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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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

REBUTTAL TESTIMONY OF CHUCK GOLDFARB, ALAN BUZACOTT AND ROY LATHROP ON BEHALF OF WORLDCOM, INC.

(Issues I-3, III-6, III-7, III-10, III-11 & III-12)

August 17, 2001

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1 **ARBITRATION ISSUES I-3, III-6, III-7, III-10, III-11, III-12**

2 **PART ONE: INTRODUCTION AND OVERVIEW**

3 **Q. What is the purpose of this testimony?**

4 A. The purpose of this testimony is to respond to Verizon's direct testimony on the
5 following issues: I-3 (reciprocal collocation), III-6 (combination of UNEs), III-7 (EELs), III-10
6 (line sharing and line splitting), III-11 (subloops), and III-12 (dark fiber).

7 **Q. Who are the members of the witness panel sponsoring this testimony?**

8 A. The members of this Panel are Chuck Goldfarb, Alan Buzacott, and Roy Lathrop.

9 **Q. Are you the same Chuck Goldfarb, Alan Buzacott, and Roy Lathrop who filed**
10 **direct testimony on these issues on July 31, 2001 in this proceeding?**

11 A. Yes.

12 **Overview**

13 **Q. Fundamentally, what is at issue in the dispute between WorldCom and Verizon over**
14 **access to UNEs?**

15 A. Congress included in the Telecommunications Act of 1996 the requirement that ILECs
16 provide nondiscriminatory access to unbundled network elements as one avenue for competitive
17 entry into telecommunications markets because it recognized that without the ability to share in
18 the economies of scale and scope that the ILECs enjoyed from their monopoly position, CLEC
19 entry would be at best limited to niche markets. Five years after passage of the Act, it is
20 abundantly clear that Congress got it right – access to UNEs is essential for viable competition to
21 develop. Such competition is not beneficial to Verizon and therefore Verizon continues to
22 attempt at every turn to deny, delay, or restrict CLEC access to UNEs. Verizon interprets every
23 regulatory rule and court decision in the fashion that most restricts CLEC access to UNEs,

1 denying the applicability of the nondiscrimination requirements of the Telecommunications Act,
2 FCC rules, or State rules. Time and time again Verizon inappropriately extends restrictions that
3 the FCC has adopted in one narrow context – such as the use, commingling, and collocation
4 restrictions temporarily adopted in the FCC's Supplemental Order Clarification – to other
5 contexts. Left to its own devices, Verizon would allow WorldCom and other CLECs such
6 restricted access to UNEs that they could never compete on an equal footing – if at all – with
7 Verizon.

8 **Q. Can you briefly describe the fundamental differences of opinion between Verizon**
9 **and WorldCom about Verizon's obligations to provide WorldCom access to unbundled**
10 **network elements?**

11 A. Yes, in the language in the two companies' proposed interconnection agreements, in the
12 direct testimony filed to date, and in the mediation negotiations that have just concluded, four
13 fundamental differences came up again and again. First, Verizon has repeatedly claimed that it
14 has no obligation to provide parity of services by constructing new facilities or undertaking other
15 activities in order to provide WorldCom access to unbundled network elements or combinations
16 of elements when it would perform similar construction or other activities to serve its own retail
17 customers.[1/] In contrast, it is WorldCom's position that the nondiscrimination requirements in
18 the Communications Act (47 U.S.C. § 251(c)(3)) and in the FCC's rules (47 C.F.R. §§ 51.307
19 and 51.311) impose on Verizon the obligation to provide nondiscriminatory access to all

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1/ Section 1.2(b) of Verizon's proposed interconnection agreement states, "Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination." In its negotiations, Verizon has refused, for example, to deploy new transport UNEs (including the multiplexing functionality of transport) even though it would deploy transport at the request of its retail customers.

