

LAW OFFICES  
**JENNER & BLOCK, LLC**  
601 THIRTEENTH STREET, N.W.  
SUITE 1200 SOUTH  
WASHINGTON, D.C. 20005  
FIRM: (202) 639-6000  
FAX: (202) 639-6066

DOCKET FILE COPY ORIGINAL

JODIE L. KELLEY

DIRECT DIAL: 202-639-6058  
INTERNET ADDRESS: jkelley@jenner.com

September 5, 2001

RECEIVED

SEP - 5 2001

Magalie R. Salas, Esq.  
Federal Communications Commission  
Office of the Secretary  
The Portals  
445 12th St. S.W.  
Room TWB 204  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket Nos. 00-218, 00-249, and 00-251/

Dear Ms. Salas:

Enclosed for filing in the above captioned docket, please find an original and three copies of the Rebuttal Testimony of WorldCom witnesses. An additional eight copies have been provided in a separate envelope to be delivered to the arbitrator. Finally, an extra copy is enclosed to be file-stamped and returned.

If you have any questions, please do not hesitate to call me at 202-639-6058. Thank you very much for your assistance with this matter.

Very truly yours,

  
Jodie L. Kelley

013

CHICAGO OFFICE  
ONE IBM PLAZA  
CHICAGO, IL 60611  
FIRM: (312) 222-9350  
FAX: (312) 527-0484

DALLAS OFFICE  
3150 BANK ONE CENTER  
1717 MAIN STREET  
DALLAS, TX 75201  
FIRM: (214) 746-5700  
FAX: (214) 746-5757

LAKE FOREST OFFICE  
ONE WESTMINSTER PLACE  
LAKE FOREST, IL 60045  
FIRM: (847) 295-9200  
FAX: (847) 295-7810

RECEIVED

SEP - 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Rebuttal Testimony of WorldCom witnesses were delivered this 5th day of September, 2001, by federal express and regular mail to:

Karen Zacharia  
David Hall  
Verizon-Virginia, Inc.  
1320 North Courthouse Road, 8th Floor  
Arlington, VA 22201  
*\* By Federal Express*

Richard D. Gary  
Kelly L. Faglioni  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074  
*\* By Federal Express*

Catherine Kane Ronis  
Wilmer, Cutler & Pickering, LLP  
2445 M Street, NW  
Washington, DC 20037-1420  
*\*By Federal Express*

Lydia Pulley  
600 East Main Street  
11th Floor  
Richmond, VA 23219  
*\* By Federal Express*

Mark Keffer  
AT&T Corporation  
3033 Chain Bridge Road  
Oakton, Virginia 22185  
*\* By Regular Mail*

J.G. Harrington  
Dow, Lohnes & Albertson  
1200 New Hampshire Ave., N.W., Suite 800  
Washington, D.C. 20036  
*\* By Regular Mail*

By:   
Jodie L. Kelley

RECEIVED

SEP - 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

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

CC Docket No. 00-218

REBUTTAL TESTIMONY OF JOHN TROFIMUK, MATT HARTHUN  
AND LISA ROSCOE

(Issues III-18, IV-85, IV-88, IV-95, IV-97, IV-101, IV-106, IV-113, IV-121  
VI-1(N), VI-1(O), VI-1(R), V-11)

September 5, 2001

## TABLE OF CONTENTS

Introduction.....	1
Background.....	2
Issues III-18 and IV-85.....	6
Issue IV-106 and V-11.....	14
Issue IV-88.....	20
Issue IV-95.....	21
Issue IV-97.....	23
Issue IV-101.....	24
Issue IV-113.....	27
Issue IV-121.....	29
Issue V-15.....	31
Issue VI-1(N).....	31
Issue VI-1(O).....	33
Issue VI-1(R).....	36
Conclusion.....	39

1 **INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. My name is Matthew Harthun. I am Commercial Counsel in the Network and  
4 Facilities Legal group of WorldCom. My business address is 8521 Leesburg Pike, 6<sup>th</sup>  
5 Floor, Vienna, Virginia 22182.

6 A. My name is John A. Trofimuk. I am Regional Executive for the Central Region  
7 Telco and Line Cost Management group of WorldCom. My address is 205 North  
8 Michigan Avenue, 11<sup>th</sup> Floor, Chicago, Illinois 60601.

9 A. My name is Lisa Roscoe. I am Associate Legal Counsel in the Law and Public  
10 Policy group of WorldCom. My business address is 701 S. 12<sup>th</sup> Street, Arlington,  
11 Virginia 22202.

12

13 **Q. Are you the same Matthew Harthun, John A. Trofimuk, and Lisa Roscoe**  
14 **who submitted direct testimony on August 17, 2001?**

15 A. Yes we are.

16

17 **Q. What is the purpose of your testimony?**

18 A. The purpose of our testimony here is to respond to the points raised in the Direct  
19 Testimony of Verizon's General Terms and Conditions panel. We intend to clarify and  
20 emphasize WorldCom's position and rationale. We will separate the topics with  
21 headings that identify the issue to which the subsequent portion of my testimony relates.

1 **BACKGROUND**

2 **Q. Have any of the issues (both to which you are testifying and to which other**  
3 **WorldCom personnel are similarly testifying) been narrowed or refined as a result**  
4 **of the mediation process?**

5 A. Yes. As the Commission is aware, when it granted WorldCom’s request for  
6 mediation, the parties had been unable to negotiate substantively any provision of the  
7 interconnection agreement. As we understand, the mediation sessions initially suffered  
8 from the same problem – the parties were frequently unable to negotiate anything due, in  
9 large part, to Verizon’s insistence that it would not discuss anything other than its  
10 proposed template language. Eventually, however, the mediation sessions became  
11 productive. The parties discussed the language that each had proposed, some common  
12 ground was found, and many issues were resolved or narrowed.

