1 **Other Issues Concerning General Terms and Conditions**

2 **Issue IV-88**

3 *Should the Interconnection Agreement contain a provision: (1) making assignments or*
4 *delegations of Interconnection Agreement rights or obligations to any non-affiliated*
5 *entity void, without prior written notice and consent, (2) requiring written notice of an*
6 *assignment or delegation to an Affiliate, and (3) further setting forth the rights and*
7 *obligations of the Parties upon a valid assignment or delegation? (Part A, Section 3.1).*

8

9 **Q. What is WorldCom's position?**

10 A. The Interconnection Agreement should contain this provision because it is
11 important for the parties to understand clearly the extent to which they may assign or
12 delegate their rights or obligations under the Interconnection Agreement, and the effect of
13 such an assignment or delegation on those rights and obligations.

14

15 **Q. What language has WorldCom proposed?**

16 A. The proposed Section 3.1 provides that

17 3.1 Any assignment or delegation by either Party to any non-affiliated entity
18 of any right, obligation or duty, or of any other interest hereunder, in whole or in
19 part, without the prior written consent of the other Party shall be void (except the
20 assignment of a right to moneys due or to become due). A Party assigning or
21 delegating this Agreement or any right, obligation, duty or other interest
22 hereunder to an Affiliate shall provide written notice to the other Party. All
23 obligations and duties of any Party under this Agreement shall be binding on all

1 successors in interest and assigns of such Party. No assignment or delegation
2 hereof shall relieve the assignor of its obligations under this Agreement.
3
4 **Q. What is Verizon's response?**
5 A. Verizon has basically agreed to inclusion of this provision in the Agreement.
6 Verizon insists, however, on what it calls a "minor modification" to WorldCom's
7 proposed Section 3.1; it argues that the "clause should apply to all assignments and
8 delegations, including to affiliated companies." Verizon's Answer at 262. Verizon
9 explains that such a modification is necessary "to ensure that an unscrupulous carrier
10 does not have the right to delegate its obligations to an affiliated shell company (i.e., one
11 without financial resources) and that a financially distressed carrier does not have the
12 right to assign only its rights (but not its obligations) to a non-distressed affiliate, in either
13 case without the consent of the other Party to the agreement." Id.
14
15 **Q. What is wrong with Verizon's position?**
16 A. Verizon's proposed modification is unacceptable for two main reasons. First, the
17 modification is in no way a "minor" one. Instead, requiring each party to obtain prior
18 written consent from the other before carrying out assignments or delegations to affiliated
19 companies would require that the parties be involved in one another's internal corporate
20 decision-making and restructuring. Such involvement would be extremely burdensome,
21 and completely beyond the appropriate scope of the Interconnection Agreement.
22 Verizon's proposal to add language to the effect that "any consents to assuagements to
23 affiliated companies shall not be unreasonably withheld, conditioned, or delayed" does

not make a difference, as it is the requirement to seek prior written consent in the first place that is both onerous and beyond the scope of the Agreement. Furthermore, Verizon's concerns about the actions of "unscrupulous" and "financially distressed" carriers are wholly misplaced: WorldCom is not such a carrier, nor is there any risk that it would shirk its contractual obligations in the way that Verizon suggests. As proof of this, for five years, Verizon and WorldCom have operated under assignment provisions practically identical to the provisions proposed by WorldCom here. This provision and its ability to assign/delegate to affiliated parties has not been a problem. This provision is targeted at companies other than WorldCom or its affiliates, and, therefore, entirely inappropriate for this Agreement.

Verizon's concerns are adequately addressed by the clause in WorldCom's proposed Section 3.1 that requires each party to give the other written notice upon an assignment or delegation to an affiliated company. That notice provision will allow each party to monitor the financial soundness of affiliated companies to whom assignments or delegations are made, without subjecting each party to invasive and burdensome inquiries relating to internal corporate restructuring that have no relevance whatsoever to the subject matter of the Agreement. If in the unlikely event that Verizon actually were to face such an "unscrupulous" carrier, Verizon could seek to pierce the corporate veil to avoid the effects of any fraud.