1 unbundled elements, and combinations of elements; where Verizon would undertake activities,
2 such as construction, to provide an network element to its own retail customer, then it has the
3 obligation to undertake the same activities to provide that network element to WorldCom. If
4 Verizon does not impose an additional charge on its retail customers to undertake those
5 activities, neither should it impose an additional charge on WorldCom to perform those
6 activities. Where Verizon charges its retail customer for construction (or other activities),
7 WorldCom agrees that it, too, should pay for such construction (or other activities) under the
8 same special construction contract terms as the retail customer faces. But Verizon is incorrect to
9 claim that it is not legally required, and therefore can refuse, to undertake such construction or
10 other activities.

11 Second, Verizon argues that it is legally required only to provide WorldCom access to the
12 features and functionalities of an unbundled element to the extent that it uses those features and
13 functionalities itself.[2/] In contrast, WorldCom believes that the clear language in Section 3(29)
14 (definitions) and in Section 251(c)(3) (unbundled access) of the Communications Act as well as
15 sections 51.307 and 51.311 of the FCC's rules require Verizon to provide WorldCom access to
16 all the features and functionalities of all unbundled network elements.

17 Third, Verizon believes that it is required to provide WorldCom only existing
18 combinations of network elements that it already offers the customer in question in combined

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2/ For example, Verizon claims that as it deploys GR-303, it will only have to make available to WorldCom those features and functionalities of GR-303 that it uses itself, even if the equipment has other features and functionalities. Similarly, Verizon will not activate vertical features on its switches at WorldCom's request unless it is using those features itself to serve its own retail customers.

1 form.[3/] In contrast, WorldCom believes that under § 51.315(a) of the FCC's rules, Verizon is
2 required to provide WorldCom combinations of unbundled network elements whenever Verizon
3 ordinarily combines those elements in a similar fashion in its network.

4 Fourth, Verizon believes that it can limit WorldCom's access to UNEs by imposing use
5 restrictions on the UNEs,[4/] refusing to make a UNE available if WorldCom would "commingle"
6 the UNE with an access service in the provision of a telecommunications service,[5/] or requiring
7 WorldCom to collocate at the Verizon network in order to gain access to the UNE.[6/] WorldCom,
8 on the other hand, believes that to the extent the FCC has sanctioned any use restriction,
9 commingling, or collocation limitations on CLEC access to UNEs, these limitation have been
10 subject to very narrow application, solely involving the use of loop-transport combinations for
11 the provision of traditional special access services. Indeed, there should be no such restrictions
12 on access to, or the use of UNEs, if the intent of the Act to create competition for all
13 telecommunications services is to be realized. The Commission adopted the fundamental rule

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3/ Section 1.1(c) of Verizon's proposed interconnection agreement states "Verizon shall not be obligated to combine UNEs that are not already combined in Verizon's network."

4/ For example, Verizon is attempting to deny WorldCom access to the LIDB database for the provision of non-local telecommunications services.

5/ For example, WorldCom often seeks to obtain redundant facilities in order to provide customers with redundancy in case one set of facilities breaks down. Verizon refuses to provide WorldCom both unbundled dedicated transport as a UNE and transport provisioned by tariffed special construction (for redundancy) on the grounds that this represents "commingling" of UNEs and special access services.

6/ Section 1.7 of Verizon's proposed interconnection agreement states, "Except as otherwise expressly stated in this Agreement, **CLEC shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with the Collocation Attachment at the Verizon Wire Center where those elements exist, and each Loop or Port shall, in the case of Collocation, be delivered to **CLEC's Collocation node by means of a Cross Connection."

1 that the use of UNEs would not be subject to such competition-limiting restrictions when it
2 adopted 47 CFR § 51.309 (a).

3 **PART TWO: ISSUES : I-3, III-6, III-7,III-10, III-11, and III-12**

4 **Issue I-3: Reciprocal Collocation**

5 **Q. Is WorldCom required to provide collocation to Verizon?**

6 A. No.

7 **Q. Does Verizon admit that WorldCom is not required to provide collocation service to**
8 **Verizon?**

9 A. Yes.

10 **Q. Is Verizon's claim that it is unable to collocate in WorldCom's facilities correct?**

11 A. No. Verizon is able to collocate, and in fact does collocate, in WorldCom facilities in at
12 least some instances.