13  
14 **Q. Are the results of the mediation sessions reflected in the testimony?**

15 A. Unfortunately, not always. This may be due to a number of factors. Both parties  
16 were under tight time constraints in filing testimony and simultaneously addressing  
17 various actions and tasks that resulted from the mediation sessions.<sup>1</sup> In some of the  
18 testimony which Verizon has filed post-mediation, however, Verizon not only fails to  
19 address or acknowledge the progress which was made during mediation, but it reverts to  
20 its misplaced argument that Verizon’s proposed language is somehow the “default” and

---

<sup>1</sup> In addition, from WorldCom’s point of view there was concern over the confidential nature of the mediation sessions. WorldCom took a conservative approach and avoided disclosing in its direct testimony offers Verizon made in mediation so as not to violate the confidentiality FCC staff and the parties established at the commencement of the mediation sessions.

1 that Verizon should not have to even grapple with contract language proposed by  
2 WorldCom.<sup>2</sup> For example, in Verizon VA’s Direct Testimony on Mediation Issues,  
3 Network Architecture, by Donald E. Albert and Peter J. D’Amico, dated August 17,  
4 2001, Verizon chastises WorldCom for proposing its own contract language rather than  
5 “work[ing] from Verizon’s template agreement.” Id. at 2. It goes on to assert that “[t]he  
6 Verizon VA-proposed template should be that starting point – because that agreement  
7 must govern.” Id.

8

9 **Q. What is WorldCom’s response?**

10 A. WorldCom simply does not understand Verizon’s assertion that its contract  
11 language should serve as a “default.” At the status conference of March 22, 2001, the  
12 parties raised the issue of which party’s preferred contract should serve as the “base”  
13 document. The Commission staff made clear at that meeting that neither document  
14 served as any kind of default. Instead, the Commission directed petitioners to file a  
15 petition seeking resolution of each and every issue that remained in dispute and  
16 proposing their preferred language. On March 27, 2001, the arbitrator issued a letter  
17 summarizing the status conference of March 22, 2001. That letter reiterated that the  
18 Commission “directed that . . . petitions include a document ‘containing both the  
19 agreed upon language and the disputed language each party proposes.’”<sup>3</sup> The letter  
20 reiterated that WorldCom, as a petitioner, should “not include in its statement of

---

<sup>2</sup> To give just one example, in the mediation session of July 27, the parties agreed that Verizon would review WorldCom’s proposed language on Meet Point Billing (Issue IV-6). To date WorldCom has not received a response from Verizon on this review. Verizon in its Direct Testimony expresses the opinion that the burden is somehow on WorldCom to identify issues with Verizon’s language. Verizon VA’s Direct Testimony on Mediation Issues, Network Architecture, by Donal E. Albert and Peter J. D’Amico, dated August 17, 2001 at pp. 16-17.

1 unresolved issues the question of whether to start with Verizon's or WorldCom's  
2 preferred document."<sup>4</sup>

3

4 **Q. Does Verizon make any similar arguments about using its language as a**  
5 **default?**

6 A. Yes. In addition to the express statement discussed above, Verizon asserts that it  
7 should not be required to consider language offered by WorldCom for several different  
8 reasons: First, Verizon asserts that it cannot consider language proffered by WorldCom  
9 because Verizon deals with many carriers.<sup>5</sup> Second, Verizon asserts that it cannot  
10 negotiate terms different than those offered to other requesting carriers.<sup>6</sup> Third, Verizon  
11 claims that WorldCom should be satisfied with what Verizon has negotiated with other  
12 carriers.<sup>7</sup>

13

14 **Q. Please respond to Verizon's assertions.**

15 A. WorldCom simply does not understand Verizon's assertion that it cannot even  
16 consider WorldCom's proposals because it deals with a number of carriers. The Act  
17 requires Verizon to negotiate with all requesting carriers.<sup>8</sup> Every carrier in this  
18 environment – including WorldCom -- must deal with many different carriers. The needs

---

<sup>3</sup> Letter of Dorothy T. Attwood to the Parties Re: Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox and WorldCom, CC Docket Nos. 00-218, 00-249 and 00-251, at p. 2 (March 27, 2001)

<sup>4</sup> Id.

<sup>5</sup> See, e.g., Verizon VA's Direct Testimony on Mediation Issues, Network Architecture, by Donal E. Albert and Peter J. D'Amico, dated August 17, 2001 at pp. 1-3

<sup>6</sup> Id.

<sup>7</sup> See, e.g., Verizon VA's Direct Testimony on Mediation Issues, Network Architecture, by Donal E. Albert and Peter J. D'Amico, dated August 17, 2001 at pp. 18-19.

1 of each are different, and Verizon cannot refuse to negotiate separately with one on the  
2 ground that it is too burdensome. Verizon's complaint that it cannot negotiate terms with  
3 WorldCom that are different than those offered to other requesting carriers is also  
4 unreasonable and inconsistent with the Act's requirements. The Act expressly  
5 contemplates that carriers will negotiate different terms as their needs require. Verizon's  
6 real complaint appears to be that the Act allows carriers to opt-in to other carriers'  
7 contracts, and that this requirement is heightened as a result of conditions adopted  
8 pursuant to the approval of Verizon's merger. But that plainly does not provide Verizon  
9 an excuse to refuse to negotiate with WorldCom. Indeed, if that were permitted, it would  
10 stand the purpose of the Act and the merger order requirement on its head. Those  
11 requirements were designed to make it easier for new carriers to enter a market, by  
12 allowing them to bypass the lengthy negotiation/arbitration process where appropriate.  
13 Verizon seeks instead to use this market-opening tool to restrict the terms and conditions  
14 any carrier, including WorldCom, can obtain. Verizon's complaint that WorldCom  
15 should be satisfied with what Verizon has negotiated with other carriers is disingenuous.  
16 As Verizon is well aware, WorldCom has different business plans and different needs  
17 than do other carriers. Moreover, other carriers may have resource constraints that  
18 preclude them from arbitrating issues even if those issues are important to them. The fact  
19 that one carrier accepts a given term simply does not demonstrate that Verizon need only  
20 offer that term to other carriers, or that any different proposal is somehow unreasonable.

