V. UNE ADVANCED SERVICES

ISSUE III-10 (Advanced Services Requirements)

WorldCom and Verizon have settled all but one of the issues surrounding the unbundling rules concerning advanced services. That one remaining issue is that Verizon objects to the following nondiscrimination language proposed by WorldCom:

> 4.10. DSL-Based Services Provided Out of Digital Loop Carrier Equipment. If and when Verizon upgrades its network to provide DSL-based services out of remote terminals, Verizon commits to provide access to remote facilities and to Loops attached to those remote facilities on the same terms and conditions as Verizon has access or provides access to its affiliates.

This should not be controversial language. It simply assures nondiscriminatory access to loops in a Next Generation Digital Loop Carrier configuration. Indeed, Verizon does not contest the substance of the proposal, as its attorney stated on the record, "that is the current state of the law anyway," Tr. 10/5/01 at 742, and in its rebuttal testimony its answer to the question "If Verizon VA upgrades its network to provide xDSL-based services using loops served by fiber-fed DLC, will it provide CLECs access to those facilities on the same terms and conditions as it grants to affiliates?" is "Yes." Verizon Exh. 16, Rebuttal Testimony On Non-Mediation Issues (Categories I and III through VII) at 56. Verizon's only objection to the language is that because it does not more than restate the law it is "unnecessary," and that AT&T and Verizon have agreed to defer other, more technical, issues relating to NGDLC (Issue V-9) until a later date. Id.

There is no reason not to adopt this nondiscrimination language. Indeed, Verizon's failure to agree to the language, if endorsed by the FCC, would no doubt be construed by Verizon as sanction to engage in discrimination. As we have demonstrated previously, even if language does no more than place in the contract regulatory

requirements relating to access to unbundled elements, it serve the important function of bringing those requirements into the world of contract enforcement; giving the parties the opportunity under established procedures to adjust disputes and remedy violations. It also prevents unnecessary delay, as Verizon frequently insists that even the most straight-forward statutory requirements be integrated into interconnection agreements before it is willing to obey them. Moreover, it is highly likely that Verizon will deploy such equipment in the near future. It acknowledges it will do so "where it makes business and economic sense to do so," and that some of its remote terminals are already "equipped with DLC technology that may be upgradeable to support DSLAM functionality." Verizon Exh. 16, Rebuttal Testimony on Non-Mediation Issues at 55. This contract provision should be adopted, so that Verizon is under a contractual obligation to provide non-discriminatory treatment on this critical deployment issue.

Issue IV-28 (Collocation Requirements)

WorldCom and Verizon apparently have no substantive dispute that the collocation requirements that should govern the parties' relationship are those set out in the Commission's recent Advanced Services Order V (2001), FCC Docket 98-147. Yet Verizon refuses to agree to contract language that so specifies. The language WorldCom proposes, and Verizon disputes, states:

> Verizon shall permit MCIm, at MCIm's discretion, to collocate DSLAMs, splitter used in association with DSLAMs, and other equipment necessarily located where the copper portion of the Loop terminates in order to provide DSL functionality, in Verizon's premises where the copper portion of the Loop terminates. The Parties agree to adopt rules to implement the FCC's Order in FCC Docket No. 98-147 providing for the collocation of multifunctional equipment where an inability to deploy that equipment would as a practical, economic, or operation matter preclude MCIm from obtaining interconnection or access to unbundled Network Elements.

Verizon does not dispute that it is obliged to comply with this Commission's recent collocation order, that WorldCom's language fairly characterizes that Order, or that the particular requirements concerning the collocations of DLSAMs and splitters accurately characterizes Verizon's legal obligations. Nevertheless, Verizon refuses to accept this language, and instead proposes language that merely states that Verizon will meet "the requirements of Applicable Law." See Verizon Proposal § 13.0 to Collocation Attachment. Its dispute with WorldCom on this point is so ephemeral that in its initial Rebuttal Testimony it indicated that it accepted WorldCom's language, Verizon Exh. 16, Rebuttal Testimony on Non-Mediation Issues at 65 (August 17, 2001). But for some reason, on August 30th it withdrew its agreement, and substituted "corrected" testimony in which it refused to adopt WorldCom's language. Verizon Exh. 16, Rebuttal Testimony on Non-Mediation Issues at 65 (August 30, 2001, corrected copy). In that

corrected testimony, Verizon indicated that the parties "agreed in principle," but "have not agreed on specific language." No explanation whatsoever is given for Verizon's withdrawal of its previous agreement to WorldCom's language.

