IV. UNBUNDLED NETWORK ELEMENTS

Issues III-6 and III-7 (Combinations)

As WorldCom demonstrated in its opening brief, its desired combinations provision – which requires Verizon to provide in combined form only those combinations of elements which Verizon routinely combines for its own use – is both consistent with applicable law and required to make entry using unbundled network elements viable. Verizon's opposition to WorldCom's proposal rests on the assertions that the Eighth Circuit's decision prohibits such a result but that, in any event, Verizon offers adequate combinations. As explained below, neither assertion has merit.

As WorldCom explained in its opening brief, requiring Verizon to provide those combinations for competitors that it ordinarily combines for itself is necessary to ensure that competitive carriers can use network elements to provide service, and to comply with the Act's non-discrimination requirements. See WorldCom Br. at 96-102. If Verizon were allowed to refuse to provide to competitors elements that it typically combines for itself, CLECs would be precluded, as a practical matter, from serving their own customers in competition with Verizon. Id. Verizon does not take issue with this general proposition, nor could it – if Verizon fails to provide competitors with access to the same UNE combinations that Verizon provides itself (even if those combinations are not joined at the exact moment the CLEC orders them) competitive carriers will plainly be subjected to discriminatory treatment.

Instead, Verizon asserts that the Eighth Circuit's decisions mandate this anomalous result. That assertion is wrong. As WorldCom explained, the Eighth Circuit did not strike down the regulation which requires Verizon to provide in combination

those elements that it typically provides in combination. See WorldCom Br. at 98-99. Instead, the Eighth Circuit struck down only Rules 315(c)-(f), which required incumbent carriers to provide new or novel combinations to competitors, so long as such combination is technically feasible. Thus, in striking down Rules 315(c)-(f), the Eighth Circuit noted that it is not the incumbent's duty to provide combined elements in any manner possible. But it did not hold that Verizon could evade its general duty not to separate elements that are previously combined and to provide combinations of those elements that Verizon typically combines for itself to new entrants.

Indeed, the Eighth Circuit could not have done so consistent with the Supreme Court's opinion in Iowa Utilities Board. In that case, the Supreme Court held that "the Act does not say, or even remotely imply, that elements must be provided only in [discrete pieces] and never in combined form." AT & T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 394 (1999). For this reason, the Ninth Circuit has, in the wake of the most recent Eighth Circuit decision, twice upheld state commission requirements that incumbent LECs provide ordinary combinations upon request. As that Court explained, it "necessarily follows from AT&T that requiring [an incumbent] to combine unbundled network elements is not inconsistent with the Act ... because the Act does not say or imply that network elements may only be leased in discrete parts." US West

Communications Corp. v. MFS Intelenet, Inc., 193 F.3d 1112, 1121 (9th Cir. 1999), cert. denied, 531 U.S. 1001 (2000).[34]

Verizon's second attempt to bolster its proposal is its assertion that the Commission has previously concluded that its behavior in other states is lawful, citing three Commission approvals pursuant to section 271. In each of those states, however, the Commission found that Verizon was providing a wide variety of combinations, whether or not the relevant elements happened to have been combined before the competitive carrier placed the order. And providing these combinations was mandated in each of these states. Thus, in Massachusetts, for example, the Commission observed that Verizon was, in fact, providing "UNE combinations, including the loop-switch port platform combination (UNE-P) and the loop transport facilities combination (Enhanced Extended Link, or EEL)" as well as "a 'switch subplatform,' which is local switching combined with other shared elements such as shared transport, shared tandem switching, operator services, directory assistance, and SS7 signaling." Mass. 271 Order ¶ 118. Moreover, the Commission indicated that the provision of such combinations was a "legal obligation" under both Verizon's tariff and its interconnection agreements. Id.; see also NY 271 Order ¶ 233 (noting that Verizon provides combinations including UNE-P,

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[34]Moreover, as the Ninth Circuit recognized, although, pursuant to the Hobbs Act, the Eighth Circuit is vested with exclusive jurisdiction to uphold or invalidate FCC regulations, it is not vested with the sole authority to interpret the Act. Thus, although in the wake of the Eighth Circuit's decision there was no mandate for state commissions to order novel combinations – because the FCC rule so requiring was no longer in existence – state commissions were not bound by the Eighth Circuit's reasoning and could choose to impose similar requirements, subject to federal court review. Because the Supreme Court has definitively interpreted the Act, of course, this is no longer at issue. The Supreme Court has determined that the Act does not mandate that elements be provided only in separated fashion.