---

<sup>8</sup> These assertions are also largely inconsistent with Verizon's actions post-mediation. WorldCom, and from what we have seen Verizon, have continued to follow up post-mediation to resolve issues and close action items taken during the mediations.

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

2 A. WorldCom does not understand why the arbitrator or WorldCom should have to  
3 continue addressing an issue that should have been resolved by the Arbitrator's  
4 March 27, 2001 letter. That said, WorldCom requests that the Commission again reject  
5 Verizon's insistence that the language it proposes should be the "default." Instead, the  
6 Commission should begin with the issue presented, as narrowed through mediation,  
7 consider each parties' position, and decide every issue based on the evidence presented.

8

9

**Issues III-18 and IV-85**

10

**(Superseding the Interconnection Agreement by Tariffs)**

11 **Q. What is WorldCom's position on these issues?**

12 A. The Interconnection Agreement controls the relationship between the parties, and  
13 can not be superseded by a unilateral decision by Verizon to file a contrary or  
14 inconsistent tariff. The Agreement should, accordingly, contain a provision that clearly  
15 describes the interplay between the Agreement and tariffs in order to ensure that Verizon  
16 can not attempt to nullify the terms of the interconnection agreement by invoking  
17 conflicting tariff provisions.

18

19 **Q. Please summarize the language that WorldCom has proposed on this issue.**

20 A. The first provision proposed by WorldCom, Section 1.3.1, provides essentially  
21 that the rates and charges which the parties have incorporated into the agreement "remain  
22 fixed for the term of this Agreement or until superseded by such rates as may be  
23 approved by the Commission." The second provision, Section 1.3.2, provides that the

1 parties will avoid construing a conflict between the terms of the Agreement and “any  
2 applicable Tariffs”. The final provision, Section 1.3.3, provides that any “change or  
3 modification” to a tariff that “materially and adversely alters the terms” of the Agreement  
4 will only be implemented when both parties consent to the change, or when the  
5 Commission affirmatively orders the change.

6

7 **Q. What is the substance of the Verizon Direct Testimony to which you are**  
8 **responding?**

9 A. In their Direct Testimony, Verizon repeats the same arguments it raised in its  
10 Answer; while, ostensibly, it agrees with the inclusion of WorldCom’s proposed Section  
11 1.3.2, it objects to the inclusion of the other two provisions. It asserts that tariffs –  
12 whether approved by a commission or not – should supersede any rates, terms or  
13 conditions contained in the Agreement. More specifically, Verizon’s proposed provision  
14 would “incorporate[] applicable tariffs to ensure[] that prices, terms and conditions . . .  
15 remain[] up-to-date without the need for further amendment.” Verizon PT&C Panel, 17-  
16 18.<sup>9</sup> It proposes that the rates agreed to by the parties would apply only “to the extent  
17 that products or services are not covered in a tariff.” *Id.* at 18.

18 Verizon argues that, since WorldCom and other CLECs “actively participate in  
19 tariff filings,” it (Verizon) does not act unilaterally in filing a new or revised tariff. *Id.* at

---

<sup>9</sup> As this issue relates to the inclusion and applicability of the Pricing Attachment of the Agreement, WorldCom and Verizon have proposed competing provisions. *See* Issues IV-32 (sub-issue 4), IV-36 and VI-1. WorldCom has proposed a provision that would make unambiguous the preeminence of the terms in the Pricing Attachment. *See* Direct Testimony of Mark Argenbright. Verizon has proposed a “waterfall provision” (Verizon’s proposed Section 1) that would “establish a ‘roadmap’ to and priority for applicable rates” where a tariff rate that has been approved or allowed to go into effect by the Commission supersedes any rate to which the parties have mutually agreed in this Agreement. Verizon PT&C Panel, 5-6. The concerns and issues addressed by these competing provisions have no

1 19. Finally, it refers to a recent New York Public Service Commission decision that it  
2 claims supports its argument and proposal.

3 Verizon also makes the same “pick and choose” argument we addressed in our  
4 Direct Testimony; it argues that WorldCom’s position “assumes that rates will only  
5 increase, not decrease.” *Id.* at 20. <sup>10</sup>

6

7 **Q. In your Direct Testimony you assert that Verizon’s position and proposal for**  
8 **Issues III-18 and IV-85 are inconsistent with the Act. Is there anything in Verizon’s**  
9 **Direct Testimony that alters that conclusion?**

10 A. No. The fundamental dispute between the parties on this question has not  
11 changed. Verizon’s position and proposal are flatly inconsistent with the Act. The  
12 Verizon Direct Testimony does not attempt to address the inconsistency of Verizon’s  
13 position with the process set forth and created by the Act.

