Pricing Terms and Conditions

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PRICING TERMS AND CONDITIONS (REPLY)

I. PRICE CAPS ON PETITIONERS' SERVICES

Issue I-9: Price Caps on CLEC Services

In articulating their opposition to Verizon VA's proposal to incorporate a reasonable contractual standard for the rates Petitioners can charge Verizon VA, AT&T and WorldCom both incorrectly suggest that Verizon VA has alternatives in delivering traffic to AT&T and WorldCom. AT&T Br. at 189-90; WorldCom Br. at 163-64. AT&T quotes Verizon VA witness Daly out of context in order to conclude that Verizon VA "conceded" that it "has other alternatives" in how it delivers traffic to CLECs,[1] also citing the "size and the reach" of Verizon VA's network. AT&T Br. at 190. No matter what the "size and reach" of Verizon VA's network, Verizon VA ultimately must obtain interconnection from AT&T, WorldCom, or Cox to deliver traffic to their respective end-users -- there is no other market participant that provides access to Petitioners' respective end-users without ultimately going through Petitioners. Apparently, even Cox recognizes the lack of market alternatives, avoiding that argument in brief. Cox Br. at 44-48.

[1] As identified by Verizon VA witness Daly, one of the alternatives that Verizon VA *seeks*, but AT&T *opposes*, is the ability to collocate on Petitioners' premises on terms that are fair and reasonable. *See* Issue I-3; Verizon VA Br. at NA-18; AT&T Br. at 31-34. WorldCom likewise opposes this alternative. WorldCom Br. at 3. Thus, AT&T misleads this Commission when it cites to Verizon VA witness Daly's testimony as a concession that Verizon VA "***has*** other alternatives" (emphasis added) -- Verizon VA ***seeks*** them. In its brief, Verizon VA discussed (i) the theoretical alternatives it *could* have to interconnect with Petitioners, (ii) Petitioners' respective *opposition* to those alternatives, and (iii) Petitioners' failure to point to a single example of a market alternative that does not ultimately lead back to each of the Petitioners for obtaining access to their respective end-users. Verizon VA Br. at 4-6. In addition to the collocation Verizon VA seeks on Petitioners' premises, one of the other "alternatives" opposed by both WorldCom and AT&T is Verizon VA's proposed meet-point interconnection arrangement. *See* Issue III-3.

The advocacy of AT&T and WorldCom on this issue ignores their respective positions on two related interconnection[2] and cannot be squared with their advocacy in connection with Issues III-18 and IV-85 -- the tariff versus interconnection agreement issues. Although both AT&T and WorldCom disparage the tariff review process in opposing Verizon VA's proposal to make effective tariffs the first source for applicable prices, both tout the virtues of the tariff review process with respect to the legitimacy of their own rates. AT&T Br. at 189-90 (citing the virtue of the tariff review process) and 190-93 (opposing reliance on the tariff review process); WorldCom Br. at 161-65 (citing the virtue of the tariff review process) and 166-71 (opposing reliance on the tariff review process). For example, AT&T complains in connection with Issue III-18 that it should not have to "police" Verizon VA's tariff filings for any impact on the contract's UNE rates.[3] AT&T Br. at 191. Yet, in connection with this issue, AT&T would require Verizon VA to "police" the tariff filings of numerous CLECs.

Another example of AT&T's inconsistency is its implication that the tariff review process denies AT&T a "meaningful opportunity for comment and participation." AT&T Br. at 191 n.600 (Issue III-18). Yet, in connection with this issue, all the Petitioners point to the tariff review process as an adequate opportunity for Verizon VA to pursue any concerns about their respective rates. AT&T Br. at 189-90; WorldCom Br. at 161-65; Cox Br. at 44-48. Verizon VA disagrees with AT&T's and WorldCom's assertions in connection with Issue III-18 that the tariff review process is not meaningful. In fact, Verizon VA does not seek the proposed contractual standard for CLEC rates due to an insufficient tariff review process. Rather, Verizon VA seeks a

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[2] *See supra note 1.*

[3] As addressed in connection with Issue III-18 and IV-85, Verizon VA does not agree that there is any unreasonable burden on Petitioners if they are required to review Verizon VA's tariff filings for any impact on the contract's UNE rates when there is no UNE tariff in Virginia.

clear contractual standard to apply to services for which there is no meaningful market mechanism and for which Verizon VA is a captive customer. The need for such a contractual standard is highlighted by Petitioners' opposition to Verizon VA's attempts to ensure it has some options for interconnection with Petitioners and their inability to identify the alleged market participants from which Verizon VA can purchase interconnection with Petitioners.