Q. What does WorldCom request of the Commission?

A. WorldCom requests that the Commission order the inclusion of its proposed Part A, Section 3.1 into the Interconnection Agreement.

1

2 **Issue IV-95**

3 *Should the Interconnection Agreement contain a provision making each Party (subject to*
4 *certain exceptions) responsible for all costs and expenses incurred in complying with its*
5 *obligations under the Interconnection Agreement, and requiring each Party to undertake*
6 *the technological measures necessary for such compliance? (Part A, Section 8.2).*

7

8 **Q. What is WorldCom's position?**

9 A. Yes. The Interconnection Agreement should contain this provision because it
10 defines the rights and obligations of the parties and avoids ambiguity that could lead to
11 future disputes. Further, this provision clarifies that neither party is or should be
12 financially responsible for the other party's compliance under the Interconnection
13 Agreement or development costs, except as otherwise specified in the Agreement. Each
14 party is in the best position to minimize its own compliance and development costs, and
15 the most efficient manner in which to minimize those costs under the Interconnection
16 Agreement is for each party to bear its own costs.

17

18 **Q. What language has WorldCom proposed?**

19 A. WorldCom has proposed the following language:

20 8.2 Except as otherwise specified in this Agreement, each Party shall be
21 responsible for: (i) all costs and expenses it incurs in complying with its
22 obligations under this Agreement; and (ii) the development, modification,
23 technical installation and maintenance of any systems or other infrastructure

which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

Q. What is Verizon's response?

A. Verizon agrees that this provision should be included in the Agreement. However, it insists on adding a phrase that would create an exception from Section 8.2 as "otherwise provided for under Applicable Law"; they would add this clause after the introductory clause. Verizon's Answer at 276.

Q. What is wrong with Verizon's position?

A. WorldCom objects to addition of this phrase because Verizon has failed to identify the provisions of Applicable Law to which it is referring. Moreover, the phrase Verizon seeks to add is wholly unnecessary. The pricing attachment establishes the exclusive list of rates that the parties are authorized to charge one another, subject to changing applicable law. To the extent the applicable law changes and alters those rates (for example, a state commission establishes a new rate or modifies an existing rate), the rates in the pricing attachment will change as well. See Attachment I, § 1.1. Verizon appears to be contemplating a category of costs or charges that would fall outside of the pricing attachment, but that nonetheless would be subject to a change in the Applicable Law. Because WorldCom cannot discern what category of costs or charges this might be, it cannot agree to Verizon's proposed addition to § 8.2.

1

2 **Q. What does WorldCom request of the Commission?**

3 A. WorldCom requests that the Commission order the inclusion of WorldCom's

4 proposed Part A, Section 8.2 into the Interconnection Agreement.

5

6 **Issue IV-97**

7 *Should the Interconnection Agreement contain a provision governing the parties'*

8 *responsibilities with respect to confidential information? Specifically, should the*

9 *Interconnection Agreement contain a provision that (1) defines the term confidential*

10 *information; (2) specifies a method for identifying and designating confidential*

11 *information; (3) states the obligations imposed upon the recipient of confidential*

12 *information under the Interconnection Agreement; (4) provides for limited disclosure to*

13 *third parties in certain circumstances; (5) limits reproduction of confidential*

14 *information; (6) sets forth procedures for return of confidential information, loss of such*

15 *information, and unauthorized disclosure; (7) provides certain exceptions from the*

16 *confidentiality obligations imposed by the provision in the case, for example, of*

17 *information publicly available or legally compelled disclosure; (8) provides for survival*

18 *of confidentiality obligations following expiration, cancellation or termination; (9) makes*

19 *clear that disclosure to a Party does not affect property rights in the information; (10)*

20 *provides for equitable relief, including injunctive relief and specific performance, for a*

21 *breach of confidentiality; (11) makes clear that it provides additional confidentiality*

22 *protections to those existing under Applicable Law; (12) sets forth obligations with*

23 *respect to access, use, or disclosure of Customer Proprietary Network Information*

(CPNI) or other customer information; and (13) makes clear that it does not limit the rights of either Party with respect to its own subscriber information?