14 In the Act, Congress established a scheme that requires the parties to “negotiate  
15 the particular terms and conditions of agreements.” If a voluntary agreement cannot be  
16 reached, the Act requires the parties to arbitrate the terms of the agreement. Verizon’s  
17 proposal would unravel this scheme by allowing Verizon to file tariffs with a state  
18 commission irrespective of the obligations memorialized in a hard-fought, binding  
19 agreement. It would be clearly inconsistent with the Act to permit Verizon to use a tariff

---

bearing on the General Terms and Conditions of the Agreement addressed here. Those concerns and issues are comprehensively addressed in the Direct and Rebuttal Testimony of Mark Argenbright.

<sup>10</sup> Verizon reveals what its real concerns are; it fears that other carriers will opt into its agreement with WorldCom and render the tariff process moot. *Id.* Thus, “even if [carriers] participate in Verizon VA’s tariff filing, they could circumvent the official tariff process.” *Id.*

1 filing to escape the rates that, pursuant to the requirements of the Act, were incorporated  
2 into the Agreement.

3 Furthermore, permitting tariffs to amend or supersede rates under the Agreement  
4 would introduce a degree of uncertainty that the negotiation and arbitration process  
5 mandated by the Act is intended to avoid. New entrants can not operate in an  
6 environment in which the business terms (i) are potentially subject to endless litigation,  
7 or (ii) can be unilaterally changed by a company that has no incentive to ensure that new  
8 entrants can compete fairly. As we explain in our Direct Testimony, “[i]f such rates,  
9 terms and conditions are unknown (because Verizon could alter them at any time through  
10 a tariff filing) carriers could never put in place a meaningful business plan and could  
11 never, therefore, decide whether to enter a market.” Further, having to litigate (in a  
12 challenge to a tariff filing) what the parties have established by means of an  
13 interconnection agreement is highly disruptive and inefficient for new entrants. It is for  
14 these reasons that WorldCom has proposed that any changes to the terms, conditions, and  
15 rates of the Agreement be mutually discussed and agreed upon through negotiation.

16

17 **Q. Does this mean the Agreement is “frozen”?**

18 A. Absolutely not. Verizon mischaracterizes the relevant issue and WorldCom’s  
19 position here. A state commission may, for example, open a docket to re-examine UNE  
20 rates. Revised rates that result from that docket might be implemented by Verizon and  
21 the commission through a complying tariff filing. The relevant change in law would not  
22 be the tariff, but the commission’s order establishing those new rates. Once a  
23 commission orders new rates, WorldCom and Verizon are bound by those rates, even

1 under the interconnection agreement, through WorldCom's proposed Section 1.1 of  
2 Attachment I. Because these rates would be established pursuant to commission order,  
3 they would also be incorporated into the parties' interconnection agreement.

4 What WorldCom objects to is Verizon's attempts to unilaterally alter not just rates  
5 but also terms and conditions, by merely filing a tariff. Verizon views its tariffs (without  
6 any review by a government agency) as having the status of law. It, further, assumes that  
7 any tariff revisions (including an entirely new tariff where one did not previously exist)  
8 should accomplish one of two things: (i) force all parties having interconnection  
9 agreements with Verizon to litigate the new tariff provisions; or (ii) bind all parties  
10 having interconnection agreements with Verizon to Verizon's new tariff terms. That is  
11 plainly inconsistent with the Act's requirements.

12 In addition, Verizon claims that use of the tariff process is needed to ensure that  
13 CLECs receive non-discriminatory treatment from Verizon. This again ignores the  
14 requirements of the Act. Section 252(i) accomplishes that. Section 252(i) ensures that  
15 CLECs can obtain the rates, terms and conditions made available by Verizon to other  
16 CLECs via their interconnection agreements. Ironically, it is Section 252(i) that Verizon  
17 seeks to avoid by attempting to supplant the interconnection agreements with Verizon's  
18 tariffs.<sup>11</sup>

---

<sup>11</sup> Verizon fears that other carriers will opt into its agreement with WorldCom and render the tariff process moot. Id. Thus, "even if [carriers] participate in Verizon VA's tariff filing, they could circumvent the official tariff process." Id.

1 **Q. Verizon relies on a recent New York State Commission decision to support**  
2 **its argument on this issue. Does that decision support Verizon’s position?**

3 A. For the most part it does not. Although the New York Commission found that the  
4 “tariff approach is entirely suitable for implementing the interconnection and access  
5 requirements Verizon should bear under the Act,”<sup>12</sup> it did so without any analysis of the  
6 Act and its requirements. The New York Commission further stated, “as a general matter  
7 the tariff provisions provide a reasonable basis for establishing a commercial  
8 relationship.”<sup>13</sup>

9 WorldCom does not dispute that tariffs are one way to establish a commercial  
10 relationship. Indeed, the Act itself contemplates that carriers may file Statements of  
11 Generally Available Terms (“SGATs”) from which a carrier could purchase  
12 interconnection if it chose not to negotiate an agreement. However, the Act very clearly  
13 established a process for negotiating and (if necessary) arbitrating interconnection  
14 agreements – not tariffs. While carriers are free to purchase from SGATs or, where  
15 applicable, Verizon’s tariffs, those carriers that choose the negotiation/arbitration process  
16 set out in the Act should be entitled the result of that process – namely a contract – not a  
17 Verizon tariff. Likewise, those carriers are entitled to the level of certainty that comes  
18 with such an agreement. They should not be forced to endure the uncertainty of

---

<sup>12</sup> 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., NYPS Case 01-C-0095, 4 (July 30, 2001).

<sup>13</sup> *Id.* at 4.

