”²⁴⁹ This definition includes “manual” records. Moreover, the FCC specifically provided that pre-order OSS include access to loop qualification information and that an incumbent LEC must provide access to this information in a non-discriminatory manner.²⁵⁰ Because Verizon technicians can directly review cable plats when deploying service to customers, AT&T is entitled to the same right pursuant to Verizon’s non-discrimination obligations.

Not surprisingly, Verizon ignores its legal obligation to provide non-discriminatory access to cable plats, and instead suggests that AT&T use a more costly and inefficient method of obtaining information about Verizon’s network. Rather than provide AT&T with direct access to the plats, Verizon wants AT&T to use the Engineering Query process to obtain isolated pieces of information about Verizon’s

248 *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,” FCC CC Docket Nos. 96-98 and 95-185 (FCC 96-325) (rel. Aug. 8, 1996) (“*Local Competition Order*”), ¶ 1223 (emphasis supplied).

249 *UNE Remand Order*, at ¶ 425.

250 *Id.* at ¶ 427.

network. This approach, however, ensures only that AT&T will experience delays, higher costs and inefficient design.

For one thing, the Engineering Query process Verizon suggests would not provide AT&T with much information. While Verizon envisions that AT&T could request information “such as amount and location of bridged taps, number and location of load coils, location of DLC, or cable gauge at a specific location,”²⁵¹—this list is not exhaustive of the information AT&T would need, and Verizon offers no information about how it would treat requests for additional types of information.

Not that it would matter, given the inefficiencies of the Engineering Query process. All that it offers is isolated pieces of information about individual loops. The process does not provide AT&T with the type of information it needs to design and deploy facilities efficiently. What AT&T needs, in simple terms, is to be able to review the entire network architecture associated with the specific building to which it wants to provide service, as well as the architecture generally in the area so that it can plan for expansion. Verizon’s proposed Engineering Query process does not meet that need.

And if those shortcomings were not enough, use of the Engineering Query also could prove to be cost prohibitive. Verizon’s proposed rate for an individual Engineering Query was a nonrecurring charge of \$121.37. Before AT&T can efficiently deploy facilities to serve MDUs, it needs information about Verizon’s facilities to the *entire* building. At Verizon’s proposed rate, the cost to AT&T of obtaining information required to deploy facilities to an entire building would quickly become prohibitive.

251 See proposed contract section 11.2.12

Giving AT&T access to Verizon's cable plats would avoid these problems. AT&T is not asking that Verizon transport its cable plats to any special location, or take any other extraordinary steps to make them available. Rather, AT&T is willing to review Verizon's cable plats at the location where they are normally housed, during normal business hours.²⁵² Nor is AT&T asking that Verizon personnel assist AT&T in gleaning any of the information AT&T needs. Instead, AT&T is willing to gather that information on its own, by taking notes, making drawings or having copies made of the records. AT&T will naturally cover the cost of having these copies made and, moreover, will cover the costs of having Verizon personnel escort and supervise AT&T during the review process.

Given the straightforward nature of the process AT&T proposes, Verizon should be required to provide access to cable plats within ten business days of any such request by AT&T. That is the time period within which it had previously agreed, in rights of way license negotiations with AT&T, to provide access to its records. Concerns by Verizon regarding the proprietary nature of the information are already adequately addressed in the confidentiality provisions of the interconnection agreement.²⁵³

252 If and where Verizon has stored cable plat information in electronic format, AT&T should have non-discriminatory access to such electronic records.

253 That the provisions sought by AT&T are entirely reasonable and able to be implemented is best illustrated by the fact that SBC provides CLECs with access to maps and cable plats and does so within two business days. In Texas, which has also been an important area for the development of local competition, SBC stipulated to such terms as far back as 1996, and included them in its model interconnection agreement, the "T2A." Accordingly, there is no reason why Verizon cannot do the same.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

Performance Reports and Benchmarks

ISSUE III.14

This issue is common to AT&T and WorldCom.

What are the appropriate performance metrics and standards and financial remedies that should apply to Verizon's delivery of services under the Agreement, in the event that Verizon fails to meet the performance metrics adopted for Virginia?

