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September 5, 2001

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SEP - 5 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 00-251/
In the Matter of Petition of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. for Arbitration of an Interconnection Agreement With Verizon Virginia, Inc. Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996

Dear Ms. Salas:

On behalf of AT&T Communications of Virginia, Inc. and its affiliates listed above, enclosed please find an original and three (3) copies of the rebuttal testimony of David Talbott and Fredrik Cederqvist.

On August 31, 2001, Verizon filed "Additional Direct Testimony" on eight issues, including III-7(a), III-7(b), and III-8. AT&T will file rebuttal testimony on these issues shortly.

Thank you for your consideration in this matter.

Sincerely yours,

Mark Keffer
Mark A. Keffer

cc: Service List
Enclosures

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013

Before the
Federal Communications Commission
Washington, D.C. 20554

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SEP - 5 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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)
State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon-Virginia, Inc.)

CC Docket No. 00-251

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September, 2001, a copy of the rebuttal testimony of David Talbott and Fredrik Cederqvist filed on behalf of AT&T Communications of Virginia, Inc. and its affiliates listed above was sent via hand delivery, Federal Express and/or by email to:

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Federal Communications Commission
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Washington, D.C. 20544

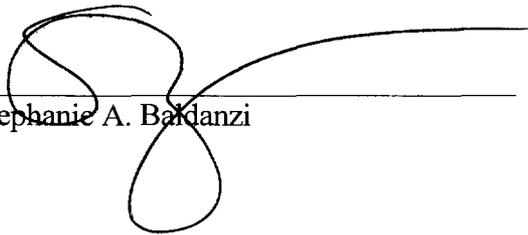
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Petition of AT&T Communications) CC Docket No. 00-251
of Virginia, Inc., Pursuant)
to Section 252(e)(5) of the Communications Act,)
for Preemption)
of the Jurisdiction of the Virginia)
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REBUTTAL TESTIMONY OF
DAVID L. TALBOTT
ON BEHALF OF AT&T¹

ISSUE ADDRESSED	
Issue III.4	<i>Forecasting</i> Should AT&T be required to forecast Verizon's originating traffic and also provide for its traffic, detailed demand forecasts for UNEs, resale and interconnection?

September 5, 2001

¹ This Affidavit is presented on behalf of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. (together, "AT&T").

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION**
2 **FOR THE RECORD.**

3 A. My name is David L. Talbott; I am a District Manager in the Local Services and
4 Access Management group in AT&T Network Services. In this position, I am
5 responsible for the development and negotiation of interconnection agreements
6 between AT&T and incumbent local exchange carriers, focusing on network
7 interconnection issues. My business address is 3737 Parke Drive, Edgewater,
8 Maryland 21037.

9 **Q. ARE YOU THE SAME DAVID L. TALBOTT THAT FILED DIRECT**
10 **TESTIMONY ON MEDIATION ISSUES WITH THIS COMMISSION ON**
11 **THIS DOCKET ON AUGUST 17, 2001?**

12 A. Yes.

13 **Q. PLEASE DESCRIBE THE SCOPE OF YOUR TESTIMONY.**

14 A. I am responding to the testimony submitted by Donald E. Albert and
15 Peter J. D'Amico on August 17, 2001, on behalf of Verizon pertaining to Issue
16 III.4, Forecasting, ("Verizon's Forecasting Testimony").

17 **Q. WHAT IS ISSUE III.4?**

18 A. The JDPL wording for Issue III.4 is as follows: Should AT&T be required to
19 forecast Verizon's originating traffic and also provide for its traffic, detailed
20 demand forecasts for UNEs, resale and interconnection?

21 **Q. HAS A PORTION OF THIS ISSUE BEEN SETTLED BY THE PARTIES?**

22 A. Yes. The related Issue VII.2 has been resolved. Issue VII.2 dealt with a
23 requirement for AT&T to forecast unbundled network elements. Accordingly,

1 Issue III.4, which I discuss in this rebuttal testimony, deals solely with the
2 forecasting of interconnection traffic.