Both WorldCom and Cox incorrectly claim that Verizon VA's proposed standard for Petitioners' rates is inconsistent with federal and Virginia law -- an argument not even advanced by AT&T. WorldCom Br. at 161-63; Cox Br. at 47. As Verizon VA explained in its Brief, at PTC-5 through -7, presumptively capping CLEC rates at Verizon VA's rates is consistent with federal and state law. As noted by the Commission when addressing analogous issues regarding CLEC access rates in its *Seventh Report,* at ¶ 2, "certain CLECs have used the tariff system to set access rates that were subject neither to negotiation nor to regulation designed to ensure their reasonableness." As a result, this Commission adopted a pricing regime in its *Seventh Report* in which the Commission concluded that, after a reasonable transition period, CLEC access rates may not be tariffed higher than the equivalent switched access rates of the incumbent LEC (the benchmark rate).

The same logic and reasoning is no less appropriate in the circumstances associated with this issue.[4] Just as the Commission recognized in setting the benchmark rate in its *Seventh Report*, the Petitioners should be limited in the exercise of their monopoly power for transport

[4] The New York Commission recently reaffirmed its decision to establish a presumption that AT&T should not charge rates great than the rates Verizon VA charges AT&T. *See Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.,* Case No. 01-C-0095, Order on Rehearing (rel. Dec. 5, 2001) at 15.

services and power and space, because Verizon has no competitive alternative to purchase these services. *See Seventh Report* at ¶ 40. However, unlike the pricing regime adopted by the Commission in its *Seventh Report*, Verizon VA's proposal ***does allow*** for the Petitioners to tariff higher rates if the Petitioners can demonstrate higher costs.

WorldCom claims that Verizon VA's proposal conflicts with *Chesapeake & Potomac Tel. Co. v. Bles*, 243 S.E.2d 473, 1013 (Va. 1978). WorldCom is wrong. That case merely impacts WorldCom's ability to charge rates that differ from its tariffed rates. Nothing about Verizon VA's proposal requires any of the Petitioners to charge different rates to different carriers. Verizon VA's proposal would give it a right to insist that Petitioners demonstrate that their respective costs are higher than those of Verizon VA if Petitioners seek to tariff rates higher than Verizon VA's rates for equivalent services. As discussed in Verizon VA's Brief, this is consistent with the Virginia Commission's regulation of CLEC retail services. Verizon VA Brief at PTC-6.

Cox needlessly worries about the "process" for implementing Verizon VA's proposed standard for Petitioners' rates. Cox Br. at 45-47. Verizon VA's proposal does not seek to invent a new process. If Cox seeks to charge a higher rate than Verizon VA's comparable rate, one option under Verizon VA's proposal is for Cox to provide cost justification to Verizon VA. If the parties disagree about the cost justification, the parties may pursue resolution of the appropriate Cox rate through the agreement's dispute resolution process. Another option is for Cox to file a tariff and provide cost justification to the appropriate commission. If Cox seeks to charge rates contained in an existing tariff that are higher than Verizon VA's comparable rates, Verizon VA may initiate a complaint proceeding or the agreement's dispute resolution process.

But, without Verizon VA's proposed contract language, there is no definitive basis against which to judge Verizon VA's complaint about "unreasonable" rates.

