General Terms and Conditions

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

In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	))))))))))	CC Docket No. 00-218
In the Matter of Petition of Cox Virginia Telecom, Inc., etc.	)))	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., etc.	)))	CC Docket No. 00-251

VERIZON VA'S REBUTTAL TESTIMONY ON MEDIATION ISSUES
(CATEGORIES I AND III THROUGH VII)

GENERAL TERMS AND CONDITIONS

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- STEVEN J. PITTERLE
- PAMELA RICHARDSON
- VINCENT WOODBURY

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. INTELLECTUAL PROPERTY (Issues III-15 and IV- 107) 4

III. FRAUD PREVENTION (Issue IV-45) 7

IV. BRANDING (Issue IV-91) 9

V. CONFIDENTIAL INFORMATION (Issue IV-97) 10

VI. BINDING ARBITRATION (Issue IV-101) 10

VII. INDEMNIFICATION (Issues IV-106 and V-11) 15

VIII. NEGOTIATIONS PROMPTED BY CHANGE IN LAW (Issue IV-113) 21

IX. CUMULATIVE REMEDIES (Issue IV-120) 23

X. REMEDIES - PERFORMANCE STANDARDS & METRICS (Issue IV-121) 24

XI. DEFINITIONS (Issue IV-129) 25

XII. ASSURANCE OF PAYMENT (Issue VI-1(N) and INSURANCE (Issue VI-1(Q)) 26

XIII. DEFAULT (Issue VI-1(O)) 28

XIV. REFERENCES (Issue VI-1(R)) 29

XV. SALES OF EXCHANGES/TRANSFER OF TELEPHONE OPERATIONS (Issues V-15 and VII-17) 30

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH VERIZON AND YOUR BUSINESS ADDRESS.

My name is Christos T. Antoniou and my business address is 2107 Wilson Boulevard, 11th Floor, Arlington, Virginia. I am employed as an attorney by Verizon Services Corp.

My name is Michael A. Daly and my business address is 2107 Wilson Boulevard, 11th Floor, Arlington, Virginia. I am employed by Verizon Services Group, Wholesale Markets, which is the Verizon business unit responsible for serving resellers and other competitive local exchange carriers. I am a director in the Interconnection Services group responsible for contract negotiations.

My name is Maryellen Langstine. Since September 1, 2000, I have served as Director Competitive Local Exchange Carrier Customer Support. My business address is 741 Zeckendorf Boulevard, Garden City, New York.

My name is Steven J. Pitterle and my business address is 600 Hidden Ridge Drive, Irving, Texas, 75038. I am employed by Verizon Services Group as Director -- Negotiations.

My name is Pamela Richardson. I am employed by Verizon Communications as a Senior Marketing Specialist and my business address is 2701 Wilson Blvd. Arlington Virginia.

My name is Vincent Woodbury and my business address is 1095 Avenue of the Americas, New York, New York. I am employed by Verizon Services

1 Corporation as Director-- Regulatory Planning for Operator Services and Retail
2 Markets.
3

4 **Q. ARE YOU THE SAME WITNESSES WHO FILED DIRECT TESTIMONY**
5 **IN THIS CASE ON AUGUST 17, 2001?**

6 A. Messrs. Antoniou, Daly and Pitterle filed direct testimony on these issues on
7 August 17. Ms. Langstine, Ms. Richardson and Mr. Woodbury have been added
8 to the panel.
9

10 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE IN**
11 **THE TELECOMMUNICATIONS INDUSTRY.**

12 A. **(Langstine)** During my 22 years of experience with Verizon, I have held
13 numerous positions, each with increasing responsibility. I have directed a number
14 of teams dedicated to customer service delivery. I have headed central office,
15 installation and maintenance field operations teams for POTs and special services.
16 Most recently, I was the Director of Operations for several service centers for
17 Verizon's largest retail business customers in Long Island, Pennsylvania and
18 Delaware.
19 **(Richardson)** I have a B.S. degree in Business Management from Florida A&M
20 University. I also hold an Associates Degree in Information Systems from Strayer
21 University. I have been employed at Verizon and its predecessor companies for 17
22 years, in positions of increasing responsibility, including those involving service
23 ordering, customer consultation and product development and deployment.

(**Woodbury**) My educational and telecommunications experience is set forth on Exhibit UNE-M-1.

Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT POSITION?

A. (**Langstine**) I am responsible for the production support of the Line Loss Report and reviewing procedures and documentation to ensure consistency across the Wholesale CLEC Customer Support team. Additionally, I am responsible for responding to issues brought to the team by CLECs.

(**Richardson**) My responsibilities include development and deployment of wholesale market products, and providing customer assistance with product questions.

(**Woodbury**) I am responsible for ensuring compliance with state and federal regulatory requirements for Operator Services and Directory Assistance.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of our testimony is to respond to the direct testimony concerning General Terms and Conditions issues filed by L. Frederik Cederqvist, on behalf of AT&T; and Robert Peterson, Matt Harthun, Ron Zimmerman, Mark Argenbright, Sherry Lichtenberg, John Trofimuk and Lisa Roscoe, on behalf of WorldCom.