3 **Q. HAS VERIZON CORRECTLY DESCRIBED AT&T'S POSITION ON**
4 **THIS ISSUE?**

5 A. No. In Verizon's Forecasting Testimony, the witnesses state that, "AT&T,
6 however, is not willing to provide Verizon VA with a trunk forecast for trunks
7 carrying calls from Verizon VA's network to AT&T's network." That is not the
8 case. As I describe at page 3 of my Direct Testimony on Mediation Issues, if
9 traffic exchanged between the parties is significantly out of balance (*i.e.*, greater
10 than 3:1), then AT&T proposes that the party originating the greater share of the
11 traffic should forecast both inbound and outbound traffic to the other party.

12 **Q. IN THE RECENT NEW YORK ARBITRATION BETWEEN VERIZON**
13 **AND AT&T, DID THE NEW YORK PSC ORDER AT&T TO FORECAST**
14 **BOTH ITS ORIGINATING AND TERMINATING TRAFFIC?**

15 A. No. Essentially, the New York PSC adopted the same traffic forecasting proposal
16 that AT&T has made in this proceeding.¹ Under the New York arbitration order
17 AT&T would be required to forecast traffic originating on Verizon's network, "in
18 all instances when [AT&T] can reasonably expect volumes in excess of three to
19 one ratio of inbound to outbound traffic."² Such a solution makes good sense,
20 because the only circumstance where a terminating LEC is better able to forecast

¹ See page 3, Talbott Direct Testimony on Mediation Issues.

² *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 Intercarrier Agreement with Verizon New York Inc., Case C-01-C-0095, Order Resolving Arbitration Issues (July 30, 2001) at 42.*

1 traffic originating on another LEC's network is when the terminating LEC is
2 specifically targeting customers with high inbound traffic requirements. When
3 traffic is reasonably in balance, the originating LEC has a much better view of its
4 own network traffic patterns and traffic volume growth than its competitor and,
5 accordingly, is better able to forecast its own trunking requirements.

6 **Q. WITH RESPECT TO TRAFFIC FORECASTING, WHAT WAS THE**
7 **OUTCOME OF THE NEW YORK PSC COLLABORATIVE EFFORT**
8 **WHICH VERIZON DESCRIBES AT PAGE 3 OF ITS TESTIMONY?**

9 A. There was no outcome. I spoke at length with the AT&T employee who
10 represented AT&T at the New York PSC collaborative, which Verizon describes
11 in its testimony. AT&T's representative has a very different view of what
12 occurred during that collaborative than the Verizon witnesses. First, AT&T's
13 collaborative representative told me that Verizon was the only party to the
14 collaborative that agreed that CLECs should forecast traffic originating on
15 Verizon's network. And second, neither the New York PSC, nor the collaborative
16 members issued a final report or agreement documenting how forecasting
17 obligations would be allocated among the parties.

18 Even if the results of the New York PSC Collaborative were as Verizon asserts,
19 which it is not, it must be recognized that the Collaborative took place during the
20 fall of 1998 – nearly three years ago – and the results of that proceeding, if any,
21 would be of dubious relevance to today's marketplace. The CLEC industry has
22 undergone enormous changes since that time. With respect to AT&T, since that
23 time AT&T has shifted from a reselling strategy to a facilities-based strategy and
24 has acquired the TCG and ACC CLEC entities, and the TCI and MediaOne cable

1 properties. AT&T is providing services in New York on a mass market basis
2 through a variety of means that were not even on the radar screen in 1998.

3 Finally, it is clear from the New York PSC's recent decision in the Verizon-
4 AT&T arbitration, in which the New York PSC adopted different forecasting
5 obligations than the purported collaborative agreement alleged by Verizon in its
6 testimony, that the New York PSC does not believe its is overturning a previous
7 PSC order or industry agreement, and also that the New York PSC believes
8 AT&T has proposed a better solution than the one propounded by Verizon.

