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NOV 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 20, 2001

By hand delivery

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

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

Dear Ms. Salas:

On behalf of AT&T Communications of Virginia, Inc. and its affiliates listed above, enclosed please find an original and three (3) copies of AT&T's Rebuttal Testimony of Michael Kalb, PH.D. and E. Christopher Nurse.

Respectfully submitted,

Mark A. Keffer

Enclosures

cc: Service List

No. of Copies rec'd 0+6
List ABCDE

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, a copy of the foregoing was sent via hand delivery, Federal Express, U.S. mail and/or email to:

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NOV 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REBUTTAL TESTIMONY

Of

MICHAEL KALB, PH.D.

And

E. CHRISTOPHER NURSE

ON BEHALF OF AT&T[1]

November 20, 2001

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1 This Rebuttal Testimony is presented on behalf of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. (together, "AT&T").

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Michael Kalb. My business address is AT&T Corp., 295 N. Maple Avenue, Basking Ridge, New Jersey.

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is E. Christopher Nurse. I am District Manager of Government Affairs for AT&T. My business address is 3033 Chain Bridge Road, Oakton, Virginia 22185.

Q. ARE YOU THE SAME WITNESSES THAT FILED DIRECT TESTIMONY ON BEHALF OF AT&T ON NOVEMBER 9, 2001, IN THIS ARBITRATION?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of our testimony is to respond to the Direct Testimony of Julie Canny for Verizon Virginia, filed November 9, 2001. Specifically, we show that the predicates for Verizon's position that no remedies plan should be adopted in this arbitration are false. We also demonstrate the fallacies undergirding Verizon's proposal that the Commission adopt a version of the Bell Atlantic/GTE Merger conditions performance assurance plan as an interim plan for the interconnection agreement.

Q. IS THERE ANY SOUND BASIS FOR VERIZON'S NOTION THAT THE COMMISSION SHOULD STAY ITS HAND IN FAVOR OF ACTION BY THE VIRGINIA COLLABORATIVE COMMITTEE?

A. None at all. This is ground that has already been plowed in Verizon's Renewed Motion to Dismiss and more than adequately rebutted in AT&T's Reply thereto, and should not have to be addressed again. Verizon's position is predicated on the notion that the Commission should not duplicate or undercut the work of the

Virginia Collaborative and the Virginia State Corporation Commission ("SCC") in the formulation of a remedies plan. However, by conflating the Virginia Commission's separate actions on metrics and remedies, Verizon once again obscures the fact that there is no Virginia remedies plan in existence, and therefore nothing for the Commission to duplicate or undercut. There is no question that the Virginia Collaborative Committee has done excellent work in reducing the differences between the CLEC parties and Verizon on metrics to seven discrete issues, which are now before the SCC for resolution. However, as we have already testified, that does not translate into progress on the issue of remedies payments, as to which the Collaborative failed to achieve any consensus and has no further role to play.

Q. WHY DO YOU NOT AGREE WITH VERIZON'S ASSERTION THAT THERE SHOULD BE NO PERFORMANCE REMEDIES PLAN IN THE INTERCONNECTION AGREEMENT, SO LONG AS THE VIRGINIA COMMISSION IS IN THE PROCESS OF ADOPTING A GENERIC STATE PERFORMANCE ASSURANCE PLAN ("PAP")?

Verizon argues that there should be no remedies plan in the interconnection agreement if the Virginia Commission is proposing to adopt a generic remedies or incentive plan. However, this Commission has never ruled that there cannot be more than one plan affecting an ILEC's liabilities for non-performance. Quite the contrary, as we have previously testified, in the New York 271 case and other cases the Commission has explicitly relied on the existence of multiple remedies plans incorporated in interconnection agreements to supplement generic state plans as the basis for finding that the ILEC has sufficient incentives to provide parity service and avoid backsliding.

Verizon also erroneously assumes that there is or soon will be a generic remedies plan in place in Virginia. However, a proceeding to consider such a plan is only now getting off the ground.[2] When and how it will end is anybody's guess, because the Virginia Commission seems unsure of its jurisdiction to impose a remedies plan, as Verizon has argued before that it does not.[3] Verizon has not abandoned its legal position, and therefore there is no assurance that the SCC will impose a plan that is contrary to Verizon's wishes, or if it does, that the plan will go into effect while Verizon pursues its legal appeals. In short, while Verizon asks this Commission to defer to the SCC, it has not stated that it would accept the decision of the SCC.