EELs, and other combinations "in accordance with the New York Commission's requirements"); Pa. 271 Order ¶¶ 74-75 (approving application where Verizon actively provided combinations, and commenters had not complained about Verizon's provisioning of such combinations).

For all these reasons, the Commission should not adopt Verizon's proposed contract language. Indeed, the Commission could not adopt Verizon's proposed language even if it generally agreed with Verizon because that language is not consistent with Verizon's purported position. As a general matter, the language proposed by Verizon consists almost entirely of statements about what it will not do, what it does not promise, and what can not be inferred by anything it may voluntarily provide.[35] Sections 1.4.1 and 1.4.2 essentially indicate only that if Verizon is required to provide UNE combinations pursuant to a change in law, the relevant terms will be contained in a Verizon tariff.[36]

Although Verizon has purported to introduce an entirely new proposal in the JDPL filed in November, that proposal is not properly on the record. Nor, in any event, does it cure the problems with Verizon's proposal. Indeed, this proposal is far worse, containing a "wish list" of all the restrictions Verizon would like to propose without containing any enforceable offers. Specifically, although Verizon asserts that it will voluntarily provide a number of combinations, the language it has proposed requires only that it provide combinations "to the extent provision of such Combination is required by

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[35] The first proposal by Verizon – Section 4 entitled "Applicable Law" has nothing to do with the Combinations issue, and should not be considered here.

[36] In addition to Section 4, these are the only provisions included in Verizon's September JDPL.

applicable law. See Section 16.1. It also indicates that, even where combinations are required, Verizon will provide them subject to unspecified requirements. Id. Verizon goes on to describe various combinations, including UNE-P (see Sections 16.1.1 - 16.1.3), but again reiterates that the combinations it will provide "may" include those delineated and, again, only "[t]o the extent required by applicable law." Because Verizon has made clear that, in its view, applicable law requires it to provide elements in combination only if those particular elements are already combined at the moment the CLEC orders them, it is clear that Verizon's proposal does not require it to provide any two elements in combination – including UNE-P – if those elements aren't combined when ordered.

The other, more general, provisions included for the first time by Verizon are similar. Section 1.1 again states that Verizon will provide combinations "only to the extent required by Applicable Law," and notes that it "may decline" to provide combinations if provision of such combinations is "not required by Applicable Law." Id. Section 1.3 purports to limit the manner in which CLECs can use combinations. And most of the remaining sections impose requirements – such as a collocation requirement – that are not directly related to this issue, but are instead addressed under other issue numbers. See, e.g., section 1.7.

Finally, as noted in WorldCom's opening brief, Verizon's anti-competitive proposal is made worse yet by its proposed Section 1.2. As WorldCom noted, it is flatly discriminatory for Verizon to be able to offer a customer service over a combination of elements that is typical in its network, but to prohibit WorldCom from offering the same customer the same service over the same combination of elements simply because the

elements were not physically linked when WorldCom placed the order. Section 1.2 takes this inequity a step further, prohibiting a customer from ordering the service in the first instance, then migrating service to WorldCom over the now-combined elements. Although Verizon states this is an "anti-gaming" provision, in reality it is an anti-competition provision, precluding competitors from offering service in direct competition with Verizon. Moreover, if Verizon believes its competitor is trying to do so, Verizon reserves for itself the right to "embargo" provision of "new services and facilities to" its competitors. See section 1.2. This would not only ensure that no competition can emerge with respect to a single customer, but also that no competition would emerge at all.

Accordingly, the Commission should reject Verizon's proposed contract language, and adopt the language proposed by WorldCom.

Issue III-8 (Connection at Technically Feasible Points)

Verizon's proposal with respect to connection to unbundled network elements is inconsistent with applicable law. The language proposed by Verizon says: "Except as otherwise expressly stated in this Agreement, **CLEC shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with the Collocation Attachment ..." Section 1.7 (emphasis added). This Commission has, however, made clear that the law is precisely the opposite, stating that incumbent carriers "cannot limit a competitive carrier's choice to collocation as the only method for gaining access to and recombining network elements." LA II 271 Order ¶ 164. Instead, Verizon must "provide ... nondiscriminatory access to network elements on an unbundled basis at any technically feasible point." 47 C.F.R. § 51.307(a) (emphasis added). Because, as Verizon has conceded, its proposal does not allow access at every technically feasible point, see Tr. 10/03/01 at 113-114 (Fox, Verizon), the Commission must reject Verizon's proposal.[37]