9 **Q. VERIZON ASSERTS THAT THE "FORECASTING PROCESS FROM**
10 **THE NEW YORK PSC COLLABORATIVE IS USED IN VIRGINIA." IS**
11 **THIS ASSERTION CORRECT?**

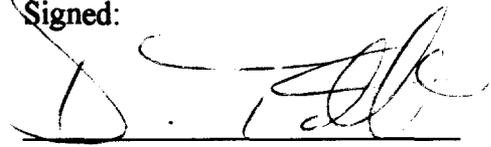
12 A. No. The Virginia State Corporation Commission has not adopted a New York
13 PSC collaborative agreement on trunk forecasting and AT&T has not agreed to
14 forecast traffic originating on Verizon's network in Virginia. As I understand it,
15 the issue of trunk forecasting is being debated in the Virginia Collaborative
16 Committee in connection with performance metrics and standards, as well as the
17 various remedies proposals. In that proceeding, Verizon is seeking to impose a
18 forecasting obligation on the CLECs that AT&T, for one, is resisting.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes, it does.

I, David L. Talbott, hereby swear and affirm that the foregoing rebuttal testimony was prepared by me or under my direct supervision or control and is true and accurate to the best of my knowledge and belief.

Signed:

A handwritten signature in black ink, appearing to read "D. Talbott", written over a horizontal line.

	including cable plats?
Issue III-15	<i>Intellectual Property</i> How should Verizon's "best efforts" obligations to procure IP licenses that protect AT&T be accounted for in the Agreement and what are the Parties' indemnification obligations with respect to IP issues?
Issue V.15 & VII.17	<i>Transfer of exchanges</i> What requirements should apply in the event of a sale of exchanges or other transfer of assets by Verizon? Should AT&T be permitted to limit Verizon's ability to transfer its Telephone Operations?
Issue V.11	<i>Indemnification for Directory Listings</i> Should AT&T be required to indemnify Verizon in the event of Verizon's gross negligence or willful misconduct involving listing information?

SEPTEMBER 5, 2001

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is L. Fredrik Cederqvist. My business address is 32 Avenue of the
3 Americas, New York, NY. I previously filed testimony in this docket on
4 August 17, 2001.

5 **Q. PLEASE DESCRIBE THE SCOPE AND PURPOSE OF YOUR**
6 **TESTIMONY.**

7
8 A. I am responding to the testimony of Christos Antoniou, Michael Daly and Steven
9 Pitterle on behalf of Verizon VA in the panels on Pricing Terms and Conditions
10 or General Terms and Conditions pertaining to Issues III.18 and VII.23-25 (tariff
11 vs. contract), III.13 and V.14 (rights of way and access to records), III.15
12 (intellectual property licenses), V.15 and VII.17 (transfer of exchanges), and V.11
13 (indemnification for directory listing errors or omissions).

14

ISSUE III.18 – Should tariffs supercede interconnection agreement rates, terms and conditions?

ISSUE VII.23 – Should definitions contained in Verizon’s tariffs prevail over the definitions within the Parties’ Interconnection Agreement?

ISSUE VII.24 --Should the Parties Agreement Define “Tariff” so as to Exclude Incorporation of Future Tariffs?

ISSUE VII.25 – Should The Parties’ Agreement Provide For Incorporation of Future Tariffs?

15

16 **Q. DOES THE TESTIMONY OF VERIZON’S WITNESSES COMPLETELY**
17 **ADDRESS AT&T’S POSITION ON THIS ISSUE?**

18

19 A. No. Verizon ignores AT&T’s arguments about the need for the stability and
20 certainty of its interconnection agreement and the near impossibility of
21 monitoring the volumes of Verizon VA’s tariff filings to discover those that might

1 alter that agreement. Moreover, Verizon appears to reject even the minimal
2 notice requirement that AT&T suggested in connection with Verizon's tariff
3 filings, arguing that its proposal would "effectively give [AT&T] a right to veto
4 Verizon-VA's commission approved tariffs."¹

5 **Q. IS VERIZON'S "VETO" CONCERN WELL-FOUNDED?**

6 A. Not at all. Giving AT&T a right to participate in a regulatory review of Verizon's
7 tariff filings can hardly be equated with a right to veto.