II. INTELLECTUAL PROPERTY (Issues III-15 and IV-107)

Q. AT&T AND WORLDCOM SUGGEST THAT AN INDEMNIFICATION CLAUSE IS NECESSARY TO ENSURE THAT VERIZON VA SATISFIES ITS LEGAL OBLIGATION TO USE "BEST EFFORTS" TO SECURE FOR CLECS THE RIGHT TO USE EMBEDDED INTELLECTUAL PROPERTY. DO YOU AGREE?

A. No. Even if the interconnection agreement is silent on this issue, Verizon VA has an obligation to use its "best efforts" to ensure that AT&T and WorldCom have from Verizon VA's vendors the necessary intellectual property rights to use Verizon VA's network (including, most particularly, software licensing rights). What the CLECs propose, however, is to replace the "best efforts" standard prescribed by the Commission with a commercially unreasonable strict liability standard by imposing upon Verizon VA an indemnification obligation not required by applicable law.

Q. PLEASE COMMENT ON WORLDCOM'S STATEMENT THAT THE INDEMNIFICATION PROVISION IT HAS PROPOSED "IS MERELY A REMEDIAL PROTECTION IN THE EVENT VERIZON FAILS TO SATISFY ITS LEGAL OBLIGATIONS; IT DOES NOT APPLY IN ALL CIRCUMSTANCES, AND IT IS NOT TRIGGERED BASED ON THE OUTCOME OF THE NEGOTIATIONS."

A. The statement is simply wrong. Obviously, WorldCom would not seek indemnification in a case where Verizon VA was able to obtain IP rights through the use of less than "best efforts." Thus, invocation of the indemnification clause is always "triggered by the outcome of the negotiations" -- and therein lies the problem.

Applicable law, complemented by the dispute resolution provisions of the interconnection agreement, provide the CLECs with adequate "remedial protection" in the event Verizon VA breaches its contractual and legal obligation to use "best efforts" in negotiating IP rights. The WorldCom and AT&T proposals, however, would give the CLECs something far more than "remedial protection." Instead, the proposed warranty and indemnification language would essentially guarantee the availability of IP rights to the CLECs. They would either get those rights or Verizon VA would be required to pay them for not getting those rights. These proposals go well beyond that which applicable law provides and directly contradict the recent decision by the New York PSC on this very point. *See AT&T-Verizon New York Order*, Case No. 01-C-0095, at 21-23 (July 30, 2001). Further, the clear implication of this language is, if third parties refuse to grant the CLECs the licenses or rights they seek, then Verizon VA <u>must</u> have failed to use its "best efforts." Verizon VA, however, cannot compel third parties to grant the CLECs the rights they seek, and a provision that assumes Verizon VA can is patently unreasonable.

Q. DOES VERIZON VA'S PROPOSED LANGUAGE COMPORT WITH THE RULING OF THE NEW YORK PSC?

A. Yes. In addition, Verizon VA is willing to add an express provision regarding notice. That change is highlighted in section 28.16.4b, below:

> 28.16.4 AT&T acknowledges that services and facilities to be provided by Verizon hereunder may use or incorporate products, services or information proprietary to third party vendors and may be subject to third party intellectual property rights. In the event that proprietary rights restrictions in agreements with such third party vendors do not permit Verizon to provide to AT&T, without additional actions or costs, particular unbundled Network Element(s) otherwise required to be made available to AT&T under this Agreement, then, as may be required by Applicable Law:
>
> a) Verizon agrees to notify AT&T, directly or through a third party, of such restrictions that extend beyond restrictions otherwise imposed under this Agreement or applicable Tariff restrictions ("Ancillary Restrictions"); and
>
> b) *Verizon shall use its best efforts*, as commercially practical, to procure rights or licenses to allow Verizon to provide to AT&T the particular unbundled Network Element(s), on terms comparable to terms provided to Verizon, directly or on behalf of AT&T ("Additional Rights/Licenses"). Costs associated with the procurement of Additional Rights/Licenses shall be passed through to AT&T as permitted under Applicable Law. **In the event that Verizon, after using its best efforts, is unable to procure a right or license for AT&T, Verizon will promptly notify AT&T of that outcome.**

III. FRAUD PREVENTION (Issue IV-45)

Q. WHAT IS VERIZON VA'S POSITION WITH REGARD TO WORLDCOM'S PROPOSED LANGUAGE?

A. As Mr. Zimmerman indicates, Verizon VA has agreed to WorldCom's proposed § 3.1. Sections 3.2 and 3.3, however, remain in dispute. Moreover, Verizon VA is somewhat confused over WorldCom's position on this issue, in that these two sections are different than the latest proposal made by WorldCom during the August 2 mediation session. During that session, WorldCom proposed a revision to the language offered by Mr. Zimmerman that struck § 3.2 in its entirety and modified § 3.3.

Q. WORLDCOM ARGUES THAT THE INDEMNIFICATION LANGUAGE IN SECTION 3.3 IS APPROPRIATE BECAUSE WORLDCOM HAS NO MEANS OF MAINTAINING THE SECURITY OF THE AREAS IN WHICH CLIP-ON FRAUD IS MOST LIKELY TO OCCUR. DO YOU AGREE?