Verizon cannot render its proposal lawful by pointing to the Bona Fide Request Process. That process puts the onus on WorldCom to demonstrate that a particular form

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[37] Verizon's original proposal included its proposed section 1.7 as well as a section titled "6. Inside Wire." In the November DPL, Verizon deleted the reference to Inside Wire, and purported to add references to Sections 1.1 through 1.6, as well as language introduced in support of other issues. Because these sections have been put at issue here for the first time, they are not properly before the Commission and should not be considered. In any event, sections 1.1 through 1.6 do not deal specifically with the method by which competitive carriers can access unbundled network elements, but instead contain a whole host of restrictions on the use of UNEs more generally. These are discussed under Issues III-6 and III-7, supra. Verizon also, for the first time, references to the Bona Fide Request Process. Again, this is not properly at issue here. Nor, as discussed above, would reference to the BFR process solve the infirmities in Verizon's proposal.

of interconnection is technically feasible, even if it plainly is. Moreover, the decision to approve a requested form of interconnection rests solely with Verizon. At a minimum, this creates uncertainty and delay.

Issue III-9 (Local Switching – Exceptions)

At the hearing, Verizon asserted two objections to WorldCom's construction of the so-called "switching exception" in the UNE Remand Order: that the four line limitation should be understood to concern business and not locations, and that the exception should for some reason also incorporate the unrelated limitations the Commission subsequently imposed on interexchange carriers when they convert special access circuits to unbundled network elements.

In its opening brief, Verizon has apparently abandoned this second argument altogether, for it makes no mention of this contention. And for good reason: imposing limitations relating to special access conversions has nothing at all to do with the FCC's switching exception. Verizon having declined to defend its previously-stated position, WorldCom will rest on the showing it made in its opening submission.

Verizon's claim that the switching exception should apply even if a customer location has less than four lines is equally insupportable. In defense of its position, Verizon observes that the exception was designed to identify businesses, because they have "competitive alternatives." Verizon Br. at UNE-36. But, of course, whether or not a business has a competitive alternative to Verizon for service at a location that requires less than four lines depends entirely upon whether any competitor would be in a position to offer competitive service to that location. And that calculation is entirely one of cost, and the obvious logic of the switching exception is that there are sufficient economies of scale and scope when a carrier is seeking to provide four or more lines of service to the same location, it would likely be able to provision loops to its own switch in a cost-effective manner. Verizon's comments to the contrary notwithstanding, that analysis has

nothing whatsoever to do with whether Verizon "would be pitching a proposal to that customer as a whole." Verizon Br. at UNE-38 (quoting Tr. 10/3/01 at 164-165 (Gilligan, Verizon)). The economies of "pitching" a customer have nothing to do with the economies the Commission believed would be obtained when a large customer orders service.

When it comes to discussing the economies that are really at issue here, Verizon quotes its witness to the effect that loops cost the same whether they are ordered to one location or to multiple locations. Verizon Br. at UNE-38 to UNE-39. (quoting Tr. 10/3/01 at 171-172 (Gansart, Verizon)). But even Verizon's witness acknowledged that "there is certainly a truth to the fact that serving customers of different sizes have different costs." Id. at 169 (Gansart, Verizon). And the relevant cost savings here having nothing to do with the costs of loops; they have to do with the costs of collocation, transport costs when concentrated traffic is moved from one location to a CLEC switch, the costs of digital equipment that must be placed at all customer locations, and the costs of hot cuts. Obviously, it costs extraordinarily more to provide service to four distinct locations than it does to provide four lines to one location, where that traffic can be concentrated at one central office and sent to the CLEC switch in concentrated form. Verizon does not dispute those critical differences, which render its construction of the four-line exception irrational.

Issue III-11 (Subloops)

The Commission should adopt WorldCom's proposed subloop contract language because it accurately and reasonably paraphrases provisions of several Commission orders and rules, and because Verizon's language imposes requirements on CLECs (such as requiring construction of an unnecessary intermediate device) that have no basis in the law. Verizon objects to WorldCom's proposed contract language, asserting that: WorldCom's "attempt" to paraphrase existing law is "unacceptable," Verizon Br. at UNE-51; the termination of the subloop at the fiber distribution interface ("FDI") is not technically feasible, id. at UNE-45; and that WorldCom's language regarding loop feeder is "overreaching." Each of these objections is invalid, and the Commission should therefore order the inclusion of the WorldCom language.

