HUNTON & WILLIAMS

DOCKET FILE COPY ORIGINAL

RIVERFRONT PLAZA, EAST TOWER
951 EAST BYRD STREET
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
FAX 804 • 788 • 8218

RICHARD D. GARY
DIRECT DIAL: 804-788-8330
EMAIL: rgary@hunton.com

FILE NO: 46001.000278

August 30, 2001

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AUG 30 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications
Commission
445 12th Street, SW
Room 1-A835
Washington, DC 20554

**Re: Arbitrations Before the Federal Communications Commission**
**CC Docket Nos. 00-218, 00-249, 00-251**

Dear Ms. Salas:

Enclosed for filing in this proceeding are an original and 12 copies of the Renewed Motion of Verizon to Dismiss, or, in the Alternative, to Defer Consideration of Certain Issues. A copy of this letter and the Motion is being served on AT&T, WorldCom and Cox by hand or overnight mail and by e-mail.

Thank you for your consideration in this matter.

Sincerely yours,

Richard D. Gary /JJR

Richard D. Gary

RDG/tms
Enclosures
cc: Dorothy T. Attwood, Chief, Common Carrier Bureau (By Hand)(8 copies)

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951 EAST BYRD STREET
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
FAX 804 • 788 • 8218



with enclosures:
Jodie L. Kelley, counsel for WorldCom (Via Overnight)
Kimberly Wild, counsel for WorldCom (By Hand)
David Levy, counsel for AT&T (By Hand)
Mark A. Keffer, counsel for AT&T (Via Overnight)
J.G. Harrington, counsel for Cox (By Hand)
Carrington F. Philip, counsel for Cox (Via Overnight)
Jeffery Dygert (By Hand)
Katherine Farroba (By Hand)
John Stanley (By Hand)

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of<br>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<br>Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Arbitration | ) | CC Docket No. 00-249 |
| In the Matter of<br>Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc. | ) | CC Docket No. 00-251 |

**RENEWED MOTION OF VERIZON TO DISMISS, OR, IN THE ALTERNATIVE, TO DEFER CONSIDERATION OF CERTAIN ISSUES**

Notwithstanding the Commission's directive to AT&T Communications of Virginia, Inc. (AT&T) and WorldCom, Inc. (WorldCom) to limit the arbitration to "implementation issues" and to strike requests that are "contrary to existing law" (Status Conference Tr. at 13-14), AT&T and WorldCom continue to seek decisions from the Commission that are improper even to consider, much less decide, in the context of this arbitration. AT&T's and WorldCom's

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restatements of several issues[1] after the July 12, 2001 Status Conference did not cure the defects in the original statement of the issues. Verizon thus renews its Motion that these issues should be deferred until existing law is clarified or dismissed from the proceeding and be subject to the "change in laws" provisions of the proposed interconnection agreements with AT&T and WorldCom.

## I. BACKGROUND

Verizon Virginia Inc. (Verizon VA) moved to dismiss or defer certain issues on June 27, 2001. The Motion requested that the Commission dismiss, or at least defer, two categories of issues: (1) those for which the Petitioners asked the Commission to reconsider decisions it had already made in industry-wide rulemaking proceedings or to pre-judge issues that are being actively considered by the Commission in pending rulemakings; and (2) issues being considered before the Virginia State Corporation Commission.[2]

The Commission has considered these arguments and made several rulings. The Commission held that it would apply existing law and not use this arbitration to change the law:

> ... we will not, in fact, reconsider an issue that the commission may have pending before it to reconsider. We will look at the existing state of the law and apply that state of the law. And we won't take this opportunity to do what the commission could do. We will do that as the commission and not in the context of this arbitration to the extent that we change the law.

Status Conference Tr. at 13.

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[1] Issue III.6 UNE Combinations, Issue III-7.C Service Conversion to UNEs--Termination Liability, Issues III-10 (B-7, B-8 and B-10), Line Sharing and Line Splitting, Issue IV-28 Collocation of Advanced Services Equipment, and Issue V-6 Next Generation Digital Loop Carrier.

[2] The issues being considered by the State Corporation Commission include performance metrics. The Petitioners and the Commission have agreed to hold those issues in abeyance until the completion of this proceeding. Status Conference Tr. at 73-77.

. . .

> Where other issues you've raised have directly conflicted with what I would say to be established commission law... we're not going to revisit that....

Status Conference Tr. at 49. Specifically with regard to Issue III-6, UNE combinations, the Commission held that "this would not be a place for us to change the direction of the 8th Circuit.... There is language [in the proposed interconnection agreement] that appears, as we read it, that would ask us to do what is contrary to what the 8th Circuit has asked." Status Conference Tr. at 26.