A. No. As WorldCom acknowledges, if it owned the facilities at which clip-on fraud was perpetrated, it would bear the liability for such fraud. What WorldCom wants, however, is to be relieved of that business risk simply because it <u>leases</u> the facilities rather than <u>owns</u> them. There is neither a legal nor a practical basis for such a shift in the risk.

The Act provides that CLECs may, through interconnection and resale, avail themselves of the benefits of the Verizon VA network in order to enter the competitive marketplace. Nowhere does the Act, or any subsequent interpretation of the Act, provide that a CLEC is entitled to enter the marketplace insulated from all of the attendant risks of conducting business. Here, as in so many other areas, WorldCom wants to use the Verizon VA network in order to enter the marketplace, but does not want to assume the business risks of doing so. Such a proposal is neither equitable nor supported by the Act.

Q. WILL VERIZON VA COOPERATE WITH WORLDCOM IN THE INVESTIGATION AND PREVENTION OF CLIP-ON FRAUD?

A. Absolutely. As Verizon VA has in the past, and as is clearly stated in § 26 of Verizon VA's proposed interconnection agreement, Verizon VA will continue to cooperate with any CLEC to minimize fraud.

The notion, however, that Verizon VA is in a better position than WorldCom to prevent such fraud because Verizon VA <u>owns</u> the facilities and WorldCom <u>leases</u> them is specious. Verizon VA can no more station guards at every telephone pole, NID, cabinet and closet than WorldCom can, and it is patently unreasonable to expect that Verizon VA can prevent the criminal actions of third parties. Moreover, WorldCom has asked for, essentially, insurance against criminal activity, yet fails even to acknowledge the increased costs to Verizon VA that providing such protection would entail.

IV. BRANDING (Issue IV-91)

Q. WHY DOES VERIZON VA TAKES ISSUE WITH WORLDCOM'S PROPOSAL ON THIS ISSUE?

A. Verizon VA takes issue with WorldCom's position on this issue because its proposed language is overly broad. For example, Section 7.1, as drafted by WorldCom, imposes upon Verizon VA an obligation to "brand any and all services. . .as MCIm may determine." Such language is grossly unreasonable and overreaching.

Ms. Lichtenberg's testimony, however, suggests that WorldCom now has a more narrow objective. She states that WorldCom wants "language that makes it clear that branding will be provided both when operator services and directory assistance ("OS/DA") are provided through resale and when they are provided as part of the UNE-Platform." *See* Lichtenberg testimony at p. 21.

Q. WILL VERIZON VA OFFER BRANDING OF OS/DA FOR WORLDCOM END USERS WHO ARE SERVED BY UNE-P FACILITIES?

A. Yes. While Verizon VA is not obligated to offer rebranding of all services as part of its UNE P offerings, WorldCom may purchase rebranded or unbranded directory assistance and operator services from Verizon VA for WorldCom customers served by UNE P facilities. In doing so, WorldCom would be responsible for arranging for the transport of its customers' calls to Verizon VA, and WorldCom could specify its own branding, or no branding at all, for these

services. Such directory assistance and operator services, including any associated branding, would be provided by Verizon VA to WorldCom pursuant to the same nondiscriminatory terms and conditions that apply to other CLECs purchasing these services from Verizon VA.

V. CONFIDENTIAL INFORMATION (Issue IV-97)

Q. DOES VERIZON VA AGREE THAT THE ONLY DISPUTE REMAINING UNDER THIS ISSUE INVOLVES ELECTRONIC MONITORING OF OSS USAGE?

A. Yes.

Q. HAS VERIZON VA ADDRESSED THAT ISSUE IN TESTIMONY ELSEWHERE?

A. Yes. Verizon VA has stated its position fully under Issue I-8, which Verizon VA understands to be identical to the sole surviving dispute under Issue IV-97.

VI. BINDING ARBITRATION (Issue IV-101)

Q. WHAT IS THE CURRENT STATUS OF NEGOTIATIONS ON THE ISSUE OF THE DISPUTE RESOLUTION PROCEDURES TO BE CONTAINED IN THE INTERCONNECTION AGREEMENT?

A. WorldCom recently provided to Verizon VA a revised proposal for dispute resolution mechanics under the contract. It is Verizon VA's understanding that

WorldCom started with the dispute resolution procedures to which Verizon VA and AT&T have agreed at Section 28.11 of their contract, and then suggested a dozen or so changes. Verizon VA is basically willing to accept all but two of WorldCom's suggested changes and is hopeful that the parties will be able to resolve this issue without the need for further arbitration.

Q. WHAT ARE THE TWO CHANGES THAT VERIZON VA CANNOT ACCEPT?

A. First, WorldCom wishes to delete the following sentence that is at the end of Section [28.11.3]: "The written opinion of the arbitrator shall not be enforceable in any court having jurisdiction over the subject matter until the Commission, pursuant to Section [28.11.7] below, has issued an Order adopting or modifying the arbitrator's written opinion." Second, WorldCom wishes to delete the following sentence that is at the end of Section [28.11.2]: "Additionally, [WorldCom] hereby waives its rights to submit disputes in accordance with the alternative dispute mediation process implemented by Verizon pursuant to paragraph 40 and Attachment F of the Merger Order."