Other events, however, make it quite clear why Verizon is refusing to acknowledge expressly that it is bound by this Commission's recent collocation order. While this proceedings was open, Verizon formally appealed that Commission Order to the D.C. Circuit, and in its recently filed brief opposing the Order, Verizon makes clear that it believes that the1996 Act permits it to refuse to allow MCIm and other CLECs to collocate on the nondiscriminatory terms mandated by the FCC Order. In that context, it seems plain that Verizon's refusal to agree to language that it acknowledges fairly characterizes the substance of that FCC Order, and identifies that Order by name, signals that Verizon has no intention of honoring the Order, at least until such time as it has exhausted its opportunities to challenge that Order in Court. Nor does it have any intention of being bound by whatever "change of law" provisions the contract specifies as they would apply to any changes the Court could conceivably require to the Order.

The Commission should not tolerate such lawlessness. If Verizon seeks to stay the effective date of the Order, the place to do that is the Commission or the D.C. Circuit. But until such time as the Order is stayed or reversed, Verizon is bound to obey it, and it can have no legitimate objection to a contract which specifies the "Applicable Law" that governs the parties' collocation arrangements. This Commission should adopt WorldCom's contract language specifying that its Collocation Order is good law unless and until it is reversed.

VI. PRICING TERMS AND CONDITIONS

Issue I-9 (Capping CLEC Rates)

Verizon's proposal to include language in the interconnection agreement that would cap WorldCom's rates for certain services at rates lower than or equal to Verizon's rates for similar services is both inconsistent with Virginia law and unnecessary. The WorldCom and Verizon witnesses identified three categories of services that would be within the scope of Verizon's proposed price cap – switched access, transportation facilities (i.e, interconnection trunks) and collocation space – and the rates for each of these types of services are filed in tariffs with the VSCC. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 3; Verizon Exh. 21, Rebuttal Test. Pricing Terms and Conditions at 2. Because those rates are tariffed, Virginia law precludes the use of a contract to override the rates, and Verizon's proposed rate cap is therefore unlawful. Further, Verizon's assertion that its proposed price cap is necessary to ensure that WorldCom charges just and reasonable rates for those services is incorrect for three reasons: Virginia's tariffing regulations ensure that the rates for these services are fair and reasonable; market factors ensure the reasonableness of rates for interconnection facilities; and Verizon has failed to provide any specific evidence that WorldCom is likely to overcharge it for the relevant services. Finally, Verizon's proposal ignores the differences between the carriers' networks. For each of these reasons, the Commission should reject Verizon's proposed language.

A. Virginia Law Prevents The Use Of The Interconnection Agreement To Alter Tariffed Rates And Ensures That Tariffed Rates Are Reasonable.

Pursuant to Virginia law, WorldCom lacks the "authority, by express contract, or otherwise, to change or vary the schedule of rates and charges approved by the corporation commission." Chesapeake & Potomac Tel. Co. v. Bles, 243 S.E.2d 473, 1013 (Va. 1978). This principle prevents WorldCom from agreeing to charge rates lower than the tariffed rates, just as it prevents it from charging rates that exceed the tariffed rates. See id. Accordingly, Verizon's proposed price cap could not be lawfully applied to tariffed rates that exceed Verizon's rates for comparable services. Because the two primary types of services that WorldCom provides to Verizon – switched access[93] and transport facilities[94] such as interconnection trunks – are tariffed, Verizon's price cap cannot be lawfully applied to the rates for those services.[95] See WorldCom Exh. 1, Direct Test. of M. Argenbright at 3.

Moreover, Verizon's proposal is inconsistent with the existing state regulatory regime because it would allow Verizon to usurp the role that state law plainly allocates to the VSCC. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 6. Virginia law

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[93] Switched access charges compensate WorldCom for using its switching facilities to originate and terminate toll calls to and from WorldCom end users. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 3.

[94] Verizon may purchase transport facilities such as interconnection trunks from several carriers, including WorldCom. See id.

[95] The Verizon witnesses did not dispute that these services would be implicated by its proposed price cap, but focused on collocation "power and space" as an item for which the proposed price cap would be necessary. See Verizon Exh. 21, Rebuttal Test. Pricing Terms and Conditions at 2-3.

recognizes that a neutral commission such as the VSCC is the appropriate body to determine whether tariffed rates are reasonable or should be limited. See id. WorldCom does not ordinarily justify its rates to its competitors, and to create such a right for Verizon in Virginia would be unprecedented and unlawful. See id.

