

1 A. The FCC should approve the recommendations of Cox on this issue.

2 **ISSUE I-4: SECTION 251(C)(2) OF THE ACT DOES NOT PERMIT VERIZON TO**
3 **DICTATE THE VOLUME OF TRAFFIC ON A TRUNK GROUP USED BY COX TO**
4 **SEND TRAFFIC TO A VERIZON TANDEM SWITCH FOR TERMINATION TO A**
5 **VERIZON END OFFICE.**

6
7 Q. PLEASE RESPOND TO THE TANDEM EXHAUST ARGUMENTS SET FORTH IN
8 VERIZON'S TESTIMONY.

9 A. Verizon witnesses Albert and D'Amico allege that Verizon "must impose reasonable
10 restrictions on the level of traffic to its tandems" to prevent its tandems from
11 exhaustion.²⁷ During the course of its negotiations with Verizon, Cox has not opposed
12 adopting a reasonable threshold for arranging direct end office trunking when traffic
13 reaches a certain level on tandem trunks. On the other hand, Cox has opposed the one
14 DS-1 threshold proposed by Verizon as being too low to be efficient for a new entrant to
15 the marketplace. The controversy concerns Cox's reasonable suggestion that the
16 threshold be set at the level of three DS-1s for any three out of six consecutive months.
17 Cox believes this compromise is a fair accommodation, although it still represents less
18 than 15 percent of the capacity of typical Cox trunk facilities. The FCC should reject the
19 demand that Cox use Verizon's legacy network engineering guidelines for the expansion
20 of Cox's network as well as the hair-trigger engineering methodology proposed by
21 Verizon.

22 Q. WHY ARE THE CRITERIA PROPOSED BY VERIZON INAPPROPRIATE FOR
23 APPLICATION TO COX'S TRAFFIC LEVELS?

²⁷ Albert/D'Amico Direct Testimony at 36.

1 A. Verizon argues that its proposal is rooted in “the design criteria Verizon VA currently
2 uses in its own network and was established in the late 1980s...as an economic trade-off
3 and engineering guideline to determine when direct trunking between two Bell Atlantic
4 switches should be established (as opposed to tandem routing).”²⁸ Verizon thus admits
5 that these criteria were designed specifically for Verizon’s network as it existed more
6 than a decade ago. This is another example of Verizon attempting to use its legacy
7 network architecture limitations to harm Cox. Based on this admission alone, Verizon’s
8 proposed criteria have no relevance to the efficiencies of other carriers’ networks in the
9 competitive marketplace that is emerging.

10 Needless to say, the engineering environment of the 1980s differs significantly from that
11 found in the competitive local marketplace of today. Verizon’s out-of-date engineering
12 criteria assume that all switches, interoffice facilities and trunks are owned and operated
13 by the party engineering and deploying the facilities. Also, the “high usage” routes, *i.e.*,
14 the direct end office-to-end office trunk groups, between Verizon end offices were
15 assumed to be shorter and less expensive to operate than the “alternative final” routes,
16 *i.e.*, the tandem trunk groups. While such assumptions may still be true for Verizon’s
17 engineering and provisioning within its own network, they simply do not pertain to
18 competitive LECs or to the network interfaces between LEC networks today.

19 Also, for Verizon’s proposed criteria to be applicable to Cox’s network circumstances,
20 you must assume Verizon and Cox face identical costs. In fact, Verizon enjoys huge
21 economies of scale that are not available to Cox. Verizon also has the benefit of a vast

²⁸ *Id.* at 37.

1 interoffice facility infrastructure that already is in place and paid for under rate of return
2 regulation. In contrast, Cox's infrastructure is far more modest in scale. At bottom,
3 Cox's relative unit costs to build or lease a DS-3 level of capacity to a distant Verizon
4 end office for a relatively small volume of traffic would be enormous. Moreover, if one
5 is using pre-Act legacy engineering models (as Verizon admits it is) in deciding whether
6 or when direct end office trunking should be deployed, it is likely that the most critical
7 component in the decision-making equation is the actual cost to construct the facilities
8 between the candidate end offices. Given the disparate economies and infrastructure
9 enjoyed by Verizon and Cox, and Cox's higher relative costs per circuit, Verizon's
10 proposal that Cox use Verizon's design criteria for direct trunking is folly. As I describe
11 in my direct testimony, based on its own costs and network design, Cox has determined
12 that a far greater capacity than one DS-1 is necessary before direct interconnection is
13 efficient.

14 Another troubling aspect of Verizon's proposal is the hair-trigger methodology it
15 proposes to use in precipitating installation of direct end office trunking.²⁹ Verizon
16 would have Cox engineer its network based on peak-usage measurements – a
17 methodology I doubt Verizon uses even in engineering its own network. Rather than
18 requiring construction of unnecessary facilities contrary to good engineering practice
19 based on a single high-water mark experienced during a single month, Cox proposes an

²⁹ The following language is proposed by Verizon:

5.2.4 In the event the traffic volume between a VZ-VA End Office and the Cox POI, which is carried by a Final Tandem Local Interconnection Trunk group, exceeds the CCS busy hour equivalent of one (1) DS-1 at any time and/or 200,000 combined minutes of use for a single month, the originating Party shall promptly establish new End Office One-Way Local Interconnection Trunk groups between the VZ-VA End Office and the POI.

1 engineering process that accounts for the actual and projected growth of traffic and
2 capacity, consistent with standard engineering practice (even legacy engineering
3 practices).³⁰

4 With regard to Verizon's efforts to combat tandem exhaust, the Verizon testimony relates
5 that it has added 24 new tandems in its 13-state territory over the last 5 years.³¹ Given
6 the number of customers served by Verizon and the overall growth in its access lines, this
7 does not appear to be particularly burdensome. Notably, the direct testimony of Verizon
8 witnesses Albert and D'Amico does not allege that Verizon is not compensated for
9 addressing tandem exhaust through tandem switching charges. However, their solution
10 would increase the interconnection costs and burdens imposed on Cox and other CLECs.
11 It is understandable that Verizon would wish to avoid adding more tandems as current
12 facilities reach exhaust. However, adopting Verizon's proposal simply would increase
13 CLEC costs and burdens by imposing triggering criteria that are inefficient for their
14 network design purposes. Further, Verizon does not contest the technical feasibility of
15 CLEC interconnection at the tandem but rather asserts cost as a rationale for severely
16 limiting that right. Since cost is not a concern of technical feasibility, and since nothing
17 prevents Verizon from recovering its costs, the FCC can properly disregard Verizon's
18 testimony on this issue.

³⁰ The following language is proposed by Cox:

In the event the one-way Tandem-routed traffic volume between any two Cox and VZ-VA Central Office Switches at any time exceeds the CCS busy hour equivalent of three (3) DS-1s for any three (3) months in any consecutive six (6) month period or for any consecutive three (3) months, the originating Party will establish new one-way direct trunk groups to the applicable End Office(s) consistent with the grade of service parameters set forth in Section 5.5.

³¹ *Id.* at 38.

1 Q. WHAT SIGNIFICANCE SHOULD THE FCC ATTACH TO THE EXAMPLE OF A
2 TANDEM EXHAUST SITUATION IN VIRGINIA PROVIDED IN VERIZON'S
3 TESTIMONY?