As this Commission has recognized, the complaint process alone is insufficient "to keep CLEC access rates within a zone of reasonableness." *Seventh Report*, at ¶ 25. According to AT&T, "[f]or the interconnection agreement to have a meaningful and durable commercial purpose," AT&T Br. at 192 (Issue III-18), a party to the contract must be able to "rely on the rates . . . contained in the contract" or have "actual, direct and meaningful notice" of a tariff filing or other means to change the effective rate so that the party has "an opportunity to protect its interests." AT&T Br. at 191, 193 (Issue III-18). Given these arguments, Petitioners should not be heard to object when Verizon VA seeks some contractual protection from being overcharged for services for which there is no market alternative. Accordingly, the Commission should adopt Verizon VA's proposal that the CLECs should not be able to charge higher rates than Verizon VA charges for the same services unless they can demonstrate that their costs justify such higher rates.

II. INTERPLAY BETWEEN TARIFFS AND INTERCONNECTION AGREEMENT

Issue III-18
Issue IV-85 **Tariffs v. Interconnection Agreements**

The positions of AT&T and WorldCom on this issue are reminiscent of Chicken Little's warning that the "sky is falling." AT&T claims that if Verizon VA prevails in establishing tariffs as the first order of preference for applicable rates, the rates determined in this proceeding are "little more than placeholders." AT&T Br. at 191. WorldCom asserts that if Verizon VA prevails on this issue, it "would completely eviscerate the interconnection scheme established by Congress." WorldCom Br. at 168. The Commission should not be swayed by this rhetoric because it is inaccurate.

First, there is a difference between suggesting that a tariff should trump rates only and suggesting that a tariff should trump the contract terms and conditions. Verizon VA's proposed contract language establishes the tariff as the controlling source ***only*** for applicable ***rates***. Verizon VA's proposal does ***not*** provide that the *terms and conditions* of a tariff will trump the contract's non-pricing ***terms and conditions***. Thus, WorldCom cries wolf when it hypothesizes that shortly after arbitrating an interconnection agreement it could "find that its interconnection agreement has been partially or entirely superceded by a tariff filed by Verizon with a state commission." WorldCom Br. at 168, citing WorldCom Ex. 21 at 7.

Second, tariffs already play an important role in the contractual rates that AT&T and WorldCom will pay. In Virginia, AT&T and WorldCom have agreed to reference a collocation tariff as the source of contractual collocation rates, and the § 252(d)(3) wholesale discount will be applied to retail rates contained in Verizon VA's retail tariff. The objections of AT&T and WorldCom to referencing tariffs ring hollow in light of the existing agreed language giving tariffs an important role in the contract as a source of applicable rates. AT&T and WorldCom

already must monitor Verizon VA's retail and collocation tariff filings for impact on the contract's rates for the related services.

Third, there is no UNE tariff in Virginia. Accordingly, there is no unreasonable burden on AT&T or WorldCom to monitor Verizon VA's tariff filings for impact on the contract's UNE rates. As mentioned, AT&T and WorldCom already must monitor Verizon VA's tariff filings for impact on other rates. AT&T itself points out that there is no reasonable basis to conclude that the Virginia Commission is going to undo the work of this Commission in setting UNE rates. AT&T Br. at 192, n.604. If that is true, it is unclear how AT&T then concludes that the UNE rates here will be "little more than placeholders." AT&T Br. at 191.

Fourth, WorldCom concedes that "[i]f 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 . . ." WorldCom Br. at 170. The only apparent difference from Verizon VA's proposal is that WorldCom would rather force the parties through the interconnection agreement's change-in-law provision rather than simply and efficiently drafting the contract to achieve the end-result WorldCom already concedes. In light of the fact that WorldCom knows it could purchase from a future tariff without any administrative or procedural delay if the rates are lower, the only possible reason for WorldCom's approach to drafting the contract is to ensure it can somehow forestall Verizon VA from charging higher rates lawfully approved.