The Commission allowed the Petitioners to cure the inappropriate statements of the issues:

> ... the parties agreed that, because they are currently phrased very broadly, several of the issues that Verizon addressed in its June 27 motion to dismiss were not appropriate for arbitration. They further agreed, however, that subsidiary implementation issues growing out of each of these broader issues remained the appropriate subject of arbitration. The parties have undertaken to resolve these issues. To the extent they are unable to reach agreement on these issues, they will, by July 19, 2001, provide the Commission with agreed statements of the issues that must still be arbitrated.

Letter to the Parties from Jeffrey H. Dygert, Assistant Chief, Common Carrier Bureau, FCC, at 1 (July 11, 2001). Several issues[3] were not restated in a way that presents an issue that should be considered in this arbitration and the restatements continue to be at war with the Commission's holdings during the Status Conference.

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[3] See fn. 1.

## II. ISSUES TO BE DEFERRED OR DISMISSED

### A. UNE Combinations (Issue III-6)

Issue III-6 should be dismissed because AT&T's and WorldCom's requests are not only contrary to existing law, they also contradict the Eighth Circuit's holdings and run afoul of the Commission's specific directives in the Status Conference. AT&T initially phrased Issue III-6 as "What types of UNE combinations must Verizon provide to AT&T and under what rates, terms and conditions must provide them?" AT&T has rephrased this to

> Under the FCC's Rules as currently in effect, must Verizon provide to AT&T new combinations of UNEs that Verizon ordinarily combines for itself, and under what rates, terms and conditions must it provide them?"[4]

WorldCom's restatement is equally defective and includes the following request:

> Verizon shall provide Combinations of Network Elements ordinarily combined in its network, whether or not those Network Elements are currently combined in Verizon's network.[5]

The revised statements of Issue III-6 are defective in that they continue to urge the Commission to require Verizon to provide "new" combinations of UNEs that are "ordinarily" combined rather than, as the law requires, combinations that Verizon "currently combines." Rule 315(b). Indeed, the Direct Testimony of AT&T Witness Pfau continues to attack the Eighth Circuit's decision to vacate Rules 315(c)-(f), contending that the Court made a "wholly artificial distinction" between old and new combinations and created "meaningless differences" between them. AT&T Witness Pfau Direct Testimony at 2-3. Contrary to AT&T's position, there is nothing "artificial" or "meaningless" about the Eighth Circuit's decision.

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[4] See letter to Magalie R. Salas, Esq., Secretary, Federal Communications Commission (FCC) from Mark Keffer, Esq., AT&T at 2 (July 19, 2001).

[5] See Letter to Magalie R. Salas, Esq., Secretary, FCC from Mark Schneider, Esq., WorldCom, at 5 (July 19, 2001).

Section 251(c)(3) of the Telecommunications Act of 1996 (the Act) requires Verizon VA to provide combinations of UNEs "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."[6] Former Commission Rules 315(c)-(f) imposed an obligation on Verizon VA to provide new combinations of UNEs upon request. These Rules were vacated by the Eighth Circuit. *Iowa Utils. Bd v. Fed. Communications Comm'n*, 120 F.3d 753, 813 (8th Cir. 1997)("*Iowa Utils. I*"). The Supreme Court affirmed in part, reversed in part, and remanded. *Iowa Utils. I. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). The Supreme Court did not, however, address the part of the *Iowa Utils. I* vacating the additional combination of network elements rules, 47 C.F.R. §§ 51.315(c)-(f). On remand, the Eighth Circuit reaffirmed its prior holding that ILECs are not required to combine UNEs in any manner requested by CLECs. *Iowa Utils. Bd. v. Fed. Communications Comm'n*, 219 F.3d 744, 759 (8th Cir. 2000)("*Iowa Utils. II*"). The Eighth Circuit stated precisely that the Act does not require ILECs to provide new combinations:

> Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carrier who shall "combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner" as required by the Commission's rule. *See* 47 C.F.R. § 51.315(c). We reiterate what we said in our prior opinion: "[t]he Act does not require the incumbent LECs to do <u>all</u> the work." *Iowa Utils. Bd.*, 120 F.3d at 813. Under the first prong of *Chevron*, subsections (c)-(f) violate the plain language of the

[6] As to the current legal requirement that Verizon VA combine UNEs, there is no dispute that Verizon VA complies with the Commission's Rule 315 as now in effect by providing UNEs to CLECs so that they may combine them for service to their customers, as well as by not separating combinations of UNEs already combined. *See* 47 C.F.R. § 51.315(a) and (b).

> statute. We are convinced that Rules 51.315(c)-(f) must remain vacated.

