Pricing Terms and Conditions

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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
In the Matter of Petition of Cox Virginia Telecom, Inc., etc	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., etc	)	CC Docket No. 00-249

VERIZON VA'S REBUTTAL TESTIMONY ON NON-MEDIATION ISSUES

(CATEGORIES I AND III THROUGH VII)

PRICING TERMS AND CONDITIONS

- MICHAEL A. DALY
- DONNA FINNEGAN
- STEVEN J. PITTERLE

AUGUST 17, 2001

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I. INTRODUCTION AND OVERVIEW

Q. ARE YOU THE SAME PANEL THAT OFFERED DIRECT TESTIMONY ON THE NON-MEDIATION PRICING TERMS AND CONDITIONS ISSUES?

A. Yes. The education and background of the Pricing Terms and Conditions Panel were described in the Direct Testimony on non-mediation issues.

Q. WHAT IS THE PURPOSE OF THE PANEL'S REBUTTAL TESTIMONY ON NON-MEDIATION ISSUES IN THIS PROCEEDING?

A. The purpose of this testimony is to respond to the testimony of AT&T witness Kirchberger, WorldCom witness Argenbright, and Cox witness Collins regarding prices for Petitioners' services (Issue I-9). The Panel provides no rebuttal testimony regarding Issues VII-12 and VII-14 because our direct testimony anticipated the arguments in the testimony of AT&T witness Kirchberger on these issues, which involve the extent to which the parties' interconnection agreement should address detailed industry billing information rather than refer to the appropriate industry billing forum. The Panel refers to and incorporates its Direct Testimony on these non-mediation issues.

II. CLEC COMMITMENT TO JUST AND REASONABLE RATES (ISSUE I-9)

Q. ARE AT&T WITNESS KIRCHBERGER (PAGES 3-4) AND WORLDCOM WITNESS ARGENBRIGHT (PAGE 4) CORRECT IN SUGGESTING THAT A "MARKET MECHANISM" OR "MARKET FORCES" WILL ENSURE THAT AT&T'S OR WORLDCOM'S RATES FOR TRANSPORT AND POWER AND SPACE ARE REASONABLE?

A. No. AT&T witness Kirchberger, pages 3-4, correctly observes that the exercise of regulatory authority is appropriate in absence of a "market mechanism" that will ensure reasonable rates. AT&T witness Kirchberger, however, is just wrong in asserting that AT&T does not "wield . . . market power" with respect to access to its own network. Verizon VA is required to interconnect with AT&T, and in order to do so Verizon VA must either purchase transport facilities from AT&T or, if Verizon VA builds its own facilities, obtain the right to terminate those facilities at AT&T's premises. AT&T and the other Petitioners are thus in complete control over access to their respective networks. Thus, contrary to the arguments of AT&T witness Kirchberger, there is a need for a reasonable limitation on AT&T's pricing flexibility with respect to transport rates and power and space because the "market" will not serve that function. Despite his arguments regarding market forces eliminating the need for any constraint on AT&T's pricing, AT&T Kirchberger identifies no effective alternative source of access to its network.

Moreover, in identifying the "factors" that WorldCom considers "when proposing rates for inclusion in the tariff," WorldCom witness Argenbright does not identify

any factor that would account for market forces. This supports Verizon VA's argument: there are no such effective market forces with respect to transport and power and space. Like AT&T witness Kirchberger, WorldCom witness Argenbright fails to identify any effective alternative source of access to its network.

Finally, it is my understanding that the New York Public Service Commission recently rejected the "market forces" argument as a basis for AT&T's opposition to essentially the same contractual provision at issue in this case establishing a presumption that it should not charge rates greater than the rates Verizon VA charges AT&T. *See Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, N.Y. P.S.C. Case 01-C-0095 (July 30, 2001) at 86.

Q. IS AT&T'S POSITION IN THIS ARBITRATION ON THIS ISSUE CONSISTENT WITH ITS COMPLAINT THAT, FOR PURPOSES OF ACCESS CHARGES, CLECS WIELD MONOPOLY POWER OVER ACCESS TO THEIR END USERS?

A. It is not consistent. In fact, Verizon VA needs the contract language it proposes in this arbitration for the very same reason that AT&T sought relief with respect to CLEC access charges. As noted by the Commission in its *Seventh Report and*

Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262 (Rel. April 27, 2001) ("*Seventh Report*"), at Paragraph 36, AT&T characterized "both the terminating and the originating access markets as consisting of a series of bottleneck monopolies over access to each individual end user." Just as AT&T argued in that context, in this context, "once an end user decides to take service from [AT&T, AT&T] controls an essential component of the system that provides [local] calls, and it becomes the bottleneck for [other LECs] wishing to complete calls to, or carry calls from, that end user." *Seventh Report* at Paragraph 36.