8 **Q. WHY WOULD IT BE INAPPROPRIATE TO PERMIT VERIZON TO**
9 **CHANGE INTERCONNECTION TERMS BY FILING A TARIFF?**

10 A. First, it would be manifestly unfair to require AT&T to litigate an unresolved
11 issue and incorporate the resolution thereof into an interconnection agreement,
12 only to have to repeat the exercise time and again when Verizon makes tariff
13 filings concerning the very same issue.

14 Second, it is unreasonable to expect AT&T and other CLECs to become
15 "tariff police" who must review and analyze every Verizon filing to determine
16 whether it has any impact on the CLECs interconnection agreement. Verizon
17 files a large number of tariffs with the Virginia SCC. It is unreasonable to expect
18 that AT&T, or any other CLEC for that matter, devote resources to obtain and
19 review those various filings every day, only to try to determine whether Verizon
20 has proposed a change in the terms and conditions for interconnection.

¹ Direct Testimony of Verizon-VA Panel on Pricing Terms and Conditions, August 17, 2001 at 19.

1 **Q. THAT BEING SAID, IS AT&T WILLING TO CONSIDER ALLOWING**
2 **VERIZON TO PROPOSE AMENDMENTS TO THE**
3 **INTERCONNECTION AGREEMENT THROUGH TARIFF FILINGS?**

4 A. Possibly, if Verizon is willing to agree to appropriate conditions. As stated in my
5 direct testimony, as a compromise, AT&T would be willing to permit Verizon to
6 amend interconnection rates, terms and conditions via tariff filing if (1) Verizon
7 agreed to serve notice of any such filing directly upon AT&T's designated
8 representative (electronically where available), and (2) that notice indicated, in
9 clear language on the cover page, that "THIS TARIFF FILING CONTAINS
10 PROPOSED CHANGES WHICH, IF APPROVED, WILL IMPACT AT&T'S
11 RIGHTS AND OBLIGATIONS UNDER ITS INTERCONNECTION
12 AGREEMENT WITH VERIZON-VIRGINIA."

13 Under this proposal, AT&T would have direct, actual notice of the proposed
14 change and would have an opportunity to protect its interests before the
15 appropriate regulatory agency. But given Verizon's apparent belief that it should
16 be able to retain unfettered discretion to propose tariff terms and conditions that
17 could supercede the interconnection agreement, in order to be willing to continue
18 to entertain this compromise, AT&T would need some additional assurances,
19 either about the precedence of its interconnection agreement or about appropriate
20 limitations on Verizon's tariffing process.

21 **Q. IN THE RECENT NEW YORK ARBITRATION BETWEEN VERIZON**
22 **AND AT&T HOW DID THE NEW YORK PUBLIC SERVICE**
23 **COMMISSION ADDRESS THIS ISSUE?**
24

1 A. It observed that the tariffs in New York provided a reasonable basis for
2 establishing a commercial relationship between Verizon-New York and CLECs,
3 and therefore ordered that the interconnection agreement conform to those tariffs
4 where possible.

5 **Q. IS THAT APPROACH APPROPRIATE FOR STATES SUCH AS**
6 **VIRGINIA THAT DO NOT HAVE SIMILAR MARKET**
7 **CHARACTERISTICS?**

8
9 A. No. Virginia is not New York. In New York, the PSC and the various industry
10 participants have participated in the development of a significant number of tariffs
11 concerning local service resale and the provision of unbundled network elements.
12 In Virginia, on the other hand, the process has been much different, and
13 interconnection agreements have been the primary vehicles to assure the rights
14 and define the obligations that are necessary to establish a competitive local
15 market.