Attorney: IV Mellups

Witness: Mike Kalb

Statement of AT&T's Position:

While they are in issue, performance metrics and standards probably will not be arbitrated in this proceeding, because AT&T and Verizon appear to be close to an agreement on an ex-C&P company regional approach, based upon the metrics and standards in effect in New York as they may be modified from time to time.²⁵⁴

However, the financial remedies and incentives that should apply to Verizon's delivery of services under the Agreement, in the event that Verizon fails to meet the performance metrics and standards established for Virginia, remain a substantial issue and one that is currently not the subject of any other proceeding to resolve the issue.²⁵⁵

The remedies and incentives that apply when Verizon fails to meet performance standards must be immediately applicable and sufficiently large enough to provide a

²⁵⁴ Some details of the mutual understanding still remain to be ironed out. The states that would be covered by the understanding would be Virginia, the District of Columbia, Maryland and West Virginia.

²⁵⁵ The Virginia Collaborative Committee established in Case No. PUC000026 has as one of its charters the establishment of remedies and incentives. However, the Committee has not yet addressed this issue. It has just begun consideration of permanent performance metrics and standards as the logical precursor to remedies and incentives.

meaningful incentive for Verizon not to permit performance degradation and to re-establish compliant performance quickly when such deterioration occurs. Token remedies, of the type Verizon proposes, are no practical incentive when the reward for paying the incentive is retention of its existing monopoly.

The remedies Verizon proposed are little more than a minor annoyance that could easily be treated as an ordinary cost of doing business. Instead of adopting the Verizon position, the financial remedies and incentives (and operational details) set forth in the Performance Incentive Plan (“PIP”) advocated by AT&T should be adopted.

Proposed Remedy:

The Performance Incentive Plan (“PIP”) attached to the interconnection agreement as schedule 26.1.1 should be adopted by the Commission as part of the interconnection agreement. The PIP can be applied, in a straightforward manner, to any underlying set of performance metrics and standards. As such, its adoption need not be held in abeyance for the resolution of the regional performance metrics and standards.

Statement of Verizon’s Position:

Verizon filed a performance plan with the Virginia Commission on August 2, 2000, a copy of which may be accessed at the following Virginia State Corporation Commission link: <http://www.state.va.us/scc/division/puc/ccimomfiles/vaperfl.pdf>. Verizon has stated that it continues to support this proposal.

Statement of Relevant Authority:

FCC Memorandum Opinion And Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, ¶ 433 (December 21, 1999).

Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: *Establishment of a Collaborative Committee to Investigate Market Opening Measures*, Case No. PUC000026, at the Virginia SCC web site: <http://www.state.va.us/scc/division/puc/ccimom.htm>.

Verizon's Response to Cavalier, WorldCom, and AT&T's Proposed Changes to Verizon Virginia's Metrics, PUC000026 (April 16, 2001), at the Virginia SCC web site: http://www.state.va.us/scc/division/puc/ccimomfiles/varply_1.pdf.

Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996; Petition filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan, in 97-C-0271, Cases 97-C-0271 and 99-C-0949, Order Adopting The Amended Performance Assurance Plan And Amended Change Control Plan.(Order issued and effective November 3, 1999).

Massachusetts Department of Telecommunications and Energy, *Investigation by the Department of Telecommunications and Energy upon its own motion pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of Verizon New England Inc. d/b/a Verizon Massachusetts as part of its application to the Federal Communications Commission for entry into the interLATA (long distance) telephone market*, D.T.E. 99-271, Order Adopting Performance Assurance Plan (September 5, 2000).

Pennsylvania Public Utility Commission, *Joint Petition of NEXTLINK Pennsylvania, Inc., et al., for an Order Establishing a Formal investigation of Performance Standards, Remedies, and Operations Support Systems testing for Bell Atlantic – Pennsylvania, Inc.*, P-00991643, Opinion and Order (adopted November 4, 1999).