Verizon's assertion that the agreement should not contain a restatement of the Commission's rules, and should instead include a vague reference to "applicable law" because the law might change is meritless, and ignores the existence of the agreement's change-of-law provisions. Pursuant to those provisions, the parties will be required to negotiate new contract terms if the law changes, and can thereby respond to any changes in the UNE regulations. Although Verizon claims that such negotiations would place an overwhelming administrative burden on Verizon, see Verizon Br. at UNE-51, Verizon could simply prepare a template amendment to address the change in law, and the parties would quickly agree to that amendment if it accurately reflected the change in law. Alternatively, Verizon could negotiate the new language in an amendment with one party, and the remaining parties could opt into the language that results from those negotiations. In either case, the change-of-law provisions would provide a means of

updating the interconnection agreement to reflect any future developments, and restating the currently applicable rules in the interconnection agreement would not place any additional burden on Verizon. Further, Verizon's proposal to include only a vague reference to "applicable law" must be rejected to ensure the contract contains sufficient detail to minimize the prospect of further litigation.

The fact that Verizon has proposed contract terms that flatly contradict the Commission's regulations, despite its claim that it will comply with "applicable law," highlights the necessity of including contract language that clearly describes the parties' legal obligations. For example, although the Commission's regulations list a number of points where sub-loop may be accessed, see 47 C.F.R. § 51.319(a)(2), Verizon's proposed language would permit WorldCom to access the subloop only at a FDI, and only through an intermediate device known as a COPIC. Verizon's own witness acknowledged, however, that the Commission's regulations do not require a CLEC to access sub-loop via an intermediate device such as a COPIC. See Tr. 10/4/01 at 365-366 (Rousey, Verizon). Instead, the regulations require Verizon to provide access using the method WorldCom requests (direct access without intermediate devices) unless the requested method is not technically feasible. 47 C.F.R. §§ 51.311(b), 51.321(a). Verizon bears the burden of proving that access to the requested method is technically infeasible, see id. §§ 51.311(b), 51.321(d), and has failed to meet that burden; the UNE Remand

Order identified the FDI as a technically feasible access point, UNE Remand Order ¶ 206, and Verizon has not presented any evidence to the contrary.[38]

In addition to conflicting with Commission regulations, Verizon's proposal that a CLEC be required to construct a COPIC to access the subloop would add significant unnecessary costs and create administrative problems that would not occur with direct access to the FDI, and would thereby adversely affect both WorldCom's ability to serve customers using this UNE and the overall economics of doing so. The cost of constructing a pad, building the COPIC, and obtaining a right of way and zoning approvals are all avoidable if the CLEC can directly access the FDI.[39] Those additional costs and the administrative burden would be borne solely by CLECs, not Verizon.

Verizon's assertion that WorldCom's proposed contract would impose duties related to loop feeder requirements that are not required under existing law, Verizon Br. at UNE-52, is incorrect. First, WorldCom's request that Verizon be required to "provide appropriate power" to the loop feeder is simply an effort to obtain nondiscriminatory treatment, and not a request that any separate "power service" be provided, as Verizon alleges. Second, WorldCom's request that copper twisted pair loop be provided in instances where the loop feeder medium is other than copper is merely an effort to obtain

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[38] Verizon's claim that allowing direct access to the FDI may threaten the integrity of its network is meritless, and does not prove technical infeasibility. WorldCom is willing to specify that only Verizon technicians are permitted to perform work activities related to subloop access at the FDI. The parties regularly coordinate work with each other and test the results on a continuing basis in other aspects of their operations, and should be able to resolve any concerns Verizon might have about this option, such as coordinating and scheduling the work, in the same manner.

[39] Under Verizon's proposed contract language, if the CLEC cannot obtain rights of way for a COPIC, it cannot access subloop at all.

copper twisted pair from Verizon where it is available in Verizon's existing network and is unused.

Finally, Verizon's proposed contract language contains significant hindrances to WorldCom's ability to access subloop.[40] For example, section 5.5 of Verizon's proposed language requires WorldCom to provide a 5 year forecast of requests for subloops, but Verizon has refused to agree to actually build facilities taking account of the forecast. See Tr. 10/4/01 at 368, 370 (Detch, Verizon). Given Verizon's admission that it does not intend to incorporate the forecast into its plans, its proposal that WorldCom be required provide the forecast can only be viewed as harassment or an attempt to discover information regarding WorldCom's marketing plans.