16
17 **ISSUES V-15 and VII-17: What requirements should apply in the event of a sale of**
18 **exchanges or other transfer of assets by Verizon? Should AT&T be permitted to**
19 **limit Verizon's ability to transfer its Telephone Operations?**

20
21
22 **Q. DOES VERIZON BELIEVE THAT THERE IS AN APPROPRIATE WAY**
23 **IN THE INTERCONNECTION AGREEMENT TO PROTECT THE**
24 **INTERESTS OF AT&T AND ITS CUSTOMERS IN THE EVENT OF A**
25 **TRANSFER BY VERZION OF SOME OF ITS ASSETS?**

26
27 A. No. It contends that there is no rule of law that permits such an outcome.²

² Direct Testimony of Verizon-VA Panel on General Terms and Conditions, August 17, 2001 at 44.

1 **Q. DOES AT&T CONTINUE TO MAINTAIN THAT THERE SHOULD BE A**
2 **PROVISION IN THE INTERCONNECTION AGREEMENT**
3 **ADDRESSING THIS ISSUE?**
4

5 A. Yes it does. As I indicated in my direct testimony and as was discussed during
6 the mediation session, it is important that Verizon not be able to dilute AT&T's
7 rights of interconnection by selling or transferring certain exchanges without a
8 requirement that the transferee company assume Verizon's interconnection
9 obligations.

10 **Q. IS AT&T WILLING TO INCLUDE A PROVISION RECOGNIZING**
11 **THAT THE TRANSFEREE MAY NOT HAVE THE SAME SYSTEMS**
12 **AND CAPABILITIES AS VERIZON?**

13 A. Yes. AT&T recognizes that the transferee may have different systems or
14 operational processes that would make a wholesale transfer of Verizon's
15 obligations impossible. Consequently, AT&T is willing to continue to negotiate
16 revisions to its proposed language to clarify the scope of the provisions, and
17 particularly to modify the terms applicable to Verizon's continuing
18 responsibilities once the transfer has occurred.

19 **Q. ARE THE MODIFICATIONS YOU PROPOSE CONSISTENT WITH THE**
20 **RECENT DECISION OF THE NEW YORK PUBLIC SERVICE**
21 **COMMISSION?**
22

23 A. Yes. The New York PSC determined that AT&T had a legitimate interest in
24 maintaining the continuity of the terms of its interconnection agreement: "The
25 interconnection agreement with Verizon forms the basis for AT&T to enter and
26 compete in the local exchange market. Its terms are critical to the company's
27 competitive growth and to its provision of stable and reliable service.

1 Accordingly, the Commission finds that AT&T has a valid interest in the
2 continuing performance of the terms in the agreement in the event of a transfer.”³
3 It found, however, that those interests would be best addressed in the
4 Commission’s review of any proposed transfer under relevant state law. It also
5 noted that “[w]ere any such transfer to be proposed, we would expect Verizon to
6 discuss the matter with AT&T and other CLECs. It is also reasonable to expect
7 that Verizon would negotiate terms to ensure continued performance under
8 existing interconnection agreements.”⁴ Consequently, AT&T suggests that a
9 modified version of its provision, reflecting the appropriate role of the
10 Commission’s review of any proposed transfer as well as memorializing
11 Verizon’s obligations prior to consummation of the transfer, be adopted.

12
13 **ISSUE III-15 - How should Verizon’s “best efforts” obligations to procure IP**
14 **licenses that protect AT&T be accounted for in the Agreement and what are the**
15 **Parties’ indemnification obligations with respect to IP issues?**
16

17 **Q. HAVE THE PARTIES BEEN ABLE TO RESOLVE THEIR REMAINING**
18 **DISAGREEMENTS WITH RESPECT TO THIS ISSUE?**

19
20 A. No. AT&T maintains that Verizon is obligated to employ its best efforts to obtain
21 third party intellectual property licenses permitting AT&T access to its unbundled
22 network elements, consistent with the Commission’s determinations.⁵ To ensure
23 that Verizon meets that obligation, AT&T had also proposed that Verizon be

³ CASE 01-C-0095 - 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., at 25.