*Iowa Utils II*, 219 F.3d at 759.[7]

The Supreme Court has granted certiorari to review, among other issues, the Eighth Circuit's invalidation of Rules 315(c)-(f). *See Fed. Communications Comm'n v. Iowa Utils. Bd.*, 121 S.Ct. 878, 148 L.Ed.2d 788 (U.S. Jan. 22, 2001). Specifically, the Court has granted certiorari to consider "[w]hether 47 U.S.C. § 251(c)(3) prohibits regulators from requiring that incumbent local telephone companies combine certain previously uncombined network elements when a new entrant requests the combination and agrees to compensate the incumbent for performing that task." *Id.* Because the Supreme Court will definitively determine the validity of Rules 315(c)-(f), the Commission has recognized multiple times that it must await that decision. AT&T's request for the Commission to ignore the Eighth Circuit's opinion contrasts with the Commission's announced decision to "wait and see" how this dispute is decided before requiring ILECs to provide new combinations to CLECs.

Even before the Eighth Circuit re-affirmed its holding that Rules 315(c)-(f) violate the "plain language" of the Act (*Iowa Utils. II*, 219 F.3d at 759), the Commission stated in the *UNE Remand Order* that "because the validity of Rules 315(c)-(f) is currently pending before the Eighth Circuit, we decline to address these arguments at this time" and specifically declined "to reinstate Rules 53.315(c)-(f)."[8] Moreover, in that same proceeding, AT&T and others urged the

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[7] This is the logical corollary of the Eight Circuit's decision that the "superior quality rules" (47 C.F.R. §§ 51.305(a)(4) and 51.311(c)) "violate the plain language of the Act." *Iowa Utils. II*, 219 F.3d at 758. As the Eight Circuit has explained, the Act "requires unbundled access only to an incumbent's *existing* network – not to a yet unbuilt superior one." *Iowa Utils.*, 120 F. 3d at 812-13.

[8] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, at ¶ 481 (rel. November 5, 1999)(*UNE Remand Order*).

Commission to do precisely what they suggest the arbitrator should do here -- require incumbent LECs both to "combine network elements that are not currently combined" and to combine elements that are "ordinarily combined" in their networks. *UNE Remand Order* ¶¶ 476, 479. The Commission expressly refused to do so, explaining that "because this matter is currently pending before the Eighth Circuit, we decline to address these arguments at this time." *Id.*¶ 479. And the Commission went on to further make clear that "we *neither* define the EEL as a separate unbundled network element *nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined'*." *Id.* ¶ 480 (emphasis added).[9] Consequently, the Commission expressly declined to adopt the very requirement that the petitioners ask it to adopt here.

During the Status Conference in this case, the Commission made clear that it would not reach a different decision here. For that reason, the Commission warned AT&T several times to amend its proposed language so that it is "not challenging the 8th Circuit." Status Conference Tr. at 30. In response to this very issue, the Commission stated, "Again, this would not be a place for us to change the decision of the 8th Circuit. We're seeking to do that in the Supreme Court. There is language that appears, as we read it, that would ask us to do what is contrary to what the 8th Circuit has asked." *Id.* at 26. In continuing to press for "new combinations" or combinations of elements that are "ordinarily combined," AT&T blatantly ignores both the Commission's admonition that it will only "look at the existing state of the law and apply that state of the law," and the Commission's specific admonition to stand down on that claim until the Supreme Court has rendered its decision.

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[9] AT&T and WorldCom themselves have conceded that the Commission's existing rule (51.315(b)) is limited to "requir[ing] equal access to the [incumbent's] *existing* network," and that "it requires *no additional work* by the [incumbent]." Opposition of Intervenors in Support of FCC to petitions for Rehearing at 10 (8th Cir. filed Oct. 1, 1997).

AT&T Witness Pfau also argues that the Commission ought to act like the state commission and establish obligations "above and beyond" the current law, "in order to foster competition." *Id.* at 3-4. The Commission also rejected this argument in the Status Conference. The Commission told AT&T and WorldCom that "this isn't going to be the forum for the Commission to reconsider existing law. We will look at the existing state of the law and apply that state of law. And we won't take this opportunity to do what the commission could do. We will do that as the commission and not in the context of this arbitration to the extent that we change the law." Status Conference Tr. at 13. Indeed, Arbitrator Attwood stated directly as to UNE combinations, "... we would be disinclined to act beyond the authority of the FCC in acting like a state..." *Id.* at 36.