Q. WHY CAN'T VERIZON VA ACCEPT THE DELETION OF THESE TWO SENTENCES?

A. The Verizon VA/AT&T dispute resolution procedures are premised upon a private arbitrator issuing a decision, but such decision being subject to the review

of the Virginia Commission (or this Commission acting in the Virginia Commission's stead, if the Virginia Commission maintains its current view toward arbitrating disputes). That way, if the Virginia Commission finds the arbitrator's decision acceptable, it can either issue an order approving the decision or, if it takes no action within thirty (30) days of receiving the arbitrator's decision, the Virginia Commission's approval of the order is deemed given. Alternatively, if the Virginia Commission does not agree with the decision, it may modify it as it deems appropriate. The key, however, is that the Virginia Commission must have an opportunity to review the arbitrator's decision before the decision becomes effective. That is entirely reasonable and appropriate. Neither Verizon VA nor WorldCom should have to give effect to a private arbitrator's decision without the Virginia Commission having had an opportunity to determine whether the decision comports with the contract, applicable law, public policy and fundamental fairness.

As to WorldCom's desired deletion of the last sentence of § 28.11.3, Verizon VA is willing to modify this provision so that it only applies to matters that are subject to arbitration (i.e., those not listed as exceptions to arbitration in § 28.11.1). However, as to those matters that are subject to arbitration, WorldCom should not be able to have it both ways – it should not be able to forum shop. That is, WorldCom, as the party insisting upon third party arbitration as the exclusive means for resolving certain potential disputes, should not also have available to it other fora to resolve disputes. WorldCom must choose. If it wishes to have an

arbitration process as the means to resolve certain disputes, then that must be the exclusive remedy for such disputes.

Q. WHAT IS VERIZON VA'S VIEW OF WORLDCOM'S ARGUMENT THAT THERE IS "NO COMPELLING REASON TO DELAY" THE EFFECTIVENESS OF THE ARBITRATOR'S DECISION?

A. First of all, the Virginia Commission (or this Commission acting in the Virginia Commission's stead), given its generally greater experience and broader view in the telecommunications arena as compared to that of a single private arbitrator, may very well arrive at a different resolution to a dispute than that to which a private arbitrator arrives. In such cases, there most certainly is a compelling reason for the short delay (not longer than 30 days) that is provided for under the AT&T/Verizon VA arbitration provisions for the Virginia Commission to review the arbitrator's decision before it becomes effective. One can easily imagine, depending upon the complexity and importance of the issue being resolved, how operationally difficult and expensive it may be to try to undo that which should never have been given effect (*i.e.*, an arbitrator's decision that is rejected or modified by the Virginia Commission). Accordingly, WorldCom's insistence on having the arbitrator's decision become effective prior to its approval by the Virginia Commission should be rejected.

Q. WHAT IS VERIZON VA'S VIEW OF WORLDCOM'S ARGUMENT THAT VERIZON VA'S RIGHT TO LEGAL PROCESS CAN BE TAKEN AWAY BECAUSE CONTRACTS ENTERED INTO UNDER THE ACT ARE SOMEHOW LEGALLY DIFFERENT THAN OTHER CONTRACTS?

A. WorldCom's argument is without merit. It is well-settled law that one entity cannot compel another to waive its rights to use the legal system in order to settle disputes (regardless of the type of contract under which such disputes arise). That said, as demonstrated by Verizon VA's willingness to agree to almost all of WorldCom's desired changes to the dispute resolution mechanics to which Verizon VA and AT&T have already agreed, Verizon VA has been willing to work with WorldCom to agree to a reasonable third party arbitration procedure. Verizon VA, however, cannot agree that the arbitrator's decision will become effective prior to its approval by the Virginia Commission. Nor can Verizon VA be compelled to agree to such a provision.

WorldCom argues that a state commission can somehow take away a party's right to legal process (*i.e.*, order a party to be bound by the decision of a private arbitrator) because contracts entered into under the Act are somehow fundamentally different from garden-variety contracts. There is absolutely nothing in the Act, however, that supports that argument. WorldCom has not cited any cases supporting such a distinction, and Verizon VA is not aware of any such cases. The bottom line is that a party cannot be compelled to give up its right to legal process – period. That said, as noted above, Verizon VA is amenable to the vast majority of the provisions that WorldCom desires.

VII. INDEMNIFICATION (Issues IV-106 and V-11)

Q. WHAT IS VERIZON VA'S POSITION ON THESE RELATED ISSUES?

A. As to Issue IV-106, Verizon VA cannot agree to include WorldCom's indemnification language at Section 19 of its proposed contract. Verizon VA will agree to: (1) the general indemnification clause at Section 20 of its own proposed interconnection agreement, (2) the general indemnification provisions that were in the parties' 1997 interconnection agreement, or (3) the general indemnification provisions agreed to by Verizon VA and AT&T. *See* § 24 of the AT&T-proposed interconnection agreement.

