Pricing Terms and Conditions

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VII. PRICING TERMS AND CONDITIONS

Although the Pricing Terms and Conditions issues cover varied topics, they have certain common themes. For example, in both the price cap issue (Issue No. I-9) and the tariff versus interconnection agreement issues (Issue Nos. III-18 and IV-85), Petitioners illegitimately seek to maximize their own options while limiting those of Verizon VA.

Specifically, when an end-user decides to take service from one of the Petitioners, that Petitioner controls access to, and becomes the bottleneck for, other carriers wishing to complete calls to that end user. Accordingly, Verizon VA seeks reasonable contract terms for the rates Petitioners may charge Verizon VA for services or facilities necessary to complete calls to Petitioners' end-user.

Likewise, consistent with their overall theme of limiting Verizon VA's options while maximizing their own, AT&T and WorldCom both seek to freeze Verizon VA's contract rates, knowing that they are then free to choose the lower of those frozen rates or any future tariff (Issue Nos. III-18 and IV-85). The Commission should reject this "heads Petitioners win, tails Verizon VA loses" approach to pricing. Instead, when Verizon VA has a legally effective rate in Virginia (e.g., by a global order or via the effectiveness of a tariff rate), that rate should apply to ***all carriers*** without distinction. No carrier should be able to pick and choose the rates Verizon VA charges. Rather, rates should be nondiscriminatory.

The other issues in this section reveal the continued tension between Petitioners' efforts to clutter the interconnection agreements with needless and ambiguous detail and Verizon VA's efforts to ensure that the contract language is clear, precise and fair. For example, although Verizon VA must exchange call detail with a great number of telecommunications carriers above and beyond AT&T, and it is critical that Verizon VA be able to rely on a uniform, industry

forum that ensures carriers exchanging information can process, exchange, and read the same records, AT&T proposes unnecessary and inappropriate detail, some of which is already outdated (Issue No. VII-12).

Verizon VA's proposed Pricing Attachment represents a much more efficient, flexible and fair approach to articulating the parties' rights and obligations with respect to pricing. By contrast, WorldCom's proposed Price Schedule is fraught with inefficiency because it would require constant updates and amendments. In addition to this flaw, WorldCom's proposed agreement would foist administrative burdens on Verizon VA and force Verizon VA to contract away its right to recover its costs or to charge legally effective prices.

I. PRICE CAPS ON PETITIONERS' SERVICES

Issue I-9: **Price Caps on CLEC Services**

WorldCom: **May Verizon place a cap on WorldCom's charges to Verizon at the level of Verizon's charges to WorldCom?**

Cox: **Verizon may not limit or control rates and charges that Cox may assess for its services, facilities and arrangements.**

AT&T: **Price Caps on CLEC Services-Can Verizon limit or control rates and charges that AT&T may assess for its services, facilities and arrangements? [ATT also numbers this issue I-2]**

A. OVERVIEW

In the absence of a market mechanism that will ensure that Petitioners' charge only just and reasonable rates, Verizon VA proposes contract language that would incorporate (i) a general rebuttable presumption that Petitioners' charges to Verizon VA may not exceed the rates that Verizon VA charges them for the same or equivalent services and (ii) the opportunity for Petitioners to overcome the general presumption, and charge higher rates, if Petitioners demonstrate either to Verizon VA or the pertinent commission that their costs are higher than those of Verizon VA. Because Verizon VA is required to interconnect with Petitioners, it is a captive customer of the Petitioners with respect to access to Petitioners' respective end-users. As a captive customer of the Petitioners, Verizon VA appropriately proposes contract language to ensure that Verizon VA can obtain fairly priced access to Petitioners' respective networks.

B. DISCUSSION

To each of the Petitioners, Verizon VA has proposed contract language that has two important concepts relative to the rates Petitioners can charge Verizon VA. First, Verizon VA proposes a general presumption that Petitioners' charges to Verizon VA may not exceed the rates that Verizon VA charges them for the same or equivalent services. Second, Verizon VA

proposes that Petitioners may overcome the general presumption, and charge higher rates, if Petitioners demonstrate either to Verizon VA or the pertinent commission that their costs are higher than those of Verizon VA. The rationale for Verizon VA's proposal is simple: required to interconnect with Petitioners, Verizon VA is a captive customer of the Petitioners with respect to access to Petitioners' respective end-users. In the absence of an effective market mechanism to ensure that Petitioners' rates are just and reasonable, Verizon VA's proposed contract language is appropriate and should be included in the parties' respective interconnection agreements.

By law, Verizon VA is required to interconnect with Petitioners, who are in complete control over access to their respective networks.[1] Verizon VA theoretically can access Petitioners' networks in various ways:

- Verizon VA can collocate at Petitioners' facilities, purchase power and space from Petitioners and build its own facilities to such collocation site;
- Verizon VA can build facilities to interconnect with Petitioners' facilities at a meet-point;
- Verizon VA can purchase transport from a third party who Petitioners have permitted to interconnect at Petitioners' premises; or
- Verizon VA can purchase transport from Petitioners.

These access scenarios are only "theoretical" because Petitioners oppose Verizon VA's proposals addressing (i) Verizon VA's right to collocate facilities on Petitioners' premises, *see* WorldCom Exhibit 5 at 4; Tr. at 1032, 1038, and (ii) the terms and conditions associated with a mid-span meet, *see* Tr. at 1040 (excluding Cox), and because there may not be any third parties

[1] If Verizon VA's VGRIP proposal is adopted by the Commission, most of Verizon VA's concerns with respect to this issue (Issue I-9) would be assuaged, as Verizon VA would satisfy its obligation to deliver its originating traffic to Petitioners in a manner that should not require Verizon VA to purchase transport (the bottleneck facility) from them. If, however, Verizon VA's VGRIP proposal is not adopted by the Commission, Verizon VA's concerns over the price cap issue become urgent, as further described herein.

from whom Verizon VA may purchase transport to Petitioners' premises. Verizon VA Exhibit 7 at 6-8; Verizon VA Exhibit 21 at 2-7. As such, if Petitioners prevail on the two related interconnection issues noted above (and, in addition, there are no third party carriers from whom Verizon VA may purchase transport to Petitioners' premises, which may very well be the case), Verizon VA will ***only have one option*** to deliver its originating traffic to Petitioners – i.e., purchase transport from them.