Likewise, WorldCom asks the Commission to require Verizon VA to combine UNEs that are not currently combined in Verizon VA's network. WorldCom argues that Rule 315(a) requires Verizon VA to provide WorldCom combinations of elements that may not be combined today to serve a particular customer but that are "ordinarily combined" in Verizon's network. Goldfarb, Buzacott and Lathrop, Direct Testimony Panel (GBL Direct Testimony Panel) at 7-8. WorldCom apparently claims that the Commission's vacated Rules 315(c)-(f) must have been superfluous because their content--the requirement that Verizon VA combine for CLECs uncombined UNEs--already existed in Rule 315(a). Rule 315(a) does not require new combinations. In fact, Rule 315(a) requires the "requesting carrier to combine such network elements ...," not Verizon VA. WorldCom's legal argument is baseless.

The Commission should dismiss this issue from the arbitration. To the extent the Eighth Circuit's decision is modified by the Supreme Court, the proposed interconnection agreements with both AT&T and WorldCom would give effect to any changes in law.

### B. Conversion of Services to UNEs--Termination Liability (Issue III-7.C)

Issues III-7.A and B are still actively being considered in the mediation process. III-7.C. has not been modified by either AT&T or WorldCom and continues to be stated as follows by AT&T (and not specifically set out by WorldCom):

> Sub issue III.7.C. Should AT&T be bound by termination liability provisions in Verizon's contracts or tariffs if it converts a service purchase pursuant to such a contract or tariff to UNEs or UNE combinations?

Petition of AT&T at 109.

The Commission has explicitly found that any service conversion would require the payment of termination liabilities. Verizon VA must allow the conversions so long as the CLEC complies with the local use provisions of the *Supplemental Clarification Order* ¶ 22. In the event of such a conversion, however, the Commission held that the termination liability provisions of the existing contract would apply:

> We note, however, that any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts.

*UNE Remand Order* fn. 985. Given that the Commission has held that it will apply the "existing state of the law" in this arbitration, this issue of termination liability for service conversions has been decided and should be dismissed.

### C. Line Sharing and Line Splitting (Issue III-10)

As restated by AT&T, three sub-issues under III-10 should be dismissed.

> III.10.B.7. If Verizon declines to do so voluntarily, must Verizon, at AT&T's request, deploy a splitter on a line-at-a-time basis as an additional functionality of the loop within 45 days of the Commission's order in a proceeding of general application?

The Commission already has found that under its current rules, ILECs are not required to own splitters, and splitters are not part of the features and functionalities of a loop. In the *Line*

*Sharing Order*, the Commission found that incumbents may ***choose*** to own and provide splitters to CLECs, but they are under no obligation to do so.[10] In its *SBC Texas 271 Order,* the Commission squarely rejected AT&T's argument that splitters are part of the features and functionalities of the loop that an ILEC must provide:

> We reject AT&T's argument that [SBC] has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and ***incumbent LECs therefore have no current obligation to make the splitter available.*** As we stated in the *UNE Remand Order*, "with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity." We separately determined that the DSLAM is a component of the packet switching unbundled network element. We observed that 'DSLAM equipment sometimes includes a splitter' and that, "[i]f not, a separate splitter device separates voice and data traffic." We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element. That distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element. . . .[11]

The FCC concluded:

> The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters. Indeed, the only discussion of the splitter appeared in a discussion of a network element (the packet switching element) that we decided not to unbundle, . . . .[12]

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[10] *Line Sharing Order* at ¶ 76 ("incumbent LECs may maintain control over the loop and splitter equipment").

[11] *SBC Texas 271 Order* at ¶ 327 (emphasis added).

[12] *Id.* at ¶ 328.

Thus, under the Commission's current rules, Verizon VA has no obligation to provide splitters to CLECs.[13] The Commission is re-examining its current rules to determine whether or not to include splitters within the definition of the local loop. Should the Commission change its current rules, Verizon VA's proposed interconnection agreement includes a change of law provision that would govern implementation of any new obligations.

The Commission should also dismiss the following sub-issues:

III.10.B.8. Must Verizon perform cross-connection wiring at the direction of AT&T (or its authorized agent), including CLEC-to-CLEC cross-connections, regardless of who deploys a splitter or where it is deployed in a line sharing or line splitting arrangement?

III.10.B.10. Must Verizon allow AT&T to collocate packet switches in collocation space?

