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July 19, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Arbitration of Interconnection Agreement Between Verizon and Cox**
**CC DOCKET NO. 00-249**

Dear Ms. Salas:

The Commission's letter order of July 11, 2001, requires the parties to the above-referenced proceeding and two similar arbitration proceedings to submit today agreed statements of the issues subject to Verizon Virginia's June 27, 2001, motion to dismiss that must still be arbitrated. This requirement is applicable to only one issue between Cox Virginia Telcom, Inc. ("Cox") and Verizon Virginia, Inc. ("Verizon"). Originally, that issue was designated Issue I-5. It dealt with the compensation due for handling traffic bound for internet service providers ("ISPs").

Cox and Verizon exchanged each party's proposed contract language concerning the subsidiary, implementation issues growing out of broader Issue I-5 and are scheduling a negotiating session to address these proposals. Cox has re-stated original Issue I-5 to reflect the effect of the Commission's recent order on compensation for ISP-bound traffic. Cox's re-statement of original Issue I-5 incorporates five such subsidiary, implementation issues. At this time, the issues growing out of original Issue I-5 are not resolved, and unless this negotiating session is successful in resolving them, they will need to be arbitrated.

As discussed with FCC staff members during a conference call this morning, Cox, Verizon and the other two parties to these proceedings were unable to create a joint submission to fulfill this requirement. As was further discussed today with FCC staff, each party will provide individual submissions today and all parties will provide a joint submission, in decision point list format, on July 27th. Attached is Cox's submission; it shows Cox's re-statement of original Issue I-5 as well as Cox's statements of the five subsidiary, implementation issues. It also contains Cox's proposed contract language to resolve these issues.

It has been suggested that mediation, or a supervised negotiation, might be appropriate for the issues growing out of original Issue I-5. At this time, Cox does not support such treatment of these issues. In Cox's view, they either will be resolved through negotiations between Cox and Verizon or must be arbitrated.

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Please inform me if any questions should arise in connection with this submission.

Respectfully submitted,

J.G. Harrington

Counsel to Cox Virginia Telcom, Inc.

Attachment

cc: As per the attached service list.

## CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 19th day of July, 2001, copies of the foregoing letter were served as follows:

**TO FCC as follows (by hand):**

Dorothy T. Attwood, Chief (8 copies)
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jeffrey Dygert
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Katherine Farroba
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Federal Communications Commission
445 12th Street, SW
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**TO AT&T as follows:**

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Washington, DC 20006

Mark A. Keffer
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**TO VERIZON as follows:**

Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
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Richmond, Virginia 23219-4074

Karen Zacharia
David Hall
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Eighth Floor
Arlington, Virginia 22201

**TO WORLDCOM as follows:**

Jodie L. Kelley, Esq.
Jenner and Block
601 13th Street, NW
Suite 1200
Washington, DC 20005

Vicki Lynne Lyttle

Vicki Lynne Lyttle

# JOINT DECISION POINT LIST I-5

**COX INPUT: 7/17/01**

**(Issue Revision, July 19, 2001)**

***WorldCom, Cox, AT&T vs. Verizon***
(Docket Nos. 00-218, 00-249, and 00-251)

ISSUE NUMBERING KEY:
Category I: (1) unique to Cox or common to (2) Cox and **WorldCom**, (3) Cox and *AT&T*, or (4) all Petitioners

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY:
**WorldCom** (bold)
Cox (underline text)
*AT&T* (italic)

| Issue No. | Statement of Issue | Petitioners' Proposed Contract Language | Petitioners' Rationale | Verizon's Proposed Contract Language | Verizon Rationale |
|---|---|---|---|---|---|
| | | | **Intercarrier Compensation** | | |
| I-5 | Verizon may not refuse to include in the Agreement an adequate description of the rates, terms and conditions applicable to the parties' implementation of the FCC's ISP Order, including provisions addressing the following questions: | 5.7.7 Reciprocal Compensation for Internet Traffic<br><br>5.7.7.1 Scope<br><br>(a) This Subsection is intended to implement the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001 ("ISP Order"), for any period in which the ISP Order is effective during the Term of this Agreement. The terms used in this section shall have the same meaning as those terms are used | • In order to avoid protracted controversy over the implementation of the FCC's ISP Order, the Agreement must contain requisite rates, terms and conditions with sufficient specificity to guide the parties' activities. | | |

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY: **WorldCom** (bold); Cox (underline text); *AT&T* (italic).

