1. Verizon VA has no obligation to expand its existing dark fiber network or to provide access to dark fiber in a manner different from how it provides access to itself.

Verizon VA provides access to its network as it currently exists and is under no obligation to improve its existing network to accommodate CLEC requests for dark fiber that is not presently installed. Dark fiber is, by definition, ***spare*** fiber without attached electronics.[73] Accordingly, Verizon VA provides access to dark fiber that is readily available at accessible terminals in its network, such as a central office, a remote terminal or an end used location.[74] WorldCom, however, asserts that Verizon VA must construct new fiber routes that do not currently exist between two or more non-continuous points. WorldCom Ex. 5 at 33-34. The New York Commission recently addressed this issue in the *NY DSL Reconsideration Order*.[75] In that case, a CLEC, Conversent, moved for reconsideration and "sought a requirement that Verizon New York connect fiber pairs in order to create new routes," *id.* * 7, which included a request that Verizon "connect the fiber at the intermediate office." *Id.* at n.25. The New York Commission found that "this requirement also goes beyond the FCC regulations." *Id.* * 7. CLECs have alternatives to allow them to create continuous paths of fiber, including the installation of necessary equipment and electronics at accessible terminal points to create and connect their own fiber routes. Tr. 384.

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[73] *UNE Remand Order* at ¶ 325; Rule 319(d)(1)(ii) ("Dark fiber transport, defined as incumbent LEC optical transmission facilities, without attached multiplexing, aggregation or other electronics.").

[74] Tr. 372. *See Iowa Utilities I*, 120 F.3d at 813; Rule 319(a)(2).

[75] *Re Digital Subscriber Line Services*, Order Granting Clarification, Granting Reconsideration In Part and Denying Reconsideration in Part, and Adopting Schedule, Case No. 00-C-0127, 2001 WL 322813 *7 (N.Y.P.S.C. January 29, 2001) (*NY DSL Reconsideration Order*).

Verizon VA does not reserve dark fiber for its own use except those fibers assigned to maintenance and to fulfill existing orders, including CLEC orders. Tr. 402. AT&T and WorldCom, however, desire to reserve Verizon VA's existing dark fiber for their future use. The *UNE Remand Order* does not require that Verizon VA allow a CLEC to reserve dark fiber. Such a reservation of fiber could be discriminatory and would be inconsistent with the requirement that Verizon VA provide services to CLECs as it provides such service to itself.[76] Tr. 403. No other UNE can be reserved, and a reservation policy for dark fiber could negatively impact other CLECs. If one CLEC were permitted to reserve dark fiber, it could hoard that fiber to the obvious detriment of other requesting carriers. Tr. 404. Moreover, Verizon VA's logical planning and engineering for its system would be undermined as fiber facilities could be locked up by CLECs for competitive purposes unrelated to current use. Verizon VA Ex. 1 at 17. As a carrier of last resort, Verizon VA's dark fiber facilities are available to serve all requesting carriers and to allow fiber to be reserved and "warehoused" by a CLEC would be inconsistent with that obligation. Verizon VA Ex. 1 at 17. The Massachusetts Department of Telecommunications and Energy rejected a reservation policy proposed by AT&T and stated:

> the availability of a given circuit would be subject to market forces, just as the availability of loops, switching capacity, and transport are so subject. Accordingly, AT&T's proposal for a reservation system and for a 25 percent reservation change is not accepted.[77]

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[76] Rule 311(b).

[77] *Consolidated Petitions of New England Telephone and Telegraph Co. d/b/a/ Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications CO., and Sprint Communications Co., L.P. pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell-Atlantic Massachusetts and the aforementioned companies,* D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-94-Phase 4-N, p.30-1 (Dec. 13, 1999).

Verizon VA makes the "reservoir" of dark fiber in its network available to CLECs and for its own needs on a first-come, first-served, basis and that is a fair, appropriate and lawful process. Finally, if CLECs were permitted to hoard dark fiber, Verizon VA would have no incentive to continue to build out its fiber network, and, contrary to the Commission's intentions, CLECs would have no incentive to build their own networks.

AT&T also argues that Verizon VA must "be required to upgrade the electronics" of dark fiber to make it "usable for AT&T." AT&T Ex. 5 at 8. This proposal turns the concept of the availability of dark fiber on its head. Dark fiber is spare fiber that "***does not have electronics on either end***" to light it.[78] To require Verizon VA to upgrade electronics to make dark fiber available is a *non sequitur* and well outside the existing requirements of providing dark fiber as a UNE.