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

AT&T and Verizon appear to be close to an agreement to use a single set of performance metrics and standards in the Verizon ex-C&P footprint. These metrics and standards would be the ones adopted by the New York PSC in its Carrier-to-Carrier ("C2C") proceeding, as amended from time to time by both consensual and non-

consensual changes adopted by the New York PSC. All changes to the New York metrics and standards would be filed with the Virginia Commission as amendments to the Virginia metrics and standards. The basic concept is that all differences between the parties would be negotiated and/or litigated in the New York Collaborative and before the New York Commission, with no second bites at the apple in the other states. ²⁵⁶

The Virginia version of these metrics is currently being considered in the Virginia Collaborative Committee established in Case No. PUC000026. For the reasons stated, AT&T is not presenting a position on performance metrics and standards at this time. If for any reason the understanding between AT&T and Verizon to rely upon the New York metrics and standards is not finalized between the parties or is not adopted for Virginia, AT&T reserves the right to present its position on metrics and standards in this arbitration. This can be done with no delay to this proceeding, because the parties' positions can be exchanged as Direct and Rebuttal Testimony along with all other Testimony (or as the Commission may otherwise direct).

However, there has been no meeting of the minds between AT&T and Verizon on the appropriate financial remedies and incentives for Verizon's failure to meet performance metrics and standards and to discourage backsliding by Verizon in the provision of wholesale services. The remedies for Verizon's failure to meet the performance metrics and standards for wholesale services provided to AT&T under the

²⁵⁶ There appears to be, however, a difference of opinion between AT&T and Verizon on what, if any, basis either party would be able to challenge the non-consensual changes imported from New York. *See*, Verizon's Response to Cavalier, WorldCom, and AT&T's Proposed Changes to Verizon Virginia's Metrics, PUC000026 (April 16, 2001), at the Virginia State Corporation Commission's web site: http://www.state.va.us/scc/division/puc/ccimomfiles/varply_1.pdf.

interconnection agreement should be the ones advocated by AT&T in the Performance Incentive Plan, a copy of which is attached to the filed interconnection agreement.

A meaningful system of self-enforcing financial consequences for discriminatory ILEC wholesale performance is critically important to development of a competitive local telecommunications market. Incumbent LECs have a strong business incentive and the means to maintain their current monopolies. They can do this through the delivery of poor operations support to the CLECs, compared to the support provided to the ILEC's in-house retail arm. Thus, an appropriate system of self-enforcing financial remedies is vital to assure that the competitive local telecommunications markets envisioned by the 1996 Act will be able to develop and survive.

In order to be effective, prompt enforcement of the remedies also must be assured. Because of delays inherent in the adjudication and appeals process, CLECs cannot rely solely upon the legal/regulatory process to obtain appropriate remedies for discriminatory ILEC performance.

Furthermore, the remedies must provide Verizon with incentives that exceed the benefits it may derive by inhibiting competition, and such consequences must be immediately imposed upon a demonstration of poor performance. The objective is to set the incentives in amounts that encourage Verizon to take proactive steps to prevent its performance from becoming non-compliant and, when it does reach that level, to correct its performance failures promptly. If Verizon ever considers the financial remedies as simply another cost of doing business, then the remedies plan will have failed.

AT&T's Performance Incentive Plan meets the five key characteristics for an effective remedies and enforcement plan that the Commission identified in the New York § 271 proceeding. The criteria established by the Commission are the following:²⁵⁷

- Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- Clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- Reasonable assurances that the reported data is accurate.

While these criteria were formulated in the context of a § 271 application, they are equally applicable in the context of the arbitration of an interconnection agreement. Indeed, the Commission stated that it would “evaluate the benefits of [state] reporting and enforcement mechanisms in the context of other regulatory and legal processes that provide additional positive incentives to [the BOC].”²⁵⁸ It specifically noted that it would be appropriate to have “liquidated damages through interconnection agreements,” among other remedies.²⁵⁹ It is such remedies that AT&T proposes here.

In brief, the AT&T PIP includes remedies operating on two tiers. In general terms, Tier I provides a form of non-exclusive liquidated damages payable to individual

²⁵⁷ FCC Memorandum Opinion And Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, ¶ 433 (December 21, 1999).

²⁵⁸ *Id.* at ¶ 430.

²⁵⁹ *Id.*

CLECs. Tier II, by contrast, incorporates what can be characterized as regulatory fines that are necessary when the incentives represented by Tier I consequences are insufficient to motivate Verizon and the deteriorated performance adversely affects or has the potential to adversely affect the CLEC industry's ability to compete with Verizon. That, in turn, means that Virginia consumers are denied a true picture of what alternative suppliers could offer.