In this regard, Verizon also erroneously assumes that AT&T will obtain all the relief it requires from a generic plan in Virginia. However, the SCC proceeding may well not give AT&T all of the relief it seeks in this arbitration, which are incentives to assure parity performance by Verizon and some degree of compensation for harm suffered when Verizon does not perform. To the contrary, the SCC appears to be focused primarily on an "incentives" plan with payments to the treasury, rather than a "remedies" plan with payments to CLECs to provide compensation to CLECs.[4] If the Commission defers to the SCC, and the SCC

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[2] Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: *Establishment of a Performance Assurance Plan for Verizon Virginia Inc.*, Case No. PUC 010226, Preliminary Order (November 9, 2001)("SCC PAP Order"). This Order may be found at the following link: http://www.state.va.us/scc/caseinfo/puc/case/c010226.pdf

[3] The SCC asks parties to address "the extent of this Commission's authority to impose and enforce any of the PAP proposals filed;" SCC PAP Order at 2.

[4] The SCC asks for comment on "ways in which a PAP can be designed and structured so as to create an effective incentive to Verizon Virginia to correct its underlying performance when

finally adopts such an "incentives" plan, then AT&T will have no credible damages provisions to compensate it for Verizon's failures to provide wholesale services at parity.

Q. WOULD THERE BE CREDIBLE DAMAGES PROVISIONS IF THE VIRGINIA COMMISSION WERE TO ADOPT THE PLAN ADVOCATED BY VERIZON IN THE COLLABORATIVE COMMITTEE?

A. No. AT&T would be denied any credible damages provisions if the Virginia Commission were to adopt the plan advocated by Verizon in the Collaborative Committee, because of the structure of that plan. Attached to this Testimony are summary sheets that compare the remedies payments under the Verizon PAP proposed in the Virginia Collaborative Committee (Attachment 3) with the payments that would be due under the AT&T Performance Incentive Plan ("PIP") that we advocated in the Collaborative and are advocating here (Attachment 4). The disparity in results could not be more dramatic. Under the Verizon proposal no payments would be due for the 5-month period under review, despite some rather severe failures. Many of the measures not only failed their tests severely (with much greater confidence than 95%), but also failed chronically, month after month. In particular, some of the metrics associated with hot-cuts failed all five months. In contrast, the AT&T PIP would result in approximately $2.4 million in remedies payments for the same period and data set. This result speaks to the inadequacy of the Verizon plan. The Verizon plan is obviously not an incentive that would encourage correction of the problems causing the failures, or a

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necessary, other than paying fines or penalties to competitive local exchange carriers." SCC PAP Order at 2.

reasonable means of compensating AT&T, because it results in no payments at all under the real-world conditions examined.

Q. TO WHAT DO YOU ATTRIBUTE THE FACT THAT THE VERIZON PLAN RESULTS IN ZERO PAYMENTS, IN CONTRAST TO THE AT&T PIP WHICH RESULTS IN PAYMENTS OF $2.4 MILLION?

A. The two primary mitigation factors in the Verizon plan that excluded failing measures from the remedies calculation for the data set used in the comparison were (1) the minimum data sample size of 10, which excluded many of the measures from the calculation, and (2) the k-table factor, which excluded the rest. We have discussed these unwarranted exclusions in our Direct Testimony.

Q. HOW DID YOU CALCULATE THE PAYMENTS UNDER THE AT&T PIP AND THE VERIZON PAP?

A. The data for the comparison is real-world AT&T data in Verizon Virginia territory for the months of May through September 2001. This was the longest run of data that was available. All measures with no activity, under development, without standards, etc. were discarded because they do not lead to remedies under the plans.[5]

For the AT&T PIP, each remaining measure z score calculated from the data is compared to the balancing critical value also obtained from the data. Then if the measure fails, the remedy is calculated. If it is a chronic failure, then the chronic override prevails. The measures were separated into parity and benchmark measures for each month in order to ascertain any difference. The failures, touched measures, percent of failures and remedy amounts are tabulated

[5] The underlying spreadsheets are AT&T Confidential although the summaries in Attachments 3 and 4 are not. The underlying data will be supplied in electronic form upon request by Staff or any party that has signed the non-disclosure agreement.

in the summary sheet for parity measures, benchmarks, and in total. For the five month period, Verizon was failing at about a 25% rate all together. This widespread failure lead to the total amounts tabulated each month, as shown in Attachment 4.

