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November 19, 2001

FILE NO: 46001.000278

Via UPS – Next Day

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

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**WorldCom, Cox, and AT&T ads. Verizon
CC Docket Nos. 00-218, 00-249, and 00-251**

Dear Ms. Salas:

Enclosed please find four copies of Verizon Virginia Inc.'s Opposition to Cox Virginia Telecom, Inc.'s Objection and Request For Sanctions. Please do not hesitate to call me with any questions.

Sincerely,

Kelly L. Faglioni
Counsel for Verizon

KLF/ar

Enclosures

cc: Dorothy T. Attwood, Chief, Common Carrier Bureau (8 copies) (Via UPS-Next Day)
Jeffery Dygert (w/o enclosure) (by mail)
Katherine Farroba (w/o encl.) (by mail)
John Stanley (w/o encl.) (by mail)

With enclosures, via UPS-Next Day Delivery:

Jodie L. Kelley, counsel for WorldCom
Kimberly Wild, counsel for WorldCom
David Levy, counsel for AT&T

No. of Copies rec'd 013
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Petition of WorldCom, Inc. Pursuant)
to Section 252(e)(5) of the)
Communications Act for Expedited)
Preemption of the Jurisdiction of the)
Virginia State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon Virginia Inc., and for)
Expedited Arbitration)

CC Docket No. 00-218

In the Matter of)
Petition of Cox Virginia Telecom, 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. and for Arbitration)

CC Docket No. 00-249

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)
Corporation Commission Regarding)
Interconnection Disputes With Verizon)
Virginia Inc.)

CC Docket No. 00-251

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**VERIZON VIRGINIA INC.'S OPPOSITION TO COX VIRGINIA TELECOM, INC.'S
OBJECTION AND REQUEST FOR SANCTIONS**

The number of inaccuracies that Cox recites in its Objection and Request for Sanctions is startling, affecting virtually every factual assertion Cox recites for support. For example, Cox states that Verizon VA never offered its VGRIP proposal to Cox prior to the hearing. This is not true. Verizon VA offered VGRIP to Cox as early as February 2000. Cox states that the first notice it had of Verizon VA offering VGRIP to it was when it was cross-examining Verizon VA's witnesses at the hearing. This is not true. In addition to the offer in February 2000, Verizon VA's answer and testimony contain the VGRIP proposal to Cox. Cox states that it was denied the opportunity to present evidence on VGRIP. This is not true. Cox's only witness for this proceeding addressed VGRIP in his pre-filed testimony. Cox states that it was denied the opportunity to cross-examine Verizon VA's witnesses on VGRIP. This is not true. In fact, Cox received an express opportunity at the hearing from the Commission to conduct such cross and accepted that opportunity.

Cox also takes a myopic view when it says that VGRIP was not a proposal to Cox because it was not in the JDPL for Cox prior to November. Cox fails to recognize that the JDPL does not define the parameters of the record for this proceeding. The JDPL is only a tool reflecting a snapshot in time, and must be considered in the context of all the record evidence. That record evidence clearly contained Verizon VA's VGRIP proposal to all the petitioners. Moreover, the JDPL for all parties was an evolving document reflecting both the negotiations that continued prior to the hearing and events at the hearing. Each version of the JDPL, contrary to Cox's assertions, contained substantive revisions, and the November filing reflected all that had preceded it.

In short, Cox's strategic decision to put blinders on when preparing its advocacy is no basis for the Commission to do the same by not considering the full record when making its

decision on the substantive issues. For this reason, explained more fully below, Verizon VA asks the Commission to deny Cox’s Objection and Request.

A. Verizon VA Offered VGRIP To Cox Before Cox Filed Its Petition And During This Proceeding.

1. Verizon VA Offered Cox VGRIP In Contract Negotiations.

As early as February 2000, Verizon VA offered VGRIP to Cox. That offer was contained in contract language transmitted via email to Marvel Vigil, the Cox negotiator. Ms. Vigil responded as follows on the same day that she received the Verizon VA proposed contract language: “You guys are so funny.” Copies of the emails transmitting the Verizon VA proposed contract language and Ms. Vigil’s response are attached as Exhibit 1; the contract language is attached as Exhibit 2.

The contract language offered to Cox and the correspondence between the Cox negotiator and the Verizon VA negotiator directly invalidate any claim by Cox that it did not receive any contract language supporting VGRIP. Moreover, the fact that this language was received by Cox casts doubt on several representations made by Cox’s witness in his testimony, by Cox’s counsel at the proceeding, and by Cox in its Objection and Request.