B. Even If Verizon's Proposed Price Cap Were Lawful, It Would Be Unnecessary.

The Virginia tariffing process obviates the need to use a contractual price cap to serve as a check on the reasonableness of WorldCom's rates for the services at issue. WorldCom submits its proposed tariffed rates to the VSCC for approval, and the VSCC may reject or modify those rates if it deems them unreasonable. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 4. Virginia law recognizes that WorldCom's tariffed rates will not always be equal to or lower than Verizon's rates for comparable services, and does not impose a mandatory price cap on those rates. See 20 Va. Admin. Code 5-400-180. Instead, the VSCC retains discretion to allow a new entrant to charge rates that exceed highest tariffed rates of any ILEC offering comparable services within the state, provided that pricing the services at the higher rates is not contrary to the public interest. See id. That public interest determination does not require CLECs to engage in the type of comparative cost-analysis that Verizon has proposed (pursuant to which higher rates would only be allowed if WorldCom's costs exceed Verizon's charges). In light of the VSCC's opportunity to review and approve tariff submissions, Virginia law accords a presumption of reasonableness to tariffed rates. See Va. Code Ann. § 56-480.

Further, although Verizon asserts that it needs the price cap because it is a captive customer that could be charged unreasonably high rates, Verizon Exh. 21, Rebuttal Test. Pricing Terms and Conditions at 3-4, Verizon has failed to provide evidence of such a

specific need to limit the prices of the three categories of services that are at issue here. The parties have agreed that switched access charges – which compensate WorldCom for using its local switching facilities to originate and terminate toll calls to and from WorldCom end users – are "governed by the terms, conditions, and rates of the applicable Tariffs."[96] Therefore, the price cap could not apply to that class of services. Verizon has not disputed the fact that transport facilities such as interconnection trunks are provided in a competitive environment, in which market forces would prevent WorldCom from successfully charging excessive rates. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 6. Finally, Verizon's witness has conceded that it does not purchase collocation space, which is the only service for which Verizon expressly claims to be a "captive customer," from WorldCom. See Tr. 10/12/01 at 2117. Further, Verizon's witness admitted that the use of WorldCom's preferred interconnection architecture (Mid Span Fiber Meet Points) would not require Verizon to purchase any collocation space. See Tr. 10/12/01 at 2115-16 (Daly, Verizon). Indeed, CLECs are not required to provide collocation under the Act. See Issue I-3, supra. There is therefore no evidence that a price cap is needed for collocation space rates.

Finally, it would be unreasonable to require parity between the carrier's rates given the differences between the carriers' networks. As explained in the WorldCom testimony, WorldCom and Verizon employ different network architectures, and have networks that are in different stages of deployment. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 7 ("WorldCom is a new entrant, with a nascent network that is not yet fully deployed. In contrast, Verizon is an incumbent monopolist, with a fully

[96] WorldCom and Verizon agreed to this language when they resolved Issue IV-31.

deployed network."). "[E]ven if both carriers provide a service such as switched access, the means of providing the service is hardly identical. WorldCom's costs may or may not exceed Verizon's costs, and there may well be variants in the quality of the service – for example, WorldCom's service may be superior in terms of functionality and/or quality." Id. Indeed, with respect to federally tariffed services, this Commission has recognized that "a CLEC's rate is not per se unreasonable merely because it exceeds the ILEC rate." Access Charge 7th Order ¶ 37.

In sum, Verizon's proposed price cap is both unlawful and unnecessary, and should be rejected by this Commission.

Issues III-18 and IV-85

Choosing Between Tariffs and Interconnection Agreements

The interconnection agreement should contain a provision that makes clear that the WorldCom-Verizon interconnection agreement, as opposed to a potentially conflicting tariff, governs the rates, terms and conditions applicable to services and other items provided pursuant to the Agreement, and that any changes to the terms, conditions, and rates of the Agreement must be mutually discussed and agreed upon through negotiation, as opposed to being subject to revision through a tariff process. Allowing Verizon to use its tariffs to unilaterally supersede or nullify sections of the interconnection agreement would be inconsistent with the Act, and would improperly introduce a great deal of uncertainty into the interconnection agreement. See WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 7-8; WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk and L. Roscoe at 8-9. Accordingly, the Commission should accept the language that WorldCom has proposed with respect to Issues III-18 and IV-85 (Part A Sections 1.3.1 through 1.3.3 of WorldCom's proposed interconnection agreement) and reject Verizon's arguments and proposed contract language.