In this context, Verizon VA's need for the contract language it proposes is even greater than AT&T's need for relief from CLEC access charges. As observed by the Commission in its *Seventh Report,* at Paragraph 24, AT&T "frequently declined altogether to pay CLEC access invoices that its views as unreasonable," and "threatened to stop delivering traffic to, or accepting it from, certain CLECs that they view as over-priced." Verizon VA does not have the option of exercising such a bargaining tool. Because Verizon VA is "subject to the monopoly power that [AT&T] wield[s] over access to [its] end-users," and just as AT&T argued in the context of CLEC access rates, this Commission should "acknowledge that the market for [access to AT&T's network] does not appear to be *structured* in a manner that allows competition to discipline rates." *Seventh Report*, at Paragraph 32, 38.

1 **Q. DOES VERIZON VA PROPOSE CONTRACT LANGUAGE THAT**
2 **"DICTATES" PETITIONERS' CHARGES FOR SERVICES, FUNCTIONS**
3 **AND FACILITIES PROVIDED TO VERIZON VA, AS AT&T WITNESS**
4 **KIRCHBERGER SUGGESTS?**
5 A. No. As explained in this Panel's Direct Testimony, Verizon VA proposes only
6 that the rates charged for transport and power and space not exceed the rates that
7 Verizon VA charges for the same services unless the Petitioners can justify higher
8 rates. Under Verizon VA's proposed contract language, Petitioners can charge
9 higher rates if Petitioners prove, in an appropriate proceeding, that their costs are
10 higher, and that their rates therefore should be greater than the rates that Verizon
11 VA charges for the same services. Verizon VA's proposed contract language
12 accomplishes what AT&T witness Kirchberger suggests is reasonable: regulatory
13 review in absence of a market mechanisms that will ensure reasonable rates.
14
15 **Q. WORLDCOM WITNESS ARGENBRIGHT (PAGE 4) IDENTIFIES TWO**
16 **"EXTERNAL CONTROLS" ON PETITIONERS' RATES: (1) VIRGINIA**
17 **LAW AND (2) MARKET FORCES. DOES THIS ADDRESS VERIZON**
18 **VA'S CONCERN?**
19 A.. No. With respect WorldCom witness Argenbright's discussion of Virginia law,
20 this Panel defers to argument and briefs provided by its counsel.
21 Notwithstanding, Verizon VA's proposal is not inconsistent with the regulatory
22 review process discussed by WorldCom witness Argenbright. This Panel has

already discussed the lack of market forces and the Petitioners' failure to identify any effective market forces.

Q. DO YOU AGREE WITH PETITIONERS CLAIM THAT THEIR COST STRUCTURES MAY BE DIFFERENT THAN VERIZON VA'S?

A. The Petitioners' cost structures may very well differ from those of Verizon VA. However, Petitioners' struggle to characterize Verizon VA as an inefficient [former] monopoly with costs that are artificially inflated cannot be reconciled with their attempt to justify why their costs reasonably should be expected to be higher than those of Verizon VA.

Q. WHY DOES VERIZON VA NEED CONTRACTUAL LANGUAGE TO ENSURE THAT PETITIONERS' RATES ARE JUST AND REASONABLE WHEN VERIZON VA IS FREE TO CHALLENGE PETITIONERS' TARIFF FILINGS AS SUGGESTED BY COX WITNESS COLLINS (PAGE 32)?

A. Although the Panel defers to argument and briefs provided by its counsel on an interpretation of applicable law, the Panel's general understanding is that existing law requires Petitioners' rates to be reasonable, but provides no specific standard by which to judge the reasonableness of Petitioners' rates. All Verizon VA is proposing is just such a reasonable standard – costs. Indeed, the only reason Petitioners could object to this standard is that they desire to charge more than their costs. There is no basis for them to do so, particularly because Verizon VA

has no choice but to obtain some services from Petitioners in order to interconnect with them, as Verizon VA is required by law to do. It is therefore reasonable that the parties' interconnection agreement contain some standard by which to measure the reasonableness of the Petitioners' rates, given the absence of effective market forces to govern the rates Verizon VA must pay Petitioners for transport and power and space.

Verizon VA's proposal is consistent with the solution the Commission reached in the context of its *Seventh Report* in attempting to address similar concerns in the context of CLEC access charges. That is, Verizon VA proposes a mechanism that presumptively ties AT&T's rates to those of Verizon VA for comparable services.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Declaration of Michael A. Daly

I declare under penalty of perjury that I have reviewed the foregoing panel testimony and that those sections as to which I testified are true and correct.

Executed this 17th day of August, 2001.

Michael A. Daly

Declaration of Christos T. Antoniou

I declare under penalty of perjury that I have reviewed the foregoing testimony and confirmed that it is true and correct.