Finally, the same tariff review process that AT&T and WorldCom condemn in connection with this issue is the one both tout as insurance that the rates they charge will be just and reasonable rates in connection with Issue I-9. Compare WorldCom's and AT&T's schizophrenic observations about the tariff process:

• "[T]he nature of tariff proceedings is 'one-sided.'"[5]	*vs.*	• "Virginia's tariffing regulations ensure that the rates for these services are fair and reasonable."[6]
• Carriers "have no guaranteed impact on the reviewing body's decision to approve or reject the tariff change."[7]	*vs.*	• "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."[8]
• "[I]t is unreasonable to expect that AT&T, or any other CLEC for that matter, can devote the substantial resources required to obtain and review all those various filing."[9]	*vs.*	• "[T]he rates concerning which Verizon contends it needs some constraints on CLECs' pricing power already are subject to the jurisdiction of the Commission and thus an avenue of relief is available to Verizon if it feels aggrieved by a particular rate.[10]

The bottom line is that if the tariff review process is adequate notice and opportunity to Verizon VA to protect itself relative to CLEC rates, then the tariff review process is adequate notice and opportunity to Petitioners to protect themselves relative to Verizon VA's rates.

[5] WorldCom Br. at 168, citing WorldCom Ex. 21 at 5.

[6] WorldCom Br. at 161.

[7] WorldCom Br. at 168.

[8] WorldCom Br. at 163.

[9] AT&T Br. at 192.

[10] AT&T Br. at 190.

III. DETAILED BILLING INFORMATION

Issue VII-12 Detailed Billing Information

AT&T articulates a broad concern about contractually referencing OBF guidelines rather than incorporating billing detail, claiming that the OBF guidelines are "just . . . guidelines" and that it "needs the assurance through contract terms." AT&T Br. at 194. In § 5.8.3 of its proposed contract, however, Verizon VA already "commits through contract terms" to provide AT&T with "EMI records formatted in accordance with industry standard guidelines adopted by and contained in the OBF's EMI, Multiple Exchange Carrier Access Billing ("MECAB") and Multiple Exchange Carriers Ordering and Design ("MECOD") documents." Verizon VA has given AT&T the contractual commitment it seeks. AT&T's broad concern is unfounded, and its proposed contract language should be rejected.

AT&T further articulates a specific concern about needing a contractual commitment to provide CICs and pseudo-CICs. AT&T Br. at 193-94. There is no basis for this concern; Verizon VA has given AT&T the contractual commitment it seeks with regard to CICs. *See* AT&T/Verizon VA interconnection agreement at § 5.8.3 (requiring the exchange of CIC by requiring the parties to provide each other with records formatted in accordance with industry standard guidelines adopted by and contained in the OBF's EMI, MECAB and MECOD documents) and § 6.3.7 ("each Party will provide the other with (i) the billing name, billing address, and CIC of the IXC, and (ii) identification of the IXC's serving wire center to comply with Meet Point Billing ("MPB") notification process as outlined in the MECAB document.").

AT&T has failed to explain why it needs more with respect to CICs. Specifically, AT&T has failed to explain, in its testimony or in its brief, what it means by its proposal to require exchange of a "valid" CIC list or "associated billing information." *See* AT&T's proposed §

5.8.4. AT&T also has failed to explain why the responsibility for determining whether a CIC list is "valid," for "assist[ing]" other carriers in obtaining a CIC, and for "obtaining reimbursement" from a carrier without a CIC should be shifted to a party who has nothing to do with the issuance of the CIC, and nothing to do with ensuring that other carriers properly establish their billing identification. In short, AT&T does not simply want a "contractual commitment." It wants ***more*** than what is industry standard in some instances; it wants ***something different*** than current industry standard in others. AT&T's specific concern about CICs is unfounded, and its proposed contract language should be rejected.

AT&T's insistence on pseudo-CICs is outdated and contrary to OBF guidelines. *See* Verizon VA Br. at PTC-18. AT&T has failed to explain in testimony or in brief why the parties' contract should memorialize the use of pseudo-CICs when the industry already has rejected their use, as reflected in OBF Issue Nos. 1921 and 2139. AT&T's current proposal to contractually memorialize an outdated practice rather than rely on the broader reference to OBF guidelines underscores why it would be insufficient to simply amend the contract in the future to reflect industry changes, as AT&T suggests. Verizon VA has no reason to expect that AT&T would be willing to amend the contract in the future to reflect industry changes when AT&T continues to insist on outdated practices. It is clear that AT&T wants to reserve to itself the right to insist on inconsistent practices in the event that AT&T does not like the outcome of OBF issue resolutions. The language to which the parties already have agreed prescribes adherence to industry guidelines for billing. AT&T's proposal that the parties nevertheless commit to provide detail in the interconnection agreement that is inconsistent with OBF guidelines should be rejected.

