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November 7, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Petition of Cox Virginia Telcom, Inc. for  
Arbitration of an Interconnection Agreement  
with Verizon Virginia Inc.  
CC Docket No. 00-249

Dear Ms. Salas:

I am transmitting to you herewith Cox Virginia Telcom, Inc.'s Objection and Request for Sanctions to certain contractual language included by Verizon Virginia, Inc. in the November 2, 2001 joint decision point list in the above-referenced proceeding.

Please inform me if any questions should arise in connection with this matter.

Respectfully submitted,



J.G. Harrington  
Counsel to Cox Virginia Telcom, Inc.

JGH/vll  
Enclosure

cc: Dorothy Attwood (8 copies)  
John Stanley  
Jeffrey Dygert  
Katherine Farroba  
Richard Gary

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LMA BODE

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**OBJECTION AND REQUEST FOR SANCTIONS  
OF COX VIRGINIA TELCOM, INC.**

COX VIRGINIA TELCOM, INC.

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November 7, 2001

## SUMMARY

In its contributions to the November JDPL, Verizon has introduced new proposals for three of the ten remaining Cox issues. By this Objection and Request for Sanctions, Cox requests that the Commission require Verizon to withdraw those proposals and replace them with the language that was properly before the Commission in the September JDPL and all earlier Verizon filings in this proceeding. Further, the Commission should sanction Verizon for its willful and repeated violations of the requirements and procedures adopted for this proceeding.

Verizon has proposed new language for Issues I-1, I-2 and I-9. The language for Issue I-1 proposes VGRIP to Cox for the first time in this proceeding and also makes other changes in Verizon's proposal. The language for Issue I-2 would give Verizon a new, unilateral right to designate interconnection points. The language for Issue I-9 introduces a new approval requirement for Cox rates that exceed comparable Verizon rates. None of these proposals was the subject of negotiation with Cox at any time during this proceeding and none of these proposals appeared in any contract language previously filed by Verizon in its Answer, the June JDPL or the September JDPL. Despite a specific request for any new proposals, Verizon did not even provide this language to Cox's negotiator prior to including it in the November JDPL.

If Verizon is permitted to introduce these new proposals, more than five months after it filed its Answer, Cox's procedural rights under the Administrative Procedure Act and the Due Process Clause would be violated. These violations would be substantial because Cox has been deprived not only of the opportunity to cross examine Verizon's witnesses on its actual proposals, but also of the opportunity to put on any evidence on the new language to affirmatively support Cox's case. The new language also violates the requirements of the

*Procedural Order* governing this proceeding, which required Verizon to state its positions, including its proposed contract language, in its Answer.

The Commission should remedy the harm caused to Cox by these new proposals by requiring Verizon to rely only on the language provided in the September JDPL. Further, Verizon should be sanctioned for its disregard for the requirements of this proceeding. Appropriate sanctions could include summary judgment on the affected issues and a forfeiture for Verizon's repeated and willful violations of the *Procedural Order*.

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

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

**Objection and Request for Sanctions  
of Cox Virginia Telcom, Inc.**

Cox Virginia Telcom, Inc. (“Cox”) hereby objects to certain proposed contractual language submitted by Verizon Virginia, Inc. (“Verizon”) in the November 2, 2001 Joint Decision Point List (the “November JDPL”) in the above-referenced proceeding and requests that the Commission impose sanctions on Verizon. For the reasons described below, Verizon should not be permitted at this late date to introduce new language that significantly changes its previous position in this proceeding and should be sanctioned for its improper efforts to do so. Because Verizon’s acts have severely damaged Cox’s rights to due process, Cox would welcome the opportunity to present oral argument in support of this Objection and Request for Sanctions, if such a presentation would be helpful to the Arbitrator.

**I. Introduction**

This filing does not object to the vast majority of minor, conforming changes that Verizon has made to its proposals on the ten Cox issues remaining for resolution in this proceeding. Cox recognizes that Verizon, like the other parties, should have the opportunity to ensure that its contract language is internally consistent and free of errors. Cox does, however,

object to a series of significant substantive changes that Verizon has made in its positions through the recent filing of newly-proposed contract language in the November JDPL. These changes affect three of the ten Cox issues remaining in this proceeding, and in each case Verizon's language in the November JDPL diverges significantly from its earlier proposals to Cox and from Verizon's positions throughout this proceeding.

To resolve Issue I-1, Verizon is now proposing an amalgam of its "Virtual Geographically Relevant Interconnection Point" ("VGRIP") language proposed to AT&T and GRIP language proposed to Cox, both of which were proposed in the September Joint Decision Point List ("September JDPL"). Second, Verizon has introduced entirely new language in its proposal for Issue I-2 that would permit it unilaterally to designate all interconnection points ("IPs"). Third, Verizon has altered its proposal for Issue I-9, concerning Cox's prices, to add new language requiring approval of certain Cox rates.<sup>1</sup>

None of these proposals was made to Cox in the recent negotiations leading up to this proceeding or in any previous filings of contract language with the Commission. The first notice that Verizon might be making the VGRIP proposal to Cox in this proceeding was during cross-examination of Verizon's witnesses at the hearing.<sup>2</sup> The first notice that Cox received of the change in Verizon's proposed language for Issues I-2 and I-9 was when Cox received an initial draft of that portion of the November JDPL.

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<sup>1</sup> For the Commission's convenience, Cox has attached Verizon's proposed contractual language for each of these issues from the September JDPL and from the November JDPL in Exhibits 2, 3 and 4.

<sup>2</sup> Tr. at 1203 (cross examination of Messrs. Albert and D'Amico). As described below, while Verizon forwarded a proposal similar to VGRIP embedded within a larger compensation proposal to Cox in February, 2000, that proposal was rejected by Cox in April, 2000 and subsequently abandoned by Verizon.

Cox is significantly prejudiced in this proceeding by Verizon's failure to make these proposals in a timely fashion. Because Verizon has waited until this late in the process, Cox has been deprived of the opportunity to prepare direct and rebuttal testimony on these proposals and of a fair opportunity to cross examine Verizon witnesses on what apparently is Verizon's final language.<sup>3</sup> Verizon's effort to introduce new language at this time also is contrary to the Commission's requirements for the conduct of this proceeding and, if permitted by the Commission to stand, would deny Cox a fair hearing. For those reasons, the Commission should reject Verizon's new language and require it to return to its earlier positions. Further, Verizon should be sanctioned for its ongoing disregard for the Commission's requirements in this proceeding. Neither Cox nor the Commission should have been forced to bear the burden of Verizon's repeated shifts in position and failure to comply with basic principles of administrative procedure.

## **II. Verizon Has Introduced New Language at an Extremely Late Point in the Proceeding.**

During this proceeding and the negotiations between Cox and Verizon, Verizon has had literally hundreds of opportunities to present language on any issue to Cox. As described in the Declaration of Marvel Kay Vigil (the "Vigil Declaration"), attached hereto as Exhibit 1, Cox and Verizon engaged in more than 50 individual negotiation sessions and also had more than 250 e-mail exchanges. These exchanges continued through October 19 of this year, after the non-cost portion of the hearing had ended. Vigil Declaration at 1. Further, under the rules set for this

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<sup>3</sup> While Cox was afforded some opportunity to cross examine Verizon as to VGRIP, that opportunity did not make up for Verizon's failure to timely disclose its position to Cox and the Commission. *See infra* Section III(A). In the case of the new language for Issues I-2 and I-9, Cox had no opportunity to cross examine Verizon at all because the new position was not disclosed until after the hearing was completed.

proceeding by the Commission, Verizon had three distinct opportunities to present its proposed language for the Cox agreement:

1. Its Answer, filed in April;
2. The initial Joint Decision Point List (the “June JDPL”), filed two months later; and
3. The September JDPL, which was supposed to represent the parties’ final positions.

In ongoing negotiations during this proceeding and through each of the three opportunities to present its contractual language to the Commission, Verizon proposed nothing different from its original language for Issues I-1, I-2 and I-9.<sup>4</sup>

Further, nothing in any of Verizon’s filings contradicted the conclusion that the contractual language proposed in April, June and September remained on the table. For instance, Verizon’s Answer describes VGRIP not as a current proposal but as something “it is willing to offer to the CLECs.” Verizon Answer, Exhibit A at 17. Verizon’s direct testimony refers to GRIP as follows:

Q. DOES VERIZON VA HAVE A PROPOSAL TO ADDRESS THESE TRANSPORT ISSUES?

A. Yes. Pursuant to its geographically relevant interconnection point (“GRIP”) proposal, Verizon VA makes IPs available at either the terminating end office wire center serving the Verizon VA customer or the tandem wire center subtended by the terminating end office serving the Verizon VA customer.<sup>5</sup>

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<sup>4</sup> Vigil Declaration at 2; Verizon Answer, Exhibit C-2 at 15 (GRIP proposal for Issue I-1), 16-17 (Issue I-2), 82 (Issue I-9); June JDPL, Network Architecture, at 7-9 (Issue I-1), 25-26 (Issue I-2), Pricing Terms and Conditions at 2; September JDPL, Network Architecture, at 2 (Issue I-1), 36-39 (Issue I-2), Pricing Terms and Conditions at 2 (Issue I-9).

<sup>5</sup> Verizon Exhibit 4, Direct Testimony of Donald E. Albert and Peter J. D’Amico, July 31, 2001, at 11, lines 4-9 (“Albert/D’Amico Direct”). This testimony also describes VGRIP, but only as “an additional proposal,” not as a substitute for GRIP or as a specific proposal made to Cox. *Id.*, lines 17-20.