4 A. Very little. This is an attempt by Verizon to blame CLECs and Internet service providers
5 for causing the capacity of a Richmond tandem to face an exhaust situation.³² However,
6 there is no showing that CLEC traffic constitutes a meaningful percentage of traffic on
7 this or any other Virginia tandem operated by Verizon. If one assumes that the relative
8 CLEC/Verizon traffic flow is related to relative market share, I seriously doubt whether
9 even a 100 percent increase in CLEC traffic would translate into more than a small
10 percent increase in overall traffic. Because not all CLEC traffic goes through Verizon's
11 tandems, this would mean an even smaller percentage of increase in CLEC traffic
12 handled by tandems. The Verizon testimony is woefully inadequate in furnishing
13 evidence to support its charges, and the FCC is fully justified in according it very little
14 weight.

15 Q. DR. COLLINS, WHAT SHOULD THE FCC DO ABOUT THIS ISSUE?

16 A. The FCC should approve the recommendations of Cox on this issue and accord the direct
17 testimony of Verizon witnesses Albert and D'Amico very little weight for the reasons set
18 forth above.

19 **ISSUE I-5: VERIZON MAY NOT REFUSE TO INCLUDE IN THE AGREEMENT AN**
20 **ADEQUATE DESCRIPTION OF THE RATES, TERMS AND CONDITIONS**
21 **APPLICABLE TO THE PARTIES' IMPLEMENTATION OF THE FCC'S ISP ORDER,**
22 **INCLUDING PROVISIONS ADDRESSING THE FOLLOWING QUESTIONS:**

³² *Id.*

- 1
2 (A) **WHAT PROVISIONS SHOULD THE PARTIES MAKE FOR CHANGES**
3 **IN THE REQUIREMENTS OF THE ISP ORDER THROUGH APPEAL,**
4 **RECONSIDERATION OR OTHER LEGAL OR REGULATORY**
5 **ACTION?**
- 6 (B) **SHOULD THE SPECIFIC RATES OF COMPENSATION FOR ISP-**
7 **BOUND TRAFFIC PAID BY THE PARTIES DURING THE TERM OF**
8 **THE RENEWAL AGREEMENT BE ZERO, A RATE EQUAL TO THE**
9 **CAP OR A RATE SOMEWHERE IN BETWEEN ZERO AND THE CAP?**
- 10 (C) **WHAT MECHANISM SHOULD BE USED BY THE PARTIES IN**
11 **CALCULATING THE AMOUNT OF TRAFFIC IN EXCESS OF THE 3:1**
12 **RATIO; WHAT DATA SHOULD BE EXCHANGED BY THE PARTIES**
13 **FOR USE IN MAKING THIS CALCULATION; WHAT TIME PERIODS**
14 **SHOULD THESE DATA COVER; AND WHEN SHOULD ANY SUCH**
15 **DATA EXCHANGE TAKE PLACE?**
- 16 (D) **SHOULD SPECIFIC TERMS BE ADOPTED TO GOVERN THE**
17 **IMPLEMENTATION OF THE GROWTH CAPS ON COMPENSABLE**
18 **ISP-BOUND TRAFFIC, INCORPORATING AN ACTUAL NUMBER**
19 **BASED ON THE PARTIES' TRAFFIC FOR THE FIRST QUARTER OF**
20 **2001, AND SHOULD THAT CAP BE APPLIED ON AN ANNUAL BASIS?**
- 21 (E) **WHAT DEFINITIONS ARE NEEDED TO IMPLEMENT THE ISP**
22 **ORDER?**
- 23 Q. DOES THE VERIZON TESTIMONY ADEQUATELY SUPPORT THE
24 CONTRACTUAL LANGUAGE PROPOSED BY VERIZON TO RESOLVE THIS
25 ISSUE?
- 26 A. No. Verizon witnesses Pitterle and D'Amico offer no support for the contractual
27 language recommended by Verizon to resolve this issue. Further, no evidence is
28 provided in support of the positions espoused by Verizon in the revised Joint Decision
29 Point List.³³ Therefore, the testimony sponsored by Verizon provides no basis for the
30 FCC to adopt the contractual language offered by Verizon.

³³ See Revised Joint Decision Point List, July 27, 2001, Verizon's proposed language to resolve Issue I-5.

1 Cox has suggested contractual language for this issue³⁴ that fully and reasonably
2 addresses the specific issues raised by the *ISP-Bound Traffic Order*.³⁵ Cox's language
3 provides for the minimum changes that are necessary to address this order without
4 otherwise affecting agreed-to elements of the agreement.

5 In the process of responding to the changes in federal law flowing from the FCC's
6 adoption of the *ISP-Bound Traffic Order*, the Parties offered new contractual language to
7 implement that decision. Verizon seized upon this opportunity to try to raise new issues
8 that bear no relationship to the directives of the *ISP-Bound Traffic Order*.

9 Q. Are there any specific concerns relating to Issue I-5 that you would like to discuss?

10 A. Yes. Verizon's proposed contractual language concerning ISP-bound traffic has raised
11 two new issues that are neither the subject of an earlier dispute nor necessary for the
12 implementation of the FCC's *ISP-Bound Traffic Order*, which the FCC has asked the
13 parties to address. These issues are (1) the definition of "Internet Traffic" and that term's
14 usage under the agreement; and (2) Verizon's audit rights as to ISP-bound traffic.

15 Q. Can you describe the issue concerning the definition of "Internet Traffic" and why the
16 FCC should not adopt Verizon's proposed language?

17 A. Prior to the issuance of the *ISP-Bound Traffic Order*, the parties had agreed on a
18 definition of "Internet Traffic." That definition was: "any traffic that is transmitted to or

³⁴ See Revised Joint Decision Point List, July 27, 2001, Cox's proposed language to resolve Issue I-5.

³⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 2001 Lexis 2340, FCC 01-131 (rel. April 27, 2001) (the "*ISP-Bound Traffic Order*").

1 returned from an Internet Service Provider at any point during the duration of the
2 transmission.” When the FCC asked the parties to revisit the compensation issue
3 following the *ISP-Bound Traffic Order*, Cox proposed to modify the definition to
4 incorporate the specific terms of that order. Verizon, however, has proposed the
5 following definition: “‘Internet Traffic’ means any traffic that is transmitted to or
6 returned from the Internet at any point during the duration of the transmission.”

7 Both the original definition and the Cox definition incorporate the idea that “Internet
8 Traffic” is traffic to or from an ISP. The Verizon definition eliminates this concept. This
9 is not a trivial change. Verizon’s use of its proposed definition of Internet Traffic would
10 expand the type of traffic covered by the definition to include, for example, phone-to-
11 phone Internet protocol (“IP”) telephony.³⁶ It also appears to exclude any traffic that uses
12 the Internet as an intermediate link for transmission purposes.³⁷ There also may be other
13 types of traffic covered by this definition that are as-yet unidentified. Verizon’s proposed
14 language would affect the settled aspects of the interconnection agreement in myriad

³⁶ The Commission has discussed this term in the following way:

Specifically, when an IP telephony service provider deploys a gateway within the network to enable phone-to-phone service, it creates a virtual transmission path between points on the public switched telephone network over a packet-switched IP network. These providers typically purchase dial-up or dedicated circuits from carriers and use those circuits to originate or terminate Internet-based calls. From a functional standpoint, users of these services obtain only voice transmission, rather than information services such as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them “information services” within the meaning of the statute, and instead bear the characteristics of “telecommunications services.”

Federal-State Joint Board on Universal Service, *Report to Congress*, 13 FCC Rcd 11501,11544 (1998) (footnote omitted).