IV. VERIZON VA/WORLDCOM PRICING ATTACHMENT

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

The language WorldCom proposes in connection with Issue IV-30 is unnecessary and inappropriate.

First, WorldCom ignores the parties' agreed "term and termination" clause, § 2 of Part A, when it proposes a duplicative "term" clause for rates or suggests that Verizon VA's proposed contract fails to "define the effective term of the rates." WorldCom Br. at 173. The "effective term of the rates" is the effective term of the agreement. Competing "term" clauses would introduce ambiguity and invite disputes. WorldCom should not be permitted to change or undermine the agreement it already has reached with Verizon VA in § 2 of Part A by introducing a second "term" clause for rates.

Second, WorldCom asserts that the parties' agreement must "establish the date on which changes in rates become effective." WorldCom Br. at 173. If rates change as a result of a subsequent order or tariff filing, the terms of the order or tariff will determine the effective date. Once again, interjecting contract language would serve only to introduce ambiguity and invite disputes over the interrelationship between the agreement and any subsequent order or tariff filing. WorldCom's attempt to dictate the terms of any future order or tariff is inappropriate and should be rejected.

Third, WorldCom's proposal for constantly updating and re-executing an agreement is inferior to Verizon VA's proposal to minimize the need for updating the agreement by establishing an order of priority for applicable rates. *See* Verizon VA Br. at PTC-20 through PTC-25. As stated above, any order or tariff that results in a change to rates will provide the source for an effective date regardless of the completion of the administrative task of

"execut[ing] a document revising the Pricing Table to incorporate such changes." WorldCom Br. at 173. Moreover, the parties already are disputing the appropriate change of law provision in connection with Issue IV-113. In the context of that issue, Verizon VA proposes § 4.5 of Part A, which addresses the time period in which the parties should negotiate any necessary revision to the agreement. WorldCom provides no reason why there must be a duplicative set of procedures for amendments to the agreement that could result from orders changing rates or why Verizon VA's proposal is insufficient.

In short, WorldCom's proposed contract language should be rejected, because it introduces duplication and ambiguity. Instead, Verizon VA's proposed Pricing Attachment should be adopted as the more efficient and effective prioritization of applicable rates without unnecessarily duplicating other provisions of the agreement.

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

- ***Development costs***

Without citation to any authority -- because there is no authority to which it could cite -- WorldCom attempts to bury in the parties' Pricing Attachment a contractual provision obligating Verizon VA to "bear it own development costs." WorldCom understates the significance of its proposed language when it claims that the contract provision is merely needed to avoid "hidden charges." Pursuant to the interconnection agreement that results from this proceeding, WorldCom will have a forum through the agreement's dispute resolution provision for any claim that Verizon VA is attempting to assess a "hidden charge." WorldCom's proposed contract language adds nothing to its ability to insist on paying only the rates and charges set forth in the pricing attachment applicable to the services or elements at issue.

Despite the false guise of protecting itself against a "hidden charge," WorldCom's proposed contract language improperly attempts to circumscribe by contract Verizon VA's right to pursue cost recovery for items such as development of future operational support systems ("OSS")[11] or acquisition of third party intellectual property licensing rights on behalf of CLECs. Thus, for example, if and when Verizon VA should pursue cost recovery for development of future OSS, the interested parties can address any questions they have about whether Verizon VA is already recovering such costs in existing recurring or non-recurring rates or charges. Verizon VA, however, should not be subjected to the argument that it has contracted away that right to its cost recovery before it has even incurred the costs. Verizon VA does not agree to do