Q. What is WorldCom's position?

A. Agreement should include these confidentiality provisions because they make clear each party's obligations with respect to the other's confidential and sensitive information.

Q. What language has WorldCom proposed?

A. WorldCom has proposed the following language:

Section 10. Confidentiality

10.1 For the purposes of this Section [10], "Confidential Information" means the following information disclosed by one Party ("Discloser") to the other Party ("Recipient") in connection with this Agreement:

10.1.1 All information disclosed by either Party to the other pursuant to Attachments I-X of this Agreement arising from the performance of this Agreement, including, but not limited to, books, records, documents and other information disclosed in an audit performed pursuant to this Agreement; and

10.1.2 Such other information as is identified as Confidential Information in accordance with Section [10.2].

10.2 All information which is to be treated as Confidential Information under Section [10.1.2] shall:

10.2.1 If in written, graphic, electromagnetic, or other tangible form, be marked as "Confidential Information"; and

10.2.2 If oral, (i) be identified by the Discloser at the time of disclosure to be "Confidential Information", and (ii) be set forth in a written summary which identifies the information as "Confidential Information" and is delivered by the Discloser to the Recipient within ten (10) days after the oral disclosure.

10.2.3 Each Party shall have the right to correct an inadvertent failure to identify such oral information as Confidential Information by giving written notification within thirty (30) days after the information is disclosed. The Recipient shall, from that time forward, treat such information as Confidential Information.

10.3 In addition to any requirements imposed by law, including, but not limited to, 47 U.S.C. § 222, for a period of three (3) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees:

10.3.1 To use the Confidential Information only for the purpose of performing under this Agreement, including, to the extent applicable, the planning and operation of the Recipient's network;

10.3.2 To use the same degree of care that it uses with similar confidential information of its own, to hold the Confidential Information in confidence and to disclose it to no one other than the directors, officers and employees of the Recipient and the Recipient's Affiliates, having a need to know the Confidential Information for the purpose of performing under this Agreement; and

1 10.3.3 Under no circumstances will Verizon disclose MCIm's Confidential
2 Information to, or permit access to MCIm's Confidential Information by, the
3 retail operations or any employee thereof, or the retail customer representatives of
4 Verizon or any Verizon Affiliate, or any independent contractors to any of the
5 foregoing, and Verizon and any Verizon Affiliate shall take all actions necessary
6 to ensure that any such retail operations and any employees thereof, their
7 respective retail customer representatives, and any independent contractors of any
8 of the foregoing, cannot access MCIm's Confidential Information.
9 10.4 A Recipient may disclose the Discloser's Confidential Information to a third
10 party agent or consultant, provided that prior to such disclosure the agent or
11 consultant has executed a written agreement of non-disclosure and non-use
12 comparable in scope to the terms of this Section [10].
13 10.5 The Recipient may make copies of Confidential Information only as
14 reasonably necessary to perform its obligations and exercise its rights under this
15 Agreement. All such copies shall bear the same copyright and proprietary rights
16 notices as are contained on the original.
17 10.6 The Recipient shall return all Confidential Information defined in
18 Section [10.1.2] in the format in which it was received from the Discloser,
19 including any copies made by the Recipient, within thirty (30) days after a written
20 request is delivered to the Recipient, and/or destroy all such Confidential
21 Information, except for Confidential Information that the Recipient reasonably
22 requires to perform its obligations under this Agreement. If the Recipient loses or
23 makes an unauthorized disclosure of the Discloser's Confidential Information, it

shall notify the Discloser immediately and use reasonable efforts to retrieve the lost or improperly disclosed information.