13 **Q. On what does Verizon base its claim that the Commission should order WorldCom**
14 **to provide collocation services to Verizon?**

15 A. Verizon appears to base its claim that WorldCom should be required to provide
16 collocation as a matter of symmetry or fairness.

17 **Q. Is there any public policy reason why the Commission should order WorldCom to**
18 **provide collocation services to Verizon?**

19 A. No. In the Telecommunications Act of 1996, Congress imposed certain obligations on
20 ILECs that it did not impose on CLECS because the former enjoy market power that the latter do
21 not. It is common, and appropriate public policy, to employ differential regulation based on
22 differences in firms' market power. Indeed, ILECs are required to provide collocation in part

because they have no incentive to interconnect with co-providers that are competitors. Verizon claims that it is reasonable for WorldCom to provide collocation so that Verizon has the same type of interconnection available as CLECs and so that it need not purchase CLEC transport facilities. This claim is somewhat ironic given Verizon's desire to retain veto power over meet-point interconnection arrangements – a type of interconnection desired by WorldCom in which carriers essentially split transport costs. Furthermore, Verizon seems to imply (with no evidence) that it is unable to self-provision transport and no alternative transport vendors exist.

Issues III-6 (UNE Combinations) and III-7 (EELs)

Q. Is there a fundamental difference between Verizon's position and WorldCom's on when Verizon is obligated to provide WorldCom UNE combinations?

A. Yes, there is a fundamental difference. As explained in our direct testimony in this proceeding, WorldCom believes that the appropriate interpretation of § 51.315(a), and the only one that demonstrates consistency between that rule and the discussion in paragraph 296 of the FCC's Local Competition Order, is that ILECs, such as Verizon, are obligated to provide CLECs, such as WorldCom, combinations of unbundled network elements at total element long run incremental cost ("TELRIC")-based rates whenever the ILEC ordinarily combines those elements in a similar fashion in its network.[7/] In contrast, Verizon argues that it is legally required to provide WorldCom only existing combinations that it already offers the customer in question. It claims that the only relevant Commission rule is rule 51.319(b), which obliges it only to "not separate requested network elements that [Verizon] currently combines."[8/] It adds that it is

7/ Direct Testimony of WorldCom on UNE Issues ("WorldCom Testimony") at 8-11.

8/ Direct Testimony of Verizon on UNE Issues ("Verizon Testimony") at 4.

1 willing voluntarily (but without legal obligation) to "provide new combinations of UNE Platform
2 at new and existing locations where facilities are available and currently combined, even though
3 retail service has not been activated over those facilities, provided that no new construction is
4 required to do so and the CLEC pays any non-recurring charges associated with activating the
5 facilities."[9/] It is noteworthy how Verizon attempts to memorialize in its proposed
6 interconnection agreement the distinction between its legal obligation and its voluntary actions.
7 With respect to what Verizon views as its legal obligation, Section 1.2(c) states, "Verizon shall
8 not be obligated to combine UNEs that are not already combined in Verizon's network." With
9 respect to what Verizon views as its voluntary actions, its proposed interconnection agreement is
10 silent. Nowhere in the UNE section of that document is there any reference to its voluntary
11 commitment to provide new combinations of UNE Platform at new and existing locations where
12 facilities are available and currently combined. Of course, if that commitment were not
13 memorialized in the Interconnection Agreement, then based on Verizon's interpretation of the
14 relevant law there would be no legal force requiring Verizon to provide new UNE Platform
15 combinations.

16 **Q. What are the implications of this difference?**

17 A. There are four significant implications. First, according to Verizon, it has no legal
18 obligation to provide WorldCom any UNE combination unless it already is using that
19 combination to serve the particular customer in question – that is, unless it already is using that
20 combination to provide a retail service to the end-user customer WorldCom seeks to serve or
21 unless it already is using that combination to provide a wholesale (special access) service to

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9/ Verizon Testimony at 4.