³⁷ For instance, in some implementations of IP-based telephony, a carrier might use the Internet to transmit local traffic to and from a centrally-located “soft switch.”

1 ways – none of which is linked to implementation of the *ISP-Bound Traffic Order* – the
2 term “Internet Traffic” is used throughout the agreement.

3 Cox has been unable to elicit from Verizon its rationale or intent in applying this term as
4 it does. Verizon asserted in its response to Cox’s motion to strike that its new definition
5 and usage of the term “goes to the very heart of implementing the interim pricing regime
6 ordered by the Commission”, but offered no explanation as to how it reached such a
7 broad conclusion. In fact, Verizon has neglected to address the heart of Cox’s complaint
8 regarding Verizon’s apparent intention to cover all manner of IP telephony in its
9 proposed definition, either in the response or in any of the three negotiation sessions on
10 this issue since Verizon proposed this language.

11 Verizon uses its expanded definition of Internet Traffic as an element of its definition of
12 “Measured Internet Traffic,” a term that roughly corresponds to ISP-bound traffic as the
13 FCC used that term in the *ISP-Bound Traffic Order*. Because, however, the term
14 “Internet Traffic” is used throughout the agreement, rather than “Measured Internet
15 Traffic,” Verizon’s proposed revision to the definition would change the meaning of a
16 host of other terms that previously were agreed to by the parties, and would have
17 significant effects on how Cox and Verizon interconnect.

18 For example, Verizon’s reliance on the more broadly-defined term Internet Traffic in
19 defining Reciprocal Compensation Traffic suggests that a party may withhold reciprocal
20 compensation for traffic that is handled using phone-to-phone IP telephony. Similarly,
21 Verizon’s proposed change in the definition of Internet Traffic changes the meaning of

1 agreed-to terms of the agreement, and in some cases even creates conflicts among or gaps
2 in provisions of the agreement.

3 Most significantly, at Section 5.7.2(d), Verizon proposes that reciprocal compensation
4 not be paid for “Internet Traffic,” and would, therefore, exclude reciprocal compensation
5 for certain traffic that is not subject to the *ISP-Bound Traffic Order*. For example, a
6 circuit-switched call that accesses enhanced services via the Internet, such as voice
7 translation of e-mail, would be excluded from reciprocal compensation. Similarly, if one
8 party used an IP telephony gateway to provide service, all local calls between the parties
9 – in either direction – would be exempt from reciprocal compensation.

10 Other reciprocal compensation provisions also would be affected by the new definition.
11 Verizon’s proposed Section 5.7.4 uses the term “Internet Traffic” in discussing the
12 application of the 3:1 ratio for separating ISP-bound traffic from other traffic, and does
13 not distinguish ISP-bound Internet Traffic from other Internet Traffic. Verizon also seeks
14 to limit the amount of compensation that a party can receive for “Internet Traffic” in its
15 proposed Section 5.7.7. Both of these provisions are inconsistent with the *ISP-Bound*
16 *Traffic Order* because they cover traffic that is not subject to the order.

17 Verizon’s proposed definition of Internet Traffic changes the meaning of several other
18 provisions as well. The agreed-to language in Section 4.2.1 addresses the type of traffic
19 that can be transported over various types of trunks.³⁸ Verizon’s new definition of

³⁸ Section 4.2.1 states, in pertinent part:

Trunk Types. Section 4 describes the architecture for Interconnection of the Parties’ facilities and equipment over which the Parties shall configure the following separate and distinct trunk groups:

continued...

1 Internet Traffic broadens the range of traffic that would be carried over local trunks to
2 include exchange access and other traffic that normally would be carried over other
3 trunks if that traffic did not touch the Internet. The agreed-to language of Section 5.5
4 discusses the engineering of trunk groups used for various types of traffic, including
5 “Internet Traffic.”³⁹ Using Verizon’s definition, long distance traffic that is transmitted
6 via the Internet may be required to use separate trunks from other long distance traffic.
7 Section 7.1 contains agreed-to language regarding Information Services Traffic to which
8 Verizon wishes to add a provision clarifying that such traffic does not include “Internet
9 Traffic,” which could exclude any Internet-transmitted Information Services traffic from
10 carriage under the agreement, even if such traffic originates and terminates on the public
11 switched network.

12 None of these changes is mandated, or even contemplated, by the *ISP-Bound Traffic*
13 *Order*. More important, they would significantly change the underlying terms of the
14 agreement in ways that even Verizon may not understand at this time. In particular,
15 given that Verizon has not even mentioned IP telephony in either its direct testimony or
16 its response to Cox’ Motion to Strike, filed on August 7, 2001, it remains unknown
17 whether Verizon believes that its proposed language covers IP-based services. There is

...continued

Traffic Exchange Trunks for the transmission and routing of terminating Local Traffic, Tandem Transit Traffic, **Internet Traffic**, translated LEC IntraLATA toll free service access code (e.g. 800/888/877) traffic, IntraLATA Toll Traffic between their respective Telephone Exchange Service customers pursuant to Section 251 (c)(2) of the Act, in accordance with Section 5; (Emphasis added.)

³⁹ The agreed-to language for Section 5.5 is shown on page 19 of Exhibit 2 to Cox’s Petition for Arbitration filed April 23, 2001. On July 19, 2001, Verizon proposed to Cox that two references in that language be changed from “Local Traffic” to “Reciprocal Compensation Traffic,” which would have no effect on the reference to “Internet Traffic” that creates the problem described here. Verizon’s proposal is not shown in its section of the revised Joint Decision Point List filed July 27, 2001.

1 no reason to introduce this sort of unknown into the parties' relationship when there is a
2 good alternative available – the use of language that specifically refers to and adopts the
3 terms of the *ISP-Bound Traffic Order*. Thus, the FCC should adopt Cox's proposal as the
4 more reasonable alternative.

5 Q. Can you describe the issue concerning the Verizon's proposal for new audit rights and
6 why the FCC should not adopt Verizon's proposed language?

7 A. Verizon has proposed adding a new paragraph to the agreement that would give Verizon
8 – and only Verizon – the right to conduct unlimited audits to determine whether Cox is
9 billing reciprocal compensation traffic properly. These audit rights would be in addition
10 to the two audits per year already allowed to each party under terms to which Cox and
11 Verizon previously agreed.

12 Verizon apparently believes that this new audit provision is justified by the portion of the
13 *ISP-Bound Traffic Order* that permits carriers to ask for modification to their
14 compensation regimes if there is evidence that ISP-bound traffic no longer meets the 3:1
15 ratio set by that order. This new provision, however, is objectionable for at least two
16 reasons.

17 The first reason is that there is no need for the provision. Verizon already has the right to
18 up to two audits of reciprocal compensation traffic per year, on demand, with additional
19 audits allowed in the event an audit uncovers material errors or discrepancies. That
20 existing provision would allow an audit to determine whether the 3:1 ratio has been
21 maintained. Verizon, in its response to Cox's motion to strike, indicated that it feared
22 that the existing provision could be interpreted too narrowly to allow Verizon to obtain

1 information to rebut the 3:1 presumption.⁴⁰ But Verizon's proposal does more than
2 adjust the contract language to ensure a broader interpretation of the type of audits
3 allowed – Verizon proposes additional, unlimited audit rights for itself for any reason, at
4 any time. There is no reason why Verizon would need to audit Cox's traffic more than
5 twice a year for this purpose. In fact, it is likely that any proceeding to determine
6 whether the 3:1 ratio has been maintained would take more than six months. In addition,
7 in any such proceeding the Virginia commission or the FCC would have the authority to
8 require Cox to provide traffic data outside the terms of the agreement, so Verizon would
9 have any opportunity it needed to obtain and examine traffic data.