There also is nothing in Verizon's rebuttal testimony to suggest that it is proposing VGRIP (let alone *only* VGRIP) to Cox. The testimony describes both proposals without stating that VGRIP is being offered to Cox. Indeed, the only reference to Cox in Verizon's rebuttal testimony discusses GRIP.<sup>6</sup> For that matter, given that Verizon was not proposing GRIP to either AT&T or WorldCom, the only reason for there to be testimony on GRIP was that it was being offered to Cox.<sup>7</sup>

Any claim by Verizon that mere oversight caused it to omit VGRIP from its three earlier filings should be dismissed out of hand. First, it would strain credulity for Verizon to claim that three different filings, each of which contains specific language proposed directly to Cox, all contained the same error, and that only the November JDPL is right.<sup>8</sup> Unlike the other parties, Cox never has had more than eleven issues in this proceeding, which makes the task of ensuring accuracy simple enough that one of the three previous documents should have been correct. Second, none of Verizon's contract proposals in the months leading up to the initiation of this proceeding contained VGRIP. The only time that Verizon ever proposed VGRIP to Cox was in

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<sup>6</sup> Verizon Exhibit 9, Rebuttal Testimony of Donald E. Albert and Peter J. D'Amico, August 17, 2001, at 3, line 20 to 4, line 10 ("Albert/D'Amico Rebuttal").

<sup>7</sup> Verizon Answer, Exhibit C-3 at 17-19 (proposed AT&T agreement), Exhibit C-1 at 62-63 (proposed WorldCom agreement). While Verizon's testimony lumped Cox together with the other parties in many respects, that was no reason for Cox to conclude that VGRIP was being offered to Cox. To the contrary, Verizon's testimony routinely treated Cox as if it was the same as the other parties, even when Cox proposed different contract language than any other party. *See, e.g.*, Albert/D'Amico Rebuttal at 36-39 (discussing "trunk augment provisions to which the parties have already agreed," but not distinguishing between Cox proposal and AT&T proposal); Verizon Exhibit 13, Direct Testimony of Christos T. Antoniou, Michael A. Daly, and Steven J. Pitterle at 5-7 (stating that reasons for opposing Cox language on Issue I-10 were the same as those for opposing differing WorldCom language). In that context, Cox had no reason to draw any inference from the inclusion of VGRIP in Verizon's testimony, especially when the testimony also included a discussion of GRIP.

<sup>8</sup> Even if the September JDPL merely was copied from the June JDPL, the Answer and the June JDPL were separate documents and the contract language in the two documents is identical.

an e-mail in early February, 2000, as part of a broader package of intercarrier compensation language, at which point Cox rejected the entire package and Verizon abandoned the proposal.<sup>9</sup> Hence, Cox had no reason to believe that Verizon was proposing VGRIP at the time this proceeding began. Third, Verizon never has proposed to Cox any method of interconnection that would accommodate a VGRIP arrangement.<sup>10</sup> Where Verizon has proposed VGRIP to the other petitioners, it also has proposed additional contract language to accommodate it.<sup>11</sup> Fourth, Cox's

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<sup>9</sup> Vigil Declaration at 1-2. The Verizon e-mail provided the VGRIP language as part of an integrated, standalone package of intercarrier compensation provisions and it never was integrated into a proposed agreement. Cox rejected the entire package in April, 2000. After Cox rejected the intercarrier compensation package, all of Verizon's subsequent contract drafts included only the GRIP language. *Id.*

<sup>10</sup> In its Answer, the June JDPL and the September JDPL, Verizon's proposed language for methods of interconnection is as follows:

4.3.4 Verizon shall have the sole right and discretion to specify any of the following method for Interconnection at any of the Cox-IPs:

- (a) an Entrance Facility leased from Cox (and any necessary multiplexing), to the Cox-IP.
- (b) a physical, virtual or other alternative Collocation node Verizon establishes at the Cox-IP; and/or
- (c) a physical, virtual or other alternative Collocation node established separately at the Cox-IP by a third party with whom Verizon has contracted for such purposes; and/or

4.3.5 Verizon shall provide its own facilities or purchase necessary transport for the delivery of traffic to any Collocation node it establishes at a Cox-IP pursuant to Section 13.

*See, e.g.,* June JDPL, Network Architecture, at 28-29.

<sup>11</sup> This, for instance, is the language proposed to AT&T with provisions omitted from the Cox proposal highlighted:

4.2.2 Verizon may specify any of the following methods for its originating traffic for Interconnection with AT&T:

**4.2.2.1 Interconnection at a Collocation node that AT&T has established at a Verizon Wire Center pursuant to Section 13 of this Agreement; and/or**

Petition for Arbitration stated in at least three places that Verizon had proposed the GRIP language, so Verizon was on notice that this was Cox's understanding and should have disputed Cox's claim in its Answer, something that it did not hesitate to do when it believed that AT&T or WorldCom described the status of negotiations incorrectly.<sup>12</sup> In fact, the *Procedural Order* required Verizon to dispute any Cox claims that it believed were incorrect.<sup>13</sup> Finally, Cox's rebuttal testimony specifically stated that Cox did not believe Verizon had proposed VGRIP. As Dr. Collins explained:

Verizon has never proposed such an IP arrangement to Cox in negotiations, did not include proposed language to support a VGRIP arrangement in its Answer to Cox's Petition and did not

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**4.2.2.2 Interconnection at a Collocation node that has been established separately at a Verizon Wire Center by a third party and such third party has established facilities between the Verizon Wire Center and the AT&T IP; and/or**

4.2.2.3 Via equipment Verizon places at the AT&T premises in accordance with rates, terms and conditions which the Parties shall negotiate at Verizon's request; and/or

4.2.2.4 Upon mutual agreement of the Parties, via equipment placed by a third party at the AT&T-IP under separate terms and conditions between AT&T and such third party with whom Verizon has contracted for such purposes; and/or

4.2.2.5 An Entrance Facility leased from AT&T (and any necessary multiplexing), to the AT&T-IP.

*See, e.g.*, June JDPL, Network Architecture, at 19-21.

<sup>12</sup> *See* Cox Petition for Arbitration at 7, Exhibit 1 at 1-2, Exhibit 2 at 14-15; Verizon Answer at 8-13 (arguing that AT&T and WorldCom have misstated or mischaracterized certain issues).

<sup>13</sup> Public Notice, "Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox and Worldcom," DA 01-270 (rel. Feb. 1, 2001) (the "*Procedural Order*") at 4 (describing items in response, including "position as to each unresolved issue"), 5 (any assertions made in a petition and not specifically denied "shall be deemed admitted").

propose language to support a VGRIP arrangement in Cox's portion of the Joint DPL.<sup>14</sup>

It is difficult to imagine a more direct statement that VGRIP was not a current proposal to Cox. Verizon's failure to respond to this statement – either through communication with Cox or by changing the language for Issue I-1 in the September JDPL – confirms that, in fact, Verizon did not propose VGRIP to Cox at any point in this proceeding.

Verizon also has not previously proposed its new language for Issues I-2 and I-9 in negotiations or in this proceeding. Again, in both cases the language provided in the November JDPL differs from the consistent language in Verizon's Answer, the June JDPL and the September JDPL. Again, Cox made multiple references to its understanding of Verizon's positions and contract language on these issues in its Petition for Arbitration and Verizon did not respond that those positions and contract language were mischaracterized. Further, Verizon's prefiled and hearing testimony provides no clue that any changes were contemplated.<sup>15</sup> In other words, both of these proposals have no connection to any of Verizon's previous filings or testimony in this proceeding.

Finally, Verizon made no effort to inform Cox of these changes before inserting them in the November JDPL. Verizon did not provide prior notice of the changes or even highlight them when it sent its contract language to the other parties for inclusion in the JDPL. Cox was left to

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<sup>14</sup> Cox Exhibit 2, Rebuttal Testimony of Dr. Francis Collins, at 11, lines 5-17. At the time this testimony was prepared, Dr. Collins was not aware of Verizon's February, 2000, intercarrier compensation package, which in any event was not the subject of further negotiations following Cox's rejection of the entire package.

<sup>15</sup> See Albert/D'Amico Direct at 11-14; Albert/D'Amico Rebuttal at 3-4; see Verizon Exhibit 7, Direct Testimony of Michael A. Daly, Donna Finnegan, and Steven J. Pitterle at 6-8; Verizon Exhibit 21, Rebuttal Testimony of Michael A. Daly, Donna Finnegan, and Steven J. Pitterle at 2-7.

ferret the changes out on its own, and discovered them only when it reviewed the draft JDPL. Indeed, although Verizon's VGRIP proposal had been discussed during the hearing, Verizon never suggested to Cox that VGRIP would be substituted in its entirety for GRIP, rather than being offered as an alternative.<sup>16</sup> Similarly, Verizon never gave any indication that in the November JDPL it would be making significant changes to its proposed language for Issues I-2 and I-9. Verizon's failure to provide notice is even more egregious than it might appear at first: The day after the non-cost portion of the hearing concluded, Cox's negotiator specifically asked Verizon if there were "any other issues for which VZ-VA would like to propose new language[.]"<sup>17</sup> Verizon never replied to this request.

### **III. Commission Acquiescence to Verizon's Shifting Positions Would Deprive Cox of Its Rights in This Proceeding.**

#### **A. Verizon's New Language Represents Real Shifts in Its Positions, Not Merely Corrections or Clarifications.**

As noted above, Cox does not object to Verizon correcting genuine errors in the language previously provided to the Commission or reflecting the results of ongoing negotiations. There are many examples of such changes in the November JDPL, and it is Cox's belief that permitting such changes will aid the Commission in its efforts to adjudicate this proceeding. Indeed, that was the intent of the Commission's request for the November JDPL. Verizon's new language in the Cox portion of the JDPL for issues I-1, I-2 and I-9 falls into neither of these categories. In each case, Verizon has introduced substantive changes in its positions and permitting those changes to become Verizon's positions would substantially prejudice Cox.

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<sup>16</sup> See Albert/D'Amico Direct at 11, lines 4-9 (VGRIP is "an additional proposal").

<sup>17</sup> See Vigil Declaration at 2 and Attachment 2 (describing and attaching e-mail from Marvel Vigil to James Pachulski).