In his pre-filed rebuttal testimony, Dr. Francis Collins, Cox’s only witness for all eleven Cox issues, erroneously stated that Verizon VA never offered VGRIP to Cox:

Q. HAS VERIZON DEVELOPED AND OFFERED TO COX AN ADDITIONAL PROPOSAL, “VGRIP,” AS A COMPROMISE TO VERIZON’S “GRIP” PROPOSAL?

A. No. Cox was first made aware of Verizon’s Virtual Geographically Relevant Interconnection Point (“VGRIP”) arrangement on July 31st in the testimony of Verizon witnesses Albert and D’Amico. *Verizon has never proposed such an IP arrangement to Cox in negotiations,*

Cox Ex. 2 at 11 (emphasis added). In addition, at the hearing, counsel for Cox erroneously represented to the Commission that Verizon VA had never offered VGRIP to Cox:

MR. HARRINGTON: What I was going to note are two things. First, I've talked to the Cox negotiator as recently as yesterday, and to my knowledge during the entire pendency of this proceeding, ***VGRIP has never been proposed to Cox by a Verizon negotiator.***

Tr. at 1213 (emphasis added). On the following day, counsel for Cox made the following representation:

MR. HARRINGTON: And let me add, I spoke to the Cox negotiator last night at some length, ***and she informed me that the VGRIP proposal had never been given to Cox . . .*** And so, hearing that Verizon thought that VGRIP was on the table was quite surprising to Cox. ***We had never received from Verizon in any negotiations any VGRIP language or any proposal,*** and as I said yesterday, it was not in the reply from Verizon.

Tr. at 1310 (emphasis added).

Contrary to its representations at the hearing, Cox acknowledges in its Objections and Request that it did in fact receive a VGRIP proposal from Verizon VA prior to the hearing, but tries to downplay this fact.¹ This is remarkable given that Cox's position rests on the fact that it claims to have never received such a proposal. What is even more remarkable is that Cox does not address at all in its filing its completely erroneous statements at the hearing, cited above. Instead of correcting the misstatements made at the hearing, Cox in its filing ignores them and instead tries to twist the circumstances surrounding the contract proposal in such a manner as to make it look as if there really was not a proposal. No amount of "smoke and mirrors" from Cox at this juncture can rewrite what actually happened, which Cox has now had to acknowledge.

When this proceeding began, Cox was aware that VGRIP was an option that Verizon VA offered to Cox. Apparently, both counsel for Cox and Cox witness Collins made an incorrect assumption that Verizon VA never offered VGRIP to Cox. Rather than now correcting this erroneous assumption, Cox compounds its error by trying to argue that the proposal it now

¹ See Objection and Request, pp. 5-6.

acknowledges receiving was not really a proposal at all. For purposes of ruling on Cox's Objection and Request, however, the important fact is that Cox cannot legitimately claim it was "surprised" that VGRIP was on the table with Cox.

2. The Record Of This Proceeding Demonstrates That VGRIP Was Offered To Cox.

On May 31, 2001, Verizon filed its Answer to the Cox, AT&T, and WorldCom Petitions. In that Answer, Verizon VA responded to the Cox Petition, unequivocally offering VGRIP to all the parties in this proceeding and describing the essential elements of that proposal. Beginning on page 14 of its Answer, Verizon stated, in pertinent part:

To address this issue fairly, Verizon developed a compromise proposal called a Virtual Geographically Relevant Interconnection Point ("VGRIP") that it is willing to offer to the CLECs.

Verizon VA Answer at 14-15.

In addition to its Answer, Verizon VA offered and described the VGRIP proposal in its pre-filed direct testimony on non-mediation issues. Verizon Ex. 4 at 11-12. Verizon VA also discussed its VGRIP proposal, *specifically addressing a concern raised by Cox*, in its pre-filed rebuttal testimony on non-mediation issues:

- Q. COX WITNESS COLLINS TESTIFIED, AT PAGES 6-8 OF HIS DIRECT TESTIMONY, ABOUT VERIZON VA'S GRIP PROPOSAL. HAS HE CORRECTLY PORTRAYED THIS PROPOSAL?**
- A. No. Pursuant to Verizon VA's GRIP proposal, and Verizon VA's VGRIP proposal, Verizon VA's financial responsibility for hauling originating traffic ends at the IP. The CLEC, in this case Cox, is then financially responsible for the carriage to its POI. In addition, under VGRIP, Verizon VA is willing to "split the difference" by agreeing to be financially responsible for delivering the CLEC traffic to a more centralized location instead of delivering it to a distant CLEC POI. Verizon VA's proposal does not shift a "disproportionate" share of the economic burden of interconnection to the CLECs. In our direct testimony, Verizon VA illustrated that it is the CLEC who has made the decision to interconnect

in this manner. The CLEC should, therefore, be financially responsible for the impact of that decision.