Executed this 17th day of August, 2001.

Christos T. Antoniou

Declaration of Steven J. Pitterle

I declare under penalty of perjury that I have reviewed the foregoing panel testimony and that those sections as to which I testified are true and correct.

Executed this 17th day of August, 2001.

Samuel M. Jones
On behalf of
Steven J. Pitterle

Resale

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(CATEGORIES I AND III THROUGH VII)

RESALE

- JOSEPHINE MAHER

AUGUST 17, 2001

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I. INTRODUCTION AND OVERVIEW

Q. ARE YOU THE SAME JOSEPHINE MAHER THAT OFFERED DIRECT TESTIMONY ON THE NON-MEDIATION RESALE-RELATED ISSUES?

A. Yes, and my education and background were described in my Direct Testimony on non-mediation resale-related issues.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. The purpose of this testimony is to respond to the testimony of AT&T witness Kirchberger with respect to the resale of vertical features (Issue V-10) and, to a limited extent, AT&T witness Pfau with respect to the resale of advanced services (Issue V-9).

II. RESALE OF VERTICAL SERVICES (Issue V-10)

Q. DOES VERIZON VA OFFER VERTICAL FEATURES ON A STAND-ALONE BASIS?

A. No. AT&T witness Kirchberger seems to dispute this fact, claiming that it "is inconsistent with the manner in which Verizon offers these vertical features pursuant to tariffs for telecommunications services." Kirchberger Direct Testimony at 8. Mr. Kirchberger, however, is wrong. Verizon VA does not provide vertical features to its retail customers on a stand-alone basis, that is, unless they also purchase the dial tone line. Indeed, they cannot use vertical features without a dial tone line.

1 **Q. DO YOU AGREE WITH AT&T WITNESS KIRCHBERGER'S ANALYSIS**
2 **OF THIS ISSUE?**
3 A. No. Mr. Kirchberger attempts to confuse the issue by stating that "Verizon's **dial**
4 **tone line service** is available for purchase by retail customers on a stand-alone
5 basis." *Id.* (emphasis added.) That is true, but that is not the issue. The issue is
6 whether **vertical features** are offered, at retail, on a stand-alone basis. They are
7 not, and AT&T is therefore not entitled to the wholesale discount if it desires to
8 purchase vertical services for resale on a stand-alone basis. All Mr. Kirchberger's
9 testimony does is demonstrate that AT&T is entitled to the wholesale discount if
10 it purchases the dial tone line for resale on a stand-alone basis. Of course, in that
11 instance, AT&T can also get the wholesale discount if it wants to resell vertical
12 features. The separate pricing of vertical features in Verizon VA's tariff does
13 not change this underlying condition for the retail sale of vertical features – that
14 they are not offered on a stand-alone basis at retail. As explained in my Direct
15 Testimony on non-mediation resale-related issues, a retail end-user may, but does
16 not have to, purchase vertical features in addition to dial tone. Accordingly, dial
17 tone line service cannot be priced as if it necessarily includes vertical features.
18 The fact that vertical features are listed and priced separately, however, does not
19 mean that they are offered on a stand-alone basis at retail. Moreover, the fact that
20 Verizon VA offers its vertical features to Enhanced Service Providers for resale
21 does not help AT&T. As I explained in my direct testimony, the offering to
22 Enhanced Service Providers is a wholesale offering, not a retail offering.
23

Q. HAVE THERE BEEN ANY RECENT STATE DECISIONS ON THIS ISSUE?

A. Yes. On July 30, 2001, the New York Public Service Commission rejected AT&T's arguments on this issue. *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, N.Y. P.S.C. Case 01-C-0095 (July 30, 2001) at 20. This is consistent with the rejection by the state commission in Massachusetts of AT&T's attempt to get vertical features on a stand-alone basis for resale at the wholesale discount. *See Petition of Sprint Communications Company L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between Sprint and Verizon-Massachusetts,* D.T.E. 00-54, Decision (Dec. 11, 2000) at 27 ("Verizon's refusal to offer vertical features on a stand-alone basis to Sprint at the wholesale discount does not violate the Act or the Commission's *Local Competition* rules.").