First, none of these provisions has been the subject of active negotiation between the parties since the initiation of this proceeding. In each case, the last position presented to Cox by Verizon was represented by the language in the Answer, the June JDPL and the September JDPL. In fact, as described in Section II, the first time Cox saw any of the new language was when draft JDPL language was circulated, despite a specific request from Cox's negotiator for any new language Verizon "would like to propose."

Second, these provisions make substantive changes in Verizon's positions and in several cases actually represent more extreme positions than Verizon's initial filings. Notably, although Verizon has characterized VGRIP as a "compromise" between petitioners' positions and GRIP, it is nothing of the sort.<sup>18</sup> VGRIP is a wholly different proposal with its own set of flaws. For instance, GRIP does not come into effect unless the IP is outside the local calling area or at least 25 miles away. Under VGRIP, there is no geographic threshold at all; a CLEC could be subject to the requirement to provide interconnection at a collocation point (or pay financial penalties) even if the original IP is across the street from the relevant Verizon tandem or end office. Similarly, VGRIP requires an IP at each end office collocation, even in multiple tandem LATAs, a provision that has no parallel in the GRIP language, and that was not addressed by Verizon's direct or rebuttal testimony.

The VGRIP language in the November JDPL also introduces new questions that would not have been raised by the September JDPL version of VGRIP. Most important, the version of VGRIP offered to AT&T in September limited the obligation to collocate in end offices to

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<sup>18</sup> VGRIP was not even developed as a "compromise" for Virginia. It was included in other Bell Atlantic interconnection agreements, *e.g.*, a Bell Atlantic-Delaware agreement in January, 2000, before Verizon's negotiations with at least one petitioner – WorldCom – even began.

single-tandem LATAs, but the VGRIP language offered to Cox in the November JDPL appears to permit Verizon to force Cox to place IPs at end office collocations or pay transport to Verizon regardless of the number of tandems in a LATA.<sup>19</sup> There also are other differences between the September and November language, some that may be mere corrections and others that appear to have more substantive effects. Moreover, despite Verizon's representation at the hearing that its proposal to AT&T was the proposal it wanted the Commission to consider, the language proposed for Cox in the November JDPL is an amalgam of Verizon's proposed language for Cox in the September JDPL and contract language shown in the September JDPL as being offered to AT&T.<sup>20</sup>

Verizon's language for Issue I-2 actually introduces a completely new issue into the proceeding. The September JDPL language (to which Cox previously has objected) indicates that IPs will be set by mutual agreement of the parties. The November language, however, gives Verizon unilateral authority to designate all IPs. *See* Exhibit 3. This language introduces an issue, not previously raised in this proceeding, as to whether Verizon can designate all interconnection points in its agreement with Cox.<sup>21</sup> For that matter, even the new language for

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<sup>19</sup> Compare September JDPL, Network Architecture, at 20-21, Verizon proposed language for AT&T Section 4.1.3.2 (referring to setting IP at end offices only in single tandem LATAs) with November JDPL, Network Architecture at 21-22, Verizon proposed language for Cox agreement section 4.2.2.1 (omitting reference to single tandem LATAs).

<sup>20</sup> *See* Exhibit 2.

<sup>21</sup> Verizon may argue that the changes to its language for Issue I-2 simply reflect an effort to conform to its VGRIP proposal. That cannot be correct, because Verizon has stated repeatedly that Issue I-2 would be moot if Verizon prevails on Issue I-1. *See* Verizon Answer at 17 ("If the Commission adopts Verizon's proposal, outlined in its response to Issue I-1, then this issue is moot."); Albert/D'Amico Direct at 16, lines 13-14 ("Both of these issues become moot, however, if the Commission finds in favor of Verizon on Issue I-1."). Thus, the Verizon language for Issue I-2 and the Verizon language for Issue I-1 cannot both appear in the final agreement and, therefore, there is no reason to reconcile the two sets of provisions.

Issue I-9, which would appear at first glance to give Cox the ability to charge prices higher than Verizon's under limited circumstances, would increase the burden on Cox by requiring it to demonstrate to the satisfaction of the Virginia Commission, the FCC or *Verizon* that Cox's costs to provide such services exceed the rates (not the costs) of Verizon's comparable services and to seek approval for rates that often are not subject to a specific approval process.<sup>22</sup>

**B. Cox Would Be Deprived of Its Rights If Verizon Were Permitted to Change Its Positions at this Time.**

Under the Commission's rules, the Administrative Procedure Act ("APA") and the Fifth Amendment to the U.S. Constitution, parties in Commission proceedings must be afforded a fair opportunity to be heard. While this right is procedural in nature, it goes directly to the question of whether the Commission has sufficient evidence to make a decision. Permitting Verizon to change its positions on Issues I-1, I-2 and I-9 through its last-minute revisions to contract language in the November JDPL would violate Cox's right to be heard and would be contrary to the *Procedural Order*.

Under the APA and the Due Process Clause of the Fifth Amendment, parties in administrative proceedings have a right to be heard on all relevant issues. This right, as the Commission has recognized, includes the opportunity to respond to the claims of other parties in the proceeding.<sup>23</sup> As the Supreme Court has explained: "The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the

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<sup>22</sup> For instance, tariffs filed under the Communications Act of 1934 generally are not approved by the Commission, but simply go into effect. *See* 47 U.S.C. § 203 (describing tariffing procedures).

<sup>23</sup> *See, e.g.,* Garrett, Andrews and Letizia, Inc., *Memorandum Opinion and Order*, 88 FCC 2d 620, 623 ("*Garrett*") (Rev. Bd. 1981) ("due process requires that the opposing parties be afforded an opportunity to meet and rebut . . . evidence").

opposing party and to meet them.”<sup>24</sup> The right to be heard includes the opportunity to respond to changes in a party’s position or underlying theory of the case.<sup>25</sup> Moreover, a claim is not raised merely by introducing evidence on the topic; rather, it must be “tried fully by the parties,” and evidence “that is relevant to a pleaded issue as well as an unpleaded issue cannot serve to give the opposing party fair notice that the new, unpleaded issue is entering the case.”<sup>26</sup> Because “[t]he opportunity to be heard is a cornerstone of due process,” a party to an arbitration proceeding must not be denied the opportunity to make its case on any relevant issue.<sup>27</sup>

Permitting Verizon to adopt its new language for Issues I-1, I-2 and I-9 would violate Cox’s APA and constitutional rights. Cox has had no chance to adduce evidence as to this new language, or to cross examine Verizon’s witnesses as to its meaning, effect or justification. Absent “an opportunity” for Cox “to meet and rebut” this new language, any Commission decision adopting Verizon’s position would be irretrievably flawed.<sup>28</sup>

Cox’s loss of an opportunity to be heard is not merely a theoretical problem, because Verizon’s new language raises new substantive issues that Cox would have addressed in testimony and cross examination. For instance, if the new language for Issue I-9 had been provided in a timely fashion, Cox would have been able to provide testimony explaining that Verizon’s purported exception for rates approved by the FCC or the Virginia Commission was

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<sup>24</sup> *Morgan v. United States*, 304 U.S. 1, 18 (1938).

<sup>25</sup> *See, e.g., Williston Basin Inter. Pipeline Co. v. F.E.R.C.*, 165 F.3d 54, 63-64 (D.C. Cir. 1999) (overturning order because party was not afforded opportunity to address data “teased . . . from the background section to a single exhibit to reach the result here at issue”).

<sup>26</sup> *Yellow Freight System, Inc. v. Martin*, 954 F.2d 353, 358 (6<sup>th</sup> Cir. 1992) (citations omitted).

<sup>27</sup> *MCI Telecommunications Corporation v. BellSouth Telecommunications, Inc.*, 9 F. Supp. 2d 766, 772-73 (E.D. Ky. 1998).

<sup>28</sup> *Garrett*, 88 FCC 2d at 623.

not meaningful. Further, Cox would have been able to cross examine Verizon on the circumstances under which Verizon would have agreed to a particular rate. As to the new language for Issue I-2, Cox would have been able to provide testimony on the question of whether Verizon should be able to designate IPs and to cross examine Verizon on the reasons it sought to include this language.<sup>29</sup> Even as to Issue I-1, Cox was deprived of the opportunity to provide testimony on either the September JDPL or November JDPL version of VGRIP, both of which differ from the June JDPL version, and had no opportunity to cross examine Verizon on the changes from September to November.<sup>30</sup> This is particularly significant because Verizon said at the hearing that the Verizon language for AT&T represented its VGRIP proposal, but, as noted above, the November JDPL language is a hybrid of the AT&T language and the September JDPL proposal to Cox. Moreover, the minimal opportunity provided to Cox to study VGRIP prior to cross-examining Verizon witnesses simply is not equivalent to the full preparation time that Verizon had for its cross examination of Cox's witness. Thus, the core due process rights recognized by the Commission and the courts would be violated if Verizon's new language were permitted to stand.

Verizon's new language also violates the requirements of the *Procedural Order*. As the Commission observed in the *August 17 Order*, Verizon's last opportunity to introduce new issues

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<sup>29</sup> Indeed, given that Verizon has not provided any testimony supporting the changed language for Issues I-2 and I-9, the Commission has no basis to adopt those proposals.

<sup>30</sup> Even if Verizon's changes to its VGRIP proposal represent the result of ongoing discussions with AT&T or WorldCom, that would not address Cox's loss of its right to be heard as to the changed provisions. Notice to the other parties cannot constitute notice to Cox.

was when it filed its Answer in May.<sup>31</sup> It is not permitted to create new issues now, either explicitly or implicitly through changes in existing proposals.<sup>32</sup>

Verizon's new language for Issue I-2 creates a new issue by giving Verizon a right to designate IPs. Verizon's new language for Issue I-1 also creates a new issue for Cox by introducing VGRIP, which embodies a much different model than GRIP, and by providing language that amalgamates earlier proposals to Cox and AT&T. Verizon also has introduced two new paragraphs describing where the IP will be set for toll traffic and for unclassified traffic, neither of which was included in any previous version of the VGRIP proposal and both of which change the obligations of the parties.<sup>33</sup> Even the new language for Issue I-9 creates a new issue: the extent to which Cox can be required to substantiate the costs behind its rates and to seek affirmative regulatory approval for rates that otherwise would go into effect without regulatory action. In each case, the introduction of the new issue violates the requirements of the *Procedural Order* and cannot be permitted.