The foregoing discussion illustrates the fact that Verizon VA is a ***captive customer***. It has ***no choice*** but to use transport provided by Petitioners. As such, the Petitioners are the ***only source*** of supply for Verizon VA to purchase interconnection with them, as Verizon VA cannot "shop around" for a better deal. Fairness dictates that, as a captive customer, Verizon VA obtain fairly priced access to Petitioners' respective networks. Accordingly, the Parties' respective interconnection agreements should contain a provision ensuring that Petitioners' rates are limited to the rates Verizon VA is allowed to charge them for the same service, unless Petitioners prove that those rates would not permit them to recover their legitimate costs, and their rates should therefore be higher. Verizon VA Exhibit 7 at 6-8; Verizon VA Exhibit 21 at 2-7.

Although Petitioners allege that the Act does not impose a specific prescription for CLEC prices, it is crystal clear that, under applicable law, CLEC rates must be just and reasonable. For example, the Virginia Commission can determine the reasonableness of *any* rate offered by "*any* public entity operating" in Virginia."[2]

Virginia is not unusual in this respect. For example, the Massachusetts D.T.E. held

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[2] *See* Va. Code Ann. § 56-235.2; *see also In re Petition of Sprint Communications Co.*, Massachusetts D.T.E., D.T.E. 00-54, at 20-21 (rel. Dec. 11, 2000) (citing §§ 251(a)(1), 252(d)(1) of the Act).

> Each carrier's rates must either be agreed-to through negotiation, or be ***cost-justified***. [citations omitted]. Hence, to avoid a protracted investigation of their costs, most CLECs simply use Verizon's rates as a proxy (*See, e.g.,* Interconnection Agreement between WorldCom and Verizon, Attachment IV, § 2.4.4). However, where a CLEC fails to negotiate a rate with Verizon and refuses to use Verizon's rates as a proxy, the Department notes that the CLEC must submit supporting documentation for its rates. *See* D.P.U. 94-185, at 50 (1996) (Department held that CLECs that intend to charge higher termination rates than NYNEX must file cost support to demonstrate the reasonableness of those rates).[3]

The Pennsylvania Public Utilities Commission also has indicated that a CLEC should be charging the same tariffed rates for certain wholesale services as the ILEC absent some justification.[4] This is all that Verizon VA is proposing in the present arbitration. Finally, in perhaps the most recent example of a state commission arbitral holding on this issue, the New York Public Service Commission found, in its July 30, 2001 Order, in the AT&T/Verizon New York arbitration, "Verizon's proposal to be reasonable, as it is premised on the established practice we employ. Absent a cost study and Commission approval of a higher rate, the default [AT&T] rates are those contained in Verizon's tariff." *NY (Verizon/AT&T) Arbitration* at 85-86

Verizon VA's proposal also mirrors how the Virginia Commission regulates CLECs' ***retail*** services. Under the Virginia Commission's rules, a CLEC's retail prices are capped by the ILEC's retail prices. This is true even though, by definition, the CLEC's retail end users have a choice of providers. In most cases, however, when Verizon VA is purchasing services from a CLEC, Verizon VA has no alternative. It is therefore particularly appropriate for CLECs, who in some cases can force Verizon VA to purchase certain services, to be subject to reasonable

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[3] *In re Petition of Sprint Communications Co.*, Massachusetts D.T.E., at 20-21 (emphasis added).

[4] *See Joint Petition of NextLink Pennsylvania, et. al., for Adoption of Partial Settlement Resolving Pending Telecommunications issues; Joint Petition of Bell Atlantic Pennsylvania, Inc., et al., for Resolution of Global Telecommunications Proceedings,* Docket Nos., P-00991648 and P-00991649, Opinion and Order (rel. Aug. 26, 1999).

pricing limitations. This is exactly what the Commission recently found. *Seventh Report,* ¶ 2 (holding "By this order, we seek to ensure . . . that CLEC access charges are just and reasonable").

Verizon VA needs the contract language it proposes in this arbitration for the very same reason that AT&T sought relief with respect to CLEC access charges. As noted by the Commission in its *Seventh Report* at ¶ 36, AT&T characterized "both the terminating and the originating access markets as consisting of a series of bottleneck monopolies over access to each individual end user." Just as AT&T argued in that context, in this context, "once an end user decides to take service from [AT&T, AT&T] controls an essential component of the system that provides [local] calls, and it becomes the bottleneck for [other LECs] wishing to complete calls to, or carry calls from, that end user." *Seventh Report* at ¶ 36.

In this context, Verizon VA's need for the contract language it proposes is even greater than AT&T's need for relief from CLEC access charges. As observed by the Commission in its *Seventh Report,* at ¶ 24, AT&T "frequently declined altogether to pay CLEC access invoices that it views as unreasonable," and "threatened to stop delivering traffic to, or accepting it from, certain CLECs that they view as over-priced." Verizon VA does not have the option of exercising such a bargaining tool. Just as AT&T argued in the context of CLEC access rates, this Commission should "acknowledge that the market for [access to Petitioners' and other CLECs' networks] does not appear to be *structured* in a manner that allows competition to discipline rates." *Seventh Report*, at ¶¶ 32, 38.