The information available was insufficient to do the entire equivalent calculation for the Verizon proposed plan. This is because in a per occurrence plan, there is a need to look at the raw data to determine various percentage points in the data. We do not have access to such data. However, all measures that had less than 10 data points were first removed. This was a very large number. The remaining z scores were held up to the fixed 95% confidence level standard of -1.645. This did not appreciably change the number of failures on the remainder measures. However, when the k-table mitigation was applied, all the failures were removed and therefore, even without the detailed data, it was easily determinable that there were no measures eligible for payment in this data set. This is shown in Attachment 3.

Q. SHOULD THE COMMISSION BE CONCERNED ABOUT "DOUBLE DIPPING" BY AT&T OR WORLDCOM?

There is no reason for the Commission to be concerned about "double dipping" by AT&T or WorldCom (Canny at 20). While Verizon obviously intends the term to be derogatory, it is a misnomer that merely spins Verizon's argument. That spin is unjustified. First, there is no performance remedies plan in effect in Virginia at this time, so "double dipping" is not an issue that the Commission needs to consider. That is a matter to be considered by the SCC, if at all. When and if the SCC finally develops and adopts a generic remedies plan for Virginia, it can consider whether and to what extent it should adjust its plan to take into account whatever remedies are available under interconnection agreements, such as the ones being arbitrated here. Second, to the extent that the SCC adopts an incentives plan with payments to the Virginia treasury rather than to CLECs, there would be no reason to offset such payments by any payments under the interconnection agreements, because the payments serve different purposes. Finally, "double dipping" may well be required in order to raise incentive payments to levels that the Commission would consider adequate to encourage parity service and to prevent backsliding, as the Commission did in the New York 271 Order and other § 271 proceedings.

Q. DO YOU AGREE THAT THE MERGER CONDITIONS PERFORMANCE ASSURANCE PLAN SHOULD BE ADOPTED BY THE COMMISSION AS AN "INTERIM" MEASURE WHILE THE VIRGINIA COMMISSION CONSIDERS A PERMANENT PLAN?

A. No. The Merger conditions plan advocated by Verizon is completely inadequate even as an interim plan. More fundamentally, this Verizon gambit assumes, incorrectly, that there can only be payments under one performance remedies plan. It also assumes that the SCC will in fact promulgate a remedies plan that provides compensation to CLECs. As shown, neither assumption is credible.

Q. DO YOU AGREE WITH VERIZON'S STATEMENT THAT THE MERGER CONDITIONS PLAN "IS BASED ON THE PAP DEVELOPED IN THE NEW YORK COLLABORATIVE PROCESS AND ADOPTED BY THE NEW YORK PSC"(CANNY AT 3)?

A. No. There is no basis in the suggestion that the Merger plan is predicated upon the New York plan. The plans differ in fundamental respects. First, the annual caps are considerably higher ($206 million for the New York plan scaled to

Virginia vs. $15.3 million, $23.3 million and $31 million for years 1, 2 and 3, respectively, for the Merger plan). Second, the plan caps and payments are differently structured. The New York plan, for example, structures metrics into four "modes of entry" (resale, UNEs, trunks and DSL) and separately measures a subset of 12 "critical" submeasures with its own payment scheme. It also has two "special" provisions with a separate payments scheme, for UNEs (measuring order flowthrough, timeliness of LSR confirmations and rejections, and hot cut performance) and timely processing of EDI notifiers and notifier trouble tickets. Third, the New York plan also has a separate remedies provision for change control metrics. The merger plan lacks any of these features. Fundamentally, the New York plan has been characterized by Verizon as a "top-down" approach to performance remedies, in contrast to the "bottom-up" plans Verizon has submitted to the Virginia Collaborative Committee and this Commission (Canny at 10).