⁴ *Ibid.*

⁵ *In the Matter of Petition of MCI for Declaratory Ruling That New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements,*

1 obligated to indemnify AT&T against infringement or misappropriation claims
2 and warrant that AT&T had rights to access and use without being subject to
3 claims of misappropriation or infringement by third parties. As I stated in my
4 direct testimony, the theory behind the indemnification obligation was to ensure
5 that Verizon’s “best efforts” were, indeed, expended. As I also noted in my
6 testimony, during mediation of this issue, AT&T agreed to revise this aspect of its
7 proposal to be consistent with the recent decision of the New York PSC.

8 **Q. DOES VERIZON CONTEND THAT ITS PROPOSED LANGUAGE IS**
9 **ADEQUATE AND SHOULD THEREFORE BE ADOPTED?**

10
11 A. Yes, it does. It had been my understanding that Verizon acknowledged during
12 mediation that its proposed language also needed revision as it was found by the
13 New York Public Service Commission to be lacking in respect of the requisite
14 notice owed to AT&T when its own license negotiations proved unsuccessful.⁶
15 However, it proposed no such revision and instead simply urged rejection of
16 AT&T’s proposal.⁷

17 **Q. HOW THEN SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

18
19 A. This Commission should find, as the New York Commission did, that the
20 agreement should reflect Verizon’s obligation to use best efforts to negotiate co-
21 extensive intellectual property terms for AT&T and that in those instances where

6 Memorandum Opinion and Order, CCBPol. 97-4, CC Docket No. 96-98 (rel. April 27, 2000) (the “UNE Licensing Order”), 15 FCC Rcd 13896, 13902.
“[I]n any instance where Verizon is unsuccessful in negotiating co-extensive terms for AT&T, Verizon should immediately and explicitly notify AT&T of any such results. Thereafter, Verizon must continue to use its best efforts to negotiate terms that are, at least, comparable to those it achieved for itself.” Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC TelecomCorp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., Case 01-C-0095, NY PSC.

1 it is unsuccessful in doing so, it should “immediately and explicitly” notify AT&T
2 of any such results. Thereafter, Verizon must continue to use its best efforts to
3 negotiate terms that are, at least, comparable to those it achieved for itself.
4 Consistent with its offer during mediation, AT&T will revise its proposed
5 language regarding indemnification.

6 **ISSUE V-10 *Rights of way* -- What rates should Verizon charge AT&T for access to**
7 **its poles, ducts, conduits and rights-of-way?**
8 **ISSUE V.14 *Record Access* What should be the requirements for providing access**
9 **to facilities records — including cable plats?**

10
11
12 **Q. DID VERIZON ADDRESS AT&T’S POSITION ON THESE ISSUES?**

13
14 A. No. However, it did address numerous substantive issues that WCOM had
15 raised with respect to the terms by which Verizon would provide access to its
16 poles, ducts conduits and right of way. As AT&T advocated in its petition,
17 Verizon should also provide access to its poles, ducts, conduits and rights of
18 way at just and reasonable rates, and should provide AT&T maps and plats or
19 such other records that will facilitate AT&T’s placement of its own facilities or
20 optimal interconnection with Verizon’s. It was my understanding that, during
21 mediation of these issues, Verizon acknowledged these obligations and was
22 willing to commit to them, albeit in a manner perhaps different from that which
23 AT&T had originally envisioned.

24 **Q. HAVE THE PARTIES BEEN ABLE TO RESOLVE THEIR**
25 **DIFFERENCES ON THESE ISSUES?**
26

⁷ Direct Testimony of Verizon-VA Panel on General Terms and Conditions, August 17, 2001 at 8-11.