As to Issue V-11, Verizon VA must have a limited specific indemnity if it is sued by AT&T's or WorldCom's end user customers in a situation where Verizon VA has not made a mistake in providing such customer's directory listing (*i.e.*, AT&T or WorldCom has provided to Verizon VA incorrect information or information to which, for whatever reason, their customers object and file a claim against Verizon VA). This indemnity appears as the last sentence of Section 4.7 of Verizon's Additional Services Attachment in the contract for WorldCom: "[WorldCom] agrees to release, defend, hold harmless and indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's publication or dissemination of the ***Listing Information as provided by [WorldCom]*** hereunder." (emphasis added) Comparable language is found as the last sentence of Section 19.1.7 of Verizon VA's proposed contract for AT&T: "In addition, AT&T agrees to release, defend, hold harmless and

indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's listing of the ***listing information provided by AT&T*** hereunder." (emphasis added)

Q. WHAT IS WRONG WITH WORLDCOM'S PROPOSAL FOR ISSUE IV-106?

A. By insisting upon inclusion of Section 19.2 of its proposed language, WorldCom again unreasonably hopes to place all of the risk of doing business on Verizon VA – effectively making Verizon VA either provide perfect service (which is not possible) or indemnify WorldCom for any claims WorldCom's end user customers bring against WorldCom on account of less than perfect service provided by Verizon VA.

Q. HAVE VERIZON VA AND AT&T AGREED TO GENERAL INDEMNIFICATION PROVISIONS?

A. Yes. Tellingly, WorldCom is again the outlier – as AT&T does not try to make Verizon VA guarantee perfect performance but, instead, has reached closure with Verizon VA on reasonable general indemnification provisions for the parties' contract (at Section 24 thereof).

Q. CAN YOU DESCRIBE IN MORE DETAIL WHAT IS WRONG WITH WORLDCOM'S PROPOSED SECTION 19.2?

A. Yes. For ease of reference, WorldCom's proposed Section 19.2 reads as follows:

> 19.2 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all Loss incurred by the indemnified Party suffered, made, instituted, or asserted by any other person (regardless of the form of action) and to the extent such Loss is legally caused by the indemnifying Party through acts or omissions in breach of this Agreement. Notwithstanding the foregoing indemnification, nothing in this Section [19] shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws.

This means that, any time Verizon VA does not provide perfect performance (*e.g.*, Verizon VA does not perform a ***single*** "hot cut" at the specified time), Verizon VA must indemnify WorldCom if WorldCom's customer brings a claim against WorldCom. That would be ridiculous. Under WorldCom's approach, even if Verizon VA performs 999 out of 1000 hot cuts on time, Verizon must still indemnify WorldCom for the single hot cut it did not perform on time (even where Verizon VA, for sake of argument, were to perform installations on time for its own new end user customers only 95% of the time, as opposed to 99.9% on time performance for WorldCom's hot cuts).

The unreasonableness of WorldCom's proposal is demonstrated by the fact that other carriers don't even ask Verizon VA for such a commercially unreasonable provision. WorldCom's bald assertion that its proposed indemnification provisions are "not overly burdensome" (see Harthun testimony at p. 13) is simply not true. For if WorldCom were to have its way, ***any time*** one of its end user

customers had a problem, WorldCom could look to Verizon VA for 100% indemnification.

Q. WHY IS WORLDCOM'S PROPOSED SECTION 19.2 COMMERCIALLY UNREASONABLE AND NOT IN KEEPING WITH APPLICABLE LAW?

A. First, while WorldCom tries to paint its proposed Section 19.2 as creating reciprocal obligations (*see* Harthun panel testimony at p. 18), in reality Verizon VA will be providing virtually all of the services. As such, Verizon VA would be the only party providing indemnification. Second, as WorldCom is well aware, state public service commissions throughout the country have considered the issue of appropriate devices by which to encourage outstanding performance from RBOCs and have, in some cases, crafted performance assurance plans to provide such incentives. These sorts of limited plans are the means by which certain state commissions have determined that RBOCs will have to provide financial remedies to CLECs different than those the RBOCs provide to their own end user customers. Put another way, WorldCom should not be able to obtain superior (much less perfect) service from Verizon VA. Rather, WorldCom should receive service in parity with that which Verizon VA provides to its own end user customers. Under Verizon VA's retail tariffs, Verizon's liability to its own end user customers for less than perfect service is generally limited to the amount of the charge for which Verizon VA billed. The same should be true for WorldCom as a customer of Verizon VA. It is not entitled to receive superior treatment as compared to Verizon's own end user customers.

Q. WHAT IS VERIZON VA'S REACTION TO WORLDCOM'S ASSERTION AT P. 18 OF ITS PANEL'S TESTIMONY THAT "VERIZON WOULD EFFECTIVELY GRANT ITSELF IMMUNITY FROM ALL THIRD PARTY CLAIMS ARISING OUT OF ITS OWN BREACH OF THE AGREEMENT"?