1 continuous litigation or changing business terms, both at the whim of a competitor that  
2 has no incentive to deal with those carriers.<sup>14</sup>

3 We also note that the New York Commission recognized that there may be  
4 situations in which “a tariff filing’s generic resolution represents a significant change or  
5 does not adequately address the specific provisions in the interconnection agreements.”  
6 Id. at 6. It found that in such situations, tariff changes should be subject to the change of  
7 law provisions of the Agreement if good cause can be shown. Id. This supports  
8 WorldCom’s assertion that the terms of the Agreement should control whether, and the  
9 manner by which, the parties assimilate any tariff changes.

10 WorldCom notes that the Connecticut Department (contrary to the New York  
11 Commission) held that tariffed rates will not supercede those rates set forth in an  
12 interconnection agreement.<sup>15</sup> On Issue 4 of that arbitration, the arbitrator specifically  
13 ruled against SNET’s claim that the pricing table should simply reference SNET’s tariff  
14 pricing. Ruling in WorldCom’s favor, the Department let stand the arbitrator’s order to  
15 include the following language:

16 6.1 The prices charged to WCOM for elements are as specified  
17 in the Appendix Pricing.

---

<sup>14</sup> As stated above, WorldCom does not dispute that changes in rates, terms, and conditions that are ordered by a state commission as a result of a docketed proceeding should be incorporated into the parties’ interconnection agreement (whether or not those changes are reflected in a revised tariff). WorldCom’s proposal simply seeks to ensure that neither party can unilaterally avoid its obligations under the Agreement. Instead, the parties should reach mutual agreement on any relevant changes to their Agreement.

<sup>15</sup> MCI Worldcom, Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SNET, Docket No. 00-04-35, dated July 11, 2001.

1 **Q. What is WorldCom’s response to Verizon’s Direct Testimony that a change**  
2 **in a tariff that is made pursuant Verizon’s tariff filing is not unilateral because**  
3 **affected parties can actively participate in the tariff filing?**

4 A. There is simply no merit to Verizon’s assertion that a tariff filing that results in a  
5 new or revised tariff is not unilateral. That WorldCom or other CLECs can participate in  
6 the tariff filing does not render the eventual tariff mutually acceptable to the parties. Nor  
7 is a tariff filing rendered mutual between the parties simply because it is subjected to  
8 state or federal commission review.

9 More to the point, a tariff filing is a document that a common carrier files with a  
10 state commission to change the services, rates, terms and conditions it offers to the  
11 general public or to a certain class of customers. In our experience, Verizon has never  
12 sought CLECs’ position on the terms of any new tariffs, and is not required to do so.  
13 WorldCom or other CLECs’ participation in the review of the filing has nothing to do  
14 with Verizon’s decision to file or necessarily whether the reviewing body will  
15 affirmatively approve the tariff change. And, even where the reviewing body considers  
16 WorldCom’s substantive complaints about a tariff change, the nature of the proceeding is  
17 still one-sided. As we explain in our Direct Testimony, “the burden should not be on the  
18 new entrant to convince a state commission to reject a tariff change that purports to alter  
19 an arbitrated interconnection term. The burden should be on the incumbent carrier to  
20 demonstrate that such a change is warranted.” See Direct Testimony of John Trofimuk,  
21 Matt Harthun and Lisa Roscoe, 10. The proper process to do that already exists; it is the  
22 normal interconnection agreement amendment process. Id.

1 Verizon attempts to downplay the effect of permitting its tariffs to govern the  
2 relationship between the parties by noting that Verizon has not filed a UNE tariff in  
3 Virginia. Significantly, Verizon does not go the extra step of indicating that it will not  
4 file in the future such a tariff or other tariffs addressing other areas of the interconnection  
5 agreement.

6

7 **Q. What does WorldCom request of the Commission on these issues?**

8 A. WorldCom requests that the Commission order the inclusion of WorldCom's  
9 proposed Sections 1.3 et seq. into the Interconnection Agreement.

10

11

#### **Issues IV-106 and V-11**

12

#### **(Indemnification)**

13 **Q. What is WorldCom's position on Issue IV-106?**

14 A. As it relates to Issue IV-106, WorldCom's position is that the parties should  
15 indemnify each other from third party claims that are caused by the other party in two  
16 broad categories: first, personal injury and property damage and, second, breach of  
17 contract.

18

19 **Q. Please summarize the language that WorldCom has proposed for Issue IV-**  
20 **106.**

21 A. WorldCom's proposed Section 19 would accomplish three principal goals. First,  
22 through Section 19.1, it would require each party to indemnify the other for third party  
23 claims that arise out of personal injuries or property damage. Second, through Section

1 19.2, it would also require each party to indemnify the other for third party claims that  
2 arise out of breaches of the Agreement. Third, through Section 19.3, it would outline a  
3 process for seeking or invoking indemnification.

4  
5 **Q. What is the substance of the Verizon Direct Testimony to which you are**  
6 **responding?**

7 A. Verizon's chief and only real complaint is that WorldCom's proposed Section 19  
8 would expose Verizon to third party liability caused by its own actions or breaches. That,  
9 however, is particularly appropriate. If Verizon's own actions or breaches cause harm to  
10 WorldCom's customers, Verizon's customers, or other third parties, Verizon should be  
11 responsible for that harm.

12 More specifically, Verizon argues that it can only agree to WorldCom's Section  
13 19.1 if a provision in the 1997 agreement, Section 19.1(b), is included. It argues that  
14 "Subsection [19](b) provides an important incentive for each party to place in its tariffs  
15 and customer contracts limitations on the liability of its suppliers . . . on account of the  
16 supplier's provision of services." Verizon GT&C Panel, 27. Verizon also argues that  
17 WorldCom's proposed Section 19.2 is unacceptable because it "would effectively make  
18 Verizon VA a guarantor, by requiring Verizon VA to indemnify WorldCom for any claim  
19 that WorldCom's customers make against WorldCom on account of Verizon VA's  
20 provision of services to WorldCom." *Id.* And, in a slight break from its Answer and  
21 other testimony on the issue, Verizon asserts that "[e]ach party's liability under the  
22 interconnection agreement should generally be limited to the value of the services

1 provided to the other party that are the subject of the claim.” Id. Finally, it reasserts that  
2 it has provided an alternative proposal.