1 WorldCom. Thus, according to Verizon, it is legally required to provide UNE combinations only
2 for that subset of uses that involves a conversion or migration of existing service. When serving
3 its own existing or potential retail customers, Verizon does not limit its own use of combined
4 network elements in this fashion. It uses its network elements to serve growth in demand as well
5 as existing demand. Thus, Verizon interprets its legal obligations with respect to UNE
6 combinations in a fashion that countenances discrimination. This is fundamentally at odds with
7 the non-discrimination requirement in section 251(c)(3) of the Communications Act and in FCC
8 rules 51.307 and 51.311.

9 Second, Verizon does not offer to make all combinations available at new and existing
10 locations where facilities are available. It explicitly limits this "voluntary" action on its part to
11 UNE platform. It therefore denies WorldCom and other CLECs access to new EELs to offer
12 local service, which WorldCom believes is contrary to the requirements of 47 C.F.R. §§
13 51.315(a), 51.307, and 51.311.

14 Third, under section 1.2 of its proposed interconnection agreement, Verizon would
15 prohibit WorldCom and its customers from purchasing the equivalent functionalities to network
16 elements out of Verizon's special access service or any other telecommunications service and
17 then converting that service to UNEs or UNE combinations.[10/] Wherever Verizon is not

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10/ Section 1.2(c) of Verizon's proposed interconnection agreement states:
"Verizon shall not be obligated to combine UNEs that are not already combined in Verizon's network. **CLEC shall not directly or through a third party (e.g., **CLEC's Customer) order Telecommunications Services from Verizon in order to impose on Verizon an obligation to provide a UNE or a Combination that Verizon would not otherwise have an obligation to provide. For example, **CLEC shall not order Telecommunications Services or advise its Customer to order Telecommunications Services where existing UNEs or Combination desired by **CLEC are not available in order to permit **CLEC to subsequently convert the Telecommunications Services to the UNEs or Combinations desired by **CLEC."

1 currently providing special access service to WorldCom to serve a specific customer – or
2 wherever Verizon does not currently have facilities deployed to provide a retail customer a
3 second line or an additional trunk – neither WorldCom nor the retail customer could purchase the
4 service from Verizon and then migrate to WorldCom service provided over UNEs or UNE
5 combinations. Instead, WorldCom and the retail customer would have to continue to purchase
6 the network functionalities out of Verizon's service tariffs. WorldCom would have to continue
7 to purchase the loop, transport, and multiplexing functionalities out of Verizon's special access
8 tariff, where some rates are far in excess of TELRIC. End-users would have to continue to
9 receive their second line or additional trunk from Verizon, even if they preferred to migrate to
10 WorldCom. Requiring Verizon to offer these ordinarily combined network elements as UNE
11 combinations for new EELs, second lines, or additional trunks would resolve this anticompetitive
12 and anti-consumer situation.

13 Fourth, Verizon's "voluntary" proposal does not provide any means for WorldCom, other
14 CLECs, or state or federal regulatory agencies to identify and correct discriminatory behavior on
15 Verizon's part. If, for example, WorldCom were to seek a second or third line for a customer as
16 part of UNE platform, and Verizon were to claim that there was no available line, neither
17 WorldCom, the Virginia Commission, nor the FCC would be able to determine whether Verizon
18 made the same effort to find a conveniently located extra line for WorldCom as it does for its
19 own retail customer. This discriminatory practice could not realistically be uncovered. The only
20 way to prevent this discrimination is to direct Verizon to provide combinations of UNEs
21 whenever it ordinarily combines those elements in a similar fashion in its network. The burden
22 of proof must be on Verizon to demonstrate that it is not performing in a discriminatory fashion,

1 but such a burden would not exist where Verizon's responsibility to offer network combinations
2 was voluntary on its part.

3 Verizon provides multiple lines to residential customers upon request. Surely it should
4 be mandatory, not voluntary, on Verizon's part to provide an additional line via UNE platform
5 (or UNE loop) whenever it receives such a request from a competitor.