AT&T has acknowledged that the exercise of regulatory authority is appropriate in absence of a "market mechanism" that will ensure reasonable rates. AT&T Exhibit 4 at 304. While AT&T nonetheless claims the Commission should rely on "the market mechanism as a

method to control prices," AT&T Petition at 280, the simple fact is that there is no such market mechanism capable of doing so here. The New York Public Service Commission recently agreed, rejecting the "market forces" argument as a basis for AT&T's opposition to essentially the same contractual provision at issue in this case establishing a presumption that it should not charge rates greater than the rates Verizon VA charges AT&T. *See NY (Verizon/AT&T) Arbitration* at 85, 86.

Moreover, Verizon VA's proposal would allow Petitioners to charge a higher rate should they demonstrate to Verizon VA or a commission that their costs are higher than Verizon VA's. The parties' interconnection agreements, however, should contain a specific standard by which to measure the reasonableness of the Petitioners' rates, given the absence of effective market forces to govern the rates Verizon VA must pay Petitioners for transport and power and space. Verizon VA's proposed contract language accomplishes what AT&T has suggested is reasonable: regulatory review against the backdrop of a specific standard in absence of a market mechanism that will ensure reasonable rates.

C. CONTRACT PROPOSALS

Verizon VA's proposed contract language for each of the Petitioners is set forth below from the Second Revised Joint Decision Point List and the Updated Exhibits C-1, C-2, and C-3 to Verizon VA's Answer respectively.

1. WorldCom

- Pricing Attachment, § 3:

  Notwithstanding any other provision of this Agreement, the Charges that **CLEC bills Verizon for **CLEC's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent the **CLEC has demonstrated to Verizon, or, at Verizon's request, to the Commission or the FCC, that **CLEC's cost to provide such **CLEC Services to Verizon exceeds the Charges for Verizon's comparable Services.

2. Cox

- §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. 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).

- Exhibit A, Part B §§ IV and X:

  IV. [Blanks for proposed prices]

  X. Available at Cox's tariffed or otherwise generally available rates. 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).

3. AT&T

- §20.3

  Notwithstanding any other provision of this Agreement, AT&T 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, AT&T has demonstrated to Verizon's (or the Commission's or FCC's) satisfaction, that AT&T's cost to provide such AT&T 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).

- Exhibit A (Pricing Exhibit)

2. AT&T SERVICES, FACILITIES, AND ARRANGEMENTS:

III. All Other AT&T Services Available to Verizon for Purposes of Effectuating Local Exchange Competition

Available at AT&T's tariffed or otherwise generally available rates, not to exceed Verizon rates for equivalent services available to AT&T.

II. DETAILED BILLING INFORMATION

Issue VII-12 Detailed Billing Information

Verizon VA: Should the Parties' interconnection agreement be burdened with detailed industry billing information when the Parties can instead refer to the appropriate industry billing forum?

A. OVERVIEW

Because Verizon VA must exchange call detail with a great number of telecommunications carriers in addition to AT&T, it is critical that Verizon VA be able to rely on a uniform, industry forum that ensures carriers exchanging information can process, exchange, and read the same records. The exchange of call detail for billing purposes is best addressed in detail through the industry-wide forum that exists to address billing issues in a uniform fashion -- the OBF -- and not with varying detail in multiple and separate interconnection agreements. Beyond this general concern, the specific details of AT&T's proposal are unreasonable, and in some instances, already outdated relative to the OBF standards.

B. DISCUSSION

Call Detail Information includes the following categories of information, provided that Verizon VA currently records such data in the ordinary course of its business: (i) completed calls, including 8YY calls and alternately-billed calls; (ii) calls to directory assistance; and (iii) calls to and completed by Operator Services where Verizon VA provides such service to an AT&T Customer. Call Detail Information facilitates the parties' ability to bill their own customers, each other, or third parties for traffic exchanged. Verizon VA Exhibit 7 at 8.

There are two general sections of the contract in which Verizon VA and AT&T have reached agreement on the exchange of "Call Detail" in a way that adequately and appropriately addresses the parties' obligations to exchange call detail information. First, in § 5.8 (Updated

Exhibit C-3 to Verizon VA's Answer), which is contained in a section addressing "transmission and routing *of telephone exchange service traffic* pursuant to section 251(c)(2) and Call Detail," the parties have agreed:

- That Verizon VA will provide Call Detail Information when Verizon VA currently records such data in the ordinary course of its business (§ 5.8.1);
- That Call Detail Information shall be transmitted in Exchange Message Interface ("EMI") format generally on a daily basis (§ 5.8.2); and
- That each party will provide the other with EMI records formatted in accordance with industry standard guidelines adopted by and contained in the OBF's EMI, Multiple Exchange Carrier Access Billing ("MECAB") and Multiple Exchange Carriers Ordering and Design ("MECOD") documents (§ 5.8.3).

Second, in § 6.3.7, which is contained in a section addressing "transmission and routing of *exchange access traffic* pursuant to § 251(c)(2)," the parties have agreed:

- That each Party will provide the other with (i) the billing name, billing address, and CIC of the IXC, and (ii) identification of the IXC's serving wire center to comply with Meet Point Billing ("MPB") notification process as outlined in the MECAB document.

Despite this agreed upon language that prescribes adherence to industry guidelines for billing, AT&T proposes that the parties commit to providing detail in the interconnection agreement regarding their exchange of call detail for billing purposes in a manner that may be (or may become) inconsistent with OBF guidelines or obsolete. Verizon VA Exhibit 7 at 8-9. Specifically, AT&T proposes §§ 5.8.4 through 5.8.7 for inclusion in the *telephone exchange service traffic* section (§ 5) through which AT&T attempts to require:

- Verizon VA to provide AT&T with "valid lists and ongoing updates" of all carrier identification codes ("CICs") and associated billing information for each Verizon VA tandem (§ 5.8.4);
- Each Party to provide the other with a CIC on each EMI record transmitted to the other Party (§ 5.8.5);

- Each Party to assist a local exchange carrier, CLEC or IXC in obtaining a CIC and to provide AT&T with a pseudo-CIC until a CIC is obtained (§§ 5.8.6, 5.8.7); and

- Each Party to obtain reimbursement from the local exchange carrier, CLEC, or IXC for the respective charges from the appropriate carrier (§§ 5.8.6, 5.8.7).