Q. DO YOU AGREE THAT THE MERGER PLAN PROVIDES "ABUNDANT INCENTIVES" FOR VERIZON TO DELIVER "EXCELLENT SERVICE" TO AT&T?

A. No. The statement (Canny at 3) is wrong on two counts. First, the incentives that the plan provides are hardly "abundant." Indeed, they are pathetically low, as we show below. Second, performance plans are designed to measure parity, as the Act requires. Parity, unfortunately, does not always translate to "excellent" service. The parity standard is satisfied even if the service that Verizon provides to itself is abysmal, so long as the service it provides to the CLECs is equally abysmal.

Q. IN SUMMARY, WHAT IS WRONG WITH VERIZON'S "INTERIM" PERFORMANCE ASSURANCE PLAN PROPOSAL?

A. Even as an interim plan, the Verizon proposal falls far short of what is needed: (1) The total annual cap is far too low to incent performance or provide adequate compensation, amounting to – at best -- less than 6% of Verizon's year 2000 net return in Virginia; (2) The annual cap allocated to AT&T under Verizon's plan is so low that even under Verizon's example, it would recover all of its annual liability to AT&T in slightly more than one day's operations in Virginia; (3) The incentives and compensations under Verizon's plan are further diluted by monthly caps and "per occurrence" caps on critical OSS measures (for example, in the case of failures of measures OR-1 and OR-2 any failures over 10 occurrences would not be remedied under Verizon's plan, even though these were massive failures numbering in the thousands in New York in the crisis following Verizon's long distance entry in that state); (4) Payments are due only after the third consecutive month of performance failure, thus ensuring that only the most chronic and egregious failures will be compensated; and (5) The Verizon plan does not increase incentives one iota, because Verizon's payments just shift payments from the treasury to AT&T and World Com – indeed, payments may well be reduced, depending on the calculation methodology selected by Verizon.

Q. YOU HAVE STATED THAT THE TOTAL ANNUAL CAP UNDER VERIZON'S "INTERIM" PROPOSAL AMOUNTS TO LESS THAN 6% OF VERIZON'S YEAR 2000 NET RETURN IN VIRGINIA, AT BEST. WOULD YOU PLEASE EXPLAIN YOUR STATEMENT?

A. Based on year 2000 ARMIS data, Verizon's annual net return in Virginia was $528 million. Thus, to match the 39% of annual net return "at risk" level of the

PAP caps in effect or proposed in New York, Pennsylvania and other Verizon states, the cap for Virginia should be $206 million. This calculation uses the methodology relied upon by the Commission in the New York 271 Order and is shown in Attachment 1 to this Testimony. In contrast, the total annual caps proposed by Verizon are $15.5 million for the first year, which is 2.9% of net return, $23.3 million in the second year, which is 4.4% of net return, and $31 million in the third year, which is 5.8% of Verizon's net return. It is clear that the Merger plan overall caps are a small fraction of the caps that have previously been found acceptable by the Commission in the context of § 271 applications by Verizon. It should be noted that AT&T's position is that caps, if adopted at all, should be "procedural" only, that is, triggering a review process by the Commission when the cap is reached, rather than capping payments.

Q. ARE THE INADEQUATE ANNUAL CAPS PROPOSED BY VERIZON SUBJECT TO REDUCTION UNDER VERIZON'S PLAN?

A. Yes. Ms. Canny concedes that the annual caps are subject to reduction for early completion of OSS work (Canny at 15). However, Verizon does not state whether or not the caps it proposes are or will be reduced because of this provision. Thus, it is possible that the annual caps will be even lower than the extremely low amounts suggested by Verizon. Verizon also does not state which year's cap would initially apply to AT&T in the event that the Verizon proposal is adopted for inclusion into the interconnection agreement.

Q. YOU HAVE STATED THAT THE ANNUAL CAP ALLOCATED TO AT&T UNDER VERIZON'S "INTERIM" PLAN IS SO LOW THAT EVEN UNDER VERIZON'S EXAMPLE, IT WOULD RECOVER ALL OF ITS ANNUAL LIABILITY TO AT&T IN SLIGHTLY MORE THAN ONE DAY'S OPERATIONS IN VIRGINIA. WOULD YOU PLEASE EXPLAIN YOUR STATEMENT?