6 **Q. Verizon claims that language in Paragraph 480 of the UNE Remand Order**
7 **declining to interpret 47 C.F.R. § 51.315(b) as requiring incumbents to combine unbundled**
8 **network elements that are ordinarily combined proves that there is no such requirement.**
9 **Do you agree?**

10 A. No. Section 51.315(b) states: "Except upon request, an incumbent LEC shall not separate
11 requested network elements that the incumbent LEC currently combines." The focus of this rule
12 is on prohibiting ILECs from separating elements that the ILEC currently combines. In the UNE
13 Remand Order the FCC "declined to address" the argument that Rule 315(b) requires incumbents
14 to combine unbundled network elements that are "ordinarily combined." ¶ 479. In any event, as
15 WorldCom explained in its direct testimony, it does not matter how the Commission interprets
16 Rule 315(b) because Rule 315(a) requires ILECs to combine for CLECs unbundled network
17 elements that are "ordinarily combined." Subsequent to the UNE Remand Order, states have
18 required ILECs to provide "ordinarily combined" UNEs, relying in part on an interpretation of
19 "currently combines" as meaning "ordinarily combines."[11/]

20 **Q. In its direct testimony, Verizon identifies the UNE platform combinations that it**
21 **offers in Virginia: analog pots, ISDN, BRI; ISDN PRI; DS1 DID/DOD/PBX; PAL; COIN**

11/ See, e.g., In re: Georgia Proceeding to Establish Long-Term Pricing Policies for

1 **AND IDLC. Is this list sufficient?**

2 A. No. There are other UNE platform combinations that Verizon should be required to
3 offer. For example, Verizon should be required to offer WorldCom UNE platform with resold
4 DSL service. This issue is addressed in greater detail by Mr. Argenbright.

5 **Q. In its direct testimony, Verizon proposes limiting the availability of EELs to loop-**
6 **transport combinations that already are combined as special access at a particular location**
7 **and that meet the FCC's use restrictions, as defined by the Commission in its Supplemental**
8 **Order Clarification. Do you agree with those restrictions?**

9 A. No. Those restrictions are not appropriate. As WorldCom explained in its direct
10 testimony,[12/] neither self-provisioned nor third-party loops are available as alternatives to Verizon
11 loops in Virginia and alternative transport facilities are available for no more than 49 of the 210
12 Verizon central offices in Virginia. Except in the limited circumstances where WorldCom has
13 collocation arrangements, Verizon special access services provide the only feasible, ubiquitous
14 alternative to EELs. Verizon's rates for those services are significantly higher than the forward-
15 looking cost to Verizon of providing the loop-transport-concentration functionality to itself or to
16 others as EELs. Requiring WorldCom to face a different and higher cost structure than Verizon
17 faces artificially impedes competition. Moreover, the FCC already has determined that proper
18 impairment analysis does not take into account the availability of an ILEC service that simply
19 mimics the functionality of a network element or elements, or ILECs would be able to avoid
20 providing unbundled network elements simply by offering those elements as services with rates

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Unbundled Network Elements, Docket No. 10692-U, p. 11 (Feb. 1, 2000) (Order).

12/ WorldCom Testimony at 15-17.

1 that exceed TELRIC.

2 The bottom line is that WorldCom is impaired in its ability to offer local
3 telecommunications services in Virginia without access to EELs and therefore it should have
4 unrestricted access to EELs to offer local service. Under § 51.315(a) of the FCC's rules, that
5 must include access to combinations that are ordinarily combined in Verizon's network, even if
6 such elements are not already combined to serve WorldCom.