A. First, Verizon VA does not object to the notion of indemnification based on death, bodily injury and damage or destruction of property. Verizon's proposed indemnification provisions include such indemnification. Again, the heart of the issue here is WorldCom's totally unreasonable insistence on Verizon VA subsidizing its business by agreeing to, in effect, provide perfect service – an agreement Verizon VA (indeed, any prudent business) should not be forced to make.

In response to WorldCom's particular assertion above, Verizon VA's proposed contract provisions would not grant immunity. Quite the contrary, Verizon VA wishes to treat WorldCom in the identical manner that Verizon VA treats its own end user customers – *i.e.*, provide to it the same remedies that are available to Verizon's own end user customers. That (and no more or less) is what WorldCom is entitled to under the Act. WorldCom's pressing of this issue is not credible.

Q. WHAT IS VERIZON VA'S REACTION TO WORLDCOM'S ASSERTION AT P. 19 OF ITS PANEL'S TESTIMONY THAT "VERIZON'S POSITION WOULD BE ANTI-COMPETITIVE"?

1 A. WorldCom frequently complains that if it does not get its way, competition will
2 suffer. What WorldCom really wants, however, is an unjustified competitive
3 advantage. It wants Verizon VA to guarantee that it will provide WorldCom with
4 not only materially better service than Verizon VA's own customers receive, but
5 rather, ***perfect*** service.

6 WorldCom fails to recognize the fact that, if Verizon VA were to insure perfect
7 service, there would be a cost associated with that insurance. Verizon VA has not
8 factored into its cost studies the cost of such insurance. Were it to do so, however,
9 the cost of service to WorldCom would increase.

10

11 **Q. DO AT&T AND WORLDCOM APPEAR TO UNDERSTAND VERIZON**
12 **VA'S POSITION ON ISSUE V-11?**

13 A. No. It appears that both AT&T and WorldCom believe that Verizon VA is asking
14 them to indemnify Verizon VA where Verizon VA has made an error in providing
15 a directory listing. That is not what Verizon VA is requesting. Rather, as noted
16 by the emphasis noted in the subject language above (i.e., ***Listing Information as***
17 ***provided by [WorldCom]***, in the case of WorldCom, and ***listing information***
18 ***provided by AT&T***, in the case of AT&T), Verizon VA wishes to have the CLECs
19 provide indemnification only to the extent that Verizon VA prints the information
20 ***as provided*** and nonetheless AT&T's or WorldCom's customer brings a claim
21 against Verizon VA. This limited indemnification is altogether appropriate.
22 Where Verizon VA does not make an error in providing a directory listing (i.e., it
23 prints the information as it is provided by AT&T or WorldCom), Verizon VA

should not be jeopardized by claims from the CLECs' customers on account of the CLECs' errors.

VIII. NEGOTIATIONS PROMPTED BY CHANGE IN LAW (Issue IV-113)

Q. WORLDCOM ARGUES THAT "IT IS NOT ATTEMPTING TO DENY VERIZON VA THE BENEFIT OF ANY CHANGE IN LAW" BUT, RATHER, THAT THE PARTIES SHOULD NEGOTIATE OVER THE "INTERPRETATION AND MEANING OF THE LAW" BEFORE VERIZON VA CEASES ANY SERVICE OFFERING BASED ON A CHANGE IN LAW. DOES VERIZON AGREE?

A. No. WorldCom's purported concern is a red herring. Using WorldCom's own example, if the Commission were to decide that local switching is no longer required, the Commission will so declare in no uncertain terms. In such a case, there would be nothing left to negotiate. What WorldCom is really concerned about is delaying indefinitely any change in law that results in a reduction in services that Verizon VA is required to offer. In essence, WorldCom wants to arrogate unto itself the right to ignore a change in law until it agrees to be bound by it.

Q. DOES THE PARTIES' EXPERIENCE FOLLOWING THE EIGHTH CIRCUIT'S DECISION IN THE IOWA UTILITIES BOARD CASE SUPPORT WORLDCOM'S POSITION?

A. No. In fact, it demonstrates the flaws in WorldCom's position. WorldCom obviously disagreed with, and appealed from, the Court of Appeals' second decision in that case. *See AT&T Corporation, et al. v. Iowa Utilities Board et al.*, 219 F.3d 744 (8th Cir. 2000). Nonetheless, with the exception of that part of the Court's decision dealing with the TELRIC methodology, which was stayed by agreement of the parties, the Courts' decision has not been stayed during the pendency of the appeal. Rather, that decision became law upon issuance of the Court's mandate.

Under WorldCom's proposal, however, until WorldCom agreed on the interpretation of the Eight Circuit's Order, it could continue to insist that the law had not changed. That is a grossly unfair and unworkable arrangement. Indeed, at the outset of this proceeding, the Arbitrator recognized that the Parties are bound by the Court's decision unless and until it is changed. In the absence of a stay, Verizon VA must be able to react to any change in law by a date certain. It cannot operate in limbo for some indefinite period of time.