A. Verizon proposes that the annual caps for AT&T and WorldCom would be their proportionate shares of the total industry annual caps (Canny at 15). In the given example, Verizon states that if AT&T has 10% of total CLEC UNE lines, resale line and trunks, AT&T's cap would be 10% of the total industry annual cap (Canny at 16). This would be $1,551,810.[6] With an annual net return in Virginia of $528 million, Verizon's average net return per day is $1,446,000. Thus, in one day Verizon will have recouped all but $105,810 of its annual payments to AT&T in the first year of the plan. This is not an incentive payment designed to encourage Verizon to fix whatever is necessary when measured performance falls below parity. For Verizon this is pocket change – simply a cost of doing business. Of course, the amount of time needed by Verizon to recoup its payments to AT&T would increase as the total industry cap increases from year to year. In year three, the recoupment period would be slightly over 2 days.[7]

Q. YOU HAVE STATED THAT THE INCENTIVES AND COMPENSATIONS UNDER VERIZON'S PLAN ARE FURTHER DILUTED BY MONTHLY CAPS AND "PER OCCURENCE" CAPS ON CRITICAL OSS MEASURES. WOULD YOU PLEASE EXPLAIN YOUR STATEMENT?

A. The monthly cap for AT&T under the Verizon proposal would be 1/12th of the annual cap. Under the example given previously, that would be $129,317.50 per

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6 The Canny testimony is in error. Ms. Canny apparently took the Maryland rather than the Virginia cap in her example.

month. A cap within a cap simply serves to further dilute the incentive and compensation effects of a remedies plan, because once that monthly cap is reached, Verizon would be able to discriminate without fear of penalty above the rather minimal monthly cap. Thus, if in a given month Verizon's performance were to suffer dramatically – as it did in the New York service crisis after Verizon's entry into the long distance market – there would be no payment above $129 thousand per month of violation, no matter how severe that violation might be.

The "per occurrence" caps act in a similar manner to reduce payments in the event of significant performance failures. Verizon says that these caps are "limited to a small set of measures." (Canny at 16). Unfortunately, the OR-1 and OR-2 ordering metrics that are capped per occurrence are the very ones that were at the vortex of Verizon's New York troubles in early 2000, when Verizon lost thousands of CLEC orders, and that caused Verizon to pay $13 million in remedies payments before the crisis abated. Again using Verizon's examples, for OR-1-02 the AT&T cap would be $6000 for the three-month remedy calculation period (Canny at 17). If each occurrence generates a payment of $600 (a "low" measure), then 10 occurrences in that three-month period would trigger the cap. Any failures over 10 in that three-month period would not generate any remedy payments. In other words, they are "free." It's actually even worse than that, because the first 5% of failures are forgiven as a result of the 95% confidence level standard applied to this metric. So out of, let's say, 100 failures in a three-

[7] 10% Of $31, 032,500 divided by $1,446,000 equals 2.15 days.

month period, the first five are forgiven, the next 10 are paid, and the remaining 85 are free.

Q. YOU HAVE STATED THAT PAYMENTS UNDER VERIZON'S PLAN ARE DUE ONLY AFTER THE THIRD CONSECUTIVE MONTH OF PERFORMANCE FAILURE, THUS ENSURING THAT ONLY THE MOST CHRONIC AND EGREGIOUS FAILURES WILL BE COMPENSATED. WOULD YOU PLEASE EXPLAIN YOUR STATEMENT?

A. The "three-month remedy calculation period" is alluded to but not explained in the examples given in the Verizon testimony (Canny at 17-18). However, it is explicitly stated in the Merger Order Attachment A-3, describing the method of calculating the per occurrence payments. The consequence of requiring three consecutive months of failure before a remedy is due under the Verizon Merger conditions plan is to, in effect, raise the actual confidence level far above the 95% standard established for the affected measures. Stated another way, the merger plan pays only for chronic performance failures. It is therefore not surprising that the plan has no separate provision for escalating payments when performance is chronically bad.

Q. YOU HAVE STATED THAT THE VERIZON PLAN DOES NOT INCREASE INCENTIVES ONE IOTA, BECAUSE VERIZON'S PAYMENTS JUST SHIFT PAYMENTS FROM THE TREASURY TO AT&T AND WORLDCOM, AND INDEED, THAT PAYMENTS MAY WELL BE REDUCED, DEPENDING ON THE CALCULATION METHODOLOGY SELECTED BY VERIZON. WOULD YOU PLEASE EXPLAIN YOUR STATEMENT?