The detail AT&T proposes should not be included because an industry-wide forum exists to address billing issues in a uniform fashion. Verizon VA must exchange call detail with a great number of telecommunications carriers above and beyond AT&T, and it is critical that Verizon VA can rely on a uniform, industry forum that ensures carriers exchanging information can process, exchange, and read the same records. The exchange of call detail for billing purposes is best addressed in detail through the OBF, and not with varying detail in multiple and separate interconnection agreements. Although Verizon VA may not currently oppose a particular detail -- *e.g.*, the exchange of CICs -- a provision requiring this exchange of CIC (i) is covered by the parties' agreement to provide the other with records formatted in accordance with industry standard guidelines adopted by and contained in the OBF's EMI, MECAB and MECOD documents and (ii) would become outdated and obsolete if the industry guidelines move away from the use of CICs. Verizon VA Exhibit 7 at 11-12.

The point is that Verizon VA commits to providing EMI records in accordance with industry standards. If those standards evolve, so will Verizon VA's practice for all carriers -- not just AT&T. If those standards are abandoned, Verizon VA should not be locked into an outdated practice for one particular carrier. AT&T's proposed inclusion of detail beyond a commitment to providing EMI records in accordance with industry standards makes the contract inflexible. It further imposes an undue burden on Verizon VA to go above and beyond the established industry processes to keep its practices current -- that is, Verizon VA would needlessly have to

conduct a review of its interconnection agreements and follow up with a process to amend the agreement should industry practice evolve. *Id.*

The Commission should support including only the agreed upon § 5.8.3, referring to industry standards for billing, rather than supporting AT&T's unnecessary and problematic language in §§ 5.8.4 – 5.8.7. These sections conflict with § 5.8.3 by placing restrictions on the very billing practices supported by the telecommunications industry, including AT&T, at the OBF. Rather than duplicate (or even worse, contradict) the efforts and purposes of the OBF, Verizon VA proposes that the parties' interconnection agreement reflect the OBF EMI guidelines - as indicated in § 5.8.3. The contract language should reflect the fact that the OBF, and not this proceeding, is the best forum to address these matters. A broad reference to the OBF sweeps in not only the industry billing changes that Verizon VA and AT&T are aware of today, but also addresses future changes that have not yet surfaced. *Id.*

AT&T claims that it needs additional detail to address its concerns regarding (i) enforceable billing requirements, and (ii) Verizon VA's ability to "unilaterally impose" new requirements or system upgrades. But, AT&T's complaint regarding "guidelines" versus a contractual commitment makes little sense when Verizon VA has contractually committed to follow the guidelines and is subject to performance plans that will provide it the incentive to abide by the industry practice. It makes even less sense in light of the fact that Verizon VA is the proponent of deference to a uniform industry process. If Verizon VA wanted to reserve to itself the right to ignore the industry guidelines, it certainly would not be able to insist on industry solutions. Verizon VA Exhibit 7 at 18.

The fact is that Verizon VA establishes its billing guidelines in accordance with the OBF. Specifically, Verizon VA processes and formats the call detail records in its daily usage files

("DUFs") according to the guidelines established by the OBF. If the guidelines change, Verizon VA amends its procedures in accordance with the OBF. Verizon VA provides representatives to the appropriate committees of the OBF to ensure that it is knowledgeable about current issues and guidelines. In addition, Verizon VA will not ignore OBF guidelines to suit a particular customer. Verizon VA will also work cooperatively with any carrier to resolve differences in billing records by examining the OBF guidelines or by taking the matter up with the OBF for issue resolution. Verizon VA Exhibit 7 at 19.

Like Verizon VA, AT&T has the opportunity to participate in the OBF to recommend new processes or procedures or resolve problems. Because Verizon VA agrees to the industry solutions that arise from the OBF, AT&T's concern about "unilateral" changes is not justified. *Id.*

C. CONTRACT PROPOSALS

As discussed above, Verizon VA opposes inclusion of AT&T's proposed §§ 5.8.4 through 5.8.7 to the parties' Agreement.

- **§ 5.8.4**

Beyond Verizon VA's general concerns about AT&T's proposal, Verizon VA opposes AT&T's proposal in § 5.8.4 that Verizon VA provide AT&T with "valid lists and ongoing updates" of all CICs and "associated billing information" for each Verizon VA tandem. In § 5.8.4, AT&T wants to contractually obligate Verizon VA to provide "valid" CIC lists in accordance with industry guidelines. This paragraph is duplicative of § 5.8.3, which already refers the Parties to industry guidelines. This duplicity could lead to long-term inconsistency with industry practices established at the OBF. Moreover, AT&T's proposed § 5.8.3 introduces

ambiguity regarding what is a "valid" CIC list and illegitimately attempts to shift to Verizon VA the responsibility for determining whether a CIC list is "valid." Verizon VA Exhibit 7 at 13.