7 **Q. Verizon argues that the very fact that unrestricted access to EELs was explicitly**
8 **included in the exception to the unbundled switching requirement in the UNE Remand**
9 **Order demonstrates that the Commission did not intend Verizon to be compelled to**
10 **provide new EELs in other situations; otherwise the Commission would not have had to**
11 **make it a prerequisite to the local switching exception. Do you agree with that argument?**

12 A. No. The FCC's impairment analysis explicitly identified EELs as a prerequisite for the
13 switching exception because unrestricted access to EELs is a necessary condition for CLECs to
14 be unimpaired in their ability to offer local service using their own switches. At the time of the
15 UNE Remand Order, EELs provisioning was widely recognized as a serious problem and
16 therefore despite the requirement that ILECs provide EELs, in practice that requirement could
17 not be met. Thus, the FCC had to explicitly indicate that EELs be fully available in the relevant
18 geographic area before an ILEC could be excepted from its unbundled switching obligation in
19 that area. Including unrestricted EELS availability in the exception cannot be interpreted to mean
20 that ILECs otherwise had no obligation to provide EELs.

21 **Issue III-10: Line Sharing and Line Splitting**

22 **Q. Are there substantive disagreements between WorldCom and Verizon regarding**

1 **line sharing and line splitting?**

2 A. There do not appear to be. Verizon's direct testimony did not address WorldCom's
3 revised contract language submitted on July 19, 2000 on these issues. Rather, Verizon's Direct
4 Testimony filed July 31, 2001 addressed issues that are not part of WorldCom's current proposal.
5 Based on Verizon's testimony, it does not appear that the parties have any dispute on the issues
6 set forth in WorldCom's initial testimony. First, Verizon has agreed to a three-day provisioning
7 interval for line sharing and should appropriately revise its contract language to reflect its
8 agreement.[13/] Second, the loop qualification language proposed by WorldCom in sections 4.9.4
9 and 4.9.4.1 of WorldCom's revised contract language reflects the requirements of the UNE
10 Remand Order and Verizon's commitments in its various 271 filings.[14/] Third, Verizon has
11 stated that it will make OSS available in Virginia for line splitting migrations in October.[15/]
12 WorldCom's contract language in section 4.9.2 appropriately references Verizon's commitment.
13 Fourth, Verizon's testimony on access to fiber fed DLC claims that WorldCom is seeking to
14 prejudge the results of open FCC proceedings. But WorldCom's proposed contract language on
15 access to fiber fed DLC merely states that if and when Verizon upgrades its network to provide
16 DSL-based services out of remote terminals, Verizon commits to provide nondiscriminatory
17 access to such facilities.[16/]

18 **Q. If there is not a substantive dispute between the parties, why should WorldCom's**

13/ Verizon Testimony at 23.

14/ WorldCom Testimony at 20.

15/ Verizon Testimony at 16.

16/ See Section 4.10 of WorldCom's revised contract language.

1 **contract language be adopted over Verizon's?**

2 A. Although there does not appear to be a substantive dispute between the parties on issue
3 III-10, the contract language submitted by the parties differs. WorldCom's contract language is
4 more specific and includes the requirements of various FCC orders and prior commitments from
5 Verizon. As WorldCom explained in its direct testimony, Verizon's contract language lacks
6 operational detail that WorldCom's language includes.[17/]

7 **Issue III-11**

8 **Q. In its direct testimony, Verizon alleges that WorldCom's proposed interconnection**
9 **agreement would require Verizon to "go well beyond the Commission's requirements for**
10 **the provision of sub-loops." Is this correct?**

11 A. No, WorldCom's proposal is well within the Commission's requirements. Verizon's
12 allegation that WorldCom's proposed contract language goes beyond the Commission's
13 requirements is part of its larger effort (discussed in the "Overview" section of this testimony) to
14 claim that it has no obligation to construct new facilities or undertake other activities in order to
15 provide unbundled network elements and that, when it does provide unbundled network
16 elements, it only need provide those element features and functionalities that it uses itself. It
17 claims that any contract language to the contrary would exceed its legal requirements.

18 Specifically, Verizon claims that its only obligation is to provide subloops "as is" to
19 WorldCom.[18/] WorldCom believes that Verizon is required to undertake construction or other
20 activities needed to meet WorldCom's subloop requests where it undertakes those activities to

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17/ WorldCom Testimony at 20.

18/ Verizon Testimony at 10.