10 Second, Verizon's proposed audit provision is biased in Verizon's favor. Unlike the
11 regular audit provision, which applies to both parties, Verizon's new provision gives it a
12 unilateral right, unavailable to Cox, to audit traffic. In practice, Cox is at least as likely
13 as Verizon to want to audit reciprocal compensation traffic. In any event, it would be
14 entirely unreasonable for the FCC to grant an audit right to Verizon that is not available
15 to Cox.

16 Finally, I note that, while proposing additional contract language regarding audits of the
17 traffic billed as reciprocal compensation, Verizon has thus far refused to work with Cox
18 to develop a method for the parties to identify the traffic to be billed as reciprocal
19 compensation in the first place. Cox proposed to Verizon on June 27th a mechanism for
20 the parties to use to calculate the amount of traffic in excess of the 3:1 ratio.⁴¹ Thus far

⁴⁰ See Verizon Response to Cox Motion to Strike at 5.

⁴¹ See Cox Opposition to Verizon Motion to Dismiss, or, in the Alternative, to Defer Consideration of Certain Issues at 14.

1 Verizon has not provided input on Cox’s proposal and has refused to propose *any*
2 contract language to address such a mechanism.

3 Q. WHAT SHOULD THE FCC DO TO RESOLVE THIS ISSUE?

4 A. The FCC should approve the recommendations of Cox on this issue and reject the
5 contractual language offered by Verizon for the reasons set forth above.

6 **ISSUE I-6: VERIZON MAY NOT IMPOSE INFEASIBLE METHODS FOR**
7 **DETERMINING TOLL VERSUS LOCAL TRAFFIC.**

8 Q. DR. COLLINS, PLEASE PROVIDE AN OVERVIEW OF VERIZON’S TESTIMONY
9 CONCERNING THE DIFFERENTIATION OF LOCAL AND TOLL TRAFFIC.

10 A. Verizon witnesses Pitterle and D’Amico mischaracterize the dispute over whether the
11 Parties should delineate local from toll traffic by comparing the originating and
12 terminating NPA-NXXs. In their erroneous view, it is nothing more than a controversy
13 about the CLEC practice of assigning telephone numbers to their customers in ways that
14 do not always match the rate center of the customer’s NXX with that customer’s physical
15 location. They dub the resulting service as Virtual Foreign Exchange (“VFX”).⁴²

16 In consideration of this issue the Commission must begin by separating the facts from
17 Verizon’s rhetoric. What Messrs. Pitterle and D’Amico refer to as a “regulatory gaming
18 scheme” in the Verizon testimony⁴³ is in fact a practice that Verizon and other
19 incumbents have followed for years. If the CLECs are responsible for engaging in such a

⁴² Pitterle/D’Amico Direct Testimony at 5.

⁴³ *Id.* at 6, 7.

1 practice, then so are Verizon and other ILECs. Verizon's testimony briefly mentions that
2 it offers its own customers foreign exchange ("FX") service – presumably "real" FX as
3 opposed to "virtual" FX – pursuant to tariff.⁴⁴ However, Verizon witnesses Pitterle and
4 D'Amico fail to mention several other tariffed offerings by Verizon, *e.g.*, Off-Premises
5 Extension Service, Foreign Central Office, IntelliLinq and ISDN Anywhere, that are
6 designed and based on using the alleged mismatch about which they complain. These
7 services also create a mismatch between the rate center to which a customer's NXX is
8 assigned and that customer's physical location.

9 Thus, if a "regulatory gaming scheme" exists – and Cox does not believe that it does – it
10 is one in which Verizon participates every day as it handles calls placed under the
11 services listed above. Additionally, Verizon's handling of wireless carriers' traffic would
12 appear to fall under this "regulatory gaming scheme" since the assignment of the wireless
13 customer's NXX code has nothing to do with the physical location of either that customer
14 or the cell site from which his or her signal is transmitted.

15 In this light, Verizon's testimony is correctly seen as yet another attempt to force Cox and
16 every other CLEC to offer only "me-too" services identical to those provided by Verizon,
17 thereby diminishing the benefits of competition. The true nature of this issue is whether
18 the comparison of NXX codes will continue to be relied upon, in accordance with long-
19 standing industry practice, as the mechanism for determining whether traffic is local or
20 toll. It is important to note that Verizon continues to rely on NXX code assignments to
21 determine that a call is local.

⁴⁴ *Id.* at 7.

1 Q. DOES VERIZON OFFER A PRACTICAL SOLUTION TO THE SUPPOSED
2 PROBLEM?

3 A. No. Verizon witnesses Pitterle and D'Amico assert that the "*physical locations* of the
4 caller and the called party must be used to determine whether a call is eligible for
5 reciprocal compensation under § 252(b)(5) of the Act."⁴⁵ This statement constitutes the
6 totality of Verizon's recommendation as to how such physical locations will be
7 ascertained. Further, it rests on shaky legal ground because the statutory provision cited
8 in support of this proposal contains no instruction as to how carriers determine whether a
9 call should be subject to reciprocal compensation, and Cox's process is consistent with
10 industry practice. As outlined above, there are myriad types of service that would require
11 a reassessment of their local or toll characterization if Verizon's proposed restriction
12 were to be applied. Indeed, any effort to apply this proposed language to "leaky" PBXs
13 would violate the FCC's rules.⁴⁶

14 Verizon urges the FCC to find in this proceeding that "the actual location of the calling
15 and called parties, not the telephone number that a LEC chooses to assign to its
16 customer,"⁴⁷ should be used to determine whether a call is local or toll. Cox has four
17 additional reasons for opposing Verizon's proposal on practical grounds. First, such a
18 scheme is not supported by industry practice or current billing technology. Second, it
19 runs counter to Verizon's own practice. This is highlighted by the internal inconsistency

⁴⁵ *Id.* at 5.

⁴⁶ See MTS and WATS Market Structure, *Memorandum Opinion and Order*, 97 F.C.C.2d 682, 711-22 (1983) (describing rate structure for "leaky" PBXs).

⁴⁷ Pitterle/D'Amico Direct Testimony at 12.

1 in the direct testimony of Verizon witnesses Pitterle and D’Amico, at page 8, which
2 states: “Verizon VA’s switch relies on the NXX assigned the terminating user to rate
3 calls and, therefore, is unable to distinguish between these fake local calls and true local
4 calls.” Third, I know of no major industry, standards or vendor bodies that support such
5 a radical change in long-standing billing practice. Finally, Verizon has not proposed any
6 mechanism by which a party could determine reliably the ultimate originating or
7 terminating point of a call, which would be necessary to implement its proposal. For
8 these reasons, Verizon’s proposal would be infeasible to implement.

9 Q. WHAT SIGNIFICANCE SHOULD THE FCC ATTACH TO THE EXAMPLE OF A
10 VFX ARRANGEMENT?

11 A. None. The example put forth by Verizon witnesses Pitterle and D’Amico assumes that a
12 CLEC assigns a Staunton, Virginia telephone number to one of its customers located at or
13 near its switch in Roanoke.⁴⁸ Further, they say that this assignment permits the CLEC
14 customer in Roanoke to receive calls from Verizon customers located in Staunton that
15 appear to be local to both the calling party and the Verizon originating switch. Finally,
16 they allege that the call is actually a toll call “disguised as a local call” for which Verizon
17 collects neither toll charges from its Staunton customer nor access charges from another
18 carrier.⁴⁹

19 I note initially that this hypothetical case links this issue with Issue I-1 involving network
20 architecture in general and Verizon’s “geographically relevant interconnection point”

⁴⁸ *Id.* at 6.