Verizon VA offers, at the CLEC's request, to perform field surveys in order for the CLECs to ascertain the transmission quality and adequacy of dark fiber for its network design prior to the CLEC's submission of a formal request for dark fiber. Verizon VA Ex. 1 at 23. AT&T Witness Nurse misconstrues the voluntary request process and argues that Verizon VA should not be permitted to require a "burdensome" field survey as a precondition to the provision of dark fiber. AT&T Ex. 5 at 13. Verizon does not require a field survey when a CLEC requests dark fiber. It is, however, the only accurate method for a CLEC to ascertain the quality and sufficiency of the requested dark fiber for its network design prior to submitting an order. Verizon VA Ex. 1 at 23. In fact, Verizon VA conducts field surveys for itself whenever it needs to determine the transmission characteristics of a fiber facility prior to deploying a fiber optic

[78] *UNE Remand Order* at ¶ 325 (emphasis added).

service. Verizon VA Ex. 1 at 23. Thus, the field survey requirements of the CLEC and Verizon VA are equivalent.

2. Verizon VA is required only to provide access to dark fiber at "accessible terminals."

Verizon VA must provide dark fiber to requesting carriers at "accessible terminals."[79] Both AT&T and WorldCom erroneously assert that Verizon VA is required to provide access to dark fiber at splice points and splice casings. AT&T Ex. 5 at 5; WorldCom Ex. 5 at 33. Indeed, WorldCom Witness Goldfarb went so far as to urge that Verizon VA must "optimize" its network for WorldCom by allowing it to splice into Verizon VA's fiber network at most any location. Tr. 454-55. The Commission has clearly held that splice points and casings are not "accessible terminals:"

> an accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the fiber or wire within. Terminals differ from splice cases, which are inaccessible because the case must be breached to reach the wires within.[80]

Fiber that must be spliced together does not meet this definition because it is ***not*** physically connected to facilities and ***cannot*** be used by CLECs without installation by the incumbent.

Verizon VA Witness Gansert explains why splice points are not accessible terminals and thus not appropriate for invasive and repeated manipulation:

> when you are done with construction, all the fibers splices would be done. They would all be sealed up. They would all be hermetically sealed and intended never to be touched again.... You're saying what if you had an accessible splice? It's a contradiction in terms. They're not designed to be accessible points.

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[79] *See id.* at ¶ 206, n.395.

[80] *Id.*

Tr. 379. Thus, allowing interconnection at splice points or casings could seriously jeopardize the integrity of Verizon VA's network. Tr. 377. Verizon VA's network will be threatened by repeatedly opening splice cases to provide access to individual fibers as those splices would impact the transmission capabilities of the fiber optic facilities and would jeopardize customer service if a mistake were made while working on a critical point in the fiber. Verizon VA Ex. 15 at 17; Tr. 437. As the Commission has noted, legitimate threats to network reliability and security must be considered in evaluating the feasibility of interconnection at any given point.[81] Counsel for WorldCom suggested an even more pernicious event: a "splice into the dark fiber ... running from one Verizon CO [Central Office] to another." Tr. 396. The creation of a new splice point on an existing cable route is not consistent with Verizon VA's practice for its retail or wholesale operations (Tr. 455) and, similar to breaking into a sealed splice point, cutting the cable and creating a splice is "not an operationally reasonable thing to do without risk of damaging the cable...." Tr. 389, 398-99. The Commission should not require Verizon VA to allow CLECs to splice into its fiber system without regard to long accepted, good engineering practice.

Verizon VA builds new fiber according to projections for future growth in demand and is serving major locations with fiber. Tr. 454-55. WorldCom advocated that Verizon VA be forced to expand its existing fiber network at WorldCom's request and suggested that Verizon VA's existing dark fiber locations are insufficient. Tr. 452-54. This is inaccurate. In fact, WorldCom Witness Lathrop could not point to a single instance when Verizon VA denied WorldCom the ability to connect to dark fiber for lack of available fiber. Tr. 453. In addition, AT&T Witness Nurse acknowledged that there are other sources of dark fiber available to

[81] *See Local Competition Order* at ¶ 203.

CLECs and, in fact, AT&T constructs new fiber and may also obtain it from and lease it to its corporate affiliates and other companies. Tr. 430. There is no reason--legal or practical--for Verizon VA to be required to build new fiber. If no fiber is available from Verizon VA, a CLEC may construct its own fiber or lease it from a third party, the same options available to Verizon VA when it forecasts the need for new fiber facilities.

3. This Commission should reject AT&T's expansive use of the term "unused transmission media" to include media other than dark fiber.

The Commission has determined that dark fiber must be unbundled;[82] it has not required unbundling of what AT&T calls "unused transmission media." AT&T Ex. 5 at 6.[83] This arbitration is not a forum in which to expand or change existing law.[84] Consistent with existing law, the Commission should consider only the availability of dark fiber in this arbitration.

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[82] *See UNE Remand Order* Executive Summary.

[83] According to § 11.2.15.1 of AT&T's proposed contract, "unused transmission media are deployed, physical transmission media (e.g., optical fiber, copper twisted pairs, coaxial cable or any other transmission conductor) that can be used to provide the functionality described as interoffice transmission facilities as set forth in FCC Rule 51.319(d) which is in place in Verizon's network but is not being used to provide service as of the date a request for unused transmission media is made by AT&T." *See* AT&T Ex. 5 at 6-7. Accordingly, "unused transmission media" as defined by AT&T is significantly more expansive than "dark fiber" as defined as a UNE by the Commission.