Verizon Ex. 18 at 3-4.

Cox chose to ignore in its Objection and Request, at the least, these places in the pre-hearing record in which Verizon VA offered VGRIP to all the CLECs, including Cox. Cox also chose to ignore the testimony of its own witness, Dr. Collins, who substantively addressed Verizon VA's VGRIP proposal. With respect to VGRIP, Cox witness Collins stated in pre-filed testimony:

Q. WOULD COX AGREE TO VERIZON'S PROPOSED VGRIP ARRANGEMENT IF OFFERED?

A. No. *The VGRIP proposal discussed in the Verizon testimony is not a reasonable alternative for Cox* because it entails the wrong use of collocation space. Cox pays premium rates for collocation space in Verizon's facilities to carry out its obligation to deliver its traffic to Verizon. Further, Cox bears all other expenses of getting its traffic to that collocated space in Verizon's facilities. It is unreasonable for Verizon to suggest that collocation space, which it furnishes only at a high cost to Cox, should be diverted for Verizon's use in delivering its traffic to Cox. Verizon's testimony also provides no plausible reason to force Cox to bear the expense of bringing Verizon's traffic from Cox's collocation space back to Cox's switches.

Cox Ex. 2 at 11-12 (emphasis added). Dr. Collins also specifically addressed VGRIP at the hearing. At pages 1383 through 1388 of the hearing transcript, Dr. Collins launched into a dissertation of what he believed was wrong with Verizon's VGRIP and GRIP proposals from Cox's perspective.

At the hearing, and contrary to Cox's assertions in its Objection and Request, counsel for Cox examined Verizon witness D'Amico on Verizon VA's VGRIP proposal at length. Tr. at 1320-33. The Commission went to great lengths to give Cox every opportunity to conduct its

examination of Verizon witness D'Amico on either the GRIP or VGRIP proposal.² In fact, Assistant Chief Dygert gave counsel for Cox the opportunity to conduct his examination of Verizon witness D'Amico, and gave him the opportunity to further cross-examine him the following day. Tr. at 1213-14. Counsel for Cox accepted this opportunity. Importantly, with respect to the merits of Cox's position in its Objection and Request, the Commission put Cox on notice that VGRIP might be considered by the Commission for Cox:

Well, I think this leaves us [the Commission] in the position that, Mr. Harrington, you are welcome to examine Verizon's witnesses on either the GRIPs proposal or the GRIP proposal or the VGRIP proposal as you prefer, but your choice to limit your cross-examination to the GRIP proposal will not necessarily limit the Commission in choosing between the competing sets of language if it appears to us [the Commission] from our review of the record that the VGRIP proposal was proposed to Cox in rebuttal testimony in a way that could reasonably be viewed as having put it at issue.

Tr. at 1207; *see also* Tr. 1211. There is no doubt that Cox was made aware that Verizon VA proposed VGRIP to Cox, and that Cox knew it.

3. Cox Was Not "Surprised" By The Inclusion Of VGRIP In The November JDPL.

Cox complains that it had to "ferret the changes out on its own" when the parties pieced together the November JDPL and that it had no notice that Verizon VA would include changes to contract language in the November JDPL. Once again, a complete review of the record indicates that this complaint is without merit. Indeed, not only did Cox have notice that VGRIP was on the table from the time Verizon VA filed its Answer, but at the hearing counsel for Verizon VA specifically informed Cox that the same contract language proposed to AT&T in the September JDPL, including the one IP per local calling area clarification, was being proposed to Cox. Tr. at

² Cox's cross-examination of Verizon witness D'Amico on GRIP appears on pages 1215 through 1248 of the transcript.

1315. There could be no clearer message to Cox that Verizon VA intended to include this language in the next iteration of the JDPL.

The language Verizon VA substituted in the Cox column of the November JDPL was completely consistent with the language Verizon VA included for WorldCom and AT&T. Verizon VA replaced § 4.2.2 of the Cox agreement with the AT&T VGRIP language. The other contract language that appears in the Cox column of the November JDPL includes already agreed upon language between the parties that Verizon VA included as a way to put the VGRIP language in context.

Moreover, the JDPL is not the complete embodiment of the record in this proceeding. It is merely a tool, or in the words of the Commission, a “demonstrative exhibit.” Tr. at 11. The Commission requested this tool to assist in organizing information, and the Commission specifically contemplated that the November iteration of the JDPL would reflect substantive revisions from the previous versions. *See* Tr. at 1311-12. This is exactly what Verizon VA did in its November filing: after informing Cox at the hearing that the VGRIP language in the JDPL for AT&T would be proposed to Cox, Verizon VA reflected this proposal in the November JDPL. Including this language in the November JDPL was perfectly appropriate, given these circumstances.

