

SEP 10 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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) CC Docket No. 00-218
Virginia State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon Virginia Inc., and for)
Expedited Arbitration)

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

In the Matter of)
Petition of AT&T Communications of)
Virginia Inc., Pursuant to Section 252(e)(5)) CC Docket No. 00-251
of the Communications Act for Preemption)
of the Jurisdiction of the Virginia)
Corporation Commission Regarding)
Interconnection Disputes With Verizon)
Virginia Inc.)

WORLDCOM'S OPPOSITION TO VERIZON'S RENEWED MOTION TO DISMISS

WorldCom, Inc. ("WorldCom") opposes Verizon Virginia, Inc.'s ("Verizon") renewed motion to dismiss issues III-6 and IV-28, which are the only claims it continues to press against WorldCom. In resolving this motion, the Commission should also make clear that to the extent Verizon addresses other issues in its motion, it does so only with respect to AT&T's claims, and

that regardless of how the Commission addresses those claims, they do not impact WorldCom's proposals which are categorized under the same issue number.

UNE COMBINATIONS (ISSUE III-6)

In response to the Commission's ruling that WorldCom restate issues to make clear that it is not asking the Commission to overrule Commission or Court precedent in this proceeding, WorldCom restated its contract language concerning combinations as follows:

WorldCom's Proposed Amended Contract Language:

2.4 Except as provided in Section 2.4.1 below, Verizon shall offer each Network Element individually or in combination with any other Network Element or Network Elements. This includes, but is not limited to, the Combination of all Network Elements, also known as Network Element Platform and Loop/Transport combinations. Verizon shall not separate Network Elements that are already combined on Verizon's network unless requested by MCI. Verizon's charge to MCI for any Combination of elements that are already combined may not exceed the TELRIC price for the sum of the network elements that comprise the Combination. At MCI's request, except as noted below, Verizon shall provide Combinations of Network Elements whether or not those Network Elements are currently combined in Verizon's network. Verizon may impose cost-based charges as specified in the pricing provisions of this Agreement for any work reasonably undertaken to combine Network Elements at MCI's request that were not previously combined.

2.4.1 Notwithstanding Section 2.4 above, Verizon shall not be required to provide Network Elements in novel combinations, that is, in configurations that are not present somewhere in Verizon's network; provided further that in the event a court of competent jurisdiction declares lawful the FCC's Rules 315(c)-(f), or the FCC promulgates some analogous rule(s), Verizon agrees to provide such novel combinations in accordance with the terms of that rule.

In its renewed motion to dismiss, Verizon ignores WorldCom's restatement of the issue, and instead attacks what it alleges to be AT&T's continued effort to have the Commission rule in violation of the 8th Circuit's mandate. AT&T no doubt will address these meritless arguments on its own behalf – for WorldCom's purposes it is enough merely to note that Verizon does not

address WorldCom's proposed language or for the most part the arguments made by WorldCom in support of that language.

As WorldCom's proposed contract language makes explicit, WorldCom does not dispute that the 8th Circuit invalidated Rule 315(c)-(f), in a ruling current under review by the Supreme Court, and it does not ask the Commission to re-impose requirements previously set out in (c)-(f), although Verizon is plainly incorrect that the Commission (standing in the shoes of a state commission) may impose only those requirements that are set out in FCC regulations. WorldCom's argument, instead, is that its combination language (permitting "ordinarily combined" but not "novel" combinations) is permitted under Rule 315(a) and (b) and does not permit the kinds of novel combinations that would have been permitted under Rules 315(c)-(f).

WorldCom's understanding of the Act and the FCC's regulations is squarely grounded in the relevant statutory and regulatory language. The Act and FCC regulations require incumbent LECs to provide combinations of unbundled network elements. 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.315(a), (b). The combined effect of the Act and these regulations is 1) to entitle requesting carriers to combinations of network elements where the elements are already combined, such as in an existing dial tone arrangement and 2) to entitle requesting carriers to new (not currently existing) combinations as well (for example, second lines) where Verizon ordinarily combines such elements in its network.