A. The payments that Verizon proposes are not in addition to, but in lieu of, the payments that it would otherwise make to the U. S. Treasury under the Merger conditions. (Canny at 19). Verizon's proposal is to allocate to AT&T and WorldCom "a proportionate share of the financial payments that would be due under the *Merger Order* Plan." (Canny at 11). To return to the example previously used, if Verizon's total payments under the Merger plan for Metric OR-1-02 were $60,000 (the per occurrence capped amount), and AT&T's cap were $6000, then it would appear that the Treasury would receive $54,000 and AT&T would receive $6000. Thus, there is no additional incentive as a result of the "interim" plan proposed by Verizon. Verizon is offering sleeves out of its vest.

However, it is possible that Verizon's total payments may actually decrease under its plan and the Merger conditions plan taken together, depending on how the individual CLEC per occurrence measures are calculated. At one point of its testimony, Verizon states that it "would calculate credits in the same fashion as the federal plan" (Canny at 11). However, at another point Verizon states that it would base the amount of payments to individual CLECs "on the level of service that Verizon VA provided to the individual CLEC. The level of service would be determined by the CLEC's own observations..." (Canny at 13). This implies that after taking the AT&T observations out of the aggregate, Verizon would calculate its compliance with a per occurrence metric separately for AT&T using the AT&T observations.

If the latter calculation is used, then it is possible that a measure that is failed at the aggregate level will be passed at the individual CLEC level, not because the individual CLEC got better service than the aggregate but only because the sample size is decreased. Simply put, as the sample size decreases, it becomes easier to achieve a "passing" Z score with the same level of performance. A level of performance that would be a "fail" in the aggregate, where hundreds or perhaps thousands of data points are sampled, may become a "pass" when the number of data points is in the dozens. Thus, the Verizon methodology may well achieve the result that Verizon's total payments are reduced. Returning again to the previous example, the Treasury would receive $54,000 ($60,000 minus AT&T's allocated $6000), but AT&T would receive nothing, for a net savings to Verizon of $6000.

Q. DOES THE VERIZON PLAN'S "PER OCCURRENCE" APPROACH TO CALCULATING REMEDIES PROVIDE A DETERENCE TO DISCRIMINATION WHEN TRANSACTION VOLUMES ARE SMALL?

A. No. As we explained in our Direct Testimony, a "per occurrence" plan does not provide adequate damages or penalties for performance measurements involving small transaction volumes, because it necessarily produces limited sanctions at low volumes. Under the proposed plan, discriminatory performance that will likely thwart competitors in a start-up mode for new services (for example, advanced services) will expose Verizon to little liability.

Q. WHY IS VERIZON'S ASSERTION THAT THE MERGER CONDITIONS PLAN DOES NOT SUNSET UNTIL THE YEAR 2004 MISLEADING?

A. The statement (Canny at 8) is misleading because, as the testimony itself acknowledges, the Merger incentive plan also terminates when Verizon receives long distance authority for Virginia. Verizon officers have made public statements that they expect Verizon to apply for § 271 authority in Virginia in the first quarter of 2002. If so, then the Merger plan may sunset well before 2004. In addition, Verizon reserves the right to "track any amendments or changes to the *Merger Order* Plan" in the proposed plan here (Canny at 20). If such changes significantly affect payments under the plan (or perhaps terminate the plan) then sunset may effectively occur before 2004.

Q. DOES THE MERGER PLAN IMPROPERLY DELAY PAYMENT OF REMEDIES?

A. Yes. Verizon has again proposed to pay any penalties it incurs under its plan through a system of delayed billing credits rather than through immediate direct payments to the harmed CLECs. As we have previously testified, bill credits are more difficult to audit and verify and are not the most effective means of providing an incentive for non-discriminatory service.

Q. DOES THE MERGER PLAN PROVIDE INCENTIVES TO ENCOURAGE TIMELY AND ACCURATE REPORTING AND CHANGE CONTROL?

A. No. Verizon's plan has no incentive to provide accurate, complete, or timely reports, because Verizon suffers no penalties for inaccurate, incomplete or untimely reports. The criticisms that we previously stated with respect to the plan that Verizon proposed to the Virginia Collaborative Committee apply in full force to the Merger plan.