10.7 The requirements of this Section [10] shall not apply to Confidential Information:

10.7.1 Which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser;

10.7.2 After it becomes publicly known or available through no breach of this Agreement by the Recipient, the Recipient's Affiliates, or the directors, officers, employees, agents, or contractors, of the Recipient or the Recipient's Affiliates;

10.7.3 After it is rightfully acquired by the Recipient free of restrictions on its disclosure;

10.7.4 Which is independently developed by personnel of the Recipient; or

10.7.5 To the extent the disclosure is required by law, or made to a court, or governmental agency for the purpose of enforcing its rights under this Agreement; provided the Discloser has been notified of an intended disclosure promptly after the Recipient becomes aware of a required disclosure or decides to make such a voluntary disclosure to enforce its rights, the Recipient undertakes reasonable, lawful measures to avoid disclosing the Confidential Information until the Discloser has had reasonable time to seek a protective order, and the Recipient complies with any protective order that covers the Confidential Information to be disclosed.

10.8 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration, cancellation or termination of this Agreement shall survive such expiration, cancellation or termination.

10.9 Confidential Information shall remain the property of the Discloser, and the Discloser shall retain all of the Discloser's right, title and interest in any Confidential Information disclosed by the Discloser to the Recipient. Except as otherwise expressly provided elsewhere in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark, or copyright), nor is any such license to be implied, solely by virtue of the disclosure of any Confidential Information.

10.10 Each Party agrees that the Discloser would be irreparably injured by a breach of this Section [10] by the Recipient, the Recipient's Affiliates, or the directors, officers, employees, agents or contractors of the Recipient or the Recipient's Affiliates, and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section [10]. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section [10], but shall be in addition to any other remedies available at law or in equity.

10.11 The provisions of this Section [10] shall be in addition to and shall not limit, alter, define or contradict any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to protection of the confidentiality of information

1 (whether or not defined as "Confidential Information" for purposes of this
2 Agreement) of the Party or its customers provided by Applicable Law.
3 10.12 Without in any way limiting the foregoing provisions of Section [10], each
4 Party shall comply with 47 U.S.C. § 222, any implementing rules, regulations,
5 and orders thereunder, and other federal and state rules and regulations addressing
6 Customer Proprietary Network Information ("CPNI") and Carrier Information. A
7 Party shall not access (including, but not limited to, through electronic interfaces
8 and gateways provided under this Agreement), use or disclose CPNI or other
9 customer information unless the Party has obtained any customer authorization
10 required by Applicable Law for such access, use and/or disclosure. By accessing,
11 using or disclosing CPNI or other customer information, a Party represents and
12 warrants that the Party has obtained any customer authorization required by
13 Applicable Law for such access, use or disclosure. A Party accessing, using or
14 disclosing CPNI or other customer information shall upon request by the other
15 Party provide proof of any customer authorization for such access, use or
16 disclosure, required by Applicable Law (including, copies of any written
17 authorization). Without limiting the foregoing provisions of this Section [10],
18 where required by 47 U.S.C. § 222, or other provision of Applicable Law, a Party
19 shall obtain a signed letter of authorization from the applicable end user in order
20 to obtain CPNI or other customer information from the other Party.
21 10.13 Nothing herein shall be construed as limiting the rights of either Party with
22 respect to its own subscriber information under any Applicable Law, including
23 without limitation Section 222 of the Act.

1

2 **Q. What is Verizon's position?**

3 A. Verizon has agreed to the inclusion of all language proposed by WorldCom. In
4 addition, Verizon has demanded that Part A, Section 22.14 of the existing Virginia
5 agreement be inserted with WorldCom's proposed language. Section 22.14 would permit
6 Verizon the ability to monitor WorldCom's access to and use of CPNI. This issue is
7 addressed on behalf of WorldCom in Sherry Lichtenberg's testimony.