Although the term "unused transmission media" has been used interchangeably with dark fiber in two state proceedings, it was not expanded to include other forms of transmission media. *See In re Petitions of AT&T,* Florida Public Service Commission, Docket No. 960833, at 16 (1996); *In Re Petition of Arbitration of an Interconnect Agreement between AT&T et al.*, UTC Docket No. UT-960307, at 20 (1997). In any event, the Commission should reject use of the term "unused transmission media" and insist upon use of the term "dark fiber".

[84] Status Conference at 26 (July 10, 2001).

C. CONTRACT PROPOSALS

1. AT&T

AT&T's requests access to "unused transmission media" in its proposed contract, rather than access to the UNE "dark fiber," (§ 11.2.15) and that request goes beyond existing Commission regulations and should not be adopted. Such a definition is inconsistent with the *UNE Remand Order* and with applicable law, and would require Verizon VA to provide access to AT&T in a manner that exceeds what is required under the law. The *UNE Remand Order* defines dark fiber as "unused loop capacity that is physically connected to facilities that the incumbent LEC currently uses to provide service, was installed to handle increased capacity, and can be used by competitive LECs without installation by the incumbent."[85] Unused transmission media is not the same as unused loop capacity. AT&T's proposed definition of dark fiber includes two examples, copper twisted pairs and coaxial cable, that are not "dark fiber" under applicable law. § 11.2.15.1. "Dark fiber," as the name connotes, is fiber and fiber alone. It is not "capacity." AT&T should not be able to, in effect, rewrite the applicable terms for loops (*i.e.*, "copper twisted pairs") or create terms for coaxial cable, etc. by using the broad and ambiguous term "unused transmission media" in the dark fiber section of the contract.

Furthermore, in § 11.2.15.2 AT&T seeks interconnection to dark fiber at "splice points." Splice points specifically have been designated as inaccessible by the Commission and requiring access at splice points would therefore be inappropriate.[86]

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[85] *UNE Remand Order* at ¶ 174, n.323.

[86] *See id.* at ¶ 206.

In § 11.2.15.3, AT&T seeks to reserve Verizon VA's dark fiber for up to 90 days. This provision is unacceptable both because Verizon VA has no similar rights to reserve dark fiber for future growth and because of the potential for the prejudice to other requesting CLECs. Tr. 404. Section 11.2.15.3 would also require Verizon VA to "upgrade transmission electronics" of existing dark fiber if it does not meet AT&T's needs. Verizon VA has no obligation to upgrade its network for AT&T and certainly has no obligation to install electronics in connection with dark fiber for a CLEC's use. Finally, with respect to § 11.2.15.3, AT&T proposes that "Verizon shall include forecasted AT&T requirements in the design and expansion of its network and capacity to accommodate reasonable AT&T requests." AT&T's proposal that Verizon VA should include AT&T's forecasted dark fiber needs in the design and expansion of Verizon VA's network has no basis in applicable law. Verizon VA is only obligated to provide access to its existing network elements. The Eighth Circuit's decision made clear that Verizon VA's obligation is to provide access to its existing network, not an unbuilt superior one. In addition, in an analogous situation regarding transmission facilities, "the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use."[87] If AT&T knows that it will need additional capacity, it can install fiber itself, or obtain dark fiber from a third party. It cannot, however, demand that Verizon VA install additional fiber, and then claim entitlement to it because Verizon VA is not using it. While Verizon VA may be obligated to offer AT&T existing dark fiber, it is certainly under no obligation to install and build additional fiber on AT&T's behalf. Verizon VA is only obligated to provide access to its existing network elements.

[87] *Id.* at ¶ 324.

AT&T would require Verizon VA to provide the "performance capabilities of spare transmission media" yet would not pay Verizon VA for the field survey required to determine its capability. § 11.2.15.4. For Verizon VA to obtain the current transmission characteristics of the dark fiber requested by a CLEC, it must first conduct a field survey of that fiber. Verizon VA Ex. 1 at 23. These surveys are optional, and the CLEC is supplied with an estimate to approve of the time and cost to perform the survey before Verizon VA commences any work. Therefore, a CLEC may accept or decline the filed survey prior to the work commencing. *See id.* Verizon VA conducts field surveys for itself if it needs to have the current transmission characteristics of dark fiber prior to activating a fiber optic service, so the provision of this service is at "parity" with the service that Verizon VA currently provides to itself and is a legitimate provision to offer to CLECs.