Q. DO YOU AGREE WITH THE CONTRACT LANGUAGE THAT VERIZON PROPOSES?

A. No. The interconnection agreement should include the full provisions of any performance assurance plan that the Commission orders in this arbitration, as AT&T has proposed. The "Applicable Law" provision that Verizon proposes (Canny at 6-7) is far too general and subject to interpretation even for the limited purpose for which it is offered, that is, the adoption of the Merger conditions plan. It references outside documents – the Merger Order – that if changed may substantially affect AT&T's rights under the interconnection agreement, without an opportunity for negotiation and arbitration. The section stating that "**CLEC shall provide Services under this agreement in accordance with the performance standards required by Applicable Law" is particularly murky in its meaning. What "Services" are meant, inasmuch as AT&T does not provide any services under the agreement? What "performance standards" are required of AT&T under applicable law? Indeed, what "Applicable Law" applies? These types of ambiguities have no place in an interconnection agreement.

Q. IF THE COMMISSION WERE DISINCLINED TO ADDRESS A NEW REMEDIES METHODOLOGY AND RATHER INCLINED TO ADOPT AN "INTERIM" REMEDIES PLAN IN THIS ARBITRATION, WHAT ALTERNATIVE DO YOU RECOMMEND?

A. Under these circumstances, we would recommend that the Commission adopt the New York PAP, scaled to Virginia, rather than the "interim" plan based on the Merger conditions that Verizon now espouses.[8] We have already testified that a scaled New York plan would be far superior to the plan that Verizon introduced to the Virginia Collaborative Committee. The same is true of the New York plan as compared to the plan suggested in Ms. Canny's testimony. The New York plan is a proven commodity that has been in effect for almost two years and can be easily imported to Virginia, because its administration is now well-established and unfamiliar methods and procedures would be not be needed to effectuate it. The metrics needed to support the New York plan are essentially the New York metrics and are now before the SCC for decision. AT&T is not challenging the consensual metrics in this arbitration or before the SCC. The metrics will likely

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[8] AT&T's calculation of how the New York remedies would scale to Virginia is provided as Attachment 2 to this testimony.

be in effect in the first quarter of 2002. Verizon will need to implement those metrics regardless of what happens in this arbitration, so there will be no duplication of efforts in establishing metrics, or a waste of time or resources, contrary to Verizon's claims (Canny at 12). Although Ms. Canny claims that there will be "practical problems" in implementing the Virginia standards for an "interim" plan (*Id.*) she provides no explanation of what those problems might be. In short, the New York plan scaled to Virginia would be a superior "interim" plan, in the event that the Commission were to accede to Verizon's position that such a plan should be adopted in this arbitration.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

Attachment 1

VERIZON VIRGINIA
CALCULATION OF REMEDIES MAXIMUM FINANCIAL EXPOSURE USING FCC's NET RETURN METHODOLOGY USING ARMIS 2000 DATA

	Intrastate only	Interstate	Total Co.	Source
Operating Revenues	$1,596,059			2000 ARMIS Report 43-01, Row 1090
Other Operating Income/Losses	$9			2000 ARMIS Report 43-01, Row 1290
Total Operating Expenses	$1,030,171			2000 ARMIS Report 43-01, Row 1190
Total Non-Operating Items	-$24,450			2000 ARMIS Report, 43-01, Row 1390
Total Other Taxes	$79,782			2000 ARMIS Report 43-01, Row 1490
FIT	$154,337			2000 ARMIS Report 43-01, Row 1590
Intrastate Annual Net Return	$356,228			Lines 2+3-4-5-6-7
Interstate Annual Net Return		$171,868		2000 ARMIS Report, 43-01, Row 1915
Total Company Annual Net Return			$528,096	Line 8 + Line 10 (See also NY 271 Order, FCC 99-404 at para. 436 n.1332)("To arrive at a total "Net Return" figure that reflects both interstate and intrastate portions of revenue derived from local exchange service, we combined line 1915 (the interstate "Net Return" line) with a computed net intrastate return number (total intrastate operating revenues and other operating income, less operating expenses, nonoperating items and all taxes). See ARMIS 43-01 Annual Summary Report, Table 1, Cost and Revenue Table...")
ARMIS Revenue Cap @ 39%			$205,957	Line 10 * 39% (% Net Return used in MA 271)