Further, the term "associated billing information" is vague and undefined. In other states, AT&T has suggested that "associated billing information" includes a billing name and address for each individual CLEC that AT&T should bill. There is no basis for shifting this burden to Verizon VA as a matter of contract, and even less basis to make it an "ongoing obligation" of Verizon VA to keep current. Verizon VA cannot be forced through this interconnection agreement into performing AT&T's own administrative functions associated with appropriate billing, especially when the information AT&T seeks from Verizon VA is equally available to AT&T. *Id.*

- **§ 5.8.5**

Verizon VA opposes AT&T's proposal in § 5.8.5 that each party provide the other with a CIC on each EMI record transmitted to the other party. This proposal is already outdated and not appropriate for inclusion in the parties' interconnection agreement. CICs are assigned by the North American Numbering Plan Administration ("NANPA") only to IXCs. If a carrier does not qualify as an IXC, it will not be assigned a CIC. Even when an IXC owns a switch to which a CIC has been assigned, it may not be applicable to identify a local exchange switch. The issue of identification of switches lacking a CIC was addressed temporarily by the industry through the practice of assigning pseudo-CICs. Moreover, the industry recognized that every local carrier was assigned an Operating Company Number ("OCN"), which provided an appropriate way to identify to which company a switch belongs. Because the EMI already contains a field for an OCN, as reflected in OBF Issue Nos. 1921 and 2139, the industry has (i) recognized that it is appropriate to populate the "OCN" rather than the "CIC" field in circumstances involving a

carrier not assigned a CIC and (ii) rejected the practice of using pseudo-CICs. Verizon VA Exhibit 7 at 14.

- **§§ 5.8.6 and 5.8.7**

There are three main components to AT&T's proposal in §§ 5.8.6 and 5.8.7: (i) a requirement for the parties to assist a local exchange carrier, CLEC, or IXC in obtaining a CIC, (ii) a requirement for the parties to submit pseudo-CIC on records for which the local exchange carrier, CLEC, or IXC has not yet received a CIC, and (iii) a requirement for the parties to obtain reimbursement for charges from the appropriate carriers. None of these components are appropriate for inclusion in the parties' interconnection agreement.

First, in attempting to require that each party assist a local exchange carrier, CLEC, or IXC in obtaining a CIC, AT&T proposes contract language that would thrust an administrative responsibility on Verizon VA that is not in Verizon VA's control. Specifically, § 5.8.6 would obligate Verizon VA to assist third party carriers in obtaining billing identification (*i.e.*, CICs) so that AT&T may bill them for usage. Even if it could, Verizon VA is not responsible (nor should it be), under the Act or any other Commission order, for shepherding other CLECs into the local exchange and exchange access business. The CIC a carrier needs for billing identification is assigned by the NANPA, not Verizon VA. The process for obtaining a CIC from NANPA is publicly available on NANPA's web site. Verizon VA should not be contractually responsible for ensuring the assignment of billing identification when it has no control or responsibility over this process. AT&T's offer of making this provision reciprocal in § 5.8.7 does not make this provision more logical. It does not make sense for AT&T to perform this function any more than Verizon VA. Verizon VA Exhibit 7 at 15.

Second, AT&T's suggestion that each party provide a pseudo-CIC for a party that has not yet obtained a CIC is troubling. To explain, three types of carrier billing identifiers bear discussion here: (1) CICs, (2) OCNs, and (3) pseudo-CICs. AT&T's language limits the discussion to CICs and pseudo-CICs, and ignores OCNs when it describes each Party's billing obligations in more detail. As mentioned above, and as reflected in OBF Issue Nos. 1921 and 2139, the industry has (i) recognized that it is appropriate to populate the "OCN" rather than the "CIC" field in circumstances involving a carrier not assigned a CIC and (ii) rejected the practice of using pseudo-CICs. AT&T's proposed language contravenes the methods the telecommunications industry has established through its industry forum for identifying third party carriers on the billing records that Verizon VA sends to AT&T. Ironically, MediaOne, a subsidiary of AT&T and a party to this arbitration and eventual interconnection agreement with Verizon VA, championed the OBF solution to replace pseudo-CICs with OCNs. AT&T -- including MediaOne -- now wants to ignore the very billing identification information MediaOne requested at the OBF. Verizon VA Exhibit 7 at 15-16.

Third, whether CICs, pseudo-CICs, or OCNs, Verizon VA will provide the best information it has to identify other carriers in conformance with industry standards. There is no basis for shifting to Verizon VA AT&T's financial risk of, and administrative costs associated with, AT&T's own billing, especially when some carriers have not obtained proper billing identification or the industry has not arrived at a uniform solution. AT&T is responsible for establishing contractual and business relations with third parties who deliver calls to AT&T's customers and seeking compensation from them under their contracts. Nothing in the Act countenances the remedy proposed by AT&T. AT&T's offer of making this provision reciprocal

in § 5.8.7 again fails to make the provision more logical. It does not make sense for AT&T to perform this function any more than Verizon VA. Verizon VA Exhibit 7 at 16-17.

III. VERIZON VA/WORLDCOM PRICING ATTACHMENT

Issue IV-30 **Pricing Table vs. Tariffs**

WorldCom: **Should the ICA contain a provision setting forth certain general principles regarding the price schedule, including: (1) the effective term of the rates and discounts provided in the ICA (effective for the length of the ICA unless modified by law or otherwise provided); (2) the principle that the rates set forth in Table I that reference existing Tariffs are subject to those Tariffs; and (3) the principle that the rates or discounts in Table I are to be replaced on a prospective basis by FCC or State Commission approved rates or discounts, and setting forth a procedure whereby such approved rates will take effect?**

Issue IV-32 **Subsequent Rates; Electronic Tables**

WorldCom: **Should the ICA contain a provision stating that: (1) absent agreement otherwise, WorldCom will pay only those rates set forth in Table I for services purchased under the ICA; (2) Verizon will pay for any systems or infrastructure it requires to provide the services covered by the ICA, and that it may recover those costs only through the rates set forth in Table I; and (3) rates for subsequently developed services or services modified by regulatory requirements will be added to Table I by agreement; and (4) electronic copies of the pricing tables will be provided to WorldCom to facilitate changing the rates in the pricing tables?**

Issue IV-36 **Schedule of Itemized Charges**

WorldCom: **Should the ICA contain a Detailed Schedule of Itemized Charges (Table I of Attachment I)?**

A. OVERVIEW

Verizon VA's proposed Pricing Attachment should be adopted because it represents a much more efficient, flexible and fair approach to articulating the parties' rights and obligations with respect to pricing. By contrast, WorldCom's proposed Price Schedule is fraught with the inefficiency of constantly having to update and amend the contract. Beyond the inefficiency, WorldCom hopes to foist administrative burdens on Verizon VA and force Verizon VA to contract away its right to recover its costs or to charge legally effective prices.