⁴⁹ *Id.*

1 proposal in particular. And, in doing so, some confusion is been introduced into
2 Verizon's analysis of the proffered Staunton/Roanoke example. According to Verizon's
3 witnesses, whether a call in this example is deemed to be local or toll is apparently a
4 function of where the CLEC switch is located and not whether the telephone number is
5 assigned under FX service. Verizon's witnesses propose that if the FX call in this
6 example was handled solely by Verizon, i.e., if the calling and called parties were
7 Verizon subscribers, that Verizon would treat the call as an interexchange call, i.e., toll,
8 and that it would collect tariffed toll charges from the originating party. That is not the
9 case: as Verizon's witnesses point out later in their testimony, the call would be rated by
10 Verizon as local and *no* toll charges would be billed to the calling party by Verizon.⁵⁰

11 Further, the same transport is used by Verizon when, for example, a Verizon customer in
12 Staunton calls a CLEC customer in Staunton, if the CLEC's switch is located in Roanoke.

13 In addition, nothing prevents Verizon from making the same "virtual FX" number
14 assignment, which would be similarly beneficial to its customer. According to Verizon,
15 this practice would be permissible if the customer had a physical facility in the remote
16 location and traffic were transported to and from that facility; however, this would entail
17 an outrageous waste of resources merely to comply with some regulatory fiction to
18 achieve Verizon's preferred outcome. I can find no reason to recommend such a
19 requirement. Moreover, because the NPA/NXX comparison is used to rate calls as either
20 local or toll, when a Cox customer in Chesapeake calls a Verizon customer located in

⁵⁰ *Id.* at 8.

1 Williamsburg who has a Chesapeake line using FX service, Verizon rates that call as a
2 local call for reciprocal compensation purposes.

3 The Staunton to Roanoke example is of dubious relevance to Cox's factual circumstance.
4 The Verizon testimony confuses the issue because Cox, as a new entrant to the Virginia
5 local market, has designed its network differently from the design of Verizon's legacy
6 narrowband network.

7 Following its business plan and forward looking network design criteria, Cox has thus far
8 installed two switches in the Norfolk LATA. This decision was not driven by any intent
9 to implement any so-called "regulatory gaming scheme". Rather, using forward looking
10 technology wherein broadband transport is cheaper than installing a multiplicity of
11 switches it is economically efficient for Cox to deploy two switches to serve a large
12 geographic area using the loops that are available to it. This contrasts with Verizon's
13 legacy network, which relies on many switches and a massive deployment of interoffice
14 trunking, resulting in relatively shorter loops. Cox's network is designed so that it can
15 economically serve customers in more than one rate center's territory from a minimum of
16 central offices. This is the only logical configuration for a new entrant. It is likely that
17 Verizon would follow a similar approach if it were designing its network today.

18 Q. DOES VERIZON ACTUALLY INCUR THE TRANSPORT COSTS IDENTIFIED IN
19 ITS TESTIMONY?

20 A. No. The costs associated with handling "virtual FX" calls by Verizon witnesses Pitterle
21 and D'Amico are largely fictional, and there are no toll usage charges which Verizon is

1 unable to bill.⁵¹ In the example, Verizon merely transports calls over flat-rated facilities.
2 Verizon certainly loses no revenue that it could expect to collect on these calls and,
3 regardless of which carrier is providing service, as I said earlier, in fact it does not expect
4 to collect any revenue from them. Verizon's proposal appears to be designed in an effort
5 to prevent CLECs from serving Internet service providers, because CLECs have been
6 successful in serving that segment of the market. Verizon also incurs transport costs
7 without receiving per-call compensation where the calls are made under FX and other
8 services provided by Verizon. Although a facility charge may be assessed for Verizon's
9 FX service, a review of Verizon's tariff reveals no additional per-minute or per-mile rate
10 that would be levied in association with this traffic.

11 Q. PLEASE COMMENT ON STATE RULINGS RELATED TO THIS ISSUE.

12 A. I disagree with the Verizon testimony's claim that all state commissions have recognized
13 that there are inequities involved with this issue.⁵² I am aware of at least one state
14 authority, the Michigan Public Service Commission, that agrees with Cox's position. In
15 an arbitration proceeding between Ameritech and Coast to Coast Telecommunications,
16 Inc., Ameritech asked the Michigan commission to compel Coast to Coast to elect
17 between either: (1) compensating Ameritech for FX calls and not billing Ameritech
18 reciprocal compensation for them; or (2) establishing a POI in each local calling area
19 associated with the NXX code assigned to a Coast to Coast customer.⁵³ The Michigan

⁵¹ *Id.* at 7, 8.

⁵² *Id.* at 9.

⁵³ Coast to Coast Telecommunications, Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Michigan Bell, d/b/a Ameritech Michigan, Case No. U-12382 (Mich. P.S.C. 2000).

1 commission ruled against this proposal. In denying this request, it expressly rejected the
2 rationale of the Maine commission in the Brooks Fiber case cited in the direct testimony
3 of Verizon witnesses Pitterle and D'Amico.⁵⁴ The Michigan commission has taken this
4 stance consistently in other cases.⁵⁵

5 With regard to the other state decisions cited in the Verizon testimony,⁵⁶ these actions
6 illustrate the point that I made in my direct testimony.⁵⁷ If Verizon believes that a CLEC
7 is engaged in unlawful number assignment practices, one of the remedies available is to
8 seek the assistance of state authorities under state laws and regulations. The willingness
9 of state commissions to grant such assistance in the cases cited in the Verizon testimony
10 only underscores my point that they can and do act when they find issues relating to local
11 calling areas. The FCC has specifically determined that the definition of local calling
12 areas is a state function and that there is no reason to believe that this state power, which
13 is unaffected by Section 251 and 252 of the 1996 Act, should be overridden in the
14 arbitration of an interconnection agreement.

15 Q. HOW CAN THE FCC RESOLVE THE DIFFERENCE BETWEEN COX AND
16 VERIZON ON THIS ISSUE?

17 A. The FCC should approve the recommendations of Cox on this issue.

⁵⁴ Pitterle/D'Amico Direct Testimony at 10.

⁵⁵ Ameritech Michigan to Revise Its Reciprocal Compensation Rates and Rate Structure and to Exempt Foreign Exchange Service from Payment of Reciprocal Compensation, Case No. U-12696 (Mich. P.S.C. 2001); Petition of Level 3 Communications, LLC, for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan, Case No. U-12460 (Mich. P.S.C. 2000).

⁵⁶ Pitterle/D'Amico Direct Testimony at 10-12.

⁵⁷ Collins Direct Testimony at 25.