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| | | in the ISP Order. Additionally, as used in this Agreement, the term "Internet Traffic" shall have the same meaning as the term "ISP-bound traffic" is used in the ISP Order.<br><br>(b) The Parties agree to pay each other for terminating Internet Traffic and section 251(b)(5) traffic in accordance with the terms and conditions of this section. For purposes of this section, Internet Traffic and section 251(b)(5) traffic shall be identified in accordance with the provisions of subsection 5.7.7.3 below. | | | |
| I.5 (a) | (a) What provisions should the parties make for changes in the requirements of the ISP Order through appeal, reconsideration or other legal or regulatory action? | 5.7.7.1 (c) Upon the occurrence of any one of the following conditions: (1) the ISP Order is not allowed to go into effect; (2) the ISP Order is revised or reversed by a court of competent jurisdiction; or (3) the ISP Order is affected by any legislative or other legal action; the Parties reserve all of their rights and remedies, including those to amend, alter, or revise this Agreement. | • The Agreement must include specific provisions regarding the parties rights in the event the ISP Order is stayed, reversed, or otherwise affected by legislative, regulatory or legal action. | | |
| I.5 (b) | (b) Should the specific rates of compensation for ISP-bound traffic paid by the parties during the term of the renewal agreement be zero, a rate equal to the cap or a rate somewhere in between zero and the cap. Also, should there be a single rate or two separate rates for tandem and end office terminations? | 5.7.7.2 Rates<br><br>(a) For the Term of this Agreement, Reciprocal Compensation rates shown in Exhibit 1 will apply to the exchange of all 251(b)5 traffic.<br><br>(b) For the period beginning on June 14, 2001 and ending on December | • The Agreement must contain the specific rates applicable to compensation for ISP-bound traffic (and their timeframes), including the rates that apply to tandem- and end office-routed traffic. | | |

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY: **WorldCom** (bold); Cox (underline text); *AT&T* (italic).

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| | | 13, 2001, the terminating Party will bill the originating Party a rate of $.0015 per minute of use (MOU) for Internet Traffic delivered to the terminating Party's Tandem and/or a rate of $.00927 per MOU for Internet Traffic delivered directly to the terminating Party's End Office.<br><br>(c) To the extent that this Agreement remains in effect, beginning on December 14, 2001, and ending on June 13, 2003, the terminating Party will bill the originating Party a rate of $.0010 per MOU for Internet Traffic delivered to the terminating Party's Tandem and/or a rate of $.00927 per MOU for Internet Traffic delivered directly to the terminating Party's End Office.<br><br>(d) To the extent that this Agreement remains in effect, beginning on June 14, 2003, and ending on June 13, 2004, the terminating Party will bill the originating Party a rate of $.0007 per MOU for Internet Traffic delivered to the terminating Party's Tandem and/or a rate of $.000649 per MOU for Internet Traffic delivered directly to the terminating Party's End Office.<br><br>(e) The ISP Order specifies that, in the event the FCC does not take further action within the final period during which the $.0007 per MOU rate cap will be applicable to Internet | | | |

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY: **WorldCom** (bold); Cox (underline text); *AT&T* (italic).

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| | | Traffic, that period will be extended until the FCC takes such further action. The Parties agree that the $.0007 per MOU rate for tandem-routed traffic and the $.000649 per MOU rate for End Office-routed traffic will continue in effect for Internet Traffic beyond June 13, 2004, if the FCC fails to take such further action by that date, to the extent this Agreement remains in effect during such period. | | | |
| I.5 (c) | (c) What mechanism should be used by the parties in calculating the amount of traffic in excess of the 3:1 ratio; what data should be exchanged by the parties for use in making this calculation; what time periods should these data cover; and when should any such data exchange take place? | 5.7.7.3 Ratio<br><br>(a) The FCC has adopted a rebuttable presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is Internet Traffic. Therefore, the combined Internet Traffic and section 251(b)(5) traffic shall be separated by applying a ratio factor of 3:1 until such time as either Party successfully rebuts this presumption in a proceeding conducted by a regulatory authority or court of competent jurisdiction. All such traffic exchanged between the Parties up to a 3:1 ratio of terminating to originating traffic shall be deemed to be section 251(b)(5) traffic subject to the Reciprocal Compensation rates shown in Exhibit 1. Except as may be modified by subsection 5.7.7.4 below, the remainder of such traffic, i.e., all minutes exceeding the 3:1 ratio of terminating to originating traffic, shall be deemed to be Internet | • The Agreement must contain the specific mechanism used by the parties for calculating the 3:1 ratio in order to identify ISP-bound traffic, including the types of data exchanged and the timeframes for such exchange. | | |

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY: **WorldCom** (bold); Cox (underline text); *AT&T* (italic).

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| | | Traffic subject to the rates established in subsection 5.7.7.2 above. In the event that a regulatory authority or court of competent jurisdiction enters a final order establishing a different ratio factor for the separation of Internet Traffic and section 251(b)(5) traffic that is applicable to this Agreement, the Parties agree that such different ratio factor shall be substituted for the 3:1 ratio factor for purposes of implementing this section. Unless such final order specifies a different effective date for the different ratio factor, such substitution should become effective on the effective date of such final order.<br><br>(b) In order that the Parties may calculate the balance of traffic exchanged, no later than the n th business day following the close of the monthly billing cycle, each Party shall furnish the other Party with a summary of the total minutes of combined Internet Traffic and section 251(b)(5) traffic received from the other Party during the preceding monthly billing cycle. The summary shall include the cumulative minutes of use associated with every call in which the calling and called party's NPA-NXX (or LNP-equivalent identifier) are located within the Local Calling Area and any extended service area, as defined by Verizon's tariffs. | | | |

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY: **WorldCom** (bold); Cox (underline text); *AT&T* (italic).