Section 11.2.15.9 of AT&T's proposed contract imposes obligations upon Verizon VA that are inconsistent with applicable law by requiring Verizon VA to certify that the characteristics of dark fiber meet certain transmission standards. AT&T's proposed § 11.2.15.9 states:

> Verizon shall be obligated to ensure that Unused Transmission Media conform to transmission of communications at speeds and rates that the manufacturer's design specifications indicate are obtainable given the transmission electronics that AT&T attaches to the media, and are at parity with the quality of service that Verizon provides to itself. If such levels of performance are not attained, then AT&T shall have the option of returning the facility to Verizon, without incurring any liability for its use or installation, or requesting that Verizon repair the transmission media at Verizon's expense.

It is unclear whether AT&T means the manufacturer's current design specifications or the specifications at the time the dark fiber was installed. In either case, AT&T requires Verizon VA

to provide access to dark fiber superior to what may exist in Verizon VA's network. AT&T is entitled only to access the dark fiber "as is."[88]

Section 11.2.15.10 of AT&T's proposed contract inappropriately places the burden of maintenance and repair on Verizon VA and assumes none of the risk for AT&T. Verizon VA will restore damaged dark fiber in the same manner as it does for its own fiber. In order to do such maintenance, Verizon VA may have to splice the cable sheath in which Dark Fiber resides to repair and maintain such fiber and AT&T should assume all risks associated with that maintenance. Moreover, Verizon VA is not obligated to undertake additional maintenance responsibilities as proposed by AT&T.

Section 11.2.15.10 also proposes that AT&T personnel should have unrestricted access to splice together fiber themselves to create dark fiber and to test dark fiber at any point. Verizon VA is not required to allow representatives from other companies unrestricted access to its network. Such unrestricted access would raise serious concerns regarding customer service, security, union relationships, accountability and liability. As to testing, AT&T accesses dark fiber at hard termination points and has the ability to test from its side of the hard termination point.

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[88] The New York Commission has addressed a similar issue its *NY DSL Reconsideration Order*, where it found that Verizon NY's position concerning dark fiber quality "was consistent with the FCC *UNE Remand Order* and the July 2000 decision of the United States Court of Appeals for the Eighth Circuit. The incumbent is obligated to provide access to existing dark fiber facilities, but not to improve them." In that case, Conversent complained of deficiencies in Verizon NY's tariff pertaining to the quality and availability of interoffice dark fiber. Conversent interpreted the tariff filing as allowing Verizon NY to provide dark fiber "as in" and not requiring it to improve transmission quality for a competitor's use. The New York Commission found for Verizon NY in that case.

2. WorldCom

WorldCom's proposed language in its Attachment III § 5 *et seq.* requires actions by Verizon VA that are not required by any existing Commission regulations or Orders.[89]

The WorldCom-BellSouth contract language set out in WorldCom's UNE Panel's rebuttal testimony (WorldCom Ex. 13 at 16-19) eliminates WorldCom's proposals for Verizon VA to expand its fiber network at WorldCom's request and to reserve dark fiber exclusively for WorldCom. To the extent this new contractual language in §§ 6.2.5 or 6.3.2[90] would allow access to dark fiber at splice points, it is contrary to existing Commission holdings. Further, to the extent WorldCom, like AT&T, would expand the definition of dark fiber to "unused transmission media," (§ 6.4) Verizon VA objects to such definition as being well beyond the Commission's definition of dark fiber as a UNE.

3. Verizon VA

a) AT&T

Verizon VA makes dark fiber available on non-discriminatory terms consistent with applicable law. Verizon VA's proposed AT&T contract §§ 11.2.15 *et seq.* Consistent with the

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[89] WorldCom may have changed the contractual provisions for dark fiber it now supports in this proceeding. Section 5 in Attachment III to WorldCom's proposed interconnection agreement filed with its Petition on April 23, 2001 was the dark fiber provision discussed by its UNE Panel (WorldCom Ex. 5 at 30-34) in its prefiled direct testimony. Although the direct testimony was not modified or withdrawn, the UNE Panel seems to have switched in its rebuttal testimony to supporting dark fiber contract provisions purporting to be between WorldCom and BellSouth. WorldCom Ex. 13 at 15-19. The JDPL filed on November 5, 2001 contains only the purported WorldCom/Bellsouth contract provisions. For that reason, Verizon VA will treat the previously proposed interconnection agreement as withdrawn.

[90] This language was formerly §§ 6.2.5, 6.3.2 and 6.4 (unused transmission media) in the JDPL filed on November 2, 2001. WorldCom, however, has renumbered these sections as 5.2.5, 5.3.2 and 5.4 in its contract language filed November 14, 2001.

Commission's holding that splice points are not "accessible terminals,"[91] in § 11.2.15.2 Verizon VA will provide access to dark fiber "only at existing hard termination points... and AT&T may not access Dark Fiber at other points."