8

9 **Issue IV-101**

10 *Should the parties be allowed to submit disputes under the agreement to binding*
11 *arbitration under the United States Arbitration Act? (Part A, Section 13.2).*

12

13 **Q. What is WorldCom's position?**

14 A. Yes. The Agreement should include a binding arbitration provision that provides
15 a private, speedy and cost-effective process for resolution of the typical disputes that arise
16 under an interconnection agreement. Binding arbitration is a private, adversarial process
17 in which the disputing parties select a neutral person or a panel of three neutral people to
18 hear their dispute and to render a final and binding decision or award. It can be
19 "administered" by a private organization, such as J.A.M.S./ENDISPUTE or AAA.
20 Arbitration is a creature of contract. It is not available simply through statute or
21 regulation – it must be included within the agreement between the parties. Agreements to
22 arbitrate are enforceable in court. The validity and enforcement of agreements to

1 arbitrate, however, are governed by the United States (Federal) Arbitration Act, 9 U.S.C.
2 §§ 1-16.

3 WorldCom's experience under the original agreement illustrates the need for
4 alternative methods of enforcing the terms of the agreement. Where a state commission
5 is unwilling or slow to enforce an interconnection agreement, WorldCom has been denied
6 the benefits and rights contained in that agreement. For example, the Virginia state
7 commission has taken the position that, under recent case law surrounding the Tenth and
8 Eleventh Amendments of the U.S. Constitution, it has no authority under its state
9 constitution to enforce Section 251 and 252 of the 1996 Act given that the Act requires
10 subsequent review in federal court. As a result, it has refused to enforce the reciprocal
11 compensation provisions of several existing interconnection agreements as those
12 provisions apply to ISP-bound traffic.[8] For approximately two years this has left the
13 parties on both sides of these contract disputes in a state of uncertainty regarding their
14 rights under their respective interconnection agreements. It is exceeding difficult for
15 WorldCom and other carriers to operate its business on such unstable terms. When a
16 dispute arises under the Interconnection Agreement, the companies should be able to get
17 expedited relief to enforce the agreement. Such relief can be provided through federal
18 law, namely the United States Arbitration Act, 9 U.S.C. § 1, et seq. Additionally, in light
19 of the Virginia Commission's unwillingness to interpret and enforce interconnection
20 agreements pursuant to the Act, it is even more critical for the parties to have a viable
21 avenue for enforcement of the agreements and dispute resolution.

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[8] See Petition of Starpower Communications, LLC For Declaratory Judgment Interpreting Interconnection Agreement with GTE South, Inc., Case No. PUC990023, Final Order (Jan. 24, 2000) (Starpower/GTE Decision) at 7.

1

2 **Q. What is Verizon's response?**

3 A. Verizon objects to inclusion of this provision in the Agreement. It claims that it
4 "is not required to agree to an alternative dispute resolution ("ADR") provision at all, and
5 cannot be forced to forego its right to resolve disputes through the Commission's
6 regulatory processes." Verizon's Response at 283. And it appeals to the general legal
7 principle that arbitration is "a matter of contract and no party can be required to submit to
8 arbitration any dispute that it has not agreed to submit in clear language." Id. (citations
9 omitted).

10

11 **Q. What is wrong with Verizon's position?**

12 A. Verizon fails to recognize or even acknowledge that the parties are not in the
13 typical commercial situation where both parties view their agreement as a mutual benefit.
14 Verizon is an incumbent LEC that, before the 1996 Act, controlled the market for local
15 telecommunications services. WorldCom is a new entrant that is seeking an agreement
16 with Verizon that will allow it to enter the market for local telecommunications services.
17 Verizon has every incentive to preserve its monopoly and avoid any obligations that the
18 interconnection agreement might create.

19 Accordingly, Verizon's underlying assumption – that the Commission only has
20 the power to order the Parties to do that which Applicable Law already requires – misses
21 the entire point of this arbitration. The 1996 Act expressly grants state commissions (or
22 this Commission, when it is acting as an arbitrator) the authority to resolve these issues,
23 specifically directing a commission to "resolve each issue set forth in the petition [for

1 arbitration of disputed issues]. . . by imposing appropriate conditions as required to
2 implement subsection (c) of this section." 47 U.S.C. § 252(b)(4)(C) (emphasis added).
3 This broad grant of authority is critical given the context in which these arbitration's
4 occur.