With respect to provision of existing combinations of network elements, Rule 315(b) provides that these existing arrangements shall not be separated by ILECs except upon request. With respect to new combinations, Rule 315(a) provides that "[a]n incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to

combine such network elements in order to provide a telecommunications service.” This regulation is simply a restatement of section 251(c)(3). Critically, the Commission has stated that section 251(c)(3) (and thus Rule 315(a) as well) requires incumbent LECs to perform the functions necessary to combine requested elements in any technically feasible manner. Local Competition Order ¶ 293. The Commission has also held that its regulations require incumbent LECs to perform the functions necessary to combine those elements that are ordinarily combined within their network. Local Competition Order ¶ 296. Thus, WorldCom may order new (but not novel) combinations under Rule 315(a), and Verizon is obligated to perform the functions necessary to combine the elements and to provide the combination pursuant to Rule 315(a). That rule is in effect and has never been challenged.

In contrast, Rules (c)-(f) by its terms address combinations of network elements “even if those elements are not ordinarily combined in the incumbent LEC’s network.” For that reason, these rules contain detailed provisions concerning the resolution of disputes over whether particular novel combinations are technically feasible. These provisions dealing with technical feasibility obviously do not in any way concern requests for combinations of elements that routinely exist in combination in the ILEC networks.

As noted above, WorldCom only seeks ordinary combinations in this proceeding and therefore is proceeding under rule 315(a). When a CLEC requests a loop-switch combination to provide a second line to a customer, that request raises no technical feasibility issues, and such requests are not made pursuant to Rules 315(c)-(f).

In its Renewed Motion to Dismiss, Verizon asserts that rules (c)-(f) should be construed broadly to cover ordinary as well as novel combinations. But neither the FCC nor any court has

accepted this construction, and Verizon's assertion that WorldCom is asking for relief inconsistent with a court order is entirely without merit. Taken on its own merits as a question of first impression, Verizon makes three specific arguments, each of which entirely lack merit. First, and principally, Verizon claims that the 8th Circuit not only invalidated rules (c)-(f), but also more generally construed section 251(c)(3) to require that the CLEC and not the ILEC do any combining of elements. Motion at 5 (quoting *Iowa Utilities Board*, 219 F.3d at 759). Therefore, in Verizon's view, any contract provision that requires ILECs to combine elements for CLECs would violate the 8th Circuit's mandate.

But while the 8th Circuit's invalidation of rules (c)-(f) remains binding law, its broad statement that ILECs may not be required to combine elements has been squarely rejected by the Supreme Court, and is therefore no longer good law. The Supreme Court rejected this argument in the clearest possible terms:

Because [section 251] requires elements to be provided in a manner that "allows requesting carriers to combine" them, incumbents say that it contemplates the leasing of network elements in discrete pieces. It was entirely reasonable for the Commission to find that the text does not command this conclusion. . . . [I]t does not say, or even remotely imply, that elements must be provided only [in discrete pieces] and never in combined form. Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundled basis" in § 251(c)(3) means "physically separated." The dictionary definition of "unbundled" (and the only definition given, we might add) matches the FCC's interpretation of the word: "to give separate prices for equipment and supporting services." Webster's Ninth New Collegiate Dictionary 1283 (1985).

AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 394 (1999). Verizon's claim that the governing law requires that CLECs, not ILECs, do any combining is thus utterly without merit.

Verizon's second argument consists of its observation that the Commission declined to order "ordinarily combined" combinations in the *UNE Remand Order*, and in that same order

declined to require the unbundling of EELs on the rationale that they were a combination of “ordinarily combined” elements. Motion at 7 (citing *UNE Remand Order* at pars. 476, 479, 480). But that shows only that the FCC previously did not feel the need to reach the issue present here. Verizon’s claim that the FCC previously *rejected* WorldCom’s construction of Rule 315 is plainly false.

Here, standing in the shoes of a state commission and required by law to resolve this dispute over alternative contract language, this Commission must reach the issue it had the discretion to avoid in the *UNE Remand Order*. That being so, Verizon is asking the Commission to rule, *for the first time*, that the vacation of Rules (c)-(f) prevent it from requiring ILECs to combine elements for CLECs as they ordinarily combine them for themselves. In other words, Verizon is asking for a ruling that the vacation of Rules (c)-(f) prevent the Commission from enforcing the most straightforward antidiscrimination provision imaginable, notwithstanding the unambiguous requirement of section 251(c)(3) that network elements be provided in a nondiscriminatory manner. Were the Commission to accept Verizon’s implausible argument, the competitive consequences could be devastating, especially in the unlikely event that the Supreme Court were to affirm the 8th Circuit’s invalidation of Rules (c)-(f).