[11] The fact that the parties are currently litigating in the cost phase of the case Verizon VA's proposed OSS-related further undercuts WorldCom's explanation that its proposed language only seeks to avoid hidden charges. WorldCom argues in the cost phase as it does here that Verizon VA should bear its OSS development costs as simply a cost of doing business that Verizon incurred as part of the new competitive environment.

so, nor is there any legal authority that would support an arbitration order requiring it to do so. To the contrary, Verizon VA's right to pursue cost recovery associated with what WorldCom calls "development costs" is well grounded in the Act and widely recognized.[12]

For example, in the *Line Sharing Order* ¶ 144, this Commission specifically recognized an ILEC's right to recover the "development costs" to which WorldCom refers:

> We find that incumbent LECs should recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element. We believe that this guideline is consistent with the principle set forth in the Local Competition Order that incumbent LECs cannot recover nonrecurring costs twice. We also reaffirm the conclusions in the Local Competition Order, that the states may require incumbent LECs in an arbitrated agreement to recover such nonrecurring costs such as these incremental OSS modification costs through recurring charges over a reasonable period of time; and that nonrecurring charges must be imposed in an equitable manner among entrants.

Accord AT&T Communications of the South Central States, v. BellSouth Telecommunications, Inc., 20 F. Supp.2d 1097, 1104-05 (E.D. Ky. 1998); *U.S. WEST Communications v. AT&T Corp.*, Nos. A1-97-085, A1-97-082 (D.N.D. January 8, 1999); *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F. Supp.2d 218, 248 (D.De. 2000); Seventeenth Supplemental Order, *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket Nos. UT-960369, *et. al.* ("*Generic Costing and Pricing Docket*") (W.U.T.C. Sept. 23, 1999) at ¶¶ 98-102.[13]

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[12] Act § 252(d)(1). *Accord Local Competition Order* ¶ 199 (interconnecting carrier is required "pursuant to section 252(d)(1) . . to bear the cost of that interconnection, including a reasonable profit," citing, in note 426, section VII of the *Local Competition Order* "concluding that requesting carriers must pay incumbent LECs the cost of interconnection or unbundling").

[13] In addition to the courts in Delaware, Kentucky, and North Dakota, Commissions in Alabama, New Mexico, and North Carolina have ruled that ILECs are entitled to recover their OSS transition costs from CLECs. *See* Report and Order, *In Re Petition of Telephone Company of Central Florida, Inc. for Arbitration of Resale Agreement with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996,* Docket 26800 (Ala. P.S.C. May 26, 1999); Supplemental Findings of Fact, Conclusions of Law and Order, *In the Matter of the Consideration of the Adoption of a Rule*

(continued...)

In *AT&T Communications of the South Central States, v. BellSouth Telecommunications, Inc.*, the U.S. District Court for the Eastern District of Kentucky rejected an AT&T argument that an interconnection agreement requiring new entrants, but not the incumbent, to pay the costs of electronic interface development for OSS violated the Act and FCC regulations. The Court agreed with the Kentucky Commission that nothing in the law supported AT&T's position:

> The FCC regulations only state that ILECs must cooperate with competitors and make available access to their OSS, but FCC regulations do not state that access to an ILEC's OSS must be subsidized by the ILEC. The PSC correctly notes that '[o]ne would not argue he was denied access to a concert on the basis that he was required to first buy a ticket." Because the electronic interfaces will only benefit the CLECs, the ILECs, like BellSouth, should not have to subsidize them. BellSouth has satisfied the nondiscrimination prong by providing access to network elements that is substantially equivalent to the access provided for itself. AT&T is the cost causer, and it should be the one bearing all the costs; there is absolutely nothing discriminatory about this concept.

Id. at 1104-05 (citations to record omitted).

Moreover, in *U.S. WEST Communications v. AT&T Corp.*, the U.S. District Court for North Dakota upheld the North Dakota Commission's approval of an interconnection agreement recovering U S WEST's OSS costs from AT&T. The Court correctly ruled:

> No one disputes that access to OSS is essential. It is in fact a critical and essential part of the infrastructure being sold to the competitor. The Act and the Agreement mandate the provision of interconnection . . . on a nondiscriminatory basis. That does not mean that the incumbent LEC must pay a portion of the costs involved in providing the interconnection for the use of a competitor.