III. RESALE OF ADVANCED SERVICES (Issue V-9)

Q. HOW SHOULD THE COMMISSION RECONCILE THE CONFLICT BETWEEN THE MERGER ORDER'S PROHIBITION AGAINST VERIZON VA OFFERING ADVANCED SERVICES AND THE COMMISSION'S STATEMENT THAT IT IS REASONABLE FOR CLECS TO EXPECT ONE AGREEMENT TO COVER ALL OF THE

1 **INTERCONNECTION OBLIGATIONS OF VERIZON VA, INCLUDING**
2 **RESALE OF ADVANCED SERVICES?**
3 A. It would make sense to order Verizon VA to include in an interconnection
4 agreement a commitment to offer that which it is prohibited from offering.
5 Should the Commission wish to allow AT&T the option of a single
6 interconnection agreement with Verizon VA that includes resale of advanced
7 services, the Commission should act quickly on Verizon's pending request to
8 accelerate the automatic sunset of the structural separation requirements imposed
9 by the Merger Order. Granting that request would allow Verizon VA to act on
10 VADI's behalf and to begin the process of re-integrating VADI/VA.[1]
11
12 **Q. IS IT NECESSARY TO INCLUDE THESE ADVANCED SERVICES IN**
13 **THE AGREEMENT BETWEEN VERIZON VA AND AT&T?**
14 A. No. First, at present, AT&T can get what it seeks here -- access to advanced
15 services pursuant to § 251(c)(4) -- from VADI-VA directly. *See* VADI's FCC
16 Tariff No. 1, Section 5, Part III; VADI-VA Virginia SCC Tariff No. 1, 1st
17 Revised Page 30 (Cancels Original Page 30), § 3.1. In the future, should Verizon-
18 VA reintegrate VADI -- the existing language to which AT&T and Verizon-VA
19 have already agreed will ensure that Verizon-VA offer for resale any advanced
20 services it offers in the future at retail to non-telecommunications carriers. That
21 is, pursuant to the following agreed portion of § 12.1.1 of the Verizon/AT&T
22 interconnection agreement, "Verizon will make available to AT&T, in accordance

[1] April 26, 2001 Verizon Correspondence to Dorothy Attwood, Common Carrier Bureau Chief, Federal Communications Commission.

with Section 251(c) (4) of the Act, for resale at wholesale rates (except as provided below), the Telecommunications Services that it provides at retail to its non-carrier customers (collectively, "Resold Services")."

In the context of this interconnection agreement -- as contrasted with a § 271 proceeding -- AT&T's proposed contract language ignores the currently mandated corporate separateness between Verizon VA and VADI-VA and is unnecessary should Verizon VA be relieved from such a requirement. Verizon VA's proposal is consistent with its obligations -- both pursuant to § 251(c)(4) and the *BA/GTE Merger Order* -- and does not prevent AT&T from obtaining advanced services for resale either now or in the future.

Q. IS PFAU CORRECT THAT THE CONNECTICUT 271 ORDER MEANS THAT VERIZON VA AND VADI-VA ARE NOT REALLY SEPARATE?

A. No. The *Connecticut 271 Order* arises not from the arbitration of an interconnection agreement, but from consideration of whether Verizon should be permitted authority to provide in-region interLATA service originating in the state of Connecticut pursuant to § 271 of the Act. This distinction is particularly important when considering the effect of the mandated corporate separation between Verizon VA and VADI-VA pursuant to the *BA/GTE Merger Order*. In the context of the Connecticut § 271 proceeding, the Commission made it clear that the corporate distinction was not important for purposes of evaluating whether Verizon had achieved compliance with certain market-opening

requirements contained in § 271 of the Act before providing in-region, interLATA long distance service. This is not a rejection of the fact that advanced services are "offered by a separate company," as AT&T witness Pfau claims. The fact that the advanced services were offered by VADI rather than Verizon was simply not a material fact to the Commission's analysis of the § 271 application.

Q. WHAT ARE AT&T'S CONCERNS ABOUT THE TERMS AND CONDITIONS UNDER WHICH VADI-VA OFFERS ADVANCED SERVICES AT RESALE?

A. AT&T witness Pfau spends a great deal of time discussing an issue discussed in the *Connecticut 271 Order*. That issue is whether VADI-VA must offer advanced services for resale if Verizon VA is not the voice provider. Because this issue implicates the terms and conditions for line sharing and line splitting, Verizon's Advanced Services Panel addresses AT&T's concerns about the terms and conditions under which VADI-VA offers advanced services at resale over Verizon VA's facilities when Verizon VA is not the underlying voice provider.

Q. SHOULD VERIZON VA HAVE AN OBLIGATION TO PROVIDE AT&T WITH ADVANCED SERVICES FOR RESALE IN THE CIRCUMSTANCE IN WHICH AT&T SERVES THE END-USER THROUGH A UNE-PLATFORM OR UNBUNDLED LOOP?

A. Verizon's Advanced Services Panel addresses AT&T's claim that Verizon VA should have an obligation to provide AT&T with advanced services for resale in

the circumstance in which AT&T serves the end-user through a UNE-Platform or Unbundled loop.

Q DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Declaration of Josephine Maher

I declare under penalty of perjury that I have reviewed the foregoing panel testimony and that those sections as to which I testified are true and correct.

Executed this 17th day of August, 2001.

//ss//Josephine Maher
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