The Commission just released its *Advanced Services Remand Order* in Docket 98-147 on August 8, 2001.[14] While Verizon VA is in the process of reviewing this Order to determine what effect, if any, it will have on Verizon VA's proposed interconnection agreement language, it appears as if the Order resolves these issues by revising the Commission's rules to clarify an ILEC's obligations for CLEC-to-CLEC cross connections and to identify what equipment must be

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[13] In the *Line Sharing Reconsideration Order,* the Commission noted that it expects to further address issues closely associated with line splitting—including splitter ownership—in upcoming proceedings where the record better reflects these complex issues. For example, in the *Fifth Further NPRM* (also known as the New Networks proceeding), the Commission is examining the nature and type of electronics that are or may be attached to a loop, and whether or not attached equipment that is used for both voice and data services (*e.g.*, the splitter) should be included in the definition of the loop. The Commission found that it has a more extensive record on these issues elsewhere and, as a result, intends to discuss them further in more recently initiated rulemaking proceedings. *Line Sharing Reconsideration Order* at ¶ 25.

[14] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, FCC 01-204, Fourth Report and Order (rel. Aug. 8, 2001) (*Advanced Services Remand Order*).

collocated. Section 13.1 of Verizon's proposed interconnection agreement to AT&T adequately reflects the Commission's rules, as well as any changes that may occur in the future.[15]

### D. Under What Terms And Conditions Must Verizon Provide AT&T With Access To Local Loops When Verizon Deploys Next Generation Digital Loop Carrier (NGDLC) Loop Architecture (Issue V-6)

AT&T's definition of NGDLC loops essentially seeks to overturn the Commission's rules defining the loop to exclude electronics, such as DSLAMs, used to provide advanced services. The Commission is re-examining its current loop definition in another proceeding, but its rules clearly state that loops do not include such electronics. The Commission defines the loop network element as:

> a transmission facility between a distribution frame (or its equivalent) in an [ILEC] central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the [ILEC]. The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber, attached electronics ***(except those electronics used for the provision of advanced services, such as [DSLAMs])***, and line conditioning. The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.

47 C.F.R. § 51.319(a)(1).

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[15] Section 13.1 of Verizon VA's proposed interconnection agreement to AT&T:

> To the extent required by Applicable Law, Verizon shall provide Collocation for the purpose of facilitating AT&T's Interconnection with facilities or services of Verizon or access to unbundled Network Elements of Verizon, except as otherwise mutually agreed to in writing by the Parties. Such Collocation shall be provided pursuant to Verizon's applicable federal and state Tariffs as amended from time to time.

Verizon VA's proposed interconnection agreement with WorldCom includes a similar provision at section 1 of the Collocation Attachment. WorldCom's Issue IV-28 likewise addresses the collocation of packet switching equipment. Verizon VA and WorldCom are currently negotiating language to reflect the *Advanced Services Remand Order* and believe they can reach agreement on this issue. Issue IV-28, therefore, also should be dismissed.

A remote terminal is an ILEC premise that is located between a distribution frame in an ILEC central office and the demarcation point at an end-user customer's premises. It therefore is placed in the middle of the loop, as the loop network element has been defined by the Commission. *See* 47 C.F.R. § 51.319(a)(1). The remote terminal may house various types of ILEC facilities, including packet switching capability. An ILEC, however, is not required to unbundle the packet switching capability present in a remote terminal unless the Commission's four-part test for packet switching capability unbundling described above, is met. *See* 47 C.F.R. § 51.319(c)(5). Due to the complexity surrounding this issue, the Commission has sought comment on whether it is necessary to modify the definition of the loop and subloop network elements.[16]

Second, Verizon VA does not have the NGDLC architecture that AT&T seeks to unbundle in place anywhere in its network (i.e. DLC with packet switching capability and optical concentration device (OCD) and line card equipment). Moreover, Verizon VA does not have the authority to own the OCD and line card equipment necessary to deploy such an architecture as a result of the merger condition that prohibits Verizon ILECs from owning advanced services equipment.

Even if Verizon did have such an architecture in place, it would not be required to unbundle it except under very limited circumstances:

> In addition to the network interface device, two network elements are involved in an architecture with a "hybrid cooper-fiber

[16] *Next Generation Networks*, Further Notice of Proposed Rulemaking, 15 FCC Rcd 178506, 17857-60, paras. 119-128. See also *Line Sharing Reconsideration Order*, Further Notice of Proposed Rulemaking, 16 FCC Rcd 2101, 2129-30, paras. 62-64. *See also* August 3, 2001 Correspondence from John A. Rogovin, Deputy General Counsel, Federal Communications Commission to The Honorable W.J. Tauzin, (emphasis added) attached as Exhibit 1 (Rogovin Correspondence).