A. Allowing Tariffs To Trump Interconnection Agreements Is Contrary To The Act.

As this Commission has recognized, "[u]sing the tariff process to circumvent the section 251 and 252 processes cannot be allowed," In re: Bell Atlantic-Delaware, Inc. v. Global NAPS, Inc., 15 F.C.C.R. 2946, ¶ 23 (1999). Yet that is precisely what Verizon seeks to do. As set forth below, such a result cannot be squared with the requirements of the 1996 Act.

Although the Act does not expressly discuss the interplay of tariffs and interconnection agreements, when passing the Act Congress chose not to rely on the historical tariffing regime, but instead set up an alternate, detailed contracting process. Specifically, Section 251(c)(1) of the Act requires the parties to "negotiate the particular terms and conditions of agreements." 47 U.S.C. § 251(c)(1). Recognizing that these negotiations would frequently be unsuccessful, Congress also determined that if a voluntary agreement cannot be reached, the parties should arbitrate the terms of the agreement. See id. § 252(a). Finally, the Act establishes a specific approval, review and appellate review process to ensure that the resulting interconnection agreement complies with all the requirements of federal law. See id. §§ 252(b), 252(e)(6). Thus an interconnection agreement, like other commercial contracts, is mutually negotiated and incorporates terms that typically remain fixed throughout the life of the agreement.[97] See WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 5. Changes to the terms of such an agreement either must be negotiated and mutually agreed to, or set by the commission that arbitrated the agreement. In this regime, a carrier desiring to modify a term would bear the burden of demonstrating that its proposed change is warranted. See WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 10. This regime also ensures that the terms of the agreement are consistent with federal law by granting federal district courts the right to conduct appellate review of interconnection agreements.

The process that applies to setting and amending the terms contained in tariffs is fundamentally different. As explained in the WorldCom witnesses' testimony, the nature

[97] As discussed supra, however, there are means of amending the interconnection agreement.

of tariff proceedings is "one-sided." WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk and L. Roscoe at 13. Tariffs contain the rates, terms, and conditions pursuant to which a carrier will offer services to certain customers, but may be changed by the filing of a revised tariff at the relevant commission. See WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 5. A carrier is not required to seek other carriers' position on the terms of new or revised tariffs, and those carriers' views have no guaranteed impact on the reviewing body's decision to approve or reject the tariff change. Indeed, WorldCom's witnesses testified that "during the years that we have worked in the industry, we have never known incumbent LECs to consult or negotiate with competing LECs when setting the terms of their tariffs." WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 10. At best, the carrier opposing the revision to the tariff can attempt to convince the state commission to reject that change. See id.

Given the differences between the tariffing process and interconnection agreements, allowing Verizon to use its tariffs to partially or completely supercede the negotiated and/or arbitrated terms of the interconnection agreement would completely eviscerate the interconnection scheme established by Congress. See WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 7; WorldCom Exh. 32, Rebuttal Test. of Harthun, Trofimuk, Roscoe at 8-9. As explained by WorldCom's witnesses:

> Under Verizon's theory, a new entrant could request negotiation for an interconnection agreement with Verizon, engage in several months of negotiation, petition for arbitration for all unresolved issues, go through a lengthy arbitrating and hearing process, obtain a completed interconnection agreement, engage in subsequent litigation over the legality of certain terms, and finally resolve those issues – only to find that its interconnection agreement has been partially or entirely superceded by a tariff filed by Verizon with a state commission. It is incomprehensible that Congress intended such a result.

WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 7.

In addition, Verizon's proposal would subvert the Act's approval and review process. Congress expressly charged federal district courts with review of state commissions' implementation of sections 251 and 252 of the Act. See 47 U.S.C. § 252(e)(6). In contrast, state commission tariff decisions are subject to appellate review in state courts. Therefore, allowing the terms of an interconnection agreement to be subject to revision by a tariff could improperly insulate those terms from the federal court review that Congress intended.