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| I.5 (d) | (d) Should specific terms be adopted to govern the implementation of the growth caps on compensable ISP-bound traffic, incorporating an actual number based on the parties' traffic for the first quarter of 2001, and should that cap be applied on an annual basis? | 5.7.7.4 Cap on Total Internet Traffic Minutes<br><br>(a) For Internet Traffic exchanged during the year 2001, and to the extent this Agreement remains in effect during that year, compensation at the rates set out above shall be billed by the terminating Party to the originating Party on Internet Traffic minutes only up to a ceiling equal to, on an annualized basis, the number of Internet Traffic minutes for which the terminating Party was entitled to compensation during the first quarter of 2001, plus a ten percent growth factor. The Parties agree that the number of Internet Traffic minutes for which the terminating Party was entitled to compensation during the first quarter of 2001 is _____. Therefore, the cap for total Internet Traffic minutes for 2001, expressed on an annualized basis, is _____, which is calculated by multiplying the first quarter total by four and increasing the result by ten percent.<br><br>(b) For Internet Traffic exchanged during the year 2002 and to the extent this Agreement remains in effect during that year, compensation at the rates set out above shall be billed by the terminating Party to the originating Party on Internet Traffic minutes only up to a ceiling equal to the number of Internet Traffic minutes for which the terminating | • The Agreement must contain specific terms regarding implementation of the growth caps on compensable ISP-bound traffic, including the actual baseline cap applicable to 2001. | | |

KEY WHERE DISTINCTION AMONG PETITIONERS IS NECESSARY: **WorldCom** (bold); Cox (underline text); *AT&T* (italic).

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| | | Party was entitled to compensation in 2001, plus a ten percent growth factor. The Parties agree that the cap for total Internet Traffic minutes number of Internet Traffic minutes for which the terminating Party is entitled to compensation in 2002 is _____, which is calculated by increasing the cap for total Internet Traffic minutes for 2001 by ten percent.<br><br>(c) For Internet Traffic exchanged during the year 2003 and to the extent this Agreement remains in effect during that year, compensation at the rates set out above shall be billed by the terminating Party to the originating Party only on Internet Traffic minutes up to the year 2002 cap determined in subsection 5.7.7.4(b) above.<br><br>(d) The cap will be applied on an annual basis. The terminating Party shall bill the originating Party monthly for all Internet Traffic received until the annual cap is reached, at which point, the terminating Party will cease further billing of Internet Traffic for the remainder of that calendar year.<br><br>(e) The minutes of Internet Traffic that exceed the ceiling established for each year shall be exchanged by the Parties on a bill and keep basis, without compensation being paid on | | | |

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| | | such excess minutes by either Party. | | | |
| I.5 (e) | (e) What definitions are needed to implement the ISP Order? | 1.0 Definitions:<br><br>1.36 "Internet Traffic" shall have the same meaning, when used in this Agreement, as the term "ISP-bound traffic" is used in the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001. Generally speaking, "Internet Traffic" refers to telecommunications traffic delivered to Internet service providers.<br>- - - - - - - - - -<br>1.39 "Local Traffic" means traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area (based on the rate center point of the originating and terminating NPA-NXXs of the callers), as defined in BA's effective Customer tariffs, or, if the Commission has defined local calling areas applicable to all LECs, then as so defined by the Commission. Local Traffic does not include any Internet Traffic (as such term is hereinafter defined). Generally speaking, the term "Local Traffic" shall have the same meaning, when used in this Agreement, as the term "251(b)(5) traffic" is used in the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 | • The Agreement must contain specific definitions for implementing the FCC's ISP Order in order to prevent inconsistency and to promote clarity. | | |

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| | | & 99-68, FCC 01-131, released April 27, 2001.<br>- - - - - - - - - -<br>1.52 "Percent Local Usage" or "PLU" is a factor that distinguishes the intraLATA, intrastate portion of minutes from the interLATA, intrastate portion of minutes of traffic exchanged via Traffic Exchange Trunks. PLU is a whole number developed through consideration of every call in which the calling and called party are located within the same Rate Center Area. The PLU factor is applied to traffic only after the PIU factor has been applied for jurisdictional separation of traffic. The PLU factor is applied to traffic before a ratio is applied to identify Internet Traffic minutes.<br>- - - - - - - - - -<br>Modify various instances of "Local Traffic" by adding "Internet Traffic" in the following subsections: 1.7.1; 4.4.3; 5.6.1.1; 5.6.1.2; 5.6.2; 17.1.2; Sched. 4.2 (1) and (5). | | | |

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