B. Verizon VA’s Contract Language In The November JDPL For Issues I-2 and I-9 Is Fully Consistent With Its Previously-Stated Positions.

Almost as an afterthought, Cox also objects to the updated contract language Verizon VA submitted in the November JDPL for Issues I-2 and I-9. The proposed contract language was completely consistent with Verizon VA’s substantive position as testified to by Verizon VA in its pre-filed testimony and its testimony at the hearing. Accordingly, Cox has always had notice of Verizon VA’s position and cannot claim that it is somehow prejudiced.

1. Verizon VA's Proposed § 4.5.3 Is Not A Change In Verizon VA's Position On Issue I-2 Regarding Cox.

As alluded to in Cox's Objection and Request, Verizon witness D'Amico testified that the contract language in support of Issue I-2 for Cox is meant to protect Verizon VA from incurring unreasonable distance-sensitive charges for transport should the Commission reject Verizon VA's VGRIP proposal. Tr. at 1256-57; Verizon Ex. 4 at 17; Verizon Ex. 18 at 13. Cox now complains that Verizon VA's updated § 4.5.3 somehow alters this position. Cox is simply wrong. Verizon VA revised § 4.5.3 to make it consistent with the modifications to the "state of the art" VGRIP language that Verizon VA promised to include to all CLECs in the November JDPL. *See* Tr. at 1312, 1315. Contrary to Cox's claim, Verizon VA has not given itself a "new right" to designate IPs.

Moreover, § 4.5.3 does not create a "new" issue. Cox has agreed to the concept of the "IP" in the parties' subsequent contract. Tr. at 1016. Section 4.5.3 appears in the portion of the contract designated "Interconnection in Additional LATAs." This section addresses the establishment of IPs in additional LATAs should Cox ever decide to interconnect with Verizon VA in another LATA in Virginia. If Verizon VA were to lose VGRIP, the reference to the contract provision that establishes how IPs are designated remains appropriate and Verizon VA's concerns regarding distance-sensitive charges for transport is also viable -- and at issue in this proceeding. Cox's objection to this section is really a substantive objection to VGRIP, which Cox should properly discuss in its brief. For purposes of deciding Cox's Objection and Request, however, Verizon VA's position on this issue, Issue I-2, is the same today as it was when the November JDPL was filed and the same as reflected in Verizon's VA pre-filed testimony and at the hearing: if the Commission does not adopt VGRIP, Cox should not charge Verizon VA distance-sensitive rates for transport. Tr. at 1256-57.

2. Verizon VA's Contract Proposal For Issue I-9 Is Completely Consistent With Verizon VA's Position On The Record.

Just as Verizon VA identified its position on VGRIP, Verizon VA pinpointed its position on Issue I-9 in its Answer, pre-filed direct and rebuttal testimony, and at the hearing. With respect to Issue I-9, Verizon VA maintained throughout this proceeding that the CLECs' rates should not exceed Verizon VA's rates for the same services unless the CLECs could prove to the appropriate commission that their higher rates were cost justified. In Verizon VA's Answer, it initially introduced the Commission and the CLECs to its legitimate concern:

Moreover, it is presumptively fair that the CLEC should charge no more to the ILEC than the ILEC can charge to the CLEC, *unless the CLEC can show that its costs justify a higher rate.*

Verizon VA Answer, at 171 (emphasis added). In addition, in Verizon VA's pre-filed direct testimony on non-mediation issues, the Pricing Terms and Conditions witness panel testified:

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 Ex. 7 at 8. Verizon VA's position at the time it filed its testimony in July and August, and its position at the hearing, is that Cox should not charge Verizon VA rates higher than Verizon VA's for the same services unless Cox proves, in an appropriate proceeding, that its costs are higher. Verizon Ex. 7 at 6. The contract language Verizon VA provided in the November JDPL is fully consistent with that position and is virtually the same contract language Verizon VA provided to AT&T.