5 Under the Act, the negotiation and arbitration process is to result in an
6 agreement between the parties. See 47 U.S.C. § 252. Such a contract requires the
7 establishment of basic terms and conditions, many of which – such as those governing
8 assignments and delegations, indemnification, or the term of the agreement – are not
9 provisions that ordinary contracting parties could be compelled to accept by a court or
10 arbitrator. But again, this is not an ordinary contractual situation. Indeed, the very fact
11 that the parties are compelled by federal law to arbitrate for the purposes of entering into
12 a contractual relationship, makes Verizon's 'freedom of contract' objection to a specific
13 provision within that contract particularly unpersuasive and inapposite.[9]

14 Thus, Verizon could not be more wrong in applying the general principle that an
15 ordinary contracting party cannot be compelled to accept a binding arbitration provision
16 as part of an interconnection agreement. The cases articulating that principle (none of
17 which involved a § 252 arbitration) have nothing to do with the market dynamics
18 underlying these proceedings. Rather, the Commission must decide this issue as it must
19 decide many of the terms and conditions issues presented in the arbitration petition:
20 namely, by assessing the merits of the arguments in favor of the provision, and deciding

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[9] See generally In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, 11 FCCR 15499 (Aug. 8, 1996) (providing that state commissions have to rule on general terms)(emphasis added).

whether it would best serve the interests of the parties, and the objectives of the Act, for the Agreement to contain such a provision.

Q. Accordingly, has WorldCom proposed any language on this issue?

A. Yes. WorldCom originally proposed its Part A, Section 13.2. In the mediations, however, WorldCom withdrew its proposal, and has agreed to accept, by and large, Verizon's proposed alternative dispute resolution provision.

Q. Does WorldCom accept all of Verizon's proposed alternative dispute resolution provision?

A. No. WorldCom can only accept this provision with certain modifications.

Q. What modifications to Verizon's proposed language does WorldCom propose?

A. The proposed modifications are as follows:

28.11 Dispute Resolution

28.11.1 Alternative to Litigation.

Except as provided under Section 252 of the Act with respect to the approval of this Agreement and any amendments thereto by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, the Parties agree to use the following alternative dispute resolution procedures as a ~~the~~ final and binding remedy with respect to

1 any action, dispute, controversy or claim arising out of or relating to this
2 Agreement or its breach, except with respect to the following:
3 (1) An action seeking a temporary restraining order or an injunction
4 related to the purposes of this Agreement;
5 (2) A dispute, controversy or claim relating to or arising out of a
6 change in law or reservation of rights under the provisions of Section 27 of this
7 Agreement;
8 (3) A suit to compel compliance with this dispute resolution process;
9 (4) An action concerning the misappropriation or use of intellectual
10 property rights of a Party, including, but not limited to, the use of the trademark,
11 tradename, trade dress or service mark of a Party;
12 (5) An action for fraud;
13 (6) A billing dispute equal to or in excess of $2,000,000.00;
14 (7) Any rate or charge within the jurisdiction of the Commission or the
15 FCC;
16 (8) Any term or condition of the (i) Memorandum Opinion and Order,
17 In the Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp,
18 Transferee, For Consent to Transfer Control of NYNEX Corp. and Its
19 Subsidiaries, 12 F.C.C.R. 19985 (1997) or (ii) Application of GTE Corporation,
20 Transferor and Bell Atlantic Corporation, Transferor, Memorandum Opinion and
21 Order, CC Docket No. 98-184, FCC 00-221 (rel. June 16, 2000) ("Merger Order);
22 (9) A dispute, controversy or claim relating to or arising out of the tax
23 provisions of this Agreement; and

(10) Any dispute appropriately before the Commission pursuant to the abbreviated Dispute Resolution Process as established in Case No. 000026, Case No. 000035, or another proceeding before the Commission.