Section 11.2.15.3 reflects the Commission's rulings that Verizon VA is not obligated to construct new dark fiber facilities to accommodate CLEC requests. Fiber is reserved only for "maintenance purposes [and] to satisfy customer orders for fiber related services." § 11.2.15.3. Verizon VA Witness Detch clarified that there is no reservation of fiber for "future growth" and Verizon VA had stricken the term "for future use" from § 11.2.15.3. Tr. 402; Verizon VA Ex. 1 at 16.

b) WorldCom

Verizon VA will provide dark fiber to WorldCom in accordance with its proposed WorldCom contract, UNE Attachment, § 7. Verizon VA will provide dark fiber "in accordance with, but only to the extent required by applicable law." *Id.* at § 7.1. Pursuant to Commission regulations, Verizon VA will provide interconnection at "pre-existing hard termination points." *Id.* at § 7.2.2. Furthermore, consistent with the Commission rule, CLECs will not be permitted to access Verizon VA's dark fiber at splice points.[92] *Id.* at § 7.2.2. Verizon VA provides interconnection at accessible terminals as defined by the Commission in the *UNE Remand Order*, provides fiber on a "route direct basis where facilities exist (*i.e.* no intermediate offices)," and reserves dark fiber only "for maintenance purposes, or to satisfy customer orders for fiber related services." *Id.* at § 7.2.2. Similar to the proposed contract with AT&T, Verizon VA

[91] *See Id.* at ¶ 206.

[92] *See id.*

Witness Detch clarified that dark fiber is not reserved by Verizon VA for future growth and eliminated that provision from § 7.2.10.3 of Verizon's proposed WorldCom contract. Tr. 402.

Issue IV-14 Applicable Law

Issue IV-15 Applicable Law

Issue VI-1(E) Changes in Law

WorldCom: IV-14: Should the contract reflect the FCC's decisions in the *UNE Remand Order*, *Advanced Services Order*, and *Line Sharing* proceedings?

IV-15: Should the Interconnection Agreement contain a provision setting forth Verizon's obligation to provide unbundled network elements, including all the features, functions, combinations, and capabilities, the provision of which is Technically Feasible?

VI-1(E): Should the interconnection agreement contain provisions addressing changes in applicable law?

A. OVERVIEW

The Parties generally agree on the concept that all services under an interconnection agreement, including UNEs, should be provided in accordance with applicable law. The Parties disagree, however, on how to phrase the "applicable law" provision and on the procedures to implement a change in applicable law. In the absence of an announced specific regulatory transition period, Verizon VA supports a specific 45-day schedule unless there is subsequent intervention in that process by the Commission (or the VA Commission). WorldCom's failure to support a set schedule for a transition will lead to interminable delay in reacting to a legitimate change in applicable law.

B. DISCUSSION

Verizon VA supports a defined process for implementing a change in applicable law when the change is not accompanied by an explicit implementation schedule. This would occur, for example, following a Court or Commission order if an implementation schedule were not set forth in the order. If the change in law requires a contract amendment, the Parties should negotiate such changes promptly and in good faith. Verizon VA did this with respect to the

changes required under the *UNE Remand Order*. On or before the respective dates that new UNEs were required to be offered under that *Order*, Verizon VA made available to CLECs interconnection agreement amendments to effect the new obligations. This process is appropriate for the introduction of a new obligation to provide a service and allows proper coordination between Verizon VA and the CLECs. Verizon VA Ex. 13 at 47.

When the change in law releases Verizon VA from providing a UNE in the manner in which it had previously been provided, the Parties must comply with the change in law within a reasonable time. Verizon VA proposes that if the governmental entity effecting the change in law does not provide for a transition period (*e.g.*, the requirement to provide a UNE otherwise ends on the effective date of the order), Verizon VA would, in all cases, provide a 45 day implementation schedule beginning on the day Verizon VA notifies WorldCom that there has been a change of law. During this 45 day period, the Parties will negotiate (and presumably reach agreement) as to how the change in law will affect the implementation of the interconnection agreement going forward. In addition, the 45 day schedule would give WorldCom time to petition the Commission (or the VA Commission) with respect to Verizon VA's proposed transition and implementation schedule if it believes the Commission needs to be further involved. Tr. 673. There would also be adequate time, if necessary, to notify customers of changes to their service. Tr. 675. Verizon VA would implement the transition upon the expiration of the 45 day period. Verizon VA Ex. 13 at 47-49. This is a fair, predictable and reasonable approach to effecting a change in law and should be adopted in the Parties' interconnection agreement.

WorldCom wants no set schedule to implement a change in applicable law. Obviously, no set schedule could result in delays for a myriad of reasons and a very inefficient and

unpredictable implementation process. Yet WorldCom was unable to provide any verifiable evidence as to what sort of problems might arise under Verizon VA's proposal. Worldcom's objection is especially confusing because it will have access to the Commission prior to the effective date of the transition. In short, a predictable process with a specific date for the transition incorporating the change in law is required to expedite the process. Open-ended transitions will only foster needless delay to the detriment of the Party benefitting from the change in law. *See* Tr. 676-77.

C. CONTRACT PROPOSALS

1. WorldCom

WorldCom's proposal in § 1.1 of its Attachment III to its proposed contract sets up the ambiguity that Verizon VA believes should be avoided:

> § 1.1. Verizon VA shall provide Unbundled Network Elements in accordance with this Agreement and Applicable Law.