1 A. Not yet. Verizon has not yet suggested how it would provide the access to the
2 records or information that the parties discussed during mediation, and the parties
3 have not yet had an opportunity to clarify the means by which these commitments
4 would be memorialized. Nevertheless, I am hopeful that, in view of the guidance
5 afforded by the Commission during mediation, we will still be able to do so.

6 **Issue V.11 – Verizon’s indemnification obligation in the event of Verizon’s gross**
7 **negligence or willful misconduct involving listing information**

8 **Q. WHAT IS THE STATUS OF THIS ISSUE**

9
10 A. AT&T had hoped to resolve this issue with Verizon. However, it appears from
11 Verizon’s Direct Testimony that AT&T and Verizon will not resolve this issue
12 through mediation.

13
14 **Q. SHOULD VERIZON BE REQUIRED TO INDEMNIFY AT&T FOR**
15 **ERRORS OR OMISSIONS IN LISTING INFORMATION CAUSED BY**
16 **VERIZON’S GROSS NEGLIGENCE OR WILFUL MISCONDUCT?**

17
18 A. Yes. In the event a customer brings an action against AT&T for errors and
19 omissions in directory listings, and the error or omission was as a result of
20 Verizon’s gross negligence or willful misconduct, Verizon should indemnify
21 AT&T against any damages and costs of defending the action.

22 **Q. WOULD THE INDEMNIFICATION REQUIREMENT APPLY IF**
23 **VERIZON WERE ONLY NEGLIGENT?**

24
25 A. No, and that is an important distinction. The indemnification requirement would
26 only apply in those instances where Verizon was grossly negligent or was found
27 to have engaged in willful misconduct.

1

2 **Q. CAN YOU PROVIDE AN EXAMPLE OF GROSS NEGLIGENCE?**

3 A. Whether negligence rises to the level of being “gross negligence” is a legal
4 question and a fact question for the decision-maker. However, if Verizon had
5 been told in year one that a listing was incorrect and failed to correct the listing in
6 year two, that possible could constitute gross negligence. The standard, as I
7 understand it, would be whether Verizon had somehow totally disregarded its
8 duties and obligations.

9 **Q. PLEASE PROVIDE AN EXAMPLE OF WILLFUL MISCONDUCT.**

10 A. Assume the spouse of a Verizon employee owned a printing shop. Assume also,
11 that the Verizon employee is responsible for inputting directory listing
12 information from AT&T customers. It would be willful misconduct if that
13 employee, upon seeing that AT&T had signed up a competing print shop,
14 intentionally mis-entered the new print shop’s telephone number.

15 **Q. DOES VERIZON AGREE THAT IT SHOULD BE RESPONSIBLE FOR**
16 **ITS OWN WILLFUL MISCONDUCT?**

17
18 A. Yes. Pursuant to the contract language Verizon has proposed, Verizon wants
19 AT&T to indemnify Verizon in all instances “except for any actions arising from
20 Verizon’s willful misconduct.” Verizon’s proposed interconnection agreement,
21 Section 19.1.7. As such, Verizon concedes that it should be responsible for its
22 own willful misconduct.

1 **Q. WOULD AT&T EXPECT INDEMNIFICATION WHERE THERE WAS**
2 **AN ERROR IN THE DIRECTORY LISTING AS A RESULT OF A**
3 **SIMPLE MISTAKE?**
4

5 A. No. In most instances the existing limitation of liability clauses in AT&T's tariff
6 would limit the company's liability to "an amount equivalent to the proportionate
7 charge to the customer for the service ... affected during the period such mistake,
8 omission ... continues after notice and demand to the Company." AT&T
9 Communications of Virginia General Regulations Tariff , Section 1 Original Page
10 13, 1.5.1. Similarly, the MediaOne tariff states: "In cases where a specific charge
11 has been made for a directory listing, the Company shall not be liable for any such
12 error or omission beyond the amount of such charge. Section 3, Page 5, 3.4.I.