> transmission system that utilizes packet-switching technology and includes a copper subloop, a fiber subloop," and a DSLAM. First, this architecture involves the loop network element, which ILECs are obligated to unbundle under section 251(c)(3). *See* 47 C.F.R. § 51.319(a)(1). Second, this architecture involves the packet switching capability network element (including DSLAM functionality), which ILECs are not required to unbundle under section 251(c)(3) unless all four of the following conditions are present: "(i) [the ILEC] has deployed digital loop carrier systems ...; (ii) [t]here are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer; (iii) [the ILEC] has not permitted a requesting carrier to deploy a [DSLAM] ... and; (iv) [the ILEC] has deployed packet switching capability for its own use." *See* 47 C.F.R. § 51.319(c)(5). As a result, an ILEC is required to unbundle the loop network element (including the subloop network element, if requested) and, in limited circumstances, the packet switching capability network element. In the event that the four-part test for packet switching is not met, the ILEC is obligated to unbundle the loop network element but not any packet switching capability that may be present in the loop.[17]

The Commission's *Line Sharing Reconsideration Order* did not change this analysis:

> As a technical matter, the high frequency portion of the loop only exists on a cooper loop. As explained below, however, the Commission has determined that an ILEC is required to provide unbundled access to the entire loop, including both cooper and fiber facilities, for line sharing purposes. There is a tension between this requirement, however, and the Commission's packet switching unbundling rules, which the Commission has sought to clarify in a recent Further Notice of Proposed Rulemaking.
>
> In the *Line Sharing Order*, the Commission specifically required that ILECs unbundle the high frequency portion of the loop, which the Commission defined as "the frequency range above the voiceband on a cooper loop facility that is being used to carry analog circuit-switched voiceband and transmissions." 47 C.F.R. § 51.319(b). In the *Line Sharing Reconsideration Order*, however, the Commission acknowledged that "although the high frequency portion of the loop network element is limited by technology, *i.e.*, is only available on a cooper facility, *access* to that network element is not limited to the cooper facility itself." 16 FCC Rcd at 2107, para. 10. Thus, the Commission clarified that "the

[17] Rogovin Correspondence at 1.

> requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (*e.g.*, where the loop is served by a remote terminal as part of a digital loop carrier system.)" *Id.* at 2106, para. 10. In doing so, the Commission stated that the use of the word "cooper" in its definition of the high frequency portion of the loop "was not intended to limit an [ILEC's] obligation to provide [CLECs] with *access to the fiber portion* of a loop for the provision of line shared xDSL services." *Id.* (emphasis added).
>
> Accordingly, pursuant to the Commission's rules, ***a CLEC seeking to line share when there is fiber deployed in the loop can access the high frequency portion of a cooper loop by collocating a DSLAM at the ILEC's remote terminal and then leasing access to dark fiber or the subloop network element for the transmission of data traffic from the remote terminal to the central office.***[18] Some ILECs, however, take the position that the fiber subloop carrying data traffic between the remote terminal and central office is part of the ILEC's packet switching network and, therefore, not required to be unbundled unless the Commission's four-part test for packet switching capability unbundling is met. The Commission clarified in a subsequently released order that the ***Line Sharing Reconsideration Order in no way modified the Commission's four-part test for packet switching capability unbundling***. 16 FCC Rcd at 4628, paras. 1-2.
>
> Finally, in light of the technical complexity surrounding this issue, ***the Commission expressly sought comment on whether its existing packet switching rules are adequate to enable CLECs to line share when there is fiber deployed in the loop*** in the Further Notice of Proposed Rulemaking that accompanied the *Line Sharing Reconsideration Order*. *Id.* at 2127-30, paras. 55-64.[19]

As Mr. Rogovin's letter makes clear, the Commission is addressing the legal, operational and technical aspects of access to NGDLC loops and, in particular, access to the high frequency portion of a loop in another proceeding. That rulemaking is the appropriate place to determine what obligations--if any--an ILEC should have with regards to such loops. In the meantime,

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[18] This is precisely what Verizon VA's proposed interconnection agreement to AT&T allows at §§ 11.2.14.6.14, 11.2.14.7, and 13.6.

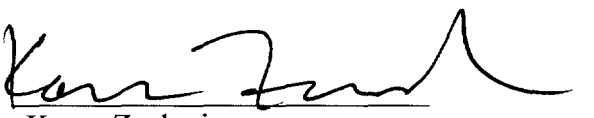
[19] Rogovin Correspondence at 2-3 (emphasis and footnote added)

Verizon VA's proposed interconnection incorporates the method identified by the Commission for providing access to the HFPL on a fiber-fed loop.

## CONCLUSION

The Commission should defer or dismiss these issues--III-6, III-7.C, III-10-B-7, III-10-B-8, III-10-B-10, IV-28 and V-6--for the reasons stated in the initial Motion: they are already decided by Commission or are actively pending in a current rulemaking. Given the Commission's rulings that it will not go beyond existing law in this proceeding, these issues, as they continue to be framed by AT&T and/or WorldCom, are not appropriate for resolution in this arbitration.