It does not matter whether Verizon's actions are intentional or accidental. In either case, the effect is the same: Cox has been deprived of its opportunity to be heard as to Verizon's "final" language on three different issues because of Verizon's actions and Verizon has

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<sup>31</sup> See Letter from Jeffrey Dygert, FCC, to Scott Randolph, Verizon, and Alexandra Wilson, Cox, August 17, 2001) (the "*August 17 Order*") at 1-2.

<sup>32</sup> *Id.* at 1 (holding that use of "Internet Traffic" definition in ISP-bound traffic language created impermissible new issue); see also *Procedural Order* at 5 (limiting proceeding "to the issues set forth in the Petition and in the Response, if any").

<sup>33</sup> These paragraphs are denoted as 4.2.2.5 and 4.2.2.6. As to Section 4.2.2.5, Verizon's witness testified at the hearing that the IP for toll traffic would be unaffected by VGRIP. Tr. at 1378 (D'Amico) ("VGRIP is associated with reciprocal compensation traffic" and does not apply to intraLATA toll). Verizon also has added a new paragraph governing the IP for Measured Internet Traffic. Because this paragraph appears to be intended to implement the *ISP-Bound Traffic Order*, Cox does not believe it raises any new issues in this proceeding.

introduced new issues more than five months after the date on which it was supposed to stake out its positions. The harm to Cox is identical either way and, under the *Procedural Order* and basic principles of administrative law, Cox cannot be required to bear the burden of Verizon's errors.

**IV. The Commission Should Grant Cox's Requested Relief and Sanction Verizon for Its Behavior.**

The Commission must take two distinct steps in response to this Objection. First, the Commission should require Verizon to revert to its September JDPL positions on each of the affected issues. Second, the Commission should impose significant sanctions on Verizon for its repeated and willful efforts to evade its basic obligations as a party in this proceeding.

Requiring Verizon to return to its September JDPL positions is the least burdensome and most reasonable way to address the concerns arising from the violation of Cox's due process rights. The testimony and cross examination address Verizon's original positions, and neither party would be deprived of its procedural rights. Most important, this remedy would prevent Cox, the injured party, from bearing any additional costs as a result of Verizon's actions. While Verizon would be unable to advocate its current preferred positions in this case, that is a relatively small cost to bear in light of Verizon's actions.<sup>34</sup>

To the extent that Verizon argues that it should not be penalized in this way for errors of omission, the Commission should disregard those pleas. Even if viewed in the most favorable light to Verizon, any explanation that Verizon may proffer for its failure to submit the correct

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<sup>34</sup> Alternatively, the Commission could address this issue by permitting Cox to file additional testimony and to cross examine Verizon's witnesses on the new language. This remedy would ensure that Cox's due process rights would not be violated. At the same time, however, instituting additional proceedings would require Cox and the Commission to expend significant additional resources, would delay action in this proceeding, and would, in effect, reward Verizon for its decision to withhold its real positions until the last minute. For those reasons, Cox submits that the best remedy is to return the parties to the *status quo ante*.

language for three out of eleven Cox issues boils down to a statement that Verizon was unwilling to be careful enough to ensure that its filings represented its actual positions. There can be no doubt that Verizon, not Cox or the Commission, should bear the burden of such errors.

Consequently, the Commission should grant the remedy requested by Cox.

Further, the Commission should impose specific sanctions on Verizon for its repeated and ongoing failure to comply with the requirements of the *Procedural Order* and its abuse of the Commission's processes. Sanctions are necessary because Verizon has demonstrated a repeated lack of respect for its obligations in this proceeding.

For instance, this is not the first time Verizon has introduced new issues after the deadline set in the *Procedural Order*. As the Commission found in the *August 17 Order* concerning Issue I-5, Verizon had engaged in exactly the same behavior when it attempted to include terms that would have created an issue that went beyond the implementation of the *ISP-Bound Traffic Order*.<sup>35</sup> Even after the *August 17 Order*, Verizon refused to correct its language for Issue I-5 until the eve of the hearing, and did so only after Cox was forced to file a motion seeking enforcement of the Commission's decision. It would be logical to expect Verizon to have been chastened by this experience, but this apparently was not the case. Instead, Verizon introduced new issues after the hearing was completed simply by changing its proposed language and without providing Cox any notice.

This approach is entirely inconsistent with fair practices and the Commission's requirements for this proceeding. Verizon has been on notice since the *Procedural Order* that it could not introduce new issues after it filed its Answer, and certainly was aware of this

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<sup>35</sup> *August 17 Order* at 1-2.

requirement after the *August 17 Order* was issued. Still, Verizon introduced new issues and new contract language proposals without any notice to the Commission or to Cox.<sup>36</sup> This is consistent with Verizon's behavior when Cox filed discovery requests. Although the *Procedural Order* is quite plain on this point, Verizon twice failed to contact Cox before filing objections to Cox discovery requests and provided no explanation or excuse for violating this simple requirement.<sup>37</sup> Taken together, these actions demonstrate, at a minimum, that Verizon is entirely unconcerned with meeting its procedural obligations in this arbitration and, more likely, that Verizon hopes to prevail by exhausting its opposition.

Verizon's actions have wasted significant amounts of Cox's and the Commission's resources. Cox should not be required to scrutinize every Verizon filing to see if Verizon has attempted to sneak in new issues; to demand enforcement of valid, unchallenged Commission orders; or to respond to discovery objections that do not meet procedural requirements. The Commission should not be required to address transparently faulty claims; to remind parties that they are subject to the deadlines established at the outset of the proceeding; or to insist on compliance with its orders. Nevertheless, that is what has occurred in this proceeding. It is particularly objectionable in Cox's case because Cox is the smallest party in this proceeding and the one most likely to be resource constrained. Indeed, Verizon may be targeting Cox because Cox is a facilities-based provider and potentially offers a more significant threat to Verizon's

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<sup>36</sup> As noted above, the new language was not provided to Cox's negotiator or counsel before it was included in the draft JDPL, despite a specific request from Cox's negotiator for any new language that Verizon intended to propose. *See* Vigil Declaration at 2.

<sup>37</sup> Even Verizon's objections to Cox's discovery were based on an untenable reading of the Commission's scheduling order. When these objections were overruled by the Commission, Verizon then argued that it had a non-existent right to file additional objections.

local business than the other parties. Verizon's ongoing campaign to impose unnecessary costs on Cox therefore should be particularly disturbing to the Commission.

In these circumstances, the Commission has the authority and an obligation to sanction Verizon for its pattern of abuse. In the context of this proceeding, the most appropriate sanction would be to grant summary judgment in Cox's favor on each of the affected issues. Because Cox's rights have been adversely affected by Verizon's actions, and because Verizon's changes in position could be understood as abandonment of its original positions on these issues, summary judgment not only would penalize Verizon for its behavior, but would tailor the sanction to the offense. Summary judgment is well within the Commission's authority, and consistent with sanctions in other cases.<sup>38</sup> Further, because Verizon has not made a direct case to support its new positions, especially as to Issues I-2 and I-9, the Commission easily could find that summary judgment is justified on substantive grounds.

Finally, the Commission also should impose a forfeiture on Verizon for its repeated and willful failure to comply with the Commission's orders in this proceeding. Because Verizon has now attempted to create several new issues on two distinct occasions, in addition to its failure to comply with procedural requirements, it has violated Commission orders on repeated occasions. In addition, the evidence demonstrates that Verizon's actions have been willful, as it was fully aware of its obligations under the *Procedural Order* and other Commission decisions and nevertheless chose not to fulfill those obligations.<sup>39</sup>

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<sup>38</sup> See Carmel Broadcasting Limited Partnership, *Memorandum Opinion and Order*, 6 FCC Rcd 4633 (Rev. Bd. 1991) (affirming dismissal of application for failure to produce a witness for cross-examination).

<sup>39</sup> The case law establishes that "willful" behavior need not be intentional. Ignoring a requirement is sufficient to establish willfulness. See, e.g., AT&T Communications, Inc., *Order of Forfeiture*, File No. ED-00-TC-006, FCC 01-128 (Apr. 17, 2001), ¶ 10 ("For a violation to be

Imposition of a forfeiture would be consistent with the Commission's recent Notice of Apparent Liability issued to SBC Communications.<sup>40</sup> Like SBC, Verizon has shown a lack of respect for the Commission's orders throughout this proceeding. Moreover, Verizon's actions are particularly egregious because they have the potential to have a direct effect on local telephone competition, and particularly residential competition. Further, a forfeiture would at least require Verizon to bear some financial consequence for its continued improper actions in this proceeding. Moreover, the Commission should impose on Verizon any additional sanction that it deems appropriate.

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willful, . . . it need not be intentional"); PTT Telekom, Inc., *Notice of Apparent Liability for Forfeiture*, File No. EB-01-IN-0035, FCC 01-106 (Mar. 29, 2001), ¶ 5 ("The term 'willful' means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules. . .").

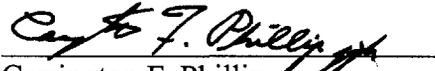
<sup>40</sup> SBC Communications, Inc., *Notice of Apparent Liability for Forfeiture*, File No. EB-01-1H-0642, DA 01-2549 (Nov. 2, 1998).