Further, Verizon's proposal could violate the substantive requirements of the Act. Verizon has asserted that if it files a tariff that sets rates for a certain UNE at a different level than those that appear in the interconnection agreement, the tariff should control. See Tr. 10/12/01 at 2050 (Antoniou, Verizon). Because those tariffed rates may exceed the cost-based rates that the Act requires (and that were incorporated into the interconnection agreement's rates), allowing Verizon to use tariffs to trump the interconnection agreement and escape the pricing obligations that the Act imposes would plainly violate the Act.

B. WorldCom's Proposal Also Furthers Important Policy Interests.

As explained by the WorldCom witnesses, allowing tariffs to be used to amend interconnection agreements would introduce a great deal of uncertainty into the interconnection agreement because WorldCom would have "no assurance that the agreed-to or arbitrated terms will apply for the duration of the agreement." WorldCom Exh. 21, Direct Test. of Harthun, Trofimuk, and Roscoe at 8. This type of uncertainty would inhibit the development of a competitive market because "new entrants cannot operate in

an environment in which the business terms (i) are potentially subject to endless litigation, or (ii) can be unilaterally changed by a company that has no incentive to ensure that new entrants can compete fairly." WorldCom Exh. 32, Rebuttal Test. of Harthun, Trofimuk, and Roscoe at 9. Put differently, "[i]f such rates, terms and conditions are unknown (because Verizon could alter them at any time through a tariff filing) carriers could never put in place a meaningful business plan and could never, therefore, decide whether to enter a market." WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 8. In addition, it would be inefficient and disruptive to require the parties to litigate (in a challenge to a tariff filing) terms that have already been established in the interconnection agreement. See WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk and L. Roscoe at 9. Although Verizon suggests otherwise, WorldCom has not proposed that the interconnection agreement be "frozen;" WorldCom simply objects to allowing Verizon to unilaterally change the terms of the agreement. See Rebuttal Test. of M. Harthun, J. Trofimuk and L. Roscoe at 9-10. If a state commission opened a docket to re-examine UNE rates and then issued an order establishing those new rates, WorldCom and Verizon would be bound by those new rates pursuant to the interconnection agreement's change-in-law provisions. See id.

In addition, using tariffs to alter the terms of interconnection agreements could introduce uncertainty regarding the enforceability of the relevant tariff. This Commission has held that "it seems evident that any federal tariff purporting to govern inter-carrier compensation for ISP-bound traffic could be reasonable only if it mirrors any applicable terms of the party's interconnection agreement, as construed by the appropriate state commission." In re: Bell Atlantic, 15 F.C.C.R. 12946, ¶ 23. Given that state

commissions may reach a similar conclusion regarding state tariffs, Verizon's proposal would draw into question the validity of its tariffs.

In sum, both law and policy support adopting WorldCom's proposal to include provisions like those that currently govern the WorldCom-Verizon relationship in Virginia, making clear that tariffs cannot be used to override the terms of interconnection agreements.

VII. GENERAL PRICING TERMS AND CONDITIONS

Issue IV-30 (Duration And Changing of Rates)[98]

WorldCom's proposed Attachment 1, Section 1.1.1., which sets forth general principles regarding the interconnection agreement's pricing schedule, should be included in the interconnection agreement. Specifically, the interconnection agreement should: specify that the rates and discounts will be effective for the length of the interconnection agreement unless modified by law or otherwise provided; indicate that the rates that reference existing tariffs are subject to those tariffs; provide that the rates or discounts in Table I will be replaced on a prospective basis by FCC or State Commission approved rates or discounts; and set forth a procedure whereby such approved rates will take effect. See WorldCom Exh. 8, Direct Test. of M. Argenbright at 18-19. Verizon has failed to address the substantive points raised in Mr. Argenbright's direct testimony on this issue, and instead only addressed the tariff vs. interconnection agreement dispute, and its waterfall pricing proposal. Therefore, Verizon has not identified any specific problems with the general principles behind WorldCom's proposed language or with WorldCom's implementation of those principles. WorldCom therefore requests that the Commission include this language, which is similar to the language that appears in the current WorldCom-Verizon Virginia interconnection agreement, in the interconnection agreement.