Respectfully submitted,



Karen Zacharia
David K. Hall
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

*Of Counsel*:
Michael E. Glover

Lydia R. Pulley
600 E. Main Street, 11th Floor
Richmond, VA 23233
(804) 772-1547

Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
(804) 788-8200

Catherine Kane Ronis
Samir C. Jain
Wilmer, Cutler & Pickering, LLP
2445 M Street, NW
Washington, DC 20037-1420

Attorneys for Verizon

Dated: August 31, 2001

# Exhibit 1

Exhibit 1

Federal Communications Commission
Washington, D.C. 20554

August 3, 2001

The Honorable W.J. ("Billy") Tauzin
Chairman
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Tauzin:

This letter transmits further elaboration on two questions you posed in a letter dated July 18, 2001. I understand that your staff spoke with Ms. Michelle Carey, Chief of the Common Carrier Bureau's Policy Division, and as a result of that conversation, we are providing this subsequent elaboration to our prior response to questions numbered 2 and 4.

We hope that you find this information useful. If you have any further questions, please do not hesitate to call me at 202-418-1700.

Sincerely,

John A. Rogovin
Deputy General Counsel

attachment

cc: The Honorable John D. Dingell
The Honorable Fred Upton
The Honorable Edward J. Markey

**1. Does the FCC currently require an ILEC to make all of its network elements deployed between a central office and a customer's premises available on an unbundled basis where an ILEC has installed a hybrid copper-fiber transmission system that utilizes packet-switching technology and includes a copper subloop, a fiber subloop and a digital subscriber line access multiplexer (DSLAM)?**

Only in limited circumstances. In addition to the network interface device, two network elements are involved in an architecture with a "hybrid copper-fiber transmission system that utilizes packet-switching technology and includes a copper subloop, a fiber subloop," and a DSLAM. First, this architecture involves the loop network element, which ILECs are obligated to unbundle under section 251(c)(3). *See* 47 C.F.R. § 51.319(a)(1). Second, this architecture involves the packet switching capability network element (including DSLAM functionality), which ILECs are not required to unbundle under section 251(c)(3) unless all four of the following conditions are present: "(i) [the ILEC] has deployed digital loop carrier systems . . . ; (ii) [t]here are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer; (iii) [the ILEC] has not permitted a requesting carrier to deploy a [DSLAM] . . . and; (iv) [the ILEC] has deployed packet switching capability for its own use." *See* 47 C.F.R. § 51.319(c)(5). As a result, an ILEC is required to unbundle the loop network element (including the subloop network element, if requested) and, in limited circumstances, the packet switching capability network element. In the event that the four-part test for packet switching is not met, the ILEC is obligated to unbundle the loop network element but not any packet switching capability that may be present in the loop. Furthermore, the Commission's definition of the loop (and subloop) is technology neutral, as described below, and it therefore includes fiber as well as copper loops and subloops.

**2. Please clarify the FCC's definition of a loop. In particular, does the definition of a loop include a DSLAM? Does the definition of a loop include a remote terminal?**

No. As explained below, the Commission's definition of a loop does not include a DSLAM or remote terminal.

The Commission defines the loop network element as "a transmission facility between a distribution frame (or its equivalent) in an [ILEC] central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the [ILEC]. The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as [DSLAMs]), and line conditioning. The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops." 47 C.F.R. § 51.319(a)(1). The definition of the loop, therefore, is technology neutral, and it includes both fiber and copper facilities. Note also that this definition expressly excludes electronics used for the provision of advanced services, including DSLAMs.

A remote terminal is an ILEC premise that is located between a distribution frame in an ILEC central office and the demarcation point at an end-user customer's premises. It therefore is placed in the middle of the loop, as the loop network element has been defined by the Commission. *See* 47 C.F.R. § 51.319(a)(1). The remote terminal may house various types of ILEC facilities, including packet switching capability. An ILEC, however, is not required to

unbundle the packet switching capability present in a remote terminal unless the Commission's four-part test for packet switching capability unbundling, described above, is met. *See* 47 C.F.R. § 51.319(c)(5).

Due to the complexity surrounding this issue, the Commission has sought comment on whether it is necessary to modify the definition of the loop and subloop network elements. *Next Generation Networks*, Further Notice of Proposed Rulemaking, 15 FCC Rcd 178506, 17857-60, paras. 119-128. *See also Line Sharing Reconsideration Order*, Further Notice of Proposed Rulemaking, 16 FCC Rcd 2101, 2129-30, paras. 62-64.