B. DISCUSSION AND CONTRACT PROPOSALS

1. Verizon VA's Proposed Pricing Attachment

Verizon VA and WorldCom have reached agreement on all of Verizon VA's proposed contract language in its proposed Pricing Attachment (Updated Exhibit C-1 to Verizon VA's Answer), with the exception of § 1 of the Pricing Attachment. Section 1 of Verizon VA's currently proposed Pricing Attachment to WorldCom contains what Verizon VA refers to as a "waterfall" provision, because it establishes a "roadmap" to and priority for applicable rates. Pursuant to § 1 of Verizon VA's proposed pricing attachment, rates are determined in the following order of priority:

> (1) if there is a rate for the subject service set forth in any applicable tariff, such rate applies;
>
> (2) in the absence of a legally effective tariff rate or a rate that has otherwise been approved or allowed to go into effect by the Commission or Virginia Commission, if there is a rate for the subject service set forth in Appendix A to the Pricing Attachment, such rate shall apply, as modified by any new rates that are approved or otherwise allowed to legally go into effect by the Commission or Virginia Commission;
>
> (3) in the absence of a legally effective tariff rate, or a rate that has otherwise been approved or allowed to go into effect by the Commission or Virginia Commission, or a rate set forth in Appendix A to the Pricing Attachment, if there is a rate for the subject service set forth in other provisions of the interconnection agreement, such rate shall apply, as modified by any new rate that is approved or allowed to go into effect by the Commission or Virginia Commission; and finally
>
> (4) if none of the foregoing apply, the rate shall be as the parties may mutually agree in writing.

Verizon VA Exhibit 11 at 5-7.

The Commission should order inclusion of Verizon VA's proposed Pricing Attachment § 1 because it is drafted to provide a simple, appropriate and nondiscriminatory roadmap to applicable rates. The main dispute relates to Verizon VA's proposal regarding the effect of applicable tariffs on rates, discussed in more detail in the section addressing Issue Nos. III-18

and IV-85. By incorporating any applicable tariffs in § 1 of the Pricing Attachment, Verizon VA seeks to ensure that prices are consistent, fair and non-discriminatory throughout the service area covered by its interconnection agreement. By referencing tariffs, the parties need not revisit or re-litigate applicable prices, but can rely on the Virginia Commission's authority and due process to ensure that rates are just and reasonable. Moreover, as tariffs may be revised throughout the term of the agreement, Verizon VA's proposed § 1 of the Pricing Attachment ensures that the interconnection agreement remains up-to-date without the need for further amendment. To the extent that products or services are not covered by a Tariff, or that prices for such services are not set by another legally effective mechanism (e.g., a generic pricing order of the Commission or the state commission), Verizon VA's proposed Pricing Attachment incorporates Appendix A, which addresses the recurring and non-recurring rates and charges for interconnection services and UNEs as well as the avoided cost discount for resale (addressed in the cost portion of this arbitration). Verizon VA Exhibit 11 at 7-8.

2. WorldCom's Proposed Price Schedule

WorldCom's proposed pricing provisions implicated by this set of issues appear both in (i) its General Terms and Conditions section (Part A) -- addressed in conjunction with the tariff-versus-interconnection-agreement discussion below -- and (ii) its Price Schedule (Attachment I), § 1.1, §§ 1.3 - 1.4, and Table I.

In § 1.1 of its proposed Price Schedule, WorldCom appears to acknowledge the potential applicability of tariff rates, as it proposes to incorporate charges from Verizon VA's current tariffs into its proposed Table 1 to its Pricing Schedule. However, WorldCom seeks inappropriately and unfairly to control the effectiveness of any changes to applicable tariff rates by inserting discriminatory provisions regarding the effective date of tariff changes and onerous

provisions requiring the parties to constantly amend Table 1 to correspond to any tariff changes. *See* WorldCom's Proposed Attachment I, Price Schedule, § 1.1. Verizon VA Exhibit 11 at 9-10. For example, under WorldCom's proposal, commission-ordered rates or discounts would not be effective pending appeals, apparently regardless of whether those rates had been stayed or not. Further, by suggesting that the parties must engage in a process to revise the contract to reflect the newly ordered rates or discounts, WorldCom adds an unnecessary administrative burden through which it could seek to further delay the effective date of the new rates in the context of a dispute over appropriate contract amendments. When new rates are legally effective (i.e., they have been ordered or otherwise allowed to go into effect under applicable law, and they have not been stayed), they should be effective for all carriers from the date of legal effectiveness of the rates; a carrier should not have to go through any additional "hoops" to obtain the legally effective rates.

There are various separate issues in dispute relating to WorldCom's proposed Price Schedule, §§ 1.3 and 1.4. The first sentence of Section 1.3 refers to payment only in accordance with the rates set forth in what WorldCom calls Table 1 - and Verizon VA calls Appendix A to the Pricing Attachment. As discussed above, Verizon VA's proposed "waterfall" pricing provision (Section 1 of Verizon VA's proposed Pricing Attachment) appropriately establishes an order of priority of various sources for potentially applicable rates. Verizon VA Exhibit 11 at 4-7, 12.