This provision creates ambiguity when the Agreement and applicable law differ because Verizon VA would be obligated to provide UNEs in accordance with ***both*** the Agreement and Applicable Law. Moreover, WorldCom's proposed interconnection agreement is silent as to a transition to reflect a change in law. Verizon VA's proposal in § 1.1 better addresses this situation by avoiding ambiguity and clearly articulating an implementation process for incorporating a change in law.

2. Verizon VA

Verizon VA in its proposed WorldCom contract, UNE Attachment § 1.1, states that it will provide WorldCom with appropriate UNEs as requested:

> Verizon shall provide to **CLEC, in accordance with this Agreement (including but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, access to

> Verizon's Network Elements on an unbundled basis and in combinations ("Combinations"); provided, however, that notwithstanding any other provisions of this Agreement, Verizon shall be obligated to provide unbundled Network Elements ("UNEs") and Combinations **CLEC only to the extent required by Applicable Law and may decline to provide UNEs or Combination[s] to **CLEC to the extent that provision of such UNEs or Combination[s] are not required by Applicable Law.

This provision clearly sets forth the pre-eminence of applicable law and avoids a contractual ambiguity between the agreement and applicable law. If the Agreement and applicable law are at odds, applicable law takes precedent through the explicit provision "***notwithstanding any other provisions of this Agreement***...." This gives explicit guidance during any period when the Agreement's terms and Applicable Law may vary.

The 45 day transition period for a change in law is proposed in § 4.6 of Verizon VA's proposed interconnection agreement with WorldCom and is applicable to all services provided under the interconnection agreement. *See* Issue IV-113, Second Revised Joint Decision Point List (GTC), which is Commission Exhibit 1.

Issue IV-18 Multiplexing

Issue IV-21 Dedicated Transport

WorldCom: Issue IV-18: Should the interconnection agreement specify the functionality provided by multiplexing/concentrating equipment and the associated technical and interface requirements?

Issue IV-21: Should the interconnection agreement include detailed provisions regarding the availability of unbundled shared and dedicated transport including a definition thereof, the transmission rates available, WorldCom's right to designate equipment to be connected to unbundled transport, and the availability of and detailed technical requirements for digital cross connect systems?

A. OVERVIEW

Dedicated Transport is a UNE and is defined as ILEC transmission facilities that provide "telecommunications between wire centers owned by incumbent LECs or requesting telecommunication carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(i). The functionality of multiplexing and the digital cross connect system (DCS) are inherent parts of dedicated transport; neither, however, qualifies as a UNE, and neither has been designated as a UNE by the Commission.[93] Multiplexing is offered to CLECs as a stand-alone service and not at the end of a dedicated transport facility. DCS functionality is provided to CLECs in the same manner it is used in providing dedicated transport to interexchange carriers as required by Rule 319(d)(2)(iv).

B. DISCUSSION

Verizon VA provides unbundled dedicated transport at transmission levels DS-1, DS-3, STS-1, OC3, OC3c, OC12 and OC12c, as well as dark fiber, where facilities exist.[94] Verizon

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[93] *UNE Remand Order*, Executive Summary.

[94] Higher level transmission levels will become available as the requisite infrastructure to support such higher levels is deployed in Verizon VA's network. The highest level of

(continued...)

VA Ex. 8 at 4. Verizon VA uses several types of electronic DCS to provide cross connections between a variety of its different digital transport systems and equipment that are sometimes used in the provisioning of unbundled dedicated transport. The "functionality" of the DCS is part of dedicated transport. Verizon VA Ex. 8 at 6-7. Multiplexing is also a function of dedicated transport as it provides for the aggregation and disaggregation of signals for transmission over Verizon VA's transport facilities (which is to say, between -- or in the middle of -- Verizon VA's transport facilities). Verizon VA Ex. 23 at 5. This functionality of "***multiplexing in the middle***" of Verizon VA's dedicated transmission facilities is not the multiplexing service requested by WorldCom.[95] Rather, WorldCom's demand is for multiplexing ***at the termination*** of dedicated transport for WorldCom's use in further transmission. Verizon VA Ex. 8 at 3-6.

WorldCom's proposals for further access to multiplexing and DCS fail because they treat multiplexing and DCS as if they were stand-alone UNEs, which they are not. WorldCom apparently believes that it has an inherent right to require termination of dedicated transport--interoffice transmission--into a multiplexer in Verizon VA's wire center. WorldCom Ex. 12 at 8-10. Multiplexing, however, has not been defined by the Commission as a UNE, nor could it

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transmission that can be provided now is through OC12 facilities. WorldCom seeks OC48 line speed, however, that must be provisioned "on a higher level system that [Verizon VA] do[es] not have available in [its] network today" even for its own lines. Tr. 521.