The more recent example of the Commission's *ISP Remand Order* provides an even clearer example of the flaws in WorldCom's proposal. Under WorldCom's language, it would be able to ignore the reciprocal compensation payment regime set up by the Commission in the *ISP Remand Order* until the D.C. Circuit <u>and</u> the Supreme Court approved it. Rather than implement the Commission's plan in accordance with its own terms (i.e., with the rate regime taking effect beginning June 14, 2001), WorldCom would hold Verizon VA hostage in negotiations for years while the appeals worked their way through the legal process.

IX. CUMULATIVE REMEDIES (Issue IV-120)

Q. DOES WORLDCOM'S PROPOSED REVISION TO PART A, SECTION 27.2 RESOLVE THE DISPUTE REGARDING THIS ISSUE?

A. No. Verizon VA takes issue with several portions of WorldCom's proposed language.

First, Verizon VA has not agreed to "remedies for performance standards failures set forth in this agreement." Indeed, that issue has been deferred. Verizon VA's position, however, is that the general state plan that will be adopted by the Virginia Commission should be the only applicable plan, and Verizon VA has not agreed that a remedies plan should be incorporated into the Agreement. Instead, Commission or Virginia Commission plans should operate independently of the agreement and do not need to be incorporated by reference.

Second, because the performance plan has not yet been identified, we cannot know if it is "not inconsistent" with the interconnection agreement. A government-adopted plan may, in some fashion, be inconsistent with other remedies in the agreement.

Third, the purpose of a performance plan may not be limited to providing "a financial incentive to meet performance standards." It may also be intended to provide a remedy for harm suffered by a CLEC as a result of deficient service. In fact, WorldCom's revised language refers to incentive plan payments as "damages."

Fourth, amounts paid to WorldCom under a performance plan should be deducted from amounts due to WorldCom under any other remedies available to it. WorldCom should not be allowed a double recovery. Thus, the word "directly" should be deleted from WorldCom's language. If a payment is made to WorldCom, whether it is directly, or indirectly through a state fund that is then distributed to WorldCom, Verizon VA should receive a credit against other amounts that may be due.

Fifth, WorldCom's revised language refers to mitigation for payments made under the performance plan that "arise out of the same breach of this Agreement." This language is too narrow. Simply because Verizon VA is obligated to make a remedy plan payment does not mean that there has been a breach of the agreement. Rather, the performance plan may provide for payments to be made when Verizon VA's service fails to satisfy the standards set by the plan. Failing to achieve such standards, however, does not necessarily equate to a breach of the interconnection agreement,

X. REMEDIES - PERFORMANCE STANDARDS & METRICS (Issue IV-121)

Q. PLEASE COMMENT ON WORLDCOM'S PROPOSALS UNDER THIS ISSUE.

A. WorldCom's proposed § 27.3 is too broad, as it seeks to incorporate into the agreement any performance standards, metrics and remedies established by the Commission, the Virginia Commission or other governmental body. The fact is

that the government standards, metrics and remedies may not have been intended to create a private right or cause of action between the Parties. For instance, the BA-GTE merger commitments establish measures and standards, and financial incentives payable to the Federal Treasury. It is not clear that the merger commitments establish an independent contract right for WorldCom to complain if Verizon VA does not meet a standard set by the merger commitments.

Verizon VA cannot incorporate into the agreement unidentified plans whose applicability is as yet unclear. Moreover, as explained above, there is no need to incorporate such plans, as they will operate as a matter of law.

XI. DEFINITIONS (Issue IV-129)

Q. HAS WORLDCOM ACCURATELY STATED VERIZON VA'S POSITION ON THIS ISSUE?

A. No. In fact, Verizon VA is rather confused by the manner in which WorldCom has described this issue in the wake of the August 2 mediation session. It was Verizon VA's understanding that the Parties agreed that the interconnection agreement should contain a set of definitions, and that WorldCom would make the first attempt at defining what the Parties might agree to be uncontroversial terms. Verizon VA also understood that the Parties accepted the fact that disputed definitions were generally being discussed along with the sections of the interconnection agreement in which the defined terms are used.

Verizon VA did not, as WorldCom suggests, take the position that definitions cannot be negotiated until after the Commission approves the entire agreement.

XII. ASSURANCE OF PAYMENT (Issue VI-1(N) and INSURANCE (Issue VI-1(Q))

Q. HAS VERIZON VA ADDRESSED WORLDCOM'S CONCERNS ABOUT THESE TWO ISSUES?

A. Yes. As explained in our direct testimony on these issues, Verizon VA has offered to WorldCom terms that alleviate its concerns about this proposed contract language.

With Issue VI-1(N), Verizon VA offered to sign a letter which states that, as of the effective date of the interconnection agreement, Verizon VA is aware of no circumstances, such as those described in § 6.2 of Verizon's Model Interconnection Agreement, that would necessitate any assurance of payment from WorldCom. WorldCom agreed to draft that letter but, for reasons not disclosed, has not done so. Again, WorldCom is the outlier, as AT&T and Verizon have agreed to such an arrangement. This arrangement is intended to provide a modicum of protection to Verizon VA from entities whose creditworthiness is questionable, while not requiring such minimal protection from financial heavyweights. This is a prototypical issue in which Verizon VA and AT&T have been able to draft around Verizon VA's reasonable opt-in concerns in a way that did not harm AT&T. WorldCom should do the same.