1 offer retail service to its own customers, and can charge WorldCom for those activities in the
2 same fashion that it charges its own customers for those activities.

3 **Q. Verizon objects to WorldCom's proposal to memorialize current subloop**
4 **unbundling obligations in the interconnection agreement, arguing that it would lock**
5 **Verizon into legal obligations as they exist today. Do you agree with this?**

6 A. No. It is essential that Verizon's legal obligations be memorialized in the interconnection
7 agreement, subject to a change of law clause. Otherwise, Verizon will make access to unbundled
8 network elements subject to its biased interpretation of the law.

9 **Issue III-12: Dark Fiber**

10 **Q. What are some of the issues relating to Verizon's obligations to offer dark fiber?**

11 A. The issues include how to perform test readings, appropriate performance intervals, the
12 reservation of dark fiber, where access to dark fiber should be permitted, whether access can
13 occur at splice points (and, if so, how to perform splices of dark fiber).

14 **Q. Have many of these issues come up when WorldCom has attempted to negotiate**
15 **access to dark fiber with other ILECs?**

16 A. Yes. When WorldCom and BellSouth first began to negotiate over the terms and
17 conditions for WorldCom to obtain access to BellSouth dark fiber, the two companies differed on
18 many of the same issues that WorldCom and Verizon disagree about today.

19 **Q. Has WorldCom been able to resolve these issues with BellSouth?**

20 A. Yes, after compromises were made by both sides, WorldCom and BellSouth agreed upon
21 contract language relating to dark fiber.

22 **Q. Do you believe that compromise language might provide a useful basis for resolving**

1 **these dark fiber issues with Verizon?**

2 A. Yes.

3 **Q. What is the language agreed to with BellSouth?**

4 A. The language agreed to by BellSouth and WorldCom is as follows:

5 Section 4. Loop

6 4.1 Definition of Loop. A transmission facility between a distribution frame (or its
7 equivalent) in BellSouth's Central Office and the Loop Demarcation Point (marking the
8 end of BellSouth's control of the Loop) at an End-User Customer premises, including
9 inside wire owned by BellSouth. The Loop includes all features, functions, and
10 capabilities of such transmission facility. Those features, functions, and capabilities
11 include, but are not limited to, Dark Fiber, attached electronics (except those electronics
12 used for the provision of advanced services, such as Digital Subscriber Line Access
13 Multiplexers), and line conditioning. The Loop includes, but is not limited to, DS1, DS3,
14 fiber, and other high capacity Loops.

15 Section 6. Dark Fiber

16 6.1 Definition: Dark Fiber is BellSouth optical transmission facilities without attached
17 multiplexers, aggregation, or other electronics. To the extent BellSouth's fiber contains
18 any lightwave repeaters (e.g., regenerators or optical amplifiers) installed on the fiber,
19 BellSouth shall not remove the same.

20 6.2 Requirements:

21 6.2.1 BellSouth shall make available Dark Fiber where it exists in BellSouth's network
22 and where, as a result of future building or deployment, it becomes available. BellSouth

shall offer all Dark Fiber to MCIm pursuant to the prices set forth in Attachment I of this Agreement. BellSouth shall make available Dark Fiber at Parity and on a non-discriminatory basis in accordance with applicable FCC rules and orders.

6.2.2 BellSouth shall provide a single Point of Contact (SPOC) for negotiating all Dark Fiber arrangements.

6.2.3 MCIm may test the quality of the Dark Fiber to confirm its usability and performance specifications.

6.2.4 BellSouth shall use its best efforts to provide to MCIm information regarding the location, availability and performance of Dark Fiber within ten (10) business days for a records based answer and twenty (20) business days for a field based answer, after receiving a request from MCIm ("Request"). Within such time period, BellSouth shall send written confirmation of availability of the Dark Fiber ("Confirmation"). BellSouth shall hold such requested Dark Fiber for MCIm's use for ten (10) business days from MCIm's receipt of Confirmation and may not allow any other party to use such media, including BellSouth. BellSouth shall provide Dark Fiber on a first come, first served basis.