**V. Conclusion**

For all these reasons, Cox Virginia Telcom, Inc. respectfully requests that the Commission act in accordance with this Objection and Request for Sanctions. Cox would be pleased to present oral argument in support of this Objection and Request for Sanctions if the Arbitrator finds that such a presentation would be helpful.

Respectfully submitted,

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November 7, 2001

**Exhibit 1**

Declaration of Marvel Kay Vigil

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

In the Matter of

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

**DECLARATION OF MARVEL KAY VIGIL**

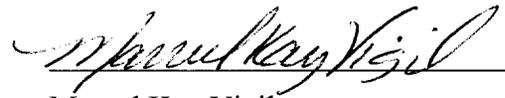
1. My name is Marvel Kay Vigil. I am employed by Cox Communications, Inc., and serve as Vice President, Exchange Carrier Relations for Cox Virginia Telcom, Inc. ("Cox").
2. In the course of carrying out the duties of my position, I have performed as Cox's lead negotiator in Cox's re-negotiation of a successor interconnection agreement with Verizon Virginia, Inc. ("Verizon"). This declaration is based on my personal knowledge, including my review of my personal notes and records.
3. Cox and Verizon have held approximately 50 telephonic negotiating sessions. In addition to these negotiations, Cox and Verizon have exchanged, through electronic means, approximately 250 items of proposed contract language. I have been present during every negotiating session between Cox and Verizon and have been Cox's designated recipient for all of Verizon's correspondence regarding this re-negotiation since formal negotiations began with Verizon on or about September 9, 1999 and through the present. Our most recent exchange of proposed contract language occurred on October 8, 2001.
4. On February 4, 2000, Verizon proposed to Cox a stand-alone "Intercarrier Compensation" (IC) package as an alternative to the original Verizon-proposed language being negotiated. A copy of the IC package is attached to this declaration as Attachment 1. The IC package contained non-severable terms and conditions associated with, among other things: (1) compensation for Internet traffic;(2) an arrangement for interconnection points similar to

“VGRIP” (although that name was never used in the proposal or subsequent discussions); (3) direct end office trunking requirements applicable only to Cox’s traffic (including DS-1 triggers and additional compensation to be paid to Verizon for tandem-routed traffic above those triggers); (4) new reciprocal compensation rates for Internet and Local traffic; and (5) a requirement that the parties waive all 252(i) (and other) rights regarding adoption of intercarrier compensation, reciprocal compensation or physical interconnection terms from other interconnection agreements. Cox understood that the IC package provided alternative language to the original proposals offered by Verizon, i.e., the IC package resulted in Verizon having two sets of contract language ‘on the table’ in negotiation of the related issues.

5. Inasmuch as Cox found the contract terms in the IC package to be less attractive than those still on the table (i.e., the original Verizon language), Cox rejected Verizon’s IC proposal in its entirety (as Verizon explained that none of the IC package terms would be available to Cox unless all of the terms were agreed to). Following Cox’s rejection of the IC package (which occurred some time before April 13, 2000), neither Cox nor Verizon discussed or negotiated further any of the terms contained in the IC package (including “VGRIP”) and both parties continued to negotiate all open issues, and to propose modification of the agreement (including interconnection points), based on Verizon’s originally-proposed contract language.
6. During the course of these negotiations, Verizon has never, to my knowledge, formally or informally, proposed or described to Cox an arrangement similar to that reflected in Verizon’s November Joint Decision Point List filing for Issue I-2 whereby, in the event Cox offers Telephone Exchange Services in a new LATA in Virginia, Verizon would be the only party authorized to designate the interconnection points to be used by the parties in that LATA.
7. During the course of these negotiations, Verizon has never, to my knowledge, formally or informally proposed or described to Cox an arrangement similar to that reflected in Verizon’s November Joint Decision Point List filing for Issue I-9 whereby Cox would be permitted to charge Verizon a rate higher than Verizon’s rates and charges for the comparable services, facilities and arrangements only in the event that Cox had demonstrated that Cox’s costs to provide such services, facilities and arrangements exceeded Verizon’s rates and charges for that comparable service.
8. On October 18, 2001, I asked Verizon’s negotiating team whether or not Verizon had new contract language proposals.. A copy of my e-mail to Verizon is attached to this declaration as Attachment 2. I received no reply from Verizon’s negotiating team.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2001.

  
Marvel Kay Vigil

Draft 2/04/00

**FOR DISCUSSION PURPOSES ONLY****Intercarrier Compensation Proposal****For****Cox Virginia Telcom, Inc.**

This proposal contains a comprehensive set of changes to the Draft Interconnection Agreement provided to Cox on \_\_\_\_\_. As such, this proposal is an integrated package that is intended to reflect a balancing of the Parties' interests with respect to reciprocal compensation and network architecture.

**1. *Delete Section 1.41 and insert the following new Section 1.41:***

1.41 "Local Traffic" means traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area, as defined in BA's effective Customer tariffs, or, if the Commission has defined local calling areas applicable to all LECs, then as so defined by the Commission. Local Traffic does not include any Internet Traffic (as such term is hereinafter defined).

**2. *Retain the following definition of "Internet Traffic":***

1.xx "Internet Traffic" means any traffic that is transmitted to or returned from the Internet at any point during the duration of a transmission.

**3. *Add a new Section 1.xx as follows:***

1.xx "Compensable Internet Traffic" means dial-up switched Internet Traffic that is originated by an end-user subscriber of one Party, is transmitted by that Party to the switched network of the other Party, and then is handed off by that Party to an Internet Service Provider which has been assigned a telephone number or telephone numbers within an NXX or NXXs which are local to the originating end-user subscriber. Internet Traffic over which telephony is conducted is not Compensable Internet Traffic.

**4. *Delete Section 1.60 (definition of Reciprocal Compensation).***

5. ***Add a new Section 1.xx as follows:***

1.xx “Intercarrier Compensation” refers to the remuneration received by one Party (the “Receiving Party”) to recover its costs for receiving and terminating Local Traffic or receiving and handing off Compensable Internet Traffic that originates on the network of the other Party (the “Originating Party”).

6. ***Delete Section 4.1.4 and insert the following new Section 4.1.4:***

**4.1.4 Geographic Relevance**

4.1.4.1 Interconnection Points. The Parties shall establish physical Interconnection Points (“IPs”) at the locations designated on Schedule 4.0, which shall be revised from time to time in accordance with the requirements of this Section. Each Party, as an Originating Party, may request that the other Party, as a Receiving party, establish IPs on the Receiving Party’s network that are geographically-relevant to the NXXs (and associated rate centers) that are assigned by the Receiving Party. In the case of BA as a Receiving Party, to the extent Cox requests BA to establish a geographically-relevant IP in addition to the BA-IPs at the BA Tandems, the geographically-relevant IP shall be the BA end office serving the Customer for whom the traffic is intended. In the case of Cox as a Receiving Party, BA may request, and Cox will then establish, geographically-relevant IPs by establishing a Cox-IP at a Collocation site at each BA Tandem in a LATA (or, in the case of a single Tandem LATA, at each BA End Office Host), for those NXXs serving equivalent BA rate centers which subtend the BA Tandem (or BA End Office Hosts). In any LATA in which BA agrees that Cox may meet its obligation to establish geographically relevant IPs through a Collocation site at fewer than all of the BA Tandems (or BA End Office Host) in a LATA, including the LATAs identified in Schedule 4.0, then BA shall determine and advise Cox as to which Cox-IP established at a Collocation site (or other available Cox-IP) BA will deliver traffic from each relevant originating rate center or other originating location.

If Cox fails to establish a geographically-relevant IP as provided herein within a commercially reasonable time, then Cox shall bill and BA shall pay only the applicable Intercarrier Compensation Rate for the relevant NXX, as set forth in Section 5.7 below, less BA’s monthly recurring rate for unbundled dedicated interoffice transport from BA’s originating End Office to Cox’s IP.

Should either Party offer additional IPs to any Telecommunications Carrier that is not a Party to this Agreement, the other Party may elect to deliver traffic to such IPs for the NXXs or functionalities served by those IPs. To the extent that any such Cox-IP is not located at a Collocation site at a BA Tandem (or BA End Office Host), then Cox shall permit BA to establish physical interconnection at the Cox-IP, to the extent such physical interconnection is technically feasible.

At any time that Cox establishes a Collocation site at a BA End Office, then either Party may request that such Cox Collocation site be established as the Cox-IP for traffic originated by BA Customers served by that End Office. Such request shall be negotiated pursuant to the Joint Grooming Plan process, and approval shall not be unreasonably withheld or delayed. To the extent that the Parties have already implemented network interconnection in a LATA, then upon BA's request for a geographically-relevant Cox-IP, the Parties shall negotiate a mutually-acceptable transition process and schedule to implement the geographically-relevant IPs. If Cox should fail to establish an IP at an end office Collocation site pursuant to BA's request, or if the Parties have been unable to agree upon a schedule for completing a transition from existing arrangements to geographically relevant Cox-IPs or to an end office Collocation site Cox-IP within sixty (60) days following BA's request, Cox shall bill and BA shall pay the applicable Inter-carrier Compensation Rate for the relevant NXX, as set forth in Section 5.7 below, less BA's monthly recurring rate for unbundled dedicated interoffice transport from BA's originating End Office to the Cox-IP.

Should Cox choose to obtain transport from BA for Local and Compensable Internet Traffic from a Cox-IP at a Collocation site to another Cox location, BA shall bill and Cox shall pay, the applicable unbundled dedicated interoffice transport and channel termination rates set forth herein.