ARMIS 2000 DATA
FOR NET RETURN ANALYSIS

FROM TABLE 43-01

Year	Quarter	COSA	Company Name	Sub_#	Row_#	Row_Title	State_g	Interstate_h
2000	-	CVVA	Verizon-Virginia	1	1090	Total Operating Revenues	1596059	687100
2000	-	CVVA	Verizon-Virginia	1	1190	Total Operating Expenses	1030171	407396
2000	-	CVVA	Verizon-Virginia	1	1290	Other Operating Income/Losses	9	4
2000	-	CVVA	Verizon-Virginia	1	1390	Total Non-operating Items (Exp)	-24450	-1881
2000	-	CVVA	Verizon-Virginia	1	1490	Total Other Taxes	79782	32413
2000	-	CVVA	Verizon-Virginia	1	1590	Federal Income Taxes (Exp)	154337	77307
2000	-	CVVA	Verizon-Virginia	1	1915	Net Return	N/A	171868

Attachment 2

Scaling NY Remedies to VA using FCC 271 Methodology

	NY PAP* 18-May-01	VA PAP Remedies Cap**	Ratio VA:NY Remedies	VA Remedies Scaled to NY PAP
MOE	$75			$52.72
Doubling of MOE	$75			$52.72
Critical Measures	$81			$56.94
Special Provisions	$52			$36.55
PAP Total	$283			$198.93
CCAP	$10			$7.03
Verizon Total	$293	$205.96	0.7029	$205.96

*NY PAP, May 18, 2001, at p. 5
*See MA 271 Order, FCC 01-130, para 241, fn 769

**source ATT-1 (page 1 of 2), calculating PA 39% of Net Total Company Return

Detail of Special Provisions*		
1.UNE		
a. Flow Through Measures for UNEs	$10	$7.03
b UNE Ordering Performance	$24	$16.87
c. Additional Hot Cut Performance Measures	$24	$16.87
2.Electronic Data Interface		
a.% Missing Notifer Trouble Tickets PONs Cleared Within 3 Business Days	$12	$8.44
b. % SOP to Bill Completon Within 3 Business Days	$6	$4.22
* totals are not addative		

Attachment 3

Parity			
	Failed	Touched	%-Failed
May	4	81	23.53%
Jun	4	90	14.29%
Jul	3	78	13.64%
Aug	7	86	23.33%
Sept	3	86	20.00%
TOTAL	21	421	4.99%

Benchmarks			
	Failed	Touched	%-Failed
May	4	14	40.00%
Jun	3	13	33.33%
Jul	1	12	11.11%
Aug	3	13	27.27%
Sept	5	22	27.78%
TOTAL	16	74	21.62%

TOTAL					
	Failed	Touched	%-Failed	Mitigation	Eligible
May	8	95	29.63%	10	0
Jun	7	103	18.92%	10	0
Jul	4	90	12.90%	9	0
Aug	10	99	24.39%	10	0
Sept	8	108	24.24%	11	0
TOTAL	37	495	7.47%	50	0

Attachment 4

Parity				
	Failed	Touched	%-Failed	Remedy
May	20	81	24.69%	$442,066.27
Jun	27	90	30.00%	$589,783.43
Jul	11	78	14.10%	$214,410.92
Aug	16	86	18.60%	$363,937.92
Sept	25	86	29.07%	$446,693.56
TOTAL	99	421	23.52%	$2,056,892.10

$4,936,541.04

Benchmarks				
	Failed	Touched	%-Failed	Remedy
May	4	14	28.57%	$77,500.01
Jun	3	13	23.08%	$74,977.51
Jul	1	12	8.33%	$25,000.00
Aug	3	13	23.08%	$75,000.00
Sept	6	22	27.27%	$88,501.65
TOTAL	17	74	22.97%	$340,979.17

$818,350.01

TOTAL				
	Failed	Touched	%-Failed	Remedy
May	24	95	25.26%	$519,566.28
Jun	30	103	29.13%	$664,760.94
Jul	12	90	13.33%	$239,410.92
Aug	19	99	19.19%	$438,937.92
Sept	31	108	28.70%	$535,195.21
TOTAL	116	495	23.43%	$2,397,871.27

$5,754,891.06