In the second sentence of § 1.3, WorldCom attempts to shift to Verizon VA responsibility for costs incurred for "systems" or "infrastructure" necessary to provide services covered by the interconnection agreement. Although in this contract proposal WorldCom unabashedly -- albeit in error -- asserts that Verizon VA must bear the "costs of competition," there is absolutely no

support in the Act or elsewhere for this proposition. WorldCom should not be permitted to prospectively foreclose Verizon VA's opportunity to recover the costs of meeting its obligations pursuant to the Act. Verizon VA Exhibit 11 at 12.

Also in the second sentence of § 1.3, WorldCom proposes that Verizon VA may recover no cost unless it is specifically provided in the interconnection agreement. To the extent that this Commission or the Virginia Commission recognizes Verizon VA's right to recover costs outside the rates contemplated in this interconnection agreement, Verizon VA should not be required to contractually bargain away such a right. Put another way, if Verizon VA provides a service to WorldCom, it should be compensated for doing so; and the rate of compensation should be the rate that is legally effective. Verizon VA Exhibit 11 at 12.

Having proposed in § 1.4 the onerous requirement of constantly updating and revising Table I, rather than making a more efficient reference to applicable tariffs or otherwise legally effective rates, WorldCom then seeks to shift additional administrative burdens to Verizon VA. Specifically, WorldCom suggests that Verizon VA be required to bear the additional burden and costs to provide WorldCom with electronic copies of Table 1 on a monthly basis. Given the number of CLECs with which Verizon VA has interconnection agreements and the ability of WorldCom to track rates for itself, there is no reasonable basis on which to foist onto Verizon VA WorldCom's own additional administrative wish list. Nevertheless, Verizon VA has offered to provide, upon reasonable request, to WorldCom from time to time a copy of its then current model interconnection agreement (which includes Table 1 on prices). Verizon VA Exhibit 11 at 13.

While WorldCom's proposed Table 1 is similar in concept to Verizon VA's proposed Appendix A, the prices to be set forth in the parties' pricing table will, in any case, be addressed

in the cost portion of this arbitration. In addition, particularly given the fact that Verizon VA will be providing services to dozens of carriers, it is appropriate and efficient to have the pricing table be in the same form for all of them, thereby easing both Verizon VA's and CLECs' ease of use of this document. Accordingly, once rates are set in cost portion of this arbitration, they should be memorialized in the manner Verizon VA has set out in its pricing table. Verizon VA Exhibit 11 at 11.

IV. INTERPLAY BETWEEN TARIFFS AND INTERCONNECTION AGREEMENT

Issue III-18

WorldCom: **Should the Interconnection Agreement contain a provision stating that, in the event of a conflict between the rates and charges set forth in the Interconnection Agreement and those set forth in a Tariff, the Interconnection Agreement should control? Should that provision further provide that the Tariff and the Interconnection Agreement should be construed to avoid any conflicts, and that changes or modifications to Tariffs filed by one Party that materially and adversely alter the terms of the Interconnection Agreement shall be effective against the other Party only upon that Party's written consent, or upon an order of the Commission?**

AT&T: **Tariffs v. Interconnection Agreements Should tariffs supercede interconnection rates, terms and conditions?**

Issue IV-85

WorldCom: **Should the Interconnection Agreement contain a provision stating that, in the event of a conflict between the rates and charges set forth in the Interconnection Agreement and those set forth in a Tariff, the Interconnection Agreement should control? Should that provision further provide that the Tariff and the Interconnection Agreement should be construed to avoid any conflicts, and that changes or modifications to Tariffs filed by one Party that materially and adversely alter the terms of the Interconnection Agreement shall be effective against the other Party only upon that Party's written consent, or upon an order of the Commission?**

A. OVERVIEW

Through provisions in the interconnection agreement, Verizon VA proposes to establish effective tariffs as the first source for applicable prices. In doing so, Verizon VA ensures that its prices are set and potentially updated in a manner that is efficient, consistent, fair, and non-discriminatory for all CLECs. Verizon VA's proposed contract provisions justifiably eliminate the arbitrage scenario that AT&T and WorldCom seek by locking Verizon VA into frozen contract rates knowing that they are always free to purchase from future tariffs should the tariff rates prove more favorable.

B. DISCUSSION AND CONTRACT PROPOSALS

Verizon VA accounts for the appropriate interplay between tariffs and interconnection agreements in various sections of its proposed contracts to AT&T and WorldCom. (In Verizon VA's proposal to WorldCom, *see* the Agreement Preface, §§ 1.1 through 1.3 and § 4, and the Pricing Attachment, § 1. In Verizon VA's proposal to AT&T, *see* § 20.2 and Exhibit A, footnotes 1, 3, and 5.) Through these proposed contract provisions, Verizon VA incorporates applicable tariffs to ensure that prices are consistent, fair and non-discriminatory throughout the service area covered by the agreement. By referencing Verizon VA's appropriate tariffs in the interconnection agreement, the parties avoid litigation by relying on the Virginia Commission's authority over rates. If a tariff rate is revised during the term of the agreement, Verizon VA ensures that the agreement remains up-to-date without the need for further amendment. Further, to the extent that products or services are not covered in a tariff, Verizon VA's proposed agreement incorporates Appendix A (a pricing schedule), which addresses the recurring and non-recurring rates and charges for interconnection services, UNEs and the avoided cost discount for resale. Verizon VA Exhibit 11 at 17-18.

Verizon VA's proposal gives tariffs precedence over the interconnection agreement only as to rates. In the event of conflicting terms and conditions, Verizon VA's proposal gives the interconnection agreement precedence. (*See, e.g.,* Verizon VA's proposed agreement to WorldCom, Agreement Preface § 1.2). Moreover, Verizon VA's proposal gives AT&T and WorldCom ample opportunity to raise concerns, because when Verizon VA files a proposed tariff rate with the Virginia Commission, "any interested person" is given an opportunity to participate in a hearing before the Virginia Commission. In fact, both AT&T and WorldCom

participated in proceedings in which Verizon VA's rates for Virginia were established. Verizon VA Exhibit 11 at 19.