As pertinent to Issue I-9, Verizon VA identified two places in its proposed contract to Cox where the parties had failed to reach resolution on contract language: (1) § 20.3 and (2) Exhibit A, Part B §§ IV and X (a pricing attachment). Important to consideration of Cox's

current Objection and Request, the **June** JDPL cited Exhibit A, Part B § X, which provided that prices for various Cox services to Verizon VA should be “Available at Cox’s tariffed or otherwise generally available rates *not to exceed Verizon’s rates for equivalent services available to Cox, unless Cox cost justifies a higher rate*” (*italics indicate disputed language and bold is emphasis added*). See Exhibit C-3 to Verizon VA’s Answer (Verizon VA’s proposed agreement to Cox). Although Cox now complains that Verizon VA’s **November JDPL** reflects a change in position, Verizon VA’s **June** JDPL identified contract language (i) consistent with its Answer and testimony and (ii) substantively consistent with the language about which Cox now complains in the **November** JDPL. That is, Cox’s rates to Verizon should not exceed Verizon VA’s rates unless Cox justifies a higher rate. While this clarification was provided in Exhibit A, Part B § X (in both Exhibit C-3 to Verizon VA’s Answer and as cited in the **June** JDPL), Verizon VA’s proposed § 20.3 lacked that clarification.

Cox itself claims to recognize that Verizon VA “should have the opportunity to ensure that its contract language is internally consistent and free of errors.” Cox Objection and Request at 1. In the **November** JDPL, Verizon VA did just that when it made its proposed § 20.3 consistent with the language set forth in Exhibit A, Part B § X (“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”)) (emphasis added). That is, Verizon VA ensured that its § 20.3 is internally consistent with its

Exhibit A, Part B § X, while clarifying that which was clear in Verizon VA's Answer and testimony -- (i) the justification could be to Verizon VA or a commission, and (ii) the justification would be based on cost. Apparently, Cox believes that Verizon VA should have the opportunity to ensure that its contract language is internally consistent unless it takes away a basis for Cox's objection to the proposed language. In essence, Cox is saying that because Verizon VA's proposal actually addresses Cox's substantive concerns, it should be excised from this proceeding. In light of Verizon VA's Answer, testimony, *and* JDPL entries, there is no basis for doing so.

D. Conclusion

Verizon VA believes that Cox's Objection and Request, from the basis for the Objection to the relief that Cox seeks, borders on the frivolous--both in terms of its timing and its substance. As demonstrated by a review of the record and what occurred prior to the hearing, there is simply no support for the factual assertions that Cox makes. Accordingly, Verizon VA asks that the Commission deny Cox's Objection and Request. Verizon VA's time, this Commission's time, and Cox's time should have been better spent addressing the substantive issues in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kelly A. Fragione", is written over a horizontal line.

Of Counsel:

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Dated: November 19, 2001

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Attorneys for Verizon VA

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing Verizon Virginia Inc.'s Opposition to Cox Virginia Telecom, Inc.'s Objection and Request For Sanctions was sent as follows this 19th day of November, 2001 by e-mail and overnight, express delivery:

VIA E-MAIL AND UPS-NEXT DAY DELIVERY TO WORLDCOM AS FOLLOWS:

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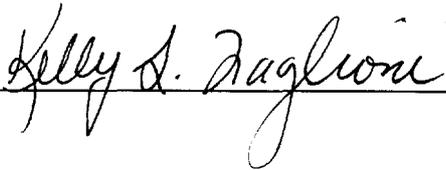


EXHIBIT 1

"Vigil, Marvel (CCI-Emeryville)" <Marvel.Vigil@cox.com> on 02/04/2000
05:53:43
PM

To: MONICA F. MOORE/EMPL/VA/Bell-Atl@Bell-Atl

cc:

Subject: RE: BA IC Comp, etc 2-4

You guys are so funny.

Have a nice weekend.

> -----Original Message-----

> From: monica.f.moore@bellatlantic.com

> [SMTP:monica.f.moore@bellatlantic.com]

> Sent: Friday, February 04, 2000 1:53 PM

> To: Vigil, Marvel (CCI-Emeryville)

> Cc: jpach@technetlaw.com

> Subject: BA IC Comp, etc 2-4

>

>

>

> Marvel:

>

> Attached is a draft of Bell Atlantic's proposal to Cox for Intercarrier

> Compensation; a proposal designed to meet the Parties' needs and

> obligations for

> reciprocal compensation and network architecture.

>

> We will be prepared to discuss this proposal on our first call Monday (or

> Tuesday if you prefer).

>

> Monica Moore

> Bell Atlantic

> (703)974-4614

>

> (See attached file: Cox IC Comp Proposal.doc) << File: Mac Word 3.0 >>

EXHIBIT 2

Excerpt From Verizon VA's Intercarrier Compensation Proposal To Cox
Verizon VA's VGRIP Language

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

4.1.4 **Geographic Relevance**

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

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

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

At any time that Cox establishes a Collocation site at a BA End Office, then either Party may request that such Cox Collocation site be established as the Cox-IP for traffic originated by BA Customers served by that End Office. Such request shall be negotiated

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

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