**4.1.4.2 Trunking Architecture.** The Originating Party must establish direct trunking to a Receiving Party's end office (which may have a Tandem-routed overflow) by self-provisioning, purchasing transport rated as unbundled dedicated interoffice transport from the Receiving Party, or purchasing from a third party if the Local and Compensable Internet Traffic destined for that end office exceeds the equivalent of one DS1 for any three (3) months during any six (6) month period. For purposes of this paragraph, BA shall satisfy its end office trunking obligations by handing off traffic to a Cox-IP. Should Cox fail to comply with this end office trunking requirement, then the Inter-carrier Compensation rate to be paid by Cox shall be determined as follows: (i) for direct (non-switched) end office trunks delivered to BA at the BA Tandem Wire Center that is subtended by the BA end office serving the Customer location receiving the call, Cox shall pay the applicable Inter-carrier

Compensation rate then in effect pursuant to Section 5.7.3, plus \$.0007 per minute of use; and (ii) for Tandem-switched trunks delivered to BA at the BA Tandem Wire Center that is subtended by the relevant BA end office, Cox shall pay the Tandem Office Reciprocal Call Termination Rate as set forth in Exhibit A hereto; provided, however, that in the event Cox has properly forecasted and ordered the required trunking from BA and BA has been unable to provision the ordered trunking, Cox shall not be obligated to pay the higher Tandem Office rate until BA is able to provide the requested trunking.

7. *Delete Section 5.7 and replace it with the following new Section 5.7:*

**5.7 Intercarrier Compensation Arrangements – Section 251(b)(5)**

The provisions of this Section 5.7 govern the payment of Intercarrier Compensation between the Parties. The Parties intend and agree that the Originating Party's payment of Intercarrier Compensation to the Receiving Party in accordance with the terms of this Agreement shall fulfill the Originating Party's obligation under Section 251(b)(5) of the Act to pay reciprocal compensation to the Receiving Party for termination of Local Traffic, and shall further fulfill any obligation the Originating Party may have to compensate the Receiving Party for receiving and handing off Internet Traffic. BA's delivery of traffic to Cox that originates with a third carrier is addressed in Section 7.3. Where Cox delivers traffic to BA that originates with a carrier other than Cox, except as may be set forth herein or subsequently agreed to by the Parties, Cox shall pay BA the same amount that such carrier would have paid BA for termination of that traffic at the location the traffic is delivered to BA by Cox. Compensation for the transport and termination of traffic not specifically addressed in this subsection shall be as provided elsewhere in this Agreement, or if not so provided, as required by the Tariffs of the Party transporting and/or terminating the traffic.

5.7.1 Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as local in its Customer Tariffs.

5.7.2 Each Party shall pay Intercarrier Compensation to the other Party at equal and symmetrical rates, as provided in Section 5.7.3 below, on condition that the other Party continues to fulfill its obligations under Section 4.1.4. These rates are to be applied at the Cox-IP for traffic delivered by BA, and at the BA-IP for traffic delivered by Cox. Except as otherwise expressly stated in this Agreement, no additional charges, including port or transport charges, shall apply for receiving and terminating Local Traffic or receiving and handing off Compensable Internet Traffic delivered to the BA-IP or the Cox-IP. When Local Traffic or Compensable Internet Traffic is exchanged over the same trunks as Toll Traffic, any port or transport or other applicable access charges related to the delivery of Toll Traffic from the IP to an end user shall be prorated to be applied only to the Toll Traffic.

5.7.3 Subject to the conditions set forth in Section 5.7.6 below, and in consideration of the Parties' having agreed to the physical architecture commitments set forth in Section 4.1.4 above, the Originating Party shall compensate the Receiving Party as follows:

5.7.3.1 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including February 1, 1999 to and including December 31, 1999, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.003 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the effective date of this Agreement.

5.7.3.2 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including January 1, 2000 to and including March 31, 2000, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.0025 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the effective date of this Agreement.

5.7.3.3 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including April 1, 2000 to and including June 30, 2000, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.002 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the effective date of this Agreement.

5.7.3.4 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including July 1, 2000 to and including September 30, 2002, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.0015 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the effective date of this Agreement; provided, however, that during any month after January 1, 2001 in which the balance of traffic (including both Local Traffic and Internet Traffic) between the Originating Party and the Receiving Party exceeds a ratio of 10:1, then the rate to be paid by the Originating Party to the Receiving Party in that month for all traffic in excess of said 10:1 ratio shall be the lesser of \$.0012 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the effective date of this Agreement.

5.7.4 Each Party reserves the right to assert in any appropriate forum that Internet Traffic generated in connection with the provisioning of telephony ("Internet Telephony"), such as a connection capable of real-time two-way telephonic communication between two or more locations other than the ISP location, is subject to a different compensation structure (such as, for example, exchange access) than the compensation structure specified in this Section 5.7. The Parties agree to abide by any

legally effective order of the FCC, the Commission or a court of competent jurisdiction regarding the compensation structure applicable to Internet Telephony.

5.7.5 The Intercarrier Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service, InterLATA or IntraLATA Toll Traffic, or Internet Traffic other than Compensable Internet Traffic. All Switched Exchange Access Service and all Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state Tariffs. In addition, the Intercarrier Compensation arrangements set forth in this Agreement are not applicable to special access, private line or any other traffic that is not switched by the Receiving Party.

5.7.6 If the FCC or the Commission issues an order that establishes a mechanism and rates for telecommunications carriers to compensate one another for the exchange of Local Traffic and Compensable Internet Traffic in the Commonwealth of Virginia (such mechanism and rates, the "Regulatory Intercarrier Compensation Scheme") and such order is effective and not subject to judicial or administrative stay, then either Party may elect, in accordance with a written notice from such Party, to adopt the Regulatory Intercarrier Compensation Scheme, which election shall be memorialized in a writing signed by the Parties; *provided, however*, that the Regulatory Intercarrier Compensation Scheme shall be effective prospectively only, to have effect from the date of the written notice identified in this paragraph above; *provided, further*, that such order either must provide that the Regulatory Intercarrier Compensation Scheme applies to Compensable Internet Traffic or must expressly prescribe discrete rates that apply to traffic that is substantially out of balance, in which case the Regulatory Intercarrier Compensation Scheme adopted by Cox must replicate the entire rate structure that applies to the various levels of traffic imbalance set forth in such order; *provided, further*, that if a Party's adoption of the Regulatory Intercarrier Compensation Scheme would cause the Intercarrier Compensation rate then in effect under Section 5.7.3 hereof to decrease or increase by less than fifteen percent (15%), then neither Party may elect to adopt the Regulatory Intercarrier Compensation Scheme; and *provided, further*, that, after its adoption, the Regulatory Intercarrier Compensation Scheme shall apply only to Compensable Internet Traffic. Except as set forth in this paragraph, each Party irrevocably waives, with respect to the other Party, any and all rights that may have accrued to it prior to October 31, 2002 under Section 252(i) of the Communications Act or any other applicable law or regulation to adopt the terms of any other interconnection agreement, law, regulation, order or arbitration award relating to (i) Intercarrier Compensation, reciprocal compensation or similar compensation mechanisms; and (ii) physical interconnection architecture.

5.7.7 The designation of Traffic as Local or Toll for purposes of compensation shall be based on the actual originating and terminating points of the complete end-to-end call, regardless of the carrier(s) involved in carrying any segment of the call.

5.7.8 Each Party reserves the right to measure and audit all Traffic to ensure that proper rates are being applied appropriately. Each Party agrees to provide the necessary Traffic data or permit the other Party's recording equipment to be installed for sampling

purposes in conjunction with any such audit.

5.7.9 The Parties will engage in settlements of alternate-billed calls (*e.g.*, collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in Virginia in accordance with the terms of an appropriate IntraLATA Telecommunications Services Settlement Agreement between the Parties substantially in the form appended hereto as Exhibit D.

**8. Change all references to “Reciprocal Compensation” to read “Intercarrier Compensation”.**

ATTACHMENT 2

**Vigil, Marvel (CCI-Emeryville)**

**From:** Vigil, Marvel (CCI-Emeryville)  
**Sent:** Friday, October 19, 2001 7:11 AM  
**To:** 'jpach@technetlaw.com'  
**Cc:** Marilyn Rhodovi  
**Subject:** RE: Verizon proposal on termination language  
Jim/Marilyn,

I'm so pleased that we were able to resolve I-10!

Are there any other issues for which VZ-VA would like to propose new language?

Marvel  
(510 923-6223)

**Exhibit 2**

Verizon's Language for Issue I-1

## Verizon's Language for Issue I-1

The following is a comparison of the language proposed by Verizon for Issue I-1 in the September JDPL and the November JDPL. Language that is changed is shown in italics. Agreed-upon language that was not included in the November JDPL is shown with a gray background.

September JDPL Language	November JDPL Language
FROM Verizon proposed Glossary to Cox:	FROM Verizon proposed Glossary to Cox:
1.37 "IP" or "Interconnection Point" means the point at which a Party who receives traffic originating on the network of the other Party assesses Reciprocal Compensation charges for the further transport and termination of that traffic.	1.37 "IP" or "Interconnection Point" means the point at which a Party who receives traffic originating on the network of the other Party assesses Reciprocal Compensation charges for the further transport and termination of that traffic.
1.54 "Point of Interconnection" or "POI" means the physical location where the originating Party's facilities physically interconnect with the terminating Party's facilities for the purpose of exchanging traffic.	1.54 "Point of Interconnection" or "POI" means the physical location where the originating Party's facilities physically interconnect with the terminating Party's facilities for the purpose of exchanging traffic.
<i>Heading absent.</i>	<b>4.0 INTERCONNECTION AND PHYSICAL ARCHITECTURE</b>
<b>4.1 Interconnection Activation</b> Cox represents that it is providing fully operational service predominantly over its own Telephone Exchange Service facilities to business and residential Customers in Virginia through the IPs listed in the attached Schedule 4.1. Cox and Verizon have set forth in Schedule 4.1 their implementation schedule for their initial IPs through which they intend to provide service. To the extent Verizon or Cox wishes to provide service through IPs in additional LATAs, Verizon and Cox will mutually agree to an implementation schedule for those IPs and amend Schedule 4.1 to reflect that implementation schedule. To that end, the Parties will establish and perform to milestones such as trunking arrangements for Traffic Exchange, timely submission of Access Service Requests, 911 Interconnection establishments, SS7 Certification and arrangements for alternate-billed calls.	<b>4.1 Interconnection Activation</b> Cox represents that it is providing fully operational service predominantly over its own Telephone Exchange Service facilities to business and residential Customers in Virginia through the IPs listed in the attached Schedule 4.1. Cox and Verizon have set forth in Schedule 4.1 their implementation schedule for their initial IPs through which they intend to provide service. To the extent Verizon or Cox wishes to provide service through IPs in additional LATAs, Verizon and Cox will mutually agree to an implementation schedule for those IPs and amend Schedule 4.1 to reflect that implementation schedule. To that end, the Parties will establish and perform to milestones such as trunking arrangements for Traffic Exchange, timely submission of Access Service Requests, 911 Interconnection establishments, SS7 Certification and arrangements for alternate-billed calls.
4.2 Trunk Types and Interconnection Points	4.2 Trunk Types and Interconnection Points