3

4 **Q. What is WorldCom’s response to Verizon’s Direct Testimony on Issue IV-**  
5 **106?**

6 A. As we explain in our Direct Testimony, WorldCom is not proposing that Verizon  
7 be the guarantor of WorldCom’s liabilities. Pursuant to reasonable business principles, it  
8 proposes only that Verizon be responsible for any liabilities that arise from Verizon’s  
9 own actions or breaches in the same way that WorldCom will be responsible for the  
10 injuries and damage caused by its own actions or breach.

11 Verizon’s insistence on the deletion of Section 19.2 and inclusion of Section  
12 19.1(b) would result in liability being apportioned based solely on whose customer raises  
13 the third-party claim, and not on which party was the cause of the harm. This is  
14 particularly problematic because, at the present time, Verizon is typically the supplier of  
15 the relevant services. Thus, under Verizon’s proposal, it could repeatedly breach its  
16 contract with WorldCom, or even intentionally act in a way that harms WorldCom’s  
17 customers, without being held responsible for such behavior. Instead, under Verizon’s  
18 proposal, any claim raised by WorldCom’s customers for such actions by Verizon would  
19 have to be absorbed by WorldCom. Not only is this flatly inconsistent with the general  
20 principle of law that every party bears responsibility for their own actions, it creates  
21 perverse incentives. As this Commission has recognized, Verizon, as the incumbent, has  
22 the incentive to behave in ways that make it more difficult for new entrants to attract and  
23 keep customers. Under Verizon’s proposal, the incentives to engage in such anti-

1 competitive behavior would be compounded, because WorldCom would be forced to bear  
2 the financial loss resulting from such actions.

3

4 **Q. What does WorldCom request of the Commission with regards to Issue IV-**  
5 **106?**

6 A. WorldCom requests that the Commission order the inclusion of its proposed  
7 Part A, Sections 19.1, 19.2, and 19.3 into the Interconnection Agreement.

8

9 **Q. What is the question raised by Issue V-11?**

10 A. Issue V-11 concerns indemnification for third party claims arising out of mistakes  
11 made in listing WorldCom and AT&T's customers' information in Directory Listings.

12 As we explain in our Direct Testimony, the issue of indemnification as it relates  
13 to directory listing was originally an issue exclusive to AT&T. Verizon and WorldCom  
14 have agreed to permit WorldCom to join AT&T on this issue as a result of settlement on  
15 the greater directory listings issue. See Direct Testimony of John Trofimuk, Matt  
16 Harthun and Lisa Roscoe, 23.

17

18 **Q. What is WorldCom's position on Issue V-11?**

19 A. Each party to the Agreement should be responsible for the damage it causes while  
20 carrying out its contractual obligations. Accordingly, Verizon should indemnify  
21 WorldCom to the full extent for any third-party claims that may arise (whether by willful,  
22 grossly negligent, or negligent (in)action) from Verizon's participation in the publication

1 or dissemination of the listing information of one of WorldCom's customers.<sup>16</sup> Likewise,  
2 WorldCom should indemnify Verizon to the full extent for third-party claims that may  
3 arise (whether by willful, grossly negligent, or negligent (in)action) from WorldCom's  
4 participation in the publication or dissemination of the listing information of one of  
5 WorldCom's customers. This position is consistent with WorldCom's position on the  
6 general indemnification provision (Issue IV-106) discussed above.

7

8 **Q. What is the substance of the Verizon Direct Testimony to which you are**  
9 **responding?**

10 A. Verizon argues that each party should expressly "indemnify the other from any  
11 claims arising from contractual obligations that do not involve the other party." Verizon  
12 GT&C Panel, 35. In other words, WorldCom or AT&T should indemnify Verizon  
13 against third party claims brought by WorldCom or AT&T's customers for Verizon's  
14 mistakes in publishing a directory listing.

15 Verizon argues, furthermore, that its proposal would provide "parity of treatment  
16 of end user customers" because all parties are "in a position to invoke the limitation of  
17 liability provisions in their respective tariffs. Any claim that falls outside of the range of  
18 those constrained by the tariff's limitation of liability clause is simply a risk of doing  
19 business to be borne by the carrier providing service directly to the end user." *Id.*

---

<sup>16</sup> WorldCom's proposal, as a practical matter, does not require Verizon to pay significant damages for even simple negligence. See Direct Testimony of John Trofimuk, Matt Harthun and Lisa Roscoe, 26.

1 **Q. What is WorldCom’s response to Verizon’s Direct Testimony for Issue V-11?**

2 A. For the same reasons asserted in our Rebuttal Testimony for Issue IV-106,  
3 Verizon’s position and proposal for Issue V-11 is completely meritless and must be  
4 rejected.

5 Verizon must be responsible for any liabilities that arise from its own mistakes in  
6 publishing and distributing directory listings in the same way that WorldCom should be  
7 responsible for any liabilities caused by its own errors in gathering directory listing  
8 information from its customers and transmitting that information to Verizon. Put  
9 differently, neither Verizon nor WorldCom should be required to cover the costs and  
10 liabilities that it cannot control. And there is no dispute that WorldCom cannot control  
11 Verizon’s actions in publishing and distributing directory listings.