6.2.5 BellSouth shall use its best efforts to make Dark Fiber available to MCIm within thirty (30) business days after it receives written confirmation from MCIm that the Dark Fiber previously deemed available by BellSouth is wanted for use by MCIm. BellSouth shall identify all appropriate and available connection points (e.g., Light Guide Interconnection (LGX) or splice points) to enable MCIm to connect or splice MCIm provided transmission media (e.g., optical fiber) or equipment to the Dark Fiber, and

MCIm shall notify BellSouth which point(s) it desires to use.

6.3 Additional Requirements for Dark Fiber

6.3.1 BellSouth shall provide MCIm with the most recent test records it has, if any, for Dark Fiber that MCIm plans to use. If BellSouth has no test records, at MCIm's request, BellSouth shall provide an estimate, using accepted industry practices, of the transmission loss of the channel at MCIm's intended transmission wavelength. BellSouth shall not warrant the accuracy of its estimate. If BellSouth's estimate of transmission loss exceeds MCIm's specifications, MCIm shall have the option of performing its own tests prior to purchase of the Dark Fiber.

6.3.2 MCIm may splice at the end points and test Dark Fiber obtained from BellSouth using MCIm or third party personnel. For connections at a splice point, BellSouth shall uncoil existing fiber a minimum of 25 feet from the manhole to allow MCIm to splice the fiber.

6.4 Availability of Unused Transmission Media other than Dark Fiber shall be determined by BellSouth on a case by case basis. BellSouth is not required to build out or deploy coaxial cable or copper where it has not been installed, although its availability will be affected as a result of future building out or deployment of such other unused transmission media.

6.4.1 If deployed in BellSouth's network, on a case by case basis, BellSouth may provide wave division multiplexer ("WDM") applications at rates to be negotiated by the Parties. For WDM applications, BellSouth shall provide to MCIm an interface to an existing WDM device or allow MCIm to install its own WDM device (where sufficient system

1 loss margins exist or where MCIm provides the necessary loss compensation) to
2 multiplex the traffic at different wavelengths. This applies to both the transmit and the
3 receive ends of the Dark Fiber.

4 **Q. Can these same terms be included in the WorldCom/Verizon Interconnection**
5 **Agreement?**

6 A. Yes, they can. These terms demonstrate that the operational questions associated with
7 access to dark fiber can be resolved when good faith negotiations occur. These terms provide a
8 reasonable resolution of the issues raised by Verizon, and BellSouth's agreement to these terms
9 demonstrates the technical feasibility of the proposed resolutions.

10 **Q. Does this conclude your testimony?**

11 A. Yes.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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

AFFIDAVIT OF ROY LATHROP,
CHUCK GOLDFARB AND ALAN BUZACOTT

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Roy Lathrop, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Roy Lathrop

Subscribed and Sworn to before me this
16th day of August, 2001.

Notary Public

MARIA A. ROSSEL
Notary Public District of Columbia
My Commission Expires: 2/14/2006

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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

AFFIDAVIT OF ROY LATHROP,
CHUCK GOLDFARB, AND ALAN BUZACOTT

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Chuck Goldfarb, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Chuck Goldfarb

Chuck Goldfarb

Subscribed and Sworn to before me this
16th day of August, 2001.

Maria A. Rossel

Notary Public

MARIA A. ROSSEL
Notary Public District of Columbia
My Commission Expires: 2/14/2006

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
Petition of WorldCom, Inc. Pursuant	)	
to Section 252(e)(5) of the	)	
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Regarding Interconnection Disputes	)	
with Verizon-Virginia, Inc., and for	)	
Expedited Arbitration	)	

AFFIDAVIT OF ROY LATHROP,
CHUCK GOLDFARB AND ALAN BUZACOTT

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Alan Buzacott, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Alan Buzacott

Subscribed and Sworn to before me this
16th day of August, 2001.

Notary Public

MARIA A. ROSSEL
Notary Public District of Columbia
My Commission Expires: 2/14/2006