The total amount of Tier I payments are set at a level that roughly approximates the CLECs' actual damages. However, it is unlikely to provide Verizon with sufficient incentives to take the actions necessary to eliminate its monopoly. Rather, Verizon may decide to treat such payments as the price for retaining its monopoly and voluntarily incur them as a cost of doing business. Tier II is designed to provide the additional incentive that would make the remedies plan an effective tool for nondiscriminatory wholesale services by Verizon. Both Tier I and Tier II are necessary and complementary elements of an effective system of consequences. Together, they work in tandem to achieve the goals of the Act.²⁶⁰

A more detailed description of AT&T's Performance Incentive Plan is contained in Schedule 26.1.1 to the interconnection agreement.

On the other hand, the Verizon plan as filed is full of devices designed to reduce the amount of financial remedies that Verizon would have to pay – various exclusions,

²⁶⁰ AT&T is presenting both Tier I and II of the PIP in this proceeding so that the Commission will have an understanding of the inter-relationship of the two Tiers, and how AT&T's plan as a whole is designed to provide appropriate remedies and incentives. AT&T urges the Commission to adopt Tier I of the PIP in this arbitration, because Tier I relates specifically to the remedies to which AT&T would be entitled. Tier II would be more appropriately considered as part of a larger package of remedies and incentives to be considered by the Virginia Collaborative Committee in Case No. PUC000026.

mitigations, minimum sample size thresholds, procedural caps and absolute caps. As a consequence, the Verizon plan provides woefully inadequate remedies, and will be quite ineffective in preventing discriminatory wholesale support of the CLECs by Verizon. AT&T will address the shortcomings of the Verizon plan in detail in its Testimony. For now, it suffices to say that the Verizon plan should not be adopted as filed.

Financial remedies and incentives have been adopted by three states in the Verizon footprint (excluding GTE territory): New York, Massachusetts and Pennsylvania. In all three states, the remedies were ordered into effect before Verizon's § 271 interLATA entry. AT&T urges that the PIP adopted here also be made immediately effective without waiting for Verizon's § 271 entry in Virginia, given that Verizon's duty to provide non-discriminatory interconnection and access to UNEs is a continuing obligation of all ILECs under § 251(c) of the Act.

Other Proceedings:

The Virginia Collaborative Committee established in Case No. PUC000026 has as one of its charters the establishment of remedies and incentives. However, the Committee has not yet addressed this issue. It has just begun consideration of permanent performance metrics and standards as the logical precursor to remedies and incentives.

Tariffs v. Interconnection Agreements

Issue III.18 This issue is common to AT&T and WorldCom.

Should tariffs supercede interconnection rates, terms and conditions?
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Witness: L. Fredrik Cederqvist
Attorney: G. Ridgley Loux

AT&T's Position:

While certain aspects of the provision of services, facilities and arrangements under the interconnection agreement will also be subject to the Parties' tariffs, Verizon should not be able, simply by filing a tariff, to alter the rates, terms and conditions contained in the contract. To the extent that the rates, terms or conditions in such tariffs appropriately supplement the interconnection agreement, those tariffs should be specifically referenced in the agreement.

Proposed Remedy:

Verizon should not be permitted to materially alter the provisions of its interconnection agreements by filing tariffs.

Verizon's Position

The tariffs that govern applicable services provided under the interconnection agreement should be incorporated in the contract by reference. If there is a change to the rates for such service, or to the terms and conditions governing the manner in which such

service is to be provided, that will be reflected in the tariff, and if AT&T objects to those changes, it should contest them when they are filed in the tariff.

Relevant Authorities:

Decision 00-08-011, August 3, 2000, Application by AT&T Communications of California, Inc., et al, (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Application 00-01-022 (Filed January 24, 2000).

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

Verizon's position would reduce interconnection agreements to little more than placeholders until tariffs are filed and litigated. The interplay between tariffs and Section 252 interconnection agreements may be uncertain, but it is this uncertainty alone that requires the Parties to work cooperatively to preserve the terms and conditions of their interconnection agreements and to foreclose the possibility that one of the parties might seek to revise those arrangements unilaterally. As an example, it would be meaningless to AT&T if, having established an interconnection agreement that requires the provision of interconnection trunks under a specific set of terms and conditions, Verizon could then file a tariff with trunking requirements that modify those in the agreement. Verizon could then seek to change the arrangements in the interconnection agreements by invoking the tariff. This uncertainty is clearly not conducive to planning and implementing business plans and developing a competitive local marketplace. For the interconnection agreement to have a meaningful commercial purpose, AT&T must be able to rely on its terms and conditions and to know that they cannot be unilaterally changed by Verizon.