WorldCom proposes that the rates contained in its proposed Price Schedule "trump" any tariff rate approved or allowed to go into effect by this Commission or the Virginia Commission. WorldCom also proposes that the rates in its proposed Price Schedule remain fixed for the duration of WorldCom's and Verizon VA's agreement. If this Commission or the Virginia Commission modifies Verizon VA's rates, WorldCom proposes that the modifications would not affect the WorldCom-Verizon VA agreement unless WorldCom consents in writing or the appropriate commission enters an "affirmative order." WorldCom proposed interconnection agreement, Part A §§ 1.3.1 - 1.3.

Similarly, AT&T contends that tariffs should not supercede the rates set forth in the interconnection agreement. AT&T also asserts that its proposal would preserve Verizon VA's right to file tariffs to supplement the rates of the AT&T-Verizon VA agreement in a manner that is consistent and appropriate with the agreement. Nevertheless, AT&T does not explain how Verizon VA's right is preserved or how a tariff rate would be deemed appropriate and consistent with the contract.

Both Petitioners' proposals would effectively give them a right to veto Verizon VA's commission-approved tariff rates or other rates that have been ordered or otherwise allowed to become legally effective in Virginia. The Commission should reject their proposals because their arguments ignore the fact that Petitioners actively participate in tariff filings (and other dockets in which rates may be set). Both Petitioners have participated in numerous Verizon VA tariff filings (and related cost proceedings), negating their complaints regarding Verizon VA's

"unilateral" ability to supercede the rates in the subsequent agreement. Verizon VA Exhibit 11 at 19.

Although AT&T and WorldCom claim that they need to achieve some measure of certainty through their interconnection agreements, what they really attempt to preserve is an arbitrage opportunity. AT&T and WorldCom hope to preserve a "best of both worlds" arrangement so that they can always choose the more favorable rates of (i) their interconnection agreement or (ii) the applicable tariff on a case by case basis. While AT&T and WorldCom attempt to lock Verizon VA into rates that, for a variety of reasons, should be updated in accordance with applicable law, they would not likewise be bound by the same contractual rates (i.e., under their logic, they could choose lower contract rates for a service even though higher rates have been approved or otherwise allowed to become legally effective by the appropriate commission, while at the same time they could purchase another service -- at rates lower than those set in the contract -- via rates that have been approved or otherwise allowed to become legally effective by the appropriate commission). Verizon VA's proposal ensures that all carriers -- including but not limited to AT&T, WorldCom, and Verizon VA -- receive services at rates, terms, and conditions that are fair and non-discriminatory. Verizon VA Exhibit 28 at 2.

Petitioners' proposals present another problem for Verizon VA if other carriers opt into Petitioners' agreements. In effect, if other carriers opt into the Petitioners' agreements, then the tariff process could be rendered moot. Each carrier who opts into WorldCom's and AT&T's agreement would be given the same right to veto Verizon VA's commission-approved tariff rates. Under Petitioners' proposal, even if Petitioners, or other carriers, participate in Verizon VA's tariff filing, they could circumvent the official tariff process. Verizon VA Exhibit 11 at 20.

Recently, the New York Public Service Commission rejected AT&T's arguments on this issue. *NY (Verizon/AT&T) Arbitration Order* at 2-6. The New York Commission, at page 4, observed that "as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship . . . we will conform the new agreement to Verizon's tariff where it is possible to do so." Verizon VA asks this Commission to do the same.

The bottom line is that if Verizon VA's tariff rate is approved or if Verizon VA's rate is otherwise allowed to go into effect pursuant to applicable law, then it should be "effective" rate for all carriers on a fair and non-discriminatory basis. It is AT&T and WorldCom that should not be allowed to avoid changes in legally effective rates that they do not like. In addition, and consistent with the *NY (Verizon/AT&T) Arbitration Order*, a state commission, as a general rule, should not have to expend precious resources relitigating on a contract by contract basis, rates that it already has decided in a global proceeding.

Finally, Verizon VA's proposal does not circumvent the §§ 251 and 252 processes or conflict with the Commission's decision in *Global NAPs I*. In *Global NAPs I*, the Commission concluded that the challenged provisions of the Global NAPs' tariff, FCC Tariff No. 1, which applied to ISP-bound traffic delivered by Verizon (then Bell Atlantic) to Global NAPs in Massachusetts, were unjust and unreasonable pursuant to § 201(b) of the Act. *Global NAPs I*, at ¶ 2.

The Commission held that Global NAPs' tariff was unreasonable, among other things, because the tariff was an attempted end run around the §§ 251 and 252 process, which the Commission previously had held was the exclusive process for resolving issues relating to intercarrier compensation for ISP bound traffic. The tariff also was unlawful because, on the tariff's face, the supposed customer could not discern whether or when it might incur tariffed

charges. *See id.* at ¶ 21. Because the terms of the tariff were not clear and explicit, contrary to 47 C.F.R. § 61.2, the tariff's provisions were unlawful. *See id.* at ¶ 22.

Unlike Global NAPs, Verizon VA is not relying on a federal tariff to circumvent or supercede a determination under §§ 251 and 252. To the contrary, Verizon VA proposes that the parties adopt in the interconnection agreement established through the §§ 251 and 252 process the rates for certain tariffed services by specifically referring to the tariff in the interconnection agreement. Unlike in the case of Global NAPs' tariff, AT&T and WorldCom would know what rates under the interconnection agreement are subject to Verizon VA's tariff.

In sum, because Verizon VA's proposed contract language ensures that its prices are set and potentially updated in a manner that is efficient, consistent, fair, and non-discriminatory for all CLECs, the Commission should order inclusion of Verizon VA's proposals to AT&T and WorldCom.