12 Nor can this issue plausibly be described as one involving parity to end-user  
13 customers. It is true that each carrier is able to invoke the limitation of liability provision  
14 in its tariff, and that it should (and will) do so when a claim arises. But that is irrelevant  
15 to the ultimate question presented here. The issue here is who should bear responsibility  
16 for damages that are not avoidable through the usual tariff defenses (for example, when  
17 the harm results from gross negligence or willful misconduct). If it is Verizon that  
18 engages in the gross negligence or willful misconduct, there is no sensible reason that  
19 Verizon should not be responsible for the resulting harm. Indeed, as with the general  
20 indemnification provisions, if this were not the case Verizon would have absolutely no  
21 incentive to properly process and publish the directory listings of competitive carriers.  
22 Indeed, under Verizon’s proposal, it would be free to deliberately and repeatedly cause  
23 errors in its competitors’ directory listings – causing substantial competitive harm to its

1 competitors while facing absolutely no recourse for doing so. That is plainly not a  
2 reasonable result.

3

4

**Issue IV-88**

5

**(Assignment and Delegation)**

6 **Q. What is WorldCom's position on these issues?**

7 A. The Interconnection Agreement should contain a provision that (1) makes void  
8 assignments or delegations to non-affiliated entities of rights or obligations under the  
9 Agreement, (2) requires written notice of an assignment or delegation to an affiliated  
10 entity, and (3) further details the rights and obligations of the parties once a right or  
11 obligation has been validly assigned or delegated.

12

13 **Q. Please summarize the language that WorldCom has proposed on this issue.**

14 A. WorldCom refers the Commission to the language in its Direct Testimony. See  
15 Direct Testimony of John Trofimuk, Matt Harthun, Lisa Roscoe, 27.

16

17 **Q. What is the status of this issue?**

18 A. The parties have resolved this issue.

1 **Issue IV-95**

2 **(Responsibility for Costs and Expenses)**

3 **Q. What is WorldCom's position on this issue?**

4 A. There should be a provision that makes each party individually responsible for all  
5 costs and expenses it incurs in complying with the obligations of the Interconnection  
6 Agreement.

7  
8 **Q. Please summarize the language that WorldCom has proposed on this issue.**

9 A. WorldCom's proposed language provides that neither party is or should be  
10 financially responsible for the other's compliance under the Act or for development costs,  
11 except as otherwise specifically set forth in the Agreement.

12  
13 **Q. What is the substance of the Verizon Direct Testimony to which you are**  
14 **responding?**

15 A. In its Direct Testimony, Verizon repeats the argument it made in its Answer. It  
16 considers the proposed language unnecessary. It will only accept WorldCom's proposed  
17 language if the phrase "or otherwise provided for under Applicable Law" is added to the  
18 provision. Verizon argues that this added clause "would make clear that Verizon VA  
19 must be compensated for its costs in providing services to WorldCom in whatever  
20 manner is consistent with applicable law," and not just "as otherwise specified in the  
21 Agreement."

1 **Q. What is WorldCom's response to Verizon's Direct Testimony on this issue?**

2 A. Verizon's proposed modification should be rejected because Verizon has failed to  
3 specify the provisions of Applicable Law to which it refers. The pricing attachment to  
4 the Agreement already specifies the exclusive list of rates that the parties may charge  
5 each other, subject to changes in applicable law. The pricing attachment explains that  
6 any changes to the applicable law will cause the rates to change as well. Verizon fails to  
7 give any specific examples of costs or charge changes that would fall outside of the  
8 pricing attachment to the Agreement, and WorldCom is concerned that Verizon will  
9 attempt to foist charges on it that WorldCom does not agree are required under any  
10 existing law. Verizon is always free, of course, to seek rate changes or additions from a  
11 state commission. In the absence of a commission order mandating additional or  
12 different charges, however, it should be clear that no rates or charges may be assessed  
13 other than those contained in the agreement.

14

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

16 A. WorldCom requests that the Commission order the inclusion of WorldCom's  
17 proposed Part A, Section 8.2 into the Interconnection Agreement.

1 **Issue IV-97**

2 **(Confidentiality)**

3 **Q. What is WorldCom's position on this issue?**

4 A. The Interconnection Agreement should have a provision that addresses and  
5 governs the parties' responsibilities to respect each other's confidentiality information  
6 obtained during the performance of the Agreement.

7 **Q. Please summarize the language that WorldCom has proposed on this issue.**

8 A. WorldCom's proposed language would detail the obligation of each party to  
9 preserve the confidentiality of information received in performance of the Agreement,  
10 and also ensure that other carriers do not use the confidential information for the unlawful  
11 purposes of marketing to Verizon's customers.

12  
13 **Q. What is the substance of the Verizon Direct Testimony to which you are**  
14 **responding?**

15 A. Verizon asserts that no resolution has been reached on this issue. It will not  
16 accept WorldCom's proposed language without a sentence that addresses Verizon's right  
17 to monitor WorldCom's access to and use of CPNI on Verizon's customers. Part A,  
18 Section 22.14 of the current agreement between the parties contains this language, and  
19 Verizon asserts that it will only agree to WorldCom's proposal if that exact language is  
20 included in the new interconnection agreement. Its chief concern, it explains, is that  
21 competing carriers might "surf" Verizon's customer information database without  
22 authorization and obtain competitive information that will assist the competing carrier to  
23 market to Verizon's customers. It argues that such "surfing" would violate "customers'

1 rights to privacy and the statutory prohibition on using carrier information for  
2 marketing.”