Verizon’s final argument is that WorldCom’s understanding of Rule 315(a) is implausible because it renders the vacated rules (c)-(f) superfluous. Motion at 8. This argument too is entirely meritless. To repeat, Rules (c)-(f), by their plain terms, explain how the Commission will address claims that novel combinations are or are not technically feasible – a matter not covered under rule 315(a), which addresses plain vanilla, ordinary, combinations.

WorldCom's straightforward understanding of how these provisions interact gives full meaning to all of them.

Adoption of WorldCom's proposed contract language, and rejection of Verizon's motion, is critical to new entrants. Verizon ordinarily combines for itself the elements in its network, both to provide service to new customers and second lines to existing customers. UNE Remand Order ¶ 481. The Commission therefore should specifically confirm that Verizon is obligated pursuant to Rule 315 (a) and (b) to provide combinations of network elements so that WorldCom may provide both the platform, and second lines to customers (whether or not the second lines are currently in service). In sum, the Commission should deny Verizon's motion to dismiss this issue, which is nothing more than a request that it be permitted to engage in precisely the kind of egregiously discriminatory conduct that is expressly prohibited by section 251(c)(3).

COLLOCATION OF ADVANCED SERVICES EQUIPMENT (ISSUE IV-28)

Verizon also has asked the Commission to dismiss Issue IV-28, which addresses collocation of equipment needed to provide advanced services. Motion at 12 n. 15.

WorldCom's restated contract language that Verizon would have the Commission strike summarily is as follows:

Verizon shall permit MCIIm, at MCIIm's discretion, to collocate DSLAMs, splitters used in association with DSLAMs, and other equipment necessarily located where the copper portion of the loop terminates in order to provide DSL functionality, in Verizon's premises where the copper portion of the loop terminates, in accordance with the rates, terms and conditions set forth in the Collocation Attachment. The parties agree to adopt rules to implement the FCC's Order in FCC Docket No. 98-147 providing for the collocation of multifunction equipment where an inability to deploy that equipment would as a practical, economic or operation matter preclude MCIIm from obtaining interconnection or access to unbundled network elements.

The contract language which WorldCom seeks to include in the Interconnection Agreement is critical for the provision of competitive advanced services. It specifies that Digital Subscriber Line Access Multiplexers (DSLAMs) can be collocated, and such collocated DSLAMs are necessary for the provision of advanced services over a copper loop. Verizon nevertheless argues that this issue should be dismissed solely because “Verizon and WorldCom are currently negotiating language to reflect the *Advanced Services Remand Order* and believe they can reach agreement on this issue.” Motion at 12 n. 15. This is a frivolous argument. It is true that Verizon and WorldCom appear to have no substantive dispute on this issue, and that WorldCom’s language, which does nothing more than require Verizon to honor the FCC’s recent Collocation Order, is entirely noncontroversial. However, WorldCom proposed this language as a compromise on July 6, and since that date Verizon has steadfastly refused to accept it or offer any alternative language. There has been no negotiation – “currently” or otherwise – on this issue because Verizon has never responded to WorldCom’s proposal. Indeed, Verizon has not even filed testimony on the issue. If the Commission were to grant Verizon’s motion and dismiss this issue now before the parties have agreed on language, there would be an unresolved dispute and no vehicle left for its resolution. Verizon should sit down with WorldCom and resolve this question, or submit it to arbitration. There is absolutely no ground for dismissing it from the case until it is resolved.

CONCLUSION

For the reasons set forth above, Verizon's Motion to Dismiss should be denied.

Respectfully submitted,



Mark D. Schneider

Lisa B. Smith
Kecia Boney Lewis
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Jenner & Block LLC
601 Thirteenth Street, N.W.
Washington, D.C. 20005

Allen Freifeld
Kimberly Wild
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing "WorldCom's Opposition to Verizon's Renewed Motion to Dismiss" were delivered this 10th day of September, 2001, by federal express to:

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

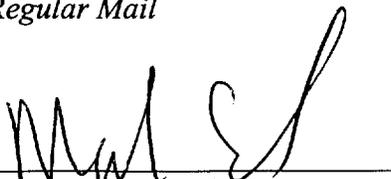
Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074

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

Lydia Pulley
600 East Main Street
11th Floor
Richmond, VA 23219

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

By: _____



Mark D. Schneider