13 **Q. HAS AT&T AGREED TO MAINTAIN THESE LIMITATIONS IN ITS**
14 **TARIFFS SO THAT VERIZON WILL NOT BE ASKED TO INDEMNIFY**
15 **AT&T FOR THE "GARDEN VARIETY" DIRECTORY LISTING**
16 **ERRORS?**
17

18 A. Yes. AT&T agrees that it will maintain in its tariffs limitations of liability
19 provisions substantively identical to those found in Verizon's tariffs.

20 **Q. WHY DOES VERIZON OPPOSE AT&T'S PROPOSED LANGUAGE?**

21 A. Verizon claims that it should be required to offer AT&T's end user customers
22 nothing more than it offers its own end user customers. Parity amongst end users,
23 Verizon claims, is all that is appropriate or necessary.

24 **Q. WHAT IS WRONG WITH VERIZON'S ARGUMENT?**

25 A. The issue here is what duty Verizon owes AT&T as its wholesale customer, not
26 whether Verizon owes any duty to AT&T's end-user customers. Both AT&T and
27 Verizon limit their liability *to end user customers* where a customer's listing has

1 an error that is the result of a simple mistake. The indemnification language
2 AT&T seeks here becomes operative only if (1) the listing error is so severe or
3 egregious such that, for whatever reason, a trier of fact finds that AT&T's
4 limitation provisions would not apply to limit a complainant's claims,⁸ and (2)
5 *Verizon's gross negligence or willful misconduct caused the problem.* Thus, the
6 language AT&T seeks here requires nothing more than for Verizon to be
7 responsible for its own gross negligence or willful misconduct.

8 **Q. DID THE NEW YORK PUBLIC SERVICE COMMISSION RULE AGAINST**
9 **AT&T ON THIS ISSUE AS VERIZON ALLEGES?**

10
11 A. No. The section of the New York decision Verizon cites deals with a completely
12 different section of the interconnection agreement, not indemnification for
13 directory listings. (New York PSC Case No. 01-C-0095, July 30, 2001) The
14 issues between AT&T and Verizon being addressed in New York are not even in
15 play in Virginia, a fact Verizon apparently argued in support of its New York
16 positions. *See* New York order at 18. Thus, Verizon's citations to New York are
17 completely off base here.

18 **Q. IS VERIZON'S REFERENCE TO THE CLAUSE IN THE CURRENT**
19 **INTERCONNECTION AGREEMENT WITH MEDIAONE**
20 **INSTRUCTIVE TO THIS ISSUE?**

21
22 A. Of course not. In conjunction with the other AT&T affiliates, MediaOne is
23 seeking to renegotiate that provision in this case.

24 **Q. ARE THERE ANY OTHER ISSUES THAT THE PARTIES HAVE NOT**
25 **YET BEEN ABLE TO RESOLVE AS A RESULT OF MEDIATION?**

⁸ In the vast majority of instances, the limitation of liability provision would apply to resolve the complaint.

1
2 A. Yes, one other matter that was described in Issue VII.27 involving contract
3 section 6.4. In its panel testimony on Miscellaneous Issues, Verizon identifies the
4 differences that remain in two particular subsections of section 6.4, and refers to
5 the outcome of other issues, specifically III.1 and III.2 regarding transit traffic and
6 I.5 and I.6 regarding reciprocal compensation, as determinative of these contract
7 terms. AT&T agrees that the resolution of those issues should determine the
8 precise terms for contract section 6.4, and that accordingly there is no separate
9 issue needing arbitration.

10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A. Yes.

I, L. Fredrik Cederqvist hereby swear and affirm that the foregoing rebuttal testimony was prepared by me or under my direct supervision or control and is true and accurate to the best of my knowledge and belief.

Signed:

L. Fredrik Cederqvist