[95] In order to create a circuit between a CLEC's collocation arrangements in two Verizon offices, Verizon will generally transport unbundled transport across its SONET interoffice infrastructure at optical signal levels. Therefore, there generally will be "multiplexing in the middle" of a circuit, which meets the requirements of the *UNE Remand Order* that Verizon provide "technically feasible capacity-related services, including electronics that are necessary components of the functionality of capacity-related services...." *UNE Remand Order*, at ¶ 323. *See* Verizon VA Ex. 23 at 5 n.3.

meet the "necessary and impair" standard of 252(d)(2) of the Act.[96] Accordingly, Verizon VA is not required to terminate WorldCom's unbundled dedicated transport into a multiplexer for the purposes of aggregating the existing signals onto a higher bandwidth facility and disaggregating the signal into lower bandwidth (demultiplexing). Nevertheless, Verizon VA voluntarily offers to CLECs two types of stand-alone multiplexing: DS3 to DS1 and DS1 to DS0. This multiplexing is offered separate and apart from unbundled loops and unbundled interoffice transport and can be accessed by a CLEC from a collocation arrangement. Verizon VA Ex. 23 at 5-6.

WorldCom, by its own admission (WorldCom Ex. 12 at 9-10), is not seeking this multiplexing functionality as an inherent part of dedicated transport; rather it is seeking to terminate its dedicated transport traffic into "multiplexing/concentration equipment" in Verizon VA's end office. In fact, WorldCom requests access to multiplexing as a stand-alone UNE.[97] Neither the Act nor the Commission's Rules, however, require Verizon VA to provide multiplexing equipment to CLECs at UNE rates. This attempted end run around the Commission's previous findings is impermissible. As Arbitrator Attwood has already determined: "This isn't going to be the forum for the Commission to reconsider existing laws.... We will look at the existing state of the law and apply the state of the law...." Status Conference Tr. at 13.

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[96] Rule 319 specifically lists the elements that meet the "necessary and impair" standard and therefore must be provided on an unbundled basis currently at TELRIC rates. Multiplexing is not on that list. See *UNE Remand Order* Executive Summary.

[97] In all events, the term "multiplexing" is overly broad and encompasses a wide range of functions and special purpose equipment that would prove most difficult to define specifically within an interconnection agreement. Verizon VA is not required to multiplex multiple DS1 signals into a DS3 signal at the tandem for unbundled transport at a DS3 level since Verizon VA is not required to provide multiple transmission levels over multiple circuits. Tr. 412.

Similar to its attempted end run on multiplexing, WorldCom uses the same "functionality" argument to try to bootstrap DCS effectively into a stand-alone UNE. WorldCom Ex. 12 at 15. Access to unbundled dedicated transport is provided from the CLEC's collocation arrangement in a Verizon VA central office through an appropriate cross-connection using the DSX bay in the case of DS1 or DS3 transport or, in the case of optical transport, on a Fiber Distribution Frame ("FDF"). The Commission's rules, however, do not require Verizon VA to provide DCS to WorldCom as a stand-alone UNE.[98] Rather, Rule 319(d)(2)(iv) provides that Verizon VA's sole obligation to the CLEC is to provide "the functionality provided by the incumbent LECs digital cross-connect system in the same manner as the incumbent LEC provides such functionality to interexchange carriers." Verizon VA does so. Verizon VA Ex. 23 at 7-8. The DCS provides electronic cross-connection of digital signals and, to the extent a DCS is used by Verizon VA to provide interoffice transport, it is also used in the provisioning of unbundled dedicated transport to CLECs. The functionality of DCS, however, is not provided to interexchange carriers on an unbundled basis. Instead, Verizon VA provides transport to interexchange carriers and relies on the use of DCS within its transport network. It provides DCS functionality to IXCs just as it provides it to WorldCom: as an inherent part of the provisioning of unbundled dedicated transport. *Id.*

Verizon VA does not have a tariff provision that offers DCS to IXCs on a stand-alone basis. WorldCom asserts that Verizon VA tariffed "IntelliMux® service" is equivalent to its requested use of DCS functionality. WorldCom Ex. 26 at 14. Verizon VA provides IntelliMux® Service that allows customer management and network reconfiguration capabilities for some types of dedicated digital special access circuits. As noted by WorldCom, IntelliMux®

[98] *See UNE Remand Order*, Executive Summary for listing of UNEs. DCS is not listed.

is a service, not a UNE, and it is not a functionality of dedicated transport; IntelliMux® service is a customized combination of customer-management capabilities that involves channel terminations, mileage charges, port charges, and database modifications:

> It's [IntelliMux® is] not access to DCS but access to a service that is far more than the cross-connect system. The cross-connect system happens to be what makes the cross-connect. The service is a management service for channels. It allows customers to order multiple channels and to describe switching arrangements between them, protection arrangements and time of day rearrangement configuration. So, it's not access to a cross-connect system. It's a service that uses a cross-connect system.