Moreover, § 251(c)(1) of the Act requires Verizon to “negotiate in good faith ... the particular terms and conditions” of an interconnection agreement. Any attempt to avoid obligations arising under a contract by referring to non-negotiable tariffs is inconsistent with of the Act²⁶¹. Any attempt to place tariff provisions in a superior position to the interconnection agreement defeats AT&T’s right pursuant to section 2521(c)(1) to a negotiated and arbitrated agreement. Because tariffs are prepared, and subject to amendment at any time, by Verizon; it is not the product of negotiation by two parties. Verizon’s contention that tariffs provide CLECs adequate protection because they are subject to regulatory oversight merely provides AT&T another opportunity to litigate. In contrast, terms in the interconnection agreement can only be modified by mutual consent and thus provide some certainty for future operations.

AT&T’s proposed approach would acknowledge the precedence of the interconnection agreement over any tariff, and would preserve the right of Verizon to file tariffs to supplement, in an appropriate and consistent manner, the rates, terms and conditions of the contract.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

²⁶¹ That was the conclusion of the arbitrator on a similar issue in California. See Decision 00-08-011, August 3, 2000, Application by AT&T Communications of California, Inc., et al, (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Application 00-01-022 (Filed January 24, 2000), at 4 (“AT&T is generally correct that the Act requires that the terms and conditions of an ICA must be negotiated between the parties”).

Sales of Exchanges

Issue V.15 This issue is exclusive to AT&T.

What requirements should apply in the event of a sale of exchanges or other transfer of assets by Verizon?

Witness: L. Fredrik Cederqvist
Attorney: G. Ridgley Loux

AT&T's Position:

In order to enter and compete in the local exchange market throughout Virginia, AT&T must be assured that a transfer of Verizon's assets will not materially alter or impair AT&T's ability to provide service to residential and business end users. Nor should such a transfer cast doubt on AT&T's rights under the interconnection agreement. AT&T, and AT&T's customers, must be protected in the event Verizon chooses to transfer or sell some of its exchanges or other assets. If not, AT&T will be unable to rely on receipt of uninterrupted wholesale service from the incumbent pursuant to the terms of a fully negotiated and arbitrated interconnection agreement, and will be subject to unreasonable exposure and risk.

This uncertainty will leave AT&T especially vulnerable if Verizon were to sell certain of its exchanges to another telephone provider that intends to use dramatically different electronic interfaces or modes of interconnection, or intends to seek (or has already sought) a rural exemption from ILEC obligations pursuant to § 251(f). Such a dramatic shift could negate and indeed, render obsolete AT&T's capital investment in equipment, software, and systems used in or for various exchanges based on the Verizon systems and processes. There must therefore be language in the interconnection

agreement that ensures that the transferee of Verizon's exchanges or assets continue to abide by obligations under the agreement for the benefit of AT&T.

Proposed Remedy:

The contract language proposed by AT&T in Section 28.8.2 should be adopted.

Verizon's Position:

The assignment and transfer of assets is not an issue that is subject to negotiation and arbitration, pursuant to 47 U.S.C. §251, *et seq.* because this issue has nothing whatsoever to do with interconnection. Accordingly, this Commission does not have jurisdiction, pursuant to 47 U.S.C. §252, to impose *in an interconnection agreement* any condition on Verizon VA's ability to assign or transfer its assets. Nor is such a condition appropriate or necessary.²⁶²

Relevant Authorities:

AT&T Communications of Indiana, Inc., TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated, d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996, Indiana RUC Cause No. 40571-INT-03, November 20, 2000.

Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Wisconsin PSC, 05-MA-120, February 27, 2001

²⁶² Response of Verizon-VA to Petition of AT&T Communications of Virginia, et al., Case No. 000282, November 14, 2000, p. 130.

Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, CA PUC, Application 00-01-022, January 24, 2000

Petition of Southwestern Bell Telephone Company for arbitration with AT&T of Communications of Texas, LP, TCG Dallas, and Teleport Communications, Inc. Texas Pursuant to Section 252(b)(1) of the Federal Communications Act of 1996, TX PUC, Docket no. 22315, September 13, 2000

AT&T Communications of Michigan, Inc. and TCG Detroit's Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Ameritech Michigan Pursuant to Section 252(b) of the Telecommunications Act of 1996, MI PSC. Case No. U-12465, October 18, 2000.

Petition of CenturyTel of Central Wisconsin, LLC, For Certification As An Incumbent Local Exchange Carrier, Wisc. Pub. Serv. Comm. Nos. 2055-NC-100 & 5846-NC-100, Final Decision (Nov. 3, 2000).

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

Verizon's assertions of the inappropriateness of the AT&T proposed contract terms rest, essentially, on two false premises. Verizon first claims that a transfer of assets provision cannot be negotiated or arbitrated pursuant to §§ 251 and 252 of the Act.²⁶³ Yet, in diametric opposition to this claim, one of Verizon's own sister Bell Operating Companies – BellSouth – has negotiated pursuant to § 251 language that safeguards AT&T in the event of a transfer of BellSouth assets, and has voluntarily incorporated this language in the AT&T/BellSouth interconnection agreement for Mississippi.²⁶⁴ Clearly, even Verizon's Bell Operating Company kin recognize that AT&T's need for stable

²⁶³ *Id.*

²⁶⁴ Agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the South Central States, Inc. for Mississippi, Section 24.1.2. While this provision differs somewhat from the language proposed by AT&T for Virginia, the Mississippi provisions provide a set of guarantees in the event of transfers that serve as a minimum "floor" in the event of a transfer of exchanges by BellSouth.

network interconnection can and should be addressed in agreements negotiated or arbitrated pursuant to §§ 251 and 252 — provisions that specifically address issues of network interconnection between carriers over time.

Verizon's second claim, that a transfer of assets provision is unnecessary, because the Commission will inevitably be involved in any transfer or sale of assets to a third party, miscomprehends the protection that the provision will afford.²⁶⁵ While it is true that state commissions have recognized in final orders that a sale of exchanges should not diminish or alter the interconnection agreement obligations of the exchanges' purchasers,²⁶⁶ AT&T's sale of assets provision would ensure this result continuously, and without interruption, from the time that a sale is contemplated, through the time the sale is negotiated and consummated, on until the time of any Commission action regarding the interconnection obligations of the purchaser. It is this assurance of continuity — not merely the likelihood of an ultimate determination by a state (or federal) commission at some unknown time in the future -- that will facilitate capital investment and the broadest possible service offerings to end users by AT&T.

It was for this reason that the Indiana Utility Regulatory Commission found such assurances to be in the public interest in ordering that such a clause be included in the AT&T - Ameritech Indiana interconnection agreement:

²⁶⁵ See fn. 1, supra.

²⁶⁶ *Petition of CenturyTel of Central Wisconsin, LLC, For Certification As An Incumbent Local Exchange Carrier*, Wisc. Pub. Serv. Comm. Nos. 2055-NC-100 & 5846-NC-100, Final Decision, p. 5 (“Applicants [for transfer of Verizon assets] shall honor all terms and conditions of existing Verizon interconnection agreements without qualifications or caveats.”)

If Ameritech Indiana were to assign its assets in an exchange without the assignee assuming Ameritech Indiana's ongoing contractual obligations, the new provider could conceivably refuse to continue to provide AT&T with services being provided in the agreement until a new agreement is negotiated or arbitrated, which would be contrary to the public interest.

AT&T Comm. of Indiana, Inc., et al., Petition for Arbitration of Interconnection, etc., Cause No. 40571-INT-03, November 20, 2000, p. 115.

Accordingly, because Verizon has no substantive objection to AT&T's proposal except for its discredited jurisdictional claim, and because other ILECs' adoption of similar provisions creates a presumption of reasonableness, the Commission should require Verizon to adopt AT&T's proposed sale of assets provision to facilitate AT&T's ability to seek wide-spread market entry.

Other Proceedings:

This issue is pending in the AT&T-Verizon arbitration in New York in Case No. 01-C-0095, Application of AT&T Communications of New York, Inc., et al., for Arbitration of Interconnection Terms and Conditions and Related Arrangements with Verizon - New York, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996.