September JDPL Language	November JDPL Language
<p>4.2.1 Trunk Types. Section 4 describes the architecture for Interconnection of the Parties' facilities and equipment over which the Parties shall configure the following separate and distinct trunk groups:</p> <p>Traffic Exchange Trunks for the transmission and routing of terminating Local Traffic, Tandem Transit Traffic, Internet Traffic, translated LEC IntraLATA toll free service access code (e.g. 800/888/877/866) traffic, IntraLATA Toll Traffic between their respective Telephone Exchange Service customers pursuant to Section 251(c)(2) of the Act, in accordance with Section 5;</p> <p>Access Toll Connecting Trunks for the transmission and routing of Exchange Access traffic, including translated InterLATA toll free service access code (e.g., 800/888/877/866) traffic, between Cox Telephone Exchange Service customers and purchasers of Switched Exchange Access Service via a Verizon Tandem, pursuant to Section 251(c)(2) of the Act, in accordance with Section 6;</p> <p>911/E911 Trunks (one-way) for the transmission and routing of terminating E911/911 traffic, in accordance with Section 7;</p> <p>At Cox's option, Cox shall configure the following separate distinct trunk groups;</p> <p>Information Services Trunks for the transmission and routing of terminating Information Services Traffic in accordance with Section 7;</p> <p>At either party's option, either Party may order: BLV/BLVI Trunks for the transmission and routing of terminating BLV/BLVI traffic, in accordance with Section 7;</p> <p>The Parties may configure other trunk groups as may be requested and agreed to by the Parties.</p>	<p><i>Deleted from JDPL as agreed-upon language.</i></p>
<p>4.2.2 Interconnection Points. Each Party shall establish Interconnection Points ("IPs") at the available locations designated in Schedule 4.1. The mutually agreed-upon IPs on the Cox network from which Cox will provide transport and termination of traffic to its Customers shall be designated as the Cox Interconnection Points ("Cox-IPs"). The mutually agreed-upon IPs on the Verizon network from which Verizon will provide transport and termination of traffic to its Customers shall be designated as the Verizon Interconnection Point(s) ("Verizon-IP(s)"); provided that such Verizon-IP(s) shall be either the Verizon terminating End Office serving the Verizon Customer (for Interconnection where direct trunking to the Verizon End Office is used) or the Verizon Tandem subtended by the terminating End Office serving the Verizon Customer (for Interconnection where direct trunking to the Verizon Tandem is used). Each party is responsible for</p>	<p>4.2.2 Geographically Relevant Interconnection Points.</p> <p>4.2.2.1 In the case of Cox as a Receiving Party, Verizon may request, and Cox will then establish, geographically-relevant IPs by establishing a Cox-IP at a Collocation site at each Verizon Tandem in a LATA (or, in the case of a single Tandem LATA, at each Verizon End Office Host; or, in the case of a LATA with no Verizon Tandem, at such other Verizon Wire Center as determined by Verizon), for those (Cox) NXXs serving equivalent Verizon Rate Center Areas which subtend the Verizon Tandem (or Verizon End Office Hosts; or, in the case of a LATA with no Verizon Tandem, at such other Verizon Wire Center as determined by Verizon) provided, however, if Collocation is not available at a particular Verizon Tandem, End Office Host or such other Verizon Wire Center chosen by Verizon, the Parties will negotiate a mutually acceptable Cox-IP in such case. Cox shall identify its IPs in writing pursuant</p>

<b>September JDPL Language</b>	<b>November JDPL Language</b>
<p><i>delivering its terminating traffic to the other Party's relevant IP.</i></p>	<p><i>to Section 4.1. If Cox fails to establish a geographically-relevant IP as provided herein within a commercially reasonable time, then Cox shall bill and Verizon shall pay only the applicable Reciprocal Compensation Traffic End Office call termination rate, as set forth in Exhibit A, less Verizon's monthly recurring rate for unbundled Dedicated Transport from Verizon's originating End Office to the Cox-IP.</i></p>
<p>4.2.2.1 Each Party shall make available at least one designated IP in each LATA in which it has Customers, as designated in Schedule 4.2. Any additional traffic that is not covered in Schedule 4.2 and is not Switched Exchange Access traffic shall be subject to separate negotiations between the Parties, except that either Party may deliver such additional traffic to the other Party for termination as long as the delivering Party pays the receiving Party's then current tariffed Switched Exchange Access rates for terminating such traffic.</p>	<p>4.2.3 Each Party shall make available at least one designated IP in each LATA in which it has Customers, as designated in Schedule 4.2. Any additional traffic that is not covered in Schedule 4.2 and is not Switched Exchange Access traffic shall be subject to separate negotiations between the Parties, except that either Party may deliver such additional traffic to the other Party for termination as long as the delivering Party pays the receiving Party's then current tariffed Switched Exchange Access rates for terminating such traffic.</p>
<p><i>No analogous language</i></p>	<p><i>4.2.2.2 Should either Party offer additional IPs to any Telecommunications Carrier that is not a Party to this Agreement, the other Party may elect to deliver traffic to such IPs for the NPA-NXXs served by those IPs. To the extent that any such Cox-IP is not located at a Collocation site at a Verizon Tandem (or Verizon End Office Host) or other Verizon End Office, then Cox shall permit Verizon to establish physical interconnection at the Cox-IP, to the extent such physical interconnection is technically feasible.</i></p>

September JDPL Language	November JDPL Language
<p>4.2.4 <i>Geographic Relevance.</i> In the event either Party fails to make available a geographically relevant End Office or functional equivalent as an IP and POI on its network, the other Party may, at any time, request that the first Party establish such additional technically feasible point as an IP and/or POI. Such requests shall be made as a part of the Joint Process established pursuant to subsection 10.1. A "geographically relevant" IP shall mean an IP that is located within the Verizon local calling area of equivalent Verizon end user Customers, but no greater than twenty five (25) miles from the Verizon Rate Center Point of the Verizon NXX serving the equivalent relevant end user Customers, or, with the mutual agreement of the Parties, an existing and currently utilized IP within the LATA but outside the foregoing Verizon local calling area and/or twenty five (25) mile radius. "Equivalent" customers shall mean customers served by either Party and which are assigned telephone numbers in the same Rate Center. If after thirty (30) days following said request such geographically relevant handoffs have not been made available by Cox, Cox shall bill and Verizon shall pay only the End Office Reciprocal Compensation rate for the relevant NXX less Verizon's transport rate from Verizon's originating End Office to Cox-IP.</p>	<p>4.2.2.3 At any time that Cox establishes a Collocation site at a Verizon End Office, then either Party may request that such Cox Collocation site be established as the Cox-IP for traffic originated by Verizon Customers served by that End Office. In the case of Verizon making such request to Cox, Cox's obligation to establish an IP at a Cox Collocation site at a Verizon End Office shall be limited to no more than one (1) such Cox Collocation site within a given local calling area or non-optional Extended Local Calling Scope Arrangement as such areas are defined in Verizon's effective Customer tariffs, or, if the Commission has defined local calling areas applicable to all LECs, then as so defined by the Commission. Such request shall be negotiated pursuant to the Joint Grooming Plan process, and approval shall not be unreasonably withheld or delayed. To the extent that the Parties have already implemented network interconnection in a LATA at a point that is not geographically relevant (as that term is described above) or another Cox-IP, then upon Verizon's request for a geographically-relevant Cox-IP at such End Office Collocation, the Parties shall negotiate a mutually-acceptable transition process and schedule to implement the geographically-relevant IPs. If Cox should fail to establish an IP at an end office Collocation site pursuant to Verizon's request, or if the Parties have been unable to agree upon a schedule for completing a transition from existing arrangements to geographically relevant Cox-IPs or to an end office Collocation site Cox-IP within sixty (60) days following Verizon's request, Cox shall bill and Verizon shall pay the applicable Reciprocal Compensation Traffic End Office call termination rate for the relevant NXX, as set forth in Exhibit A, less Verizon's monthly recurring rate for unbundled Dedicated Transport from Verizon's originating End Office to the Cox-IP.</p>
<p>No analogous language.</p>	<p>4.2.2.4 The IP of a Party ("Receiving Party") for Measured Internet Traffic delivered to the Receiving Party by the other Party shall be the same as the IP of the Receiving Party for Reciprocal Compensation Traffic under Section 4.</p>
<p>No analogous language.</p>	<p>4.2.2.5 Except as otherwise set forth in the applicable Tariff of a Party ("Receiving Party") that receives Toll Traffic from the other Party, the IP of the Receiving Party for Toll Traffic delivered to the Receiving Party by the other Party shall be the same as the IP of the Receiving Party for Reciprocal Compensation Traffic under Section 4.</p>
<p>No analogous language.</p>	<p>4.2.2.6 The IP for traffic exchanged between the Parties that is not Reciprocal Compensation Traffic, Measured Internet Traffic or Toll Traffic, shall be as specified in the applicable provisions of this Agreement or the</p>