**3. Is a remote terminal a network element that has to be made available by an ILEC on an unbundled basis to CLECs in accordance with section 251(c)(3) of the Act?**

No. The Commission's list of unbundled network elements that must be made available pursuant to section 251(c)(3) is as follows: the loop and subloop; the network interface device; switching capability; interoffice transmission facilities; signaling networks and call-related databases; operator services and directory assistance; operations support systems; and the high frequency portion of the loop. *See* 47 C.F.R. § 51.319. A remote terminal is an ILEC premise that is located between a distribution frame in an ILEC central office and the demarcation point at an end-user customer's premises. It is therefore placed in the middle of the loop, as the loop network element has been defined by the Commission. *See* 47 C.F.R. § 51.319(a)(1). The remote terminal may house various types of ILEC facilities that are required to be unbundled. Nonetheless, the remote terminal is not considered an unbundled network element under the Commission's rules.

**4. Does the FCC currently require an ILEC to provide line sharing on the fiber portion of a local loop facility that utilizes packet switching?**

As a technical matter, the high frequency portion of the loop only exists on a copper loop. As explained below, however, the Commission has determined that, as a legal matter, an ILEC is required to provide unbundled access to the entire loop, including any fiber facilities that may be used to transmit data traffic from the remote terminal to the central office. There is a tension between this requirement, however, and the Commission's packet switching unbundling rules, which the Commission has sought to clarify in a recent Further Notice of Proposed Rulemaking.

In the *Line Sharing Order*, the Commission specifically required that ILECs unbundle the high frequency portion of the loop, which the Commission defined as "the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions." 47 C.F.R. § 51.319(h). In the *Line Sharing Reconsideration Order*, however, the Commission acknowledged that "although the high frequency portion of the loop network element is limited by technology, *i.e.*, is only available on a copper facility, *access* to that network element is not limited to the copper facility itself." 16 FCC Rcd at 2107, para. 10. Thus, the Commission clarified that "the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (*e.g.*, where the loop is served by a remote terminal as part of a digital loop carrier system.)" *Id.* at 2106, para. 10. In doing so, the Commission stated that the use of the word "copper" in its definition of the high frequency portion of the loop "was not intended to limit an [ILEC's] obligation to provide [CLECs] with

*access to the fiber portion* of a loop for the provision of line shared xDSL services." *Id.* (emphasis added).

Accordingly, pursuant to the Commission's rules, a CLEC seeking to line share when there is fiber deployed in the loop can access the high frequency portion of a copper loop by collocating a DSLAM at the ILEC's remote terminal and then leasing access to dark fiber or the subloop network element for the transmission of data traffic from the remote terminal to the central office. Some ILECs, however, take the position that the fiber subloop carrying data traffic between the remote terminal and central office is part of the ILEC's packet switching network and, therefore, not required to be unbundled unless the Commission's four-part test for packet switching capability unbundling is met. The Commission clarified in a subsequently released order that the *Line Sharing Reconsideration Order* in no way modified the Commission's four-part test for packet switching capability unbundling. 16 FCC Rcd at 4628, paras. 1-2.

Finally, in light of the technical complexity surrounding this issue, the Commission expressly sought comment on whether its existing packet switching rules are adequate to enable CLECs to line share when there is fiber deployed in the loop in the Further Notice of Proposed Rulemaking that accompanied the *Line Sharing Reconsideration Order*. *Id.* at 2127-30, paras. 55-64.

**5. Must an ILEC currently provide unbundled access to a fiber subloop that the ILEC is using to carry data traffic between an ILEC's DSLAM in its remote terminal and the ILEC's central office?**

An ILEC is required to unbundle the subloop network element, which the Commission has defined as "any portion of the loop that is technically feasible to access at terminals in the [ILEC's] outside plant. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface." 47 C.F.R. § 51.319(a)(2). An ILEC, however, is not required to unbundle packet switching capability that may be associated with a subloop unless the Commission's four-part test for packet switching capability unbundling, described above, is met. 47 C.F.R. § 51.319(c)(5).

As described in the line sharing context above, some ILECs take the position that the fiber subloop carrying data traffic between the remote terminal and central office is part of the ILEC's packet switching network and, therefore, not required to be unbundled unless the Commission's four-part test for packet switching unbundling is met. Some CLECs contend that, in this situation, the Commission's four-part test is met and that without access to the full loop network element, they lack an economic means to provide transmission from the remote terminal to the central office. This and other next generation network architecture issues are currently pending before the Commission in several rulemakings. *See Line Sharing Reconsideration Order*, Further Notice of Proposed Rulemaking, 16 FCC Rcd at 2127-30, paras. 55-64; *Next Generation Networks*, Further Notice of Proposed Rulemaking, 15 FCC Rcd at 17856-62, paras. 118-133.

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