3

4 **Q. What is WorldCom’s response to Verizon’s Direct Testimony on this issue?**

5 A. As our Direct Testimony makes clear, Verizon has failed to account for the  
6 mediation session on this issue as well as subsequent discussions between the parties. In  
7 mediation Verizon agreed to the inclusion of all language proposed by WorldCom on this  
8 issue (Section 10 et seq.). Further, the parties agreed that the only remaining question  
9 was of CPNI monitoring and that this was already being addressed under Issue I-8. This  
10 was last confirmed by email between the parties on August 16, 2001. We refer the  
11 Commission to the testimony of Sherry Lichtenberg for WorldCom’s position on  
12 Verizon’s monitoring of WorldCom’s access to and use of CPNI.

13

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

15 A. WorldCom requests that the Commission order the inclusion of WorldCom’s  
16 proposed Part A, Section 10 into the Interconnection Agreement.

17

18 **Issue IV-101**

19 **(Binding Arbitration)**

20 **Q. What is WorldCom’s position on this issue?**

21 A. The Interconnection Agreement should include a binding arbitration provision  
22 that, as a general matter, details a private, speedy and cost-effective process for resolution  
23 of typical disputes that will likely arise under the Agreement.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**Q. Please summarize the language that WorldCom has proposed on this issue.**

A. WorldCom has proposed a binding arbitration process that would be administered by a private organization, such as JAMS or AAA. The agreement to arbitrate would be enforceable in court, and the validity and enforcement of the agreement to arbitrate would be governed pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1-16.

**Q. What is the substance of the Verizon Direct Testimony to which you are responding?**

A. Verizon repeats that it is not required to agree to an alternative dispute resolution provision, and in the absence of such agreement cannot be compelled to adopt a binding arbitration provision. Verizon reiterates that “[a]rbitration of disputes under the interconnection agreement is a matter of contract and no party can be required to submit to third party binding arbitration any dispute that it has not agreed to submit in clear language.” Verizon GT&C Panel, 25 (citations omitted). Accordingly, it argues that the Commission cannot order the inclusion of an arbitration provision in the Agreement with which Verizon does not agree. The only alternative dispute resolution provision to which it will agree is that proposed by AT&T. *Id.* (citing §28.11 of the AT&T-proposed interconnection agreement).

**Q. What is WorldCom’s response to Verizon’s Direct Testimony on this issue?**

A. First, as we explained in our Direct Testimony, WorldCom rejects Verizon’s freedom to contract argument. To repeat, the parties are not entering into the typical contractual arrangement.

1           As an incumbent LEC that controlled the market for local telecommunications  
2 services before the 1996 Act, Verizon has no incentive to enter an agreement with  
3 WorldCom or other new entrants. However, under the Act, the parties must agree to the  
4 terms and conditions of interconnection. Indeed, the Act grants to state commissions and,  
5 if necessary, the Commission the authority to resolve and arbitrate disputes irrespective  
6 of Verizon's wishes. Thus, pursuant to the Act, Verizon must agree to terms and  
7 conditions that commercial contracts in most other settings do not contain unless  
8 mutually agreeable to both parties. A provision that outlines an alternative dispute  
9 resolution process is one such term, and WorldCom's proposed ADR language would be  
10 appropriate.

11           Nonetheless, in an effort to resolve this issue, WorldCom has withdrawn its  
12 originally proposed language and has agreed to accept Verizon's proposed alternative  
13 dispute resolution provision with certain modifications. See Direct Testimony of John  
14 Trofimuk, Matt Harthun, and Lisa Roscoe, 43-49. In our Direct Testimony, we explain  
15 comprehensively each particular, proposed modification. See id. at 49-51. To  
16 summarize, WorldCom first proposes to make it clear in Verizon's proposed language  
17 that the arbitrator's award is final and binding on the parties. Second, WorldCom  
18 proposes to insert in Verizon's proposal an exclusion for disputes arising out of tax  
19 provisions of the Agreement. Third, WorldCom objects to the inclusion of a provision in  
20 the Verizon proposed language that would require WorldCom to waive its right to use the  
21 alternative dispute resolution process required of Verizon under Verizon's GTE/Bell  
22 Atlantic merger conditions. Fourth, WorldCom has proposed several modifications in  
23 order to make it conform more tightly to the AAA Rules. And, fifth, WorldCom

1 proposes that the expedited procedures of the AAA Rules be invoked for billing disputes  
2 of \$200,000 or less, and not, as Verizon proposes, for all billing disputes.

3 **Q. What is WorldCom requesting of the Commission?**

4 A. WorldCom requests that the Commission order the inclusion of Verizon's  
5 proposed Section 28.11, et seq., with the specific modifications set forth and discussed in  
6 our Direct Testimony and above.

7

8 **Issue IV-113**

9 **(Change of Law)**

10 **Q. What is WorldCom's position on this issue?**

11 A. Interconnection agreements must be sufficiently flexible to accommodate changes  
12 in applicable statutory or regulatory law. Therefore, the Agreement here should contain a  
13 provision that obligates the parties to negotiate promptly and in good faith to amend the  
14 Agreement in the event a subsequent change in law renders a provision of the Agreement  
15 unlawful, or materially alters the obligation to provide services, or materially alters any  
16 of the services themselves. The Agreement should also contain a provision that puts in  
17 place a process for ensuring that the changes in law are incorporated into the Agreement.

18

19 **Q. Please summarize the language that WorldCom has proposed on this issue.**

20 A. WorldCom has proposed that the Agreement contain a provision that requires the  
21 parties to negotiate amendments to the Agreement in the event there are any changes in  
22 the law that materially affect the parties' obligations or other matters covered under the  
23 Agreement.