1 **ISSUE I-7: VERIZON MAY NOT REQUIRE THAT COX ENGINEER AND/OR**
2 **FORECAST VERIZON'S TRUNK GROUPS.**

3 Q. DR. COLLINS, HOW DO YOU RESPOND TO THE ALLEGATIONS OF VERIZON
4 WITNESSES ALBERT AND D'AMICO REGARDING THIS ISSUE?

5 A. Verizon's statistics are misleading at best.⁵⁸ Verizon is significantly larger than Cox in
6 business base, network structure, and traffic generation; and the relative impact of
7 changes in the level of its traffic is much more significant to Cox than vice versa. Cox
8 has specifically agreed to furnish data on significant changes in its expected traffic to
9 Verizon. However, without Verizon's traffic data, Cox has no ability to forecast
10 accurately. This deficiency is illuminated by the Verizon testimony, asserting broadly
11 that "Cox knows that most of those calls originate from Verizon VA end users."⁵⁹
12 Verizon would compel Cox alone to forecast, based on such assumptions as "most of the
13 calls," while Verizon possesses complete knowledge of the number and other important
14 attributes of outbound calls from its own network.

15 Sound engineering practice requires several data inputs that are unavailable to Cox for
16 the forecasting of Verizon's outbound traffic. The missing data include:

- 17 (1) Current peg count usage and overflow measurements of the
18 in-service trunk group(s) under study;⁶⁰
- 19 (2) Knowledge of internal network failures and/or congestion,
20 including the routine or periodic use of Network
21 Management controlled re-routes, that may have resulted in

⁵⁸ Pitterle/D'Amico Direct Testimony at 20, 21.

⁵⁹ *Id.* at 21.

⁶⁰ Cox has no way to measure overflow on Verizon's outgoing trunk groups.

1 abnormal and/or inaccurate traffic usage patterns and
2 thereby distorting the true forecast usage calculations;⁶¹ and

3 (3) Long- and mid-range infrastructure plans, *e.g.* fiber routes,
4 switch placements and rehomes.⁶²

5 Thus, Cox clearly is not “able to best forecast this information.”⁶³

6 There should be no doubt that joint trunk provisioning is necessary when two LECs
7 interconnect their facilities.⁶⁴ However, an actual exchange of meaningful information
8 between the Parties needs to occur, not merely the transfer of information from Cox to
9 Verizon. Such joint trunk provisioning has been the industry standard for many years,
10 and the process has been a mutual planning exercise, based on each carrier’s particular
11 knowledge about its network. Cox supports the exchange of accurate information by all
12 carriers for trunk planning, and has proposed language reflecting this.

13 Cox has no idea how many customers are served by Verizon, where they are physically
14 located or the volume and nature of calls that they place and receive. Further, Cox has no
15 knowledge about other LECs and wireless service providers that are interconnected with
16 Verizon’s network. It is totally unreasonable to compel Cox to provide forecasts of the
17 usage of Verizon’s own customers.

⁶¹ Cox would have no way to know of these unusual events occurring within Verizon’s network.

⁶² Verizon normally would be very reluctant to divulge such plans to Cox, including long-term market and product strategies, and it has not proposed to do so.

⁶³ Pitterle/D’Amico Direct Testimony at 20.

⁶⁴ *Id.*

1 Verizon's witnesses state that: "The CLEC is the only Party privy to its own marketing
2 plans."⁶⁵ This is true as far as it goes; however, it begs the question about Verizon's own
3 marketing plans and the immediate and profound impact their implementation can have
4 on trunk requirements. For example, Verizon may enjoy success in deploying its Internet
5 access product, Digital Subscriber Line ("DSL") service, leading to a radical shift in
6 traffic patterns. This is especially true in Cox's case to the extent that customers could
7 move away from the dial-up Internet service providers served on Cox's network and to
8 Verizon's DSL service. There would be a resulting drop in the trunking requirements for
9 traffic flowing from Verizon to Cox. While neither Party can be expected to divulge
10 proprietary information about its marketing strategy, forecasting remains a collaborative
11 undertaking that requires at least a brief peek behind the curtain to be successful. Local
12 markets can only be expected to become more volatile.

13 Q. HOW CAN THE FCC RESOLVE THE DIFFERENCE BETWEEN COX AND
14 VERIZON ON THIS ISSUE?

15 A. The FCC should approve the recommendations of Cox on this issue.

16 **ISSUE I-8: VERIZON MAY NOT MONITOR OR AUDIT COX'S ACCESS TO AND**
17 **USE OF CUSTOMER PROPRIETARY NETWORK INFORMATION MADE**
18 **AVAILABLE TO COX THROUGH THE INTERCONNECTION AGREEMENT.**
19

20 Q. DR. COLLINS, IS ELECTRONIC MONITORING THE ONLY MEANS OF
21 ASSURING THAT CPNI IS NOT ABUSED?

⁶⁵ *Id.* at 21.

1 A. No. Verizon witness Langstine assumes that electronic monitoring is the only safeguard
2 available to Verizon for Customer Proprietary Network Information (“CPNI”).⁶⁶
3 However, that is not the case because other means are available for protecting CPNI.
4 One means entails the installation of software that requires users, including the customer
5 services representatives employed by Verizon, to indicate that they are accessing CPNI
6 with assent. The means recommended by Cox relies on the provisions in the agreed-to
7 language of the interconnection agreement that prohibit Cox from abusing CPNI.⁶⁷

8 Q. DOES VERIZON NEED SUCH MONITORING TO MEET DEMAND?

9 A. No. Monitoring individual CLEC usage of OSS is useless in determining whether the
10 capacity of the system is becoming overloaded. Verizon thus has no need to monitor the
11 access of OSS by any one CLEC to project size capacities. Verizon can monitor the total
12 number of inquiries received from all carriers, availing itself of aggregate information
13 about the total usage of its OSS. Such aggregate usage figures are much more valuable to
14 capacity determinations than individual company data, and using aggregate data would
15 avoid giving Verizon access to CLECs’ sensitive information. Further, it is questionable
16 whether data about today’s usage of OSS will be useful to Verizon in sizing future
17 construction needs.

⁶⁶ Langstine Direct Testimony at 2.

⁶⁷ The following agreed-to language is contained in the interconnection agreement:

18.4.3 ...[B]y accessing, using or disclosing Customer Proprietary Network Information, each Party warrants and represents that it has obtained authorization for such action from the applicable Customer in the manner required by Applicable Law and this Agreement.

1 Q. IS VERIZON LEGALLY OBLIGATED TO MONITOR CLECS' OSS USAGE
2 ELECTRONICALLY?

3 A. No. It is simply untrue that Section 222 of the 1996 Act obligates Verizon to monitor
4 CLECs' access to CPNI, as suggested by Verizon witness Langstine.⁶⁸ Additionally,
5 there is no rule of the FCC or Virginia commission either requiring or permitting Verizon
6 to monitor a CLEC's use of CPNI. It also is possible that the act of monitoring OSS
7 usage by a CLEC could be a violation of Verizon's CPNI obligations. As I state in my
8 direct testimony, Cox – and not Verizon – is liable for Cox's violation of the CPNI
9 requirements, so it is not Verizon's place to enforce Cox's obligations under federal law.
10 Similarly, it is the customer – and not Verizon – who would be harmed by an improper
11 disclosure of his or her CPNI. These obligations are imposed on Cox outside the
12 responsibilities assumed by Cox under the interconnection agreement. However, Cox has
13 undertaken contractual obligations in the agreed-to language of the interconnection
14 agreement which offer Verizon further protections.

15 Q. CAN VERIZON USE MONITORING TO DETECT CPNI VIOLATIONS?

16 A. The pre-ordering example provided in the direct testimony of Verizon witness Langstine
17 demonstrates why trying to detect CPNI violations through electronic monitoring is a bad
18 idea.⁶⁹ Verizon cites larger than normal pre-order activity as indicating that a CLEC is
19 accessing OSS to gather confidential marketing information without authorization and
20 claims that Verizon would be powerless to detect such abuse without electronic

⁶⁸ Langstine Direct Testimony at 3.