In sum, the Commission should adopt the subloop contract language proposed by WorldCom because it is virtually identical to provisions of several Commission orders and rules, and because Verizon's proposed language is inconsistent with the law.

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[40] The Commission should also reject Verizon's proposed sections 6-8.7.2, which were not properly entered into the record. Verizon included those provisions in the November DPL, but did not include them in the earlier DPL or testimony, and thereby deprived WorldCom's witnesses of any opportunity to respond to that language. Therefore, even if the Commission resolves this issue in Verizon's favor, those provisions should be excluded from the interconnection agreement.

Issue III-12 (Dark Fiber)

WorldCom has proposed detailed contract language that implements the Commission's intention to make dark fiber available to CLECs by identifying Verizon's responsibilities and WorldCom's rights regarding unbundled dark fiber. As an alternative, because Verizon opposes those terms, WorldCom would accept the dark fiber contract terms agreed to by WorldCom and BellSouth.[41] See WorldCom Br. at 118. Both sets of language give WorldCom meaningful access to dark fiber consistent with this Commission's rules and orders. In contrast, Verizon's proposed terms are so restrictive that they deny any meaningful access to dark fiber, and must therefore be rejected.

The principle differences between the parties' proposals concern the methods by which dark fiber may be accessed. Specifically, the parties disagree about whether dark fiber can be accessed via splicing, whether dark fiber can be accessed in a manhole or vault, and whether collocation is required to access dark fiber. See Verizon Br. at UNE-60. In both WorldCom's initial proposal and the WorldCom/BellSouth contract language, Verizon is required to identify appropriate connection points, including light guide interconnection or splice points, to enable WorldCom to connect or splice its equipment to the dark fiber. See WorldCom Exh. 5, Direct Test. of C. Goldfarb, A. Buzacott, and R. Lathrop at 33; WorldCom Exh. 13, Rebuttal Test. of C. Goldfarb, A. Buzacott, and R. Lathrop at 17. Verizon, on the other hand, limits the availability of dark fiber to hard termination points and prohibits splicing as a means of accessing dark fiber.

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[41] WorldCom's successful negotiation of this language with BellSouth demonstrates that the operational questions regarding dark fiber can be resolved through good faith negotiations, and that WorldCom's proposal is technically feasible.

Verizon also requires collocation in order to access dark fiber, and prohibits WorldCom from accessing dark fiber in manholes or vaults. See WorldCom Exh. 5, Direct Test. of C. Goldfarb, A. Buzacott, and R. Lathrop at 34. Verizon's restrictions are discriminatory and inconsistent with the Commission's rules, and must be rejected.

A. Verizon Has Failed To Demonstrate That It Is Not Technically Feasible to Allow Dark Fiber To be Accessed By Splicing and WorldCom's Proposed Language Should Therefore be Adopted.

Verizon bears the burden of proving that it is not technically feasible to access dark fiber at the points requested by WorldCom, see 47 C.F.R. § 51.319(a)(2)(ii), and has failed to meet this burden. The fact that BellSouth has agreed to the language that Verizon opposes demonstrates that it is technically feasible for an ILEC to provide access to dark fiber via splice and thereby provide access at any technically feasible point. Indeed, splicing is a convenient, efficient, and technically feasible means of accessing dark fiber.[42]

In its brief, Verizon fails to acknowledge or address the fact that the Commission's regulations do not specify or constrain the methods that can be used to access dark fiber, other than to provide that subloop may be accessed at any point where technicians can access the fiber without removing a splice case to reach the fiber. 47 C.F.R. § 51.319(a)(2). The Commission's rules do not require collocation, do not prohibit accessing dark fiber in a manhole or vault, and do not prohibit splicing to access dark fiber. In fact, Verizon frequently accesses unused fiber for its own purposes by establishing a new splice to access dark fiber where removing a pre-existing splice case is

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[42] To allay Verizon's network security concerns, see Verizon Br. at UNE-66, WorldCom is willing to specify that Verizon personnel conduct any splices of WorldCom fiber to Verizon dark fiber.

not required. Tr. 10/4/01 at 371-373, 375 (Detch, Verizon). Thus, Verizon's proposal would impose restrictions on the availability of dark fiber that go well beyond the Commission's rules.