Any such actions, disputes, controversies or claims may be pursued by either Party before any court, Commission or agency of competent jurisdiction. ~~Additionally, AT&T hereby waives its rights to submit disputes in accordance with the alternative dispute resolution mediation process implemented by Verizon pursuant to paragraph 40 and Attachment F of the Merger Order.~~

28.11.2 Negotiations

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not

so exempted and may, if otherwise discoverable or admissible, be discovered, or be admitted in evidence, in the arbitration or lawsuit.

28.11.3 Arbitration

Except for those disputes identified in section 28.11.1(1) through 28.11.1(9), if the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute may be submitted by either Party or both Parties (with a copy provided to the other Party) to the Commission for arbitration pursuant to section 252 of the Act. The Commission shall assign the dispute to a single arbitrator selected by the Parties pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect on the date of commencement of the arbitration, as modified by this Agreement, hereinafter referred to as the AAA Rules.~~, to which body the Parties hereby agree to submit the dispute pursuant to the AAA Rules, except that t~~ The Parties may select an arbitrator outside AAA's roster of arbitrators ~~Rules~~ upon mutual agreement prior to AAA's appointment of an arbitrator. Neither Party waives any rights it may otherwise have under Section 252 of the Act by agreeing to allow the Commission to assign the dispute to an arbitrator selected by the Parties. Discovery shall be controlled by the arbitrator but limited ~~and shall be permitted~~ to the extent set out in this section, unless otherwise prohibited by the AAA Rules. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of twenty-five (25) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral

deposition of one individual of the other Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city or as determined by the arbitrator~~. The arbitrator shall control the scheduling so as to process the matter expeditiously~~. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings, including Findings of Fact and Conclusions of Law. The arbitrator shall have no power to add or detract from this Agreement of the Parties and may not make any ruling or award that does not conform to the terms and conditions of this Agreement. The arbitrator may award whatever remedies at law or in equity the arbitrator deems appropriate. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. ~~The written opinion of the arbitrator shall not be enforceable in any court having jurisdiction over the subject matter until the Commission, pursuant to section 28.11.7 below, has issued an Order adopting or modifying the arbitrator's written opinion.~~

28.11.4 Expedited Arbitration Procedures

If the issue to be resolved through the negotiations referenced in Section 28.11.2 directly and materially affects service to either Party's end-user Customers or the amount subject to a billing dispute is $200,000~~2,000,000~~ or less, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to arbitration shall be five (5) Business Days. Once such a

service affecting dispute is submitted to arbitration pursuant to the process outlined in Section 28.11.3 above, the arbitration shall be conducted pursuant to the expedited procedures rules of the AAA Rules in effect on the date of commencement of the arbitration~~(i.e., rules 53 through 57)~~.

28.11.5 Costs

Each Party shall bear its own costs of these procedures. The Parties shall equally split the fees of the arbitrator.

28.11.6 Continuous Service

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations, including making payments in accordance with and as required by this Agreement.

28.11.7 Commission Order

28.11.7.1 Within thirty (30) days of the arbitrator's decision, the Parties shall submit that decision to the Commission for review. Each Party shall also submit its position on the arbitrator's decision in a statement not to exceed ten (10) pages as to whether the Party ~~agrees to be bound by it or~~ seeks to challenge it before the Commission. The Commission shall accept or modify the arbitrator's decision within thirty (30) days of its receipt and issue an Order accordingly pursuant to Section 252 of the Act; provided, however, if the Commission does not issue an Order accepting or modifying the arbitrator's decision within thirty (30) days of its receipt, the arbitrator's decision shall be deemed an Order of