⁶⁹ *Id.*

1 monitoring. The same type of activity could signify that the CLEC has engaged in a new
2 direct marketing campaign and obtained many new customers or that it has inaugurated
3 service in a new area. Monitoring this type of usage would furnish Verizon with very
4 sensitive competitive information that it should not be able to access. Further, to the
5 extent that Verizon is asked to monitor usage by a regulatory agency,⁷⁰ there is no need
6 for the interconnection agreement to permit electronic monitoring in general because it
7 already requires the Parties to cooperate with regulatory bodies.

8 Also, Verizon does not provide any explanation of how it could use the information it
9 would obtain by monitoring Cox's use of CPNI. Using Verizon's example, would it
10 confront the CLEC with the data showing increased usage; call individual customers to
11 see if they had consented; report its findings to state or federal regulators; or take some
12 other, unspecified action? Any of these actions would be fraught with competitive
13 implications, especially given that there are obvious, lawful explanations for increased
14 CPNI access. Indeed, there are significant competitive advantages to making a CLEC
15 wary of increasing its access to OSS or use of CPNI, especially when that use is lawful.
16 All it would take would be one complaint by Verizon to this Commission to make every
17 CLEC think twice about any use of CPNI that Verizon might consider excessive.

18 In addition, it is worth noting that Verizon does not propose any standards for its
19 monitoring, but apparently will decide for itself when, what and how to monitor and, not
20 incidentally, what activity constitutes abuse. Again, Verizon's example demonstrates this
21 point. The testimony, like Verizon's proposed contractual language, provides no

⁷⁰ *Id.*

1 standard for determining what is permitted and impermissible use of CPNI, or even for
2 the level of usage that would trigger Verizon's inquiry into whether the use was abusive.
3 Setting such standards, in any event, is a job for regulators, not for a competitor seeking
4 competitive advantages. The FCC should not permit Verizon to arrogate this authority to
5 itself.

6 Q. HAS ANY STATE COMMISSION CONSIDERED THIS ISSUE, AND IF SO, HOW
7 WAS IT DECIDED?

8 A. Yes. The Massachusetts commission considered a similar issue in an arbitration case
9 between MediaOne and Bell Atlantic.⁷¹ It ruled against Bell Atlantic's demand for a
10 contractual provision permitting it to audit the use and/or disclosure of CPNI by another
11 carrier. I commend to the FCC the following rationale expressed by the Massachusetts
12 commission:

13 Section 222 does not contain a provision that permits (or requires) carriers to
14 audit the use and/or disclosure of CPNI to another carrier. We are not inclined to
15 create such a rule here. There is no evidence that MediaOne, or any other CLEC,
16 would improperly use or disclose CPNI in violation of Section 222. Therefore,
17 we find in favor of MediaOne. The interconnection agreement shall not include a
18 provision allowing Bell Atlantic to audit MediaOne's use of CPNI. If Bell
19 Atlantic has reason to believe the CPNI is being misused by any CLEC, Bell
20 Atlantic may bring that concern to the Department's attention for possible further
21 action.⁷²

⁷¹ *MediaOne Tele. Of Mass., Inc., and New England Tele. and Tele. Co. (Bell Atlantic – Mass.)*, D.T.E. 99-42/43, 99-52 (August 25, 1999).

⁷² *Id.*

1 Q. HOW SHOULD THE FCC RESOLVE THIS ISSUE?

2 A. The FCC should approve the recommendations of Cox on this issue.

3 **ISSUE I-9: VERIZON MAY NOT LIMIT OR CONTROL RATES AND CHARGES**
4 **THAT COX MAY ASSESS FOR ITS SERVICES, FACILITIES AND ARRANGEMENTS**

5 Q. DR. COLLINS, HAS THE VERIZON TESTIMONY FURNISHED ANY EVIDENCE
6 OF THE EXISTENCE OF A PROBLEM WITH COX'S RATES AND CHARGES?

7 A. No. The direct testimony of Verizon witnesses Daly, Finnegan and Pitterle provides no
8 evidence of the existence of an actual problem. No example of abuse whatsoever, and
9 thus none pertaining to Cox, is given in the testimony. Hence, the FCC can only
10 conclude that Verizon does not believe that Cox's rates and charges are unreasonable.

11 Q. WHAT APPEARS TO BE VERIZON'S CONCERN ABOUT COX'S RATES AND
12 CHARGES?

13 A. Verizon's witnesses frame their arguments with the unsupported assertion that, unless
14 Cox's rates are the same or lower than Verizon's, Cox's rates are unjust and
15 unreasonable.⁷³ They maintain that the only way higher Cox rates might be reasonable is
16 if Cox were to "prove, in an appropriate proceeding, that [its] costs are higher."⁷⁴
17 Claiming that Verizon is a "captive customer" of Cox,⁷⁵ the witnesses allege that fairness
18 dictates that Verizon be afforded fairly priced access to Cox's network. This is the only
19 reason given in the Verizon testimony to cap Cox's rates and charges at the levels

⁷³ Daly/Finnegan/Pitterle Direct Testimony at 6-8.

⁷⁴ *Id.* at 6.

⁷⁵ *Id.* at 7.

1 assessed by Verizon for the same services and facilities. The testimony does not explain
2 why state and federal regulatory authority over CLEC rates and charges should be
3 overridden by mandatory contractual caps. My conclusion is that Verizon's concern
4 about Cox's rates and charges is entirely theoretical. This is understandable inasmuch as
5 the problem appears to be theoretical as well.

6 Verizon's demand for equal or lower rates raises an interesting question. Why should
7 Verizon Virginia allege unfairness in the case of a Cox rate that is higher than Verizon
8 Virginia's rate for the same service or facility when its rates are sometimes higher than its
9 affiliate, Verizon South, Inc., for the same services and facilities? An example is found
10 in Verizon Virginia's access tariff which assesses a \$278.61 monthly rate for
11 multiplexing DS1-to-voice, while Verizon South's access tariff assesses a \$190 monthly
12 rate for this service. This points up the fallacy of establishing Verizon's regulated prices
13 as the benchmark for determining whether Cox's regulated prices are just and reasonable.

14 Q. ARE COX'S RATES AND CHARGES UNREGULATED?

15 A. No. The absurdity of Verizon's proposal is illustrated by its apparent conclusion that,
16 without contractual protections, Verizon is entirely at the mercy of an unregulated entity.
17 Cox's rates for terminating switched access and dedicated transport are fully subject to
18 the regulatory authority of the Virginia commission and the FCC. While Verizon may
19 believe that Cox's tariffs do not receive the same level of regulatory scrutiny as
20 Verizon's, it remains the case that the Virginia commission has not questioned Cox's
21 tariffed rates. Virginia rules governing the offering of competitive local exchange service
22 require all new entrants to provide interconnection on a nondiscriminatory basis with

1 other local exchange carriers.⁷⁶ The Virginia commission is empowered to act, on its
2 own behalf or upon the request of another carrier, if it has evidence that Cox's rates are
3 unlawful. This forum is available to Verizon if it has such evidence. As to interstate
4 services, Section 201 of the Communications Act of 1934, as amended, mandates that
5 Cox's rates and charges be just and reasonable.⁷⁷ Section 208 provides adequate
6 recourse through the FCC's complaint procedure if Verizon believes that Cox's rates are
7 unjust or unreasonable or otherwise in violation of the requirements of Section 201.⁷⁸

8 While Verizon complains about not being able to "shop around" for cheaper rates,
9 Verizon fails to mention that it gets the benefit of any rates offered by Cox to other
10 customers for the same services.⁷⁹ These benefits accrue to Verizon because a CLEC
11 can no more discriminate among customers than can incumbents; both Verizon and Cox
12 are subject to the same common carrier obligations. Thus, Verizon will not be subject to
13 excessive rates for services and facilities received from Cox.