Although Verizon apparently believes that its proposed contract language adequately addresses these general principles, WorldCom's language is superior in

[98] Although this issue is related to the dispute regarding the relationship between tariffs and interconnection agreements, WorldCom's testimony also addressed other points, which are discussed in this section.

several respects. First, Verizon's proposed pricing attachment fails to define the effective term of the rates. As explained in WorldCom's testimony, defining the rates' term "provides necessary clarity to the parties' agreement ... [which] is needed to prevent disputes and/or litigation concerning this aspect of the applicability of the agreement's rates." WorldCom Exh. 8, Direct Test. of M. Argenbright at 19. This is a standard term in interconnection agreements and should be non-controversial. See id. Second, Verizon's proposed pricing provisions fail to clearly establish the date on which changes in rates become effective. WorldCom's proposed language makes clear that "such new rates or discounts shall be effective immediately upon the legal effectiveness of the court, FCC, or Commission order requiring such new rates or discounts." Id. This degree of specificity is necessary to ensure that the parties know whether, and how, such rates will become effective, and how the interconnection agreement's rates will be modified in light of the relevant state commission or FCC orders. Id. Finally, Verizon's proposed pricing attachment fails to provide a time line for amending the pricing table to incorporate any changes to the rates. In contrast, WorldCom's proposal provides a specific 30 day time period within which the parties will execute a document revising the Pricing Table to incorporate such changes. See id. at 20-21.

Issue IV-32 (Exclusivity Of Rates And Pricing Table Updates)[99]

The interconnection agreement should contain a provision making clear that the rates set forth in the pricing table of the interconnection agreement are the exclusive pricing schedule unless the parties agree otherwise and that Verizon should bear its own development costs, and establishing a process pursuant to which the pricing table may be amended. As set forth below, WorldCom's proposed language prevents hidden charges and provides necessary clarity regarding the parties' rights and obligations. See WorldCom Exh. 8, Direct Test. of M. Argenbright at 23-24. By treating this issue as identical to Issues III-18 and IV-85, Verizon has failed to address the truly relevant issues. For this reason and those set forth below, WorldCom requests that the Commission order inclusion of the language that appears at Attachment I, Sections 1.3 through 1.4 of WorldCom's proposed interconnection agreement.

WorldCom's proposal that the interconnection agreement make clear that the rates contained in the interconnection agreement are the exclusive means of assessing charges for the services covered in the interconnection agreement (absent agreement otherwise) is an important means of preventing Verizon from imposing hidden charges. As explained in WorldCom's testimony, such a provision "prevents Verizon from circumventing the agreement's rates by agreeing to offer a service at the rate contained in the interconnection agreement, and then subsequently identifying an additional charge that WorldCom must pay in order to receive that service." WorldCom Exh. 8, Direct Test. of M. Argenbright at 26; see also Tr. 10/12/01 at 2063 (Argenbright, WorldCom). Although Verizon suggests that it objects to WorldCom's proposal because it impedes the parties'

[99] See supra n.98.

ability to incorporate new rates that result from a change in law, see Tr. 10/12/01 at 2066-67 (Argenbright, WorldCom), or prevents the parties from mutually agreeing to charge different rates, WorldCom's language would not have either of those two effects. See WorldCom Exh. 24, Rebuttal Test. of M. Argenbright at 20. As FCC staff noted, Verizon objects to the WorldCom proposal because it wants to "reserve for itself the right to levy additional charges on WorldCom related to services that are offered pursuant to this agreement and priced under this agreement." Tr. 10/12/01 at 2074 (Preiss, FCC). Allowing Verizon to unilaterally make such modifications in the form of hidden charges would be inappropriate and anticompetitive. See WorldCom Exh. 8, Direct Test. of M. Argenbright at 27-28. In addition, like Verizon's proposal that it be allowed to use tariffs to change the rates in the agreement, allowing Verizon to impose additional charges would eviscerate the Act's interconnection scheme. See Issues III-18 and IV-85, supra.

WorldCom's proposal that Verizon bear its own development costs should also be adopted. Given that Verizon is legally required to provide the services that are covered in the interconnection agreement, "the development of additional systems or infrastructure is simply the cost of doing business in a competitive environment." WorldCom Exh. 8, Direct Test. of M. Argenbright at 25. New entrants must cover their development costs, and Verizon should not be given preferential treatment. See WorldCom Exh. 23, Rebuttal Test. of M. Argenbright at 20-21.