1 the Commission pursuant to Section 252 of the Act. The Order of the
2 Commission shall become final and binding on the Parties, except as
3 provided in Section 28.11.7.2 below.
4 28.11.7.2 Either Party may seek timely review of the Commission
5 Order rendered above pursuant to Section 252(e)(6) of the Act. The
6 Parties agree to waive any objection to the federal court's jurisdiction over
7 the subject matter.
8
9 **Q. What purpose do these modifications serve?**
10 A. First, WorldCom proposes to modify the first paragraph of Section 28.11.1 and
11 Sections 28.11.3 and 28.11.7.1 of Verizon's proposal. Through these modifications,
12 WorldCom proposes to make it clear that the arbitrator's award is final and binding on
13 the parties. Under Verizon's proposal, the arbitrator's findings are not final and binding
14 until the Commission has acted on the award or thirty days have elapsed. This defeats, or
15 at least significantly detracts, from the overall purpose behind an alternative dispute
16 resolution process in the first place – that is, expedited and efficient dispute resolution.
17 WorldCom sees little purpose in delaying the effect of the arbitrator's position.
18 WorldCom is comfortable making the Commission the first step in the process of seeking
19 review of the arbitrator's award, but there is no compelling reason to delay its effect.
20 Second, in Verizon's proposed Section 28.11.1(9), WorldCom has inserted an
21 additional exclusion to the alternative dispute resolution process regarding disputes
22 arising out of the tax provisions of this Agreement. Given the highly technical nature of

1 tax disputes and the complexity of the area of tax generally, it is best to address tax
2 disputes outside of an alternative dispute resolution process.
3 Third, in the last paragraph of Verizon's proposed Section 28.11.1, Verizon
4 proposes that WorldCom waive its right to use the ADR process required of Verizon
5 under its GTE/Bell Atlantic merger conditions. There is no compelling reason why
6 WorldCom should waive this right, nor can Verizon compel WorldCom to do so.
7 WorldCom has proposed several modifications to 28.11.3 to conform this section
8 more tightly to the AAA Rules, as those rules may change from time to time. For
9 example, AAA arbitrators technically are selected from AAA's roster of arbitrators, not,
10 as Verizon states it, from AAA's rules. Also, arbitrators are frequently called on to
11 decide on the location of the arbitration when the parties cannot agree. In addition,
12 WorldCom has proposed to add language to clarify what is expected of the arbitrator,
13 namely, a written order setting forth findings of fact and conclusions of law. This is
14 important because it provides the reviewing commission with a comprehensive basis on
15 which to review the arbitrator's finding. WorldCom has also proposed in their language
16 a clarification that the arbitrator is authorized to order any remedies available under the
17 agreement.
18 Finally, WorldCom proposes to modify Verizon's Section 28.11.4. In that
19 section, Verizon proposes that all billing disputes applicable to this alternative dispute
20 resolution process be handled under AAA's expedited procedures rules. The expedited
21 procedures of the AAA Rules are significantly faster and more compressed than the
22 normal AAA rules and are designed to address fairly straight forward disputes. To the
23 extent that the amount in dispute reflects the complexity of the underlying case, the

threshold for use of AAA's expedited procedures should be significantly lower than that proposed by Verizon. It is WorldCom's experience, however, that these special expedited procedures are invoked only for disputes of significantly lower commercial value than $2,000,000.00.. Accordingly, WorldCom proposes that the expedited AAA rules be invoked for billing disputes of $200,000 or less.

Q. What is WorldCom requesting of the Commission?

A. WorldCom requests that the Commission order the inclusion of Verizon's proposed Section 28.11, et seq., with the specific modifications set forth and discussed above.

Issue IV-113

Should the Interconnection Agreement contain a provision obligating the Parties to negotiate promptly and in good faith to amend the Interconnection Agreement in the event that subsequent changes in the law render any provision of the Interconnection Agreement unlawful, or materially alters the obligation(s) to provide services, or the services themselves, embodied in the Interconnection Agreement? (Part A, Section 25.2).

Q. Could you describe this issue?

A. This is a critical issue. The question presented is how the parties should incorporate into the Interconnection Agreement changes in law that affect the Agreement's terms. Based on WorldCom's experience, the parties frequently cannot agree on the impact or implementation of a given court decision or Commission order. If