Concerning Costing Methodologies, Docket Nos. 96-310-TC, 97-334-TC (N.M. C.C., Dec. 31, 1998) at ¶ 54; Order Ruling on Motions for Reconsideration, Clarification, and Comments, *In the Matter of General Proceeding to Determine Permanent Pricing for Unbundled Network Elements*, Docket No. P-100, Sub. 133d (N.C.U.C. August 18, 1999).

Slip op. at 21.

Similarly, in *Bell Atlantic-Delaware, Inc. v. McMahon*, the United States District Court for Delaware held that "[n]othing on the face of the Act prohibits imposing an additional charge to compensate Bell for providing OSS access to its competitors." The Delaware court upheld the Delaware Commission's decision to impose OSS "access" charges on CLECs, but remanded the decision back to the Commission to determine whether Bell's OSS access charges for resale orders were already recovered through its wholesale resale rates. *Id.* at 247-49.

In its Seventeenth Supplemental Order, *Generic Costing and Pricing Docket*, the state commission in Washington observed:

> While Congress required the ILECs . . . to open up their networks to competition, it also sought to ensure that they would be compensated for reasonable costs incurred as a result of their efforts to comply with this mandate . . . .
>
> * * * *
>
> Some parties to this proceeding have argued that CLECs are not responsible for the OSS costs because, even if no CLEC enters an ILEC market, the ILEC must incur these costs in anticipation of competition materializing. The Commission finds this argument to be faulty because it merely illustrates that should no demand for OSS arise, the ILEC will be unable to recover its costs from a CLEC. A lack of demand does not indicate an absence of cost responsibility.

Generic Costing and Pricing Docket at ¶¶ 98-102. The Washington Commission's 13th Supplemental Order reiterated its earlier decision that "CLECs are required to pay for reasonable OSS transition costs incurred by Qwest and Verizon in modifying their OSS for use by CLECs." *In the Matter of Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*, UT-003013 Part A, "Thirteenth Supplemental Order" (W.U.T.C. Jan. 31, 2001) at ¶ 169.

The developmental costs that WorldCom seeks to preclude are not Verizon's "cost of doing business in a competitive environment" as WorldCom claims. WorldCom Br. at 175. Rather, the development costs result from the choice of WorldCom and other CLECs to use Verizon VA's network rather than invest in their own networks. That choice is not without costs, but they are not Verizon VA's costs to bear. Precluding Verizon VA's right to recover its costs by contract results in a subsidy to WorldCom for choosing to use Verizon VA's network rather than building its own. The Commission cannot require this result.

- ***Updated electronic pricing tables***

WorldCom's suggestion that Verizon VA be responsible for providing updated electronic copies of pricing tables is just another example of World equating "efficiency" with that which is efficient for WorldCom because of an improper shift of costs to Verizon VA. There is absolutely no reason WorldCom cannot create and maintain in an electronic format any document that WorldCom wishes to keep updated, including its pricing tables.

- ***Subsequently developed or modified services***

WorldCom repeats its insistence on unnecessary redundancy when it claims the need for language in the pricing attachment addressing "subsequently developed services" and "services modified by regulatory requirements." The agreement that results from this arbitration will contain bona fide request and change of law provisions making the WorldCom proposed pricing attachment language unnecessary. *See* Issue No. IV-17 (resolved), including the parties' agreed § 13 of the Network Elements Attachment (Bona fide requests) and Issue No. IV- 113, including Verizon VA's proposed §§ 4.5 and 4.6 of Part A (change of law provisions).

Issue IV-35 **Reciprocal Compensation**

Verizon VA addressed this issue in connection with the Intercarrier Compensation issues.

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

Verizon VA and WorldCom both agree that the rates and charges will (i) result from the cost phase of this proceeding and (ii) be reflected in a pricing table.