WorldCom's proposal that Verizon provide updated electronic copies of the pricing tables promotes efficiency and facilitates auditing of the bills. See WorldCom Exh. 23, Rebuttal Test. of M. Argenbright at 21. As explained in WorldCom's testimony, if WorldCom can audit the bills "in an expedient and consistent manner,"

there will be fewer disputes and a higher level of accuracy. WorldCom Exh. 8, Direct Test. of M. Argenbright at 26. An electronic format is particularly appropriate given the scope and complexity of the services for which WorldCom will be billed. See WorldCom Exh. 23, Rebuttal Test. of M. Argenbright at 21. The electronic copies of the pricing schedules should be updated to ensure that WorldCom has received "a current and accurate price list." WorldCom Exh. 8, Direct Test. of M. Argenbright at 28.

The remaining two aspects of WorldCom's proposed language – which provide that subsequently developed services or services modified by regulatory requirements will be added to Table I by agreement and require Verizon to provide USOC codes in the pricing schedule – should also be incorporated into the interconnection agreement. There is a very real potential that new services will be developed, or that existing services will be modified, during the life of the interconnection agreement, and WorldCom's proposed language makes clear that, upon agreement, such rates or services will be added to the agreement's pricing schedule. See WorldCom Exh. 8, Direct Test. of M. Argenbright at 26. Verizon has not offered any express criticism of this principle. Given that the parties have agreed in the context of Resolved Issue IV-59 that Verizon will provide USOC codes, the reference to USOCs in Section 1.4 should be similarly uncontroversial.

Issue IV-35 (Reciprocal Compensation For Non ISP-Bound Local Traffic)

WorldCom's proposal that the interconnection agreement contain language that addresses the reciprocal compensation of non-internet-service-provider ("ISP") bound local traffic implements the parties' legal obligation to provide reciprocal compensation for the exchange of certain traffic pursuant to §§ 251(b)(5) and 252(d)(2) of the 1996 Act and should be adopted by the Commission. See 47 U.S.C. §§ 251(b)(5), 252(d)(2). In light of this Commission's ISP Remand Order, WorldCom has amended its proposed language to make clear that the reference to information service provider traffic excludes traffic to internet service providers. See WorldCom Exh. 8, Direct Testimony of M. Argenbright at 31-32. The information service providers that would be covered by this provision include telephone time and temperature information providers whose numbers are local, as determined by the NPA-NXX's.[100] See id. at 32; Tr. 10/11/01 at 1729-1730. Although this Commission determined in the ISP Remand Order that section 251(g) of the Act excludes certain categories of traffic from the Act's reciprocal compensation obligations, see ISP Remand Order ¶¶ 44-46, and that traffic to internet service providers is included within the scope of section 251(g), the Commission has not addressed the types of calls that are covered by WorldCom's proposed language. Accordingly, WorldCom's proposal that reciprocal compensation apply to these calls is fully consistent with the Act and this Commission's implementing orders.

WorldCom's proposed language is also necessary to make clear which compensation mechanism will apply to the traffic to the non-ISP information service providers. Because the special intercarrier compensation mechanisms that the

[100] The use of NPA-NXXs to determine the jurisdiction of a call is discussed in Issue I-6, supra.

Commission has adopted only apply to traffic to internet service providers, see ISP Remand Order ¶ 66, those rules would not apply to the calls to time and temperature information providers at issue here. Such calls would presumably be covered through either exchange access or reciprocal compensation. Given that the calls are jurisdictionally local, and were subject to reciprocal compensation as local calls under the current Virginia interconnection agreement, reciprocal compensation is the appropriate mechanism to apply to these calls. See WorldCom Exh. 8, Direct Test. of M. Argenbright at 31-32. The Commission should therefore order the inclusion of WorldCom's proposed language on this issue.

Issue IV-36 (Inclusion Of A Schedule Of Rates)

WorldCom raised this issue to ensure that, consistent with the requirements of Section 252(a)(1) of the act, the interconnection agreement will contain a detailed schedule of itemized charges for the services provided under the interconnection agreement. See 47 U.S.C. § 252(a)(1). As explained in WorldCom's testimony, the rates that are included in that schedule will be those established by this Commission or the VSCC. WorldCom's arguments regarding the rates that should be included in the pricing schedule are addressed in Issues II-1 and II-2, and the other unresolved disputes regarding WorldCom's pricing language are addressed under the appropriate headings in the remainder of the Pricing Terms and Conditions section of the brief. See WorldCom Exh. 8, Direct Test. of M. Argenbright at 32-33; WorldCom Exh. 23, Rebuttal Test. of M. Argenbright at 23.