14 Q. DOES VERIZON APPEAR TO BE CONFUSING COX WITH ANOTHER
15 PETITIONER?

16 A. Yes. It seems that Verizon may be confusing Cox with one or more of the other
17 petitioners in two similar arbitration proceedings. Verizon's witnesses state that Verizon

⁷⁶ 20 Va. Code § 5-400-180(C)(1)(h).

⁷⁷ 47 U.S.C. § 201.

⁷⁸ 47 U.S.C. § 208.

⁷⁹ Daly/Finnegan/Pitterle Direct Testimony at 7.

1 can access Petitioners' networks in three ways, one of which is to "purchase
2 transport from a third party that Petitioners have permitted to interconnect at
3 Petitioners' premises."⁸⁰ This is not the case. Cox and Verizon Virginia have
4 never discussed such an interconnection arrangement. Verizon also did not
5 include proposed language to support such an interconnection arrangement in its
6 Answer to Cox's Petition and in the Cox-related portion of the Joint Decision
7 Point List filed on June 22, 2001. It appears, however that Verizon has proposed
8 contract language to support such an interconnection arrangement to AT&T (see
9 Verizon's proposed agreement with AT&T, at Section 4.2.1.2) and to WorldCom
10 (see Verizon's proposed agreement with WorldCom, at Section 2.1.2.2). I can
11 only conclude that Verizon's use of the term "the Petitioners" in its testimony
12 regarding this interconnection arrangement was mistaken, and that it meant to
13 refer only to AT&T and WorldCom.

14 Similarly, confusion is evident in Verizon's statement that: "If a third party is
15 interconnected at Petitioners' facilities, then Verizon VA should be given the same right
16 and at no less favorable terms and conditions."⁸¹ Verizon has never proposed contract
17 language to Cox, or raised the issue in its Answer filed in this proceeding, that it is
18 seeking a contractual right to interconnect with Cox under the terms available to a third
19 party. Apart from this confusion, Verizon's argument is self-defeating. Any

⁸⁰ *Id.*

⁸¹ *Id.*

1 interconnection provided by Cox to a third party would be at the same tariffed prices that
2 are available to Verizon. If Cox were compelled to cap, for example, its terminating
3 access rate at the level of Verizon's rate for that service, then Verizon could get a lower
4 rate than all other interconnected carriers who would be charged according to Cox's
5 tariffed rates.

6 Q. IS VERIZON'S PROPOSAL THAT COX CAN PROVE A COST JUSTIFICATION
7 FOR RATES HIGHER THAN VERIZON'S REASONABLE?

8 A. No. Verizon proposes that Cox's rates be capped at Verizon's own rates, "unless
9 Petitioners prove that those rates would not permit them to recover their legitimate costs,
10 and their rates should therefore be higher."⁸² This proposed language does not really
11 permit Cox an opportunity to charge higher rates because it contains no standards for
12 justifying those rates. Nor does it propose which regulatory authority would be
13 empowered to decide the issue. Without such standards, the provision would effectively
14 bar higher rates, even if cost-justified.

15 Q. WHAT SHOULD THE FCC DO TO ADDRESS THIS ISSUE?

16 A. The FCC should approve the recommendations of Cox on this issue.

17 **ISSUE I-10: VERIZON MAY NOT UNREASONABLY TERMINATE AN**
18 **INTERCONNECTION AGREEMENT.**

19 Q. DR. COLLINS, HAS THE TESTIMONY SPONSORED BY VERIZON FURNISHED
20 THE FCC WITH ANY EVIDENCE ON THIS ISSUE?

⁸² *Id.* at 8.

1 A. No. The direct testimony sponsored by Verizon in this proceeding contains no evidence
2 supporting the contractual language offered by Verizon as a means of resolving this issue.
3 This silence could represent Verizon's conclusion that Issue I-10 is strictly a legal issue
4 for which factual evidence is unnecessary and signal an intent to brief this issue only. In
5 my view, this would be an erroneous conclusion because there are several factual matters
6 that have a bearing on the proper resolution of this issue and therefore should be
7 considered by the FCC. Verizon's failure to address these factual matters justifies, in my
8 view, the FCC's conclusion that the unopposed facts furnished by Cox are dispositive of
9 this issue.

10 Q. HAS COX PROPOSED APPROPRIATE LANGUAGE TO RESOLVE THIS ISSUE
11 AND SUPPORTED IT WITH EVIDENCE?

12 A. Yes. Cox's language is best suited to resolving this issue because it prevents the adverse
13 impact on customers that would occur by the unwarranted termination of the agreement.⁸³
14 As I explain in my direct testimony, the twelve-month date certain for terminating the
15 agreement fails to provide the Parties enough time to negotiate a renewal of the
16 agreement.⁸⁴ The history of the negotiations – extending beyond two years – leading to
17 this arbitration proves that Verizon's proposed twelve-month period is too short.
18 Additionally, Cox's language takes into account both bad faith in negotiating and a
19 failure to negotiate by permitting a regulatory body to act in either occurrence. Thus,
20 Verizon's legitimate interests are protected under Cox's proposal for resolving this issue.

⁸³ See Initial Joint Decision Point List, June 22, 2001, Cox's proposed Sections 22.1-22.4.

⁸⁴ Collins Direct Testimony at 33.

1 Q. HOW SHOULD THE FCC ADDRESS THIS ISSUE?

2 A. The FCC should find that the facts explained by Cox are true and adopt the contractual
3 language offered by Cox in resolving this issue.

4 **ISSUE I-11: VERIZON MAY NOT SUMMARILY TERMINATE COX'S ACCESS TO**
5 **OSS FOR COX'S ALLEGED FAILURE TO CURE ITS BREACH OF SCHEDULE 11.7**
6 **OR SECTIONS 1.5 OR 1.6.**

7
8 Q. HAS THE TESTIMONY SPONSORED BY VERIZON FURNISHED THE FCC WITH
9 ANY EVIDENCE ON THIS ISSUE?

10 A. No. The direct testimony sponsored by Verizon in this proceeding contains no evidence
11 supporting the contractual language offered by Verizon as a means of resolving this issue.
12 Once again, this silence could represent Verizon's conclusion that Issue I-11 is strictly a
13 legal issue for which factual evidence is unnecessary and signal an intent to brief this
14 issue only. In my view, this would be an erroneous conclusion because there are several
15 factual matters that have a bearing on the proper resolution of this issue and therefore
16 should be considered by the FCC. Verizon's failure to address these factual matters
17 justifies, in my view, the FCC's conclusion that the unopposed facts furnished by Cox are
18 dispositive of this issue.

19 Q. HAS COX PROPOSED APPROPRIATE LANGUAGE TO RESOLVE THIS ISSUE
20 AND SUPPORTED IT WITH EVIDENCE?

21 A. Yes. Cox's proposed language, in combination with agreed-to language granting Verizon
22 certain termination rights in the event of Cox's material breach, is best suited to resolving
23 this issue because Verizon's interest in having its OSS used properly is adequately