With Issue VI-1(Q), Verizon VA proposed a minimum net worth clause that would allow WorldCom to be self-insured.

Q. IF VERIZON VA IS WILLING TO MAKE EXCEPTIONS TO THESE CONTRACTUAL OBLIGATIONS FOR WORLDCOM, WHY DOES VERIZON VA WANT THE CLAUSES IN THE INTERCONNECTION AGREEMENT?

A. As explained before, not every CLEC that opts into this interconnection agreement may be as financially sound as WorldCom. Therefore, Verizon VA must protect itself against the risk of nonpayment and lack of insurance.

Q. WORLDCOM HAS PROPOSED SOME REVISED LANGUAGE UNDER ISSUE VI-1(Q). DOES THAT LANGUAGE RESOLVE THE INSURANCE ISSUE?

A. No. As explained above, Verizon VA has eliminated WorldCom's concerns by offering to allow it to satisfy this obligation through self-insurance. Verizon VA is not, however, willing to lessen its protection with future CLECs who might opt into this agreement.

XIII. DEFAULT (Issue VI-1(O))

Q. WHY DOES VERIZON VA OPPOSE WORLDCOM'S SUGGESTION THAT ALL DISPUTES SURROUNDING UNCURED DEFAULTS BE RESOLVED VIA THE DISPUTE RESOLUTION PROCESS?

A. WorldCom's proposal would put Verizon VA in the untenable position of having to continue to provide service indefinitely to a CLEC who refuses to pay. If a CLEC refuses to pay for service, Verizon VA must have the right to suspend that service, upon adequate notice to the CLEC and the state commission.

Q. HAS VERIZON VA PROPOSED REASONABLE LANGUAGE THAT ADDRESSES WORLDCOM'S CONCERNS?

A. Yes. Verizon VA first proposed the language set forth in § 12 of its Model Interconnection Agreement, which gives the defaulting party 30 days to cure. Then, in the August 2 mediation session, Verizon VA offered to WorldCom the same language to which Verizon VA and AT&T had agreed. WorldCom has refused to accept either.

Q. WHAT IS VERIZON VA'S POSITION WITH REGARD TO HANDLING BONA FIDE BILLING DISPUTES?

A. Under both its Model Interconnection Agreement and the language agreed to by AT&T, Verizon VA's position is that a bona fide billing dispute would not constitute a default.

XIV. REFERENCES (Issue VI-1(R))

Q. WHAT FURTHER COMMENTS DOES VERIZON VA HAVE UPON REVIEW OF THE WORLDCOM PANEL'S TESTIMONY ON THIS ISSUE?

A. Verizon VA had previously understood that WorldCom wanted to freeze in time (i.e., at the effective date of the interconnection agreement) Verizon VA's tariffs, technical manuals and the like. Apparently, WorldCom wishes to go beyond that. At page 67 of the Trofimuk panel testimony, WorldCom notes that it also wishes to freeze applicable "laws, or other authorities and sources [such as Telcordia technical manuals]" in place as well. The foregoing additions illustrate just how unworkable and unreasonable WorldCom's desired approach is.

As an example, WorldCom would have the Parties negotiate any time Telcordia changes one of its applicable manuals to determine whether the Parties will give effect to that change. This is a ridiculous approach. As Verizon VA stated in its initial testimony on this issue, "the interconnection agreement must reflect the fact that all documents referred to may evolve from time-to-time throughout the life of the agreement."

Verizon VA and other carriers have uniformly recognized that both parties are best served (both substantively and administratively) if applicable law and other governing authorities and sources are taken as they are amended and in effect from time to time. If a change in law or a change in a technical reference materially impacts the provision of services under the agreement, then, any negotiation of an amendment to the agreement will be dealt with under the change

of law clause of the contract – the contents of which is subject to arbitration in this proceeding. There is no justification for WorldCom's "snapshot" of applicable law and other governing authorities and sources. Rather, they quite naturally should be as amended and in effect from time to time. Anything less would be illegal (in the case of applicable law), and unreasonable and unworkable (in the case of other governing authorities and sources).

XV. SALES OF EXCHANGES/TRANSFER OF TELEPHONE OPERATIONS (Issues V-15 and VII-17)

Q. WHAT IS YOUR REACTION TO AT&T WITNESS CEDERQVIST'S STATEMENT THAT AT&T WOULD "NOT NECESSARILY" BE INVOLVED IN ANY COMMISSION PROCEEDING TO REVIEW A PROPOSED SALE OF EXCHANGE(S) OR OTHER TRANSFER OF ASSETS BY VERIZON?

A. First, I doubt very much that AT&T would not be involved if the exchange in question was of any importance to AT&T. The Virginia Commission would certainly protect the interests of all customers, including AT&T, if it provided service in the exchange in question. The Virginia Commission would examine the particular facts in question and make a determination of the appropriate course of action. The Virginia's Commission's determination would depend upon any number of relevant factors, which could include the number of exchanges to be transferred, where they are located, the identity (including the technical characteristics of the systems, equipment and operational processes) of the