September JDPL Language	November JDPL Language
	<i>applicable Tariff of the receiving Party, or in the absence of applicable provisions in this Agreement or a Tariff of the receiving Party, as mutually agreed by the Parties.</i>
<p>4.2.3 Points of Interconnection. As and to the extent required by Section 251 of the Act, the Parties shall provide Interconnection of their networks at any technically feasible point, as described in Section 4.2. To the extent the originating Party's Point of Interconnection ("POI") is not located at the terminating Party's relevant IP, the originating Party is responsible for transporting its traffic from its POI to the terminating Party's relevant IP.</p>	<i>Deleted from JDPL as agreed-upon language.</i>
<p>4.2.4 1. The Parties shall configure separate one-way trunk groups for traffic from Cox to Verizon, and for traffic from Verizon to Cox, respectively; however, either Party may at its discretion request that the trunk groups shall be equipped as two-way trunks for testing purposes.</p>	<i>Deleted from JDPL as agreed-upon language.</i>
<p>4.3. Physical Architectures</p> <p>4.3.1 Cox shall have the sole right and discretion to specify any of the following three methods for interconnection at the Verizon-IPs:</p> <p>(a) a Physical or Virtual Collocation node Cox established at the Verizon-IP; and/or</p> <p>(b) a Physical or Virtual Collocation node established separately at the Verizon-IP by a third party with whom Cox has contracted for such purposes; and/or</p> <p>(c) an Entrance Facility and transport (where applicable) leased from Verizon (and any necessary multiplexing), to the Verizon-IP.</p>	<i>This Section, in its entirety, is included in Verizon's proposed language for resolution of Issue I-3.</i>
<p>4.3.2 Cox shall provide its own facilities or purchase necessary transport for the delivery of traffic to any Collocation arrangement it establishes at a Verizon-IP pursuant to Section 13.</p>	<i>Deleted from JDPL as agreed-upon language.</i>
<p>4.3.3 Cox may order from Verizon any of the Interconnection methods specified above in accordance with the order intervals, and other terms and conditions, including without limitation, rates and charges, set forth in this Agreement, in any applicable Tariff(s), or as may be subsequently agreed to between the Parties.</p>	<i>Deleted from JDPL as agreed-upon language.</i>
<p>4.3.4 Verizon shall have the sole right and discretion to specify any of the following method for Interconnection at any of the Cox-IPs:</p> <p>(a) an Entrance Facility leased from Cox (and any necessary multiplexing), to the Cox-IP.</p>	<i>This Section, in its entirety, is included in Verizon's proposed language for resolution of Issue I-3.</i>

September JDPL Language	November JDPL Language
<p>(b) a physical, virtual or other alternative Collocation node Verizon establishes at the Cox-IP; and/or</p> <p>(c) a physical, virtual or other alternative Collocation node established separately at the Cox-IP by a third party with whom Verizon has contracted for such purposes and/or.</p>	
<p>4.3.5 Verizon shall provide its own facilities or purchase necessary transport for the delivery of traffic to any Collocation node it establishes at a Cox-IP pursuant to Section 13.</p>	<p><i>This Section, in its entirety, is included in Verizon's proposed language for resolution of Issue I-3.</i></p>
<p>4.3.6 Verizon may order from Cox the Interconnection method specified above in accordance with the order intervals and other terms and conditions, including, without limitation, rates and charges, set forth in this Agreement, in any applicable Tarriff(s), or as may be subsequently agreed to between the Parties.</p>	<p><i>Deleted from JDPL as agreed-upon language.</i></p>
<p>4.3.7 The publication "Bellcore Technical Publication GR-342-CORE; High Capacity Digital Special Access Service, Transmission Parameter Limits and Interface Combination" describes the specification and interfaces generally utilized by Verizon and is referenced herein to assist the Parties in meeting their respective Interconnection responsibilities.</p>	<p><i>Deleted from JDPL as agreed-upon language.</i></p>
<p>4.3.8 In recognition of the large number and variety of Verizon-IPs available for use by Cox, Cox's ability to select from among those points to minimize the amount of transport it needs to provide or purchase, and the fewer number of Cox-IPs available to Verizon to select from for similar purposes, Cox shall charge Verizon no more than a non-distance sensitive Entrance Facility charge as provided in Exhibit A for the transport of traffic from a Verizon-IP to a Cox-IP in any given LATA.</p>	<p><i>This Section, in its entirety, is included in Verizon's proposed language for resolution of Issue I-3.</i></p>

**Exhibit 3**

Verizon's Language for Issue I-2

## Verizon's Language for Issue I-2

The following is a comparison of the language proposed by Verizon for Issue I-2 in the September JDPL and the November JDPL. Language that is changed is shown in italics.

September JDPL Language	November JDPL Language
<p>4.3.8 In recognition of the large number and variety of Verizon-IPs available for use by Cox, Cox's ability to select from among those points to minimize the amount of transport it needs to provide or purchase, and the fewer number of Cox-IPs available to Verizon to select from for similar purposes, Cox shall charge Verizon no more than a non-distance sensitive Entrance Facility charge as provided in Exhibit A for the transport of traffic from a Verizon-IP to a Cox-IP in any given LATA.</p> <p>4.5.3 <i>Unless otherwise agreed to by the Parties, the Parties shall designate the Wire Center(s) Cox has identified as its initial Rating Point(s) in the LATA as the Cox-IP(s) in that LATA and shall designate a mutually agreed upon Tandem Office or End Offices within the LATA nearest to the Cox-IP (as measured in airline miles utilizing the V and H coordinates method) as the Verizon-IP(s) in that LATA, provided that, for the purpose of charging for the transport of traffic from a Verizon-IP to the Cox-IP, the Cox-IP shall be no further than a non-distance sensitive Entrance Facility away from the Verizon-IP.</i></p>	<p>4.3.8 In recognition of the large number and variety of Verizon-IPs available for use by Cox, Cox's ability to select from among those points to minimize the amount of transport it needs to provide or purchase, and the fewer number of Cox-IPs available to Verizon to select from for similar purposes, Cox shall charge Verizon no more than a non-distance sensitive Entrance Facility charge as provided in Exhibit A for the transport of traffic from a Verizon-IP to a Cox-IP in any given LATA.</p> <p>4.5.3 <i>Consistent with Section 4.2.2 above, Verizon may request and Cox shall provide additional IPs in that LATA. Verizon shall designate its local Tandems and End Offices as its IPs in that LATA. Cox shall charge Verizon no more than a non-distance sensitive Entrance Facility charge as provided in Exhibit A for the transport of traffic from a Verizon-IP to a Cox-IP in that LATA.</i></p>

**Exhibit 4**

Verizon's Language for Issue I-9

## Verizon's Language for Issue I-9

The following is a comparison of the language proposed by Verizon for Issue I-9 in the September JDPL and the November JDPL. Language that is changed is shown in italics.

September JDPL Language	November JDPL Language
<p>20.3 The rates and charges set forth in Exhibit A shall be superseded by any new rate or charge when such new rate or charge is required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect, provided such new rates or charges are not subject to a stay issued by any court of competent jurisdiction; <i>provided, further that Cox may not charge Verizon a rate higher than the Verizon rates and charges for the same services, facilities and arrangements.</i></p> <p>See Exhibit A, Part B §§ IV and X, to Verizon's proposed interconnection agreement with Cox..</p>	<p>20.3 The rates and charges set forth in Exhibit A shall be superseded by any new rate or charge when such new rate or charge is required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect, provided such new rates or charges are not subject to a stay issued by any court of competent jurisdiction. <i>Notwithstanding any other provision of this Agreement, Cox may not charge Verizon a rate higher than the Verizon rates and charges for the comparable services, facilities and arrangements, except if and, to the extent that, Cox has demonstrated to Verizon's (or the Commission's or FCC's) satisfaction, that Cox's cost to provide such Cox services to Verizon exceeds the rates and charges for Verizon's comparable services (and the Commission or the FCC, as the case may be, has issued an unstayed order directing that Verizon pay the higher rate or charge).</i></p> <p>Exhibit A, Part B §§ IV and X, to Verizon's proposed interconnection agreement with Cox:</p> <p>IV. [Blanks for proposed prices]</p> <p>X. Available at Cox's tariffed or otherwise generally available rates. <i>Notwithstanding any other provision of this Agreement, Cox may not charge Verizon a rate higher than the Verizon rates and charges for the comparable services, facilities and arrangements, except if and, to the extent that, Cox has demonstrated to Verizon's (or the Commission's or FCC's) satisfaction, that Cox's cost to provide such Cox services to Verizon exceeds the rates and charges for Verizon's comparable services (and the Commission or the FCC, as the case may be, has issued an unstayed order directing that Verizon pay the higher rate or charge).</i></p>

## CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 7th day of November, 2001, copies of the foregoing "Objection and Request for Sanctions of Cox Virginia Telcom, Inc." were served as follows:

### TO FCC as follows (by hand):

Dorothy T. Attwood, Chief (8 copies)  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Jeffrey Dygert  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Katherine Farroba  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

John Stanley  
Assistant Division Chief  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

### TO AT&T as follows:

David Levy  
Sidley & Austin  
1501 K Street, NW  
Washington, DC 20005

Mark A. Keffer  
AT&T  
3033 Chain Bridge Road  
Oakton, Virginia 22185

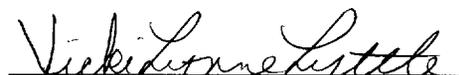
### TO VERIZON as follows:

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

Karen Zacharia  
David Hall  
1515 North Court House Road  
Suite 500  
Arlington, Virginia 22201-2909

### TO WORLDCOM as follows:

Jodie L. Kelley, Esq.  
Jenner and Block  
601 13th Street, NW  
Suite 1200  
Washington, DC 20005

  
Vicki Lynne Lyttle