Tr. 507. IntelliMux® Service is not equivalent to the "functionality" of DCS provided to IXCs. Thus, there is no stand-alone DCS functionality available to WorldCom. *See* Verizon VA Ex. 23 at 8.

Finally, WorldCom asserts it has a right to force Verizon VA to perform special construction and build new transport facilities when WorldCom requires physical diversity in connection with the use of dedicated transport for a particular customer. WorldCom Ex. 12 at 13-14. WorldCom proposes language that would allow it to require Verizon VA to construct "additional physical diversity by submitting a request for special construction." There is absolutely no basis for this proposal. Verizon VA cannot be required to construct a special network for WorldCom, let alone highly specialized systems to support a physical diversity arrangement. The Eighth Circuit's ruling made clear that a CLEC has "access only to an incumbent LEC's existing network--not to a yet unbuilt superior one."[99] The Commission expressly agrees with this network limitation as to dedicated transport:

> ... we do not require incumbent LECs to construct new transport facilities to meet specific competitive point-to-point demand

[99] *Iowa Utilities I*, 120 F.3d at 813.

> requirements for facilities that the incumbent LEC has not deployed for its own use.[100]

Nevertheless, WorldCom believes that it may require Verizon VA to construct whatever facilities WorldCom needs to provide physical diversity for WorldCom's customers. There is no obligation, legal or otherwise, for Verizon VA to assume the role of WorldCom's construction department. Tr. at 424. If WorldCom seeks a diverse route, it could order a second circuit and possibly turn that circuit into a diverse route within its collocation arrangement.[101] Tr. 422. In addition, it would be possible through special access or special construction to create a diverse facility, so long as the UNE is not commingled with a special access circuit. Tr. 516. In all events, Verizon VA does not guarantee diversity as a part of its regular operation. Diversity is a special service and there is no obligation on Verizon VA to construct new facilities for WorldCom. Tr. at 516-17.

C. CONTRACT PROPOSALS

1. WorldCom

WorldCom's proposal regarding concentration equipment is unclear.[102] As Verizon VA testified, it does not deploy loop concentration equipment in its outside plant network or its

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[100] *UNE Remand Order* at ¶ 324.

[101] "[D]iverse circuit generally means it's got a route, a completely separate route, through the network. When you order an unbundled network element, we check to see if there are facilities available to get you from point A to point B. If you order a second circuit, which is a second unbundled dedicated transport circuit, ... [it] could be equivalent to a diverse circuit. There is no guarantee that that second circuit ordered would actually go over a diverse route." Tr. 514. Accordingly, diversity can not necessarily be ordered in conjunction with a UNE. Tr. 515.

[102] WorldCom may have changed the provisions for loop concentrator/multiplexer it now supports in this proceeding. Section 4.6 in Attachment III to WorldCom's proposed interconnection agreement filed with its Petition on April 23, 2001 was discussed exclusively by (continued...)

central office. Verizon VA Ex. 23 at 6. There is no basis, therefore, for proposed contractual provisions that would require access to this type of loop concentration equipment. *Id.* Loop concentration/multiplexing is not a UNE and none of the language in WorldCom's proposed § 4.18 is appropriate for an interconnection agreement that sets forth the arrangements required by the Act. For the same reason, WorldCom's proposed § 10.2.4 that would require "DCS and multiplexing, both together with and separately from Dedicated Transport" is inappropriate as is all of proposed § 10.3 Digital Cross Connect System.

Proposed § 10.2.2 would require Verizon VA to provide "physical diversity" to WorldCom through "special construction." Verizon VA need not enhance its system for WorldCom or act as its construction department. For those reasons, § 10.2.2 should be rejected.

Proposed § 10.3.2, would require Verizon VA to make available to WorldCom as a UNE a federally tariffed Verizon VA service called IntelliMux®, which is a complex combination of functions and not a UNE. Intellimux® provides end user customers the ability to reconfigure what would equate to loop-transport combinations, or EELs. Intellimux® as a complex service cannot be used as a "front" to obtain DCS as a stand-alone UNE.

2. Verizon VA

Section 1 of the UNE Attachment to Verizon VA's proposed WorldCom contract adequately and lawfully addresses WorldCom's access to Verizon VA's UNEs and combinations "to the extent required by Applicable Law." *See id.* at § 1.1. Section 1.2(b) recognizes that Verizon VA "shall have no obligation to construct or deploy new facilities or equipment to offer

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its UNE Panel (WorldCom Ex. 12 at 8-12) in its direct testimony. Although the direct testimony was not modified or withdrawn, WorldCom seems also to support loop concentrator provisions purporting to be between WorldCom and BellSouth in the JDPL filed on November 5, 2001, at 104-07.

any UNE or Combination." Section 10 of the UNE Attachment to Verizon VA's proposed contract specifically recognizes that Verizon VA will provide interoffice transport to WorldCom but does not provide for multiplexing or DCS functionalities to be treated as stand-alone UNEs as desired by WorldCom.