Verizon's assertion that WorldCom's position forces Verizon to "construct new fiber routes that do not currently exist between two or more non-continuous points," Verizon Br. at UNE-57, is both misleading and inaccurate. WorldCom's language does not impose a construction requirement on Verizon; instead, what Verizon has described as construction is merely the splicing of WorldCom fiber to Verizon dark fiber, which can result in a new fiber route. The Commission's rules do not prohibit the creation of new routes via splicing. Indeed, Verizon's legal obligation to provide nondiscriminatory access to dark fiber requires Verizon to permit WorldCom to create a fiber route via splicing, just as Verizon does for itself. See WorldCom Br. at 120-21.

B. Verizon's Proposed Language Improperly Restricts CLEC Access To Dark Fiber and Should Be Rejected By the Commission.

Verizon has proposed contract language that restricts CLEC access to dark fiber in a manner that has no basis in the Commission's rules, and as a practical matter is so restrictive that it effectively denies CLECs access to dark fiber.[43] See WorldCom Br. at 121-24. For example, Verizon seeks to deny access to dark fiber in cable vaults, controlled environmental vaults, and manholes, despite the fact that the Commission's definition of dark fiber does not exclude fiber located in a vault or manhole. See

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[43] Verizon's proposed section 7-7.2.9 and 7.3-7.6 should also be rejected because they are not properly in the record. As explained in WorldCom's Motion to Strike, those sections were included on the November DPL, but were not presented at a sufficiently early stage of the proceedings to afford WorldCom's witnesses an opportunity to respond.

WorldCom Br. at 121-22. Verizon's proposal that access to dark fiber be limited to pre-existing hard termination points and that new splice points be prohibited even if the fiber can be accessed without breaking into an existing splice case, see Tr. 10/4/01 at 399-400 (Gansert, Verizon), also has no basis in the Commission's rules. This proposal is also discriminatory because Verizon performs new splices for itself without disturbing preexisting splice cases, and CLECs should be permitted to use the fiber by splicing, just as Verizon does, or by asking Verizon to do the actual splicing. See WorldCom Br. at 122-23; Tr. 10/4/01 at 405, 407 (Gansert, Verizon). Verizon's proposed collocation requirement also limits dark fiber in a way that this Commission's rules do not contemplate; as a technical matter, accessing dark fiber does not require collocation (virtual or physical) because dark fiber can be accessed in the outside plant via a splice without the need for collocation in a central office or remote terminal. Tr. 10/4/01 at 494 (Lathrop, WorldCom). Finally, Verizon's proposal that it be allowed to take back fiber previously provided to a CLEC, after proving to the Commission it has a need for the fiber, presents significant risks of network and customer service disruptions for CLECs using dark fiber, and acts as a powerful disincentive to CLECs to seek dark fiber from Verizon. See WorldCom Br. at 123-24. These terms have no legal basis and, when viewed collectively, prevent CLECs from obtaining access to unbundled dark fiber. In contrast, the language proposed by WorldCom, and the WorldCom/BellSouth language, implement the Commission's intention to make dark fiber actually available to CLECs, and should therefore be adopted by this Commission.

Issue IV-14 (Implementation of Regulatory Terms and Definitions)

WorldCom's proposed contract language on this issue reflects the Commission's decisions in the UNE Remand Order, Advanced Services Orders, and the Line Sharing Order, and includes definitions and operational terms that provide a high degree of detail and should minimize the possibility of future disputes. See WorldCom Proposed ICA, Attachment III, §§ 4.2.9-4.2.12; 4.4-4.5; 4.8, 6-6.2.4; WorldCom Br. at 125-27. Verizon has failed to articulate any plausible reason to exclude these terms from the interconnection agreement. Indeed, the discussion of Issue IV-14 in its brief does not even address the definitions and operational terms, but instead discusses the change-of-law issue. See Verizon Br. at UNE-70 to UNE-73. Given Verizon's failure to offer any criticism of WorldCom's proposed language, the Commission should order the inclusion of the WorldCom language. In addition, because Verizon's failure to address the merits of this issue in its opening brief deprived WorldCom of any opportunity to respond to Verizon's position, any portion of Verizon's Reply Brief that attempts to address the merits should be stricken and ignored by the Commission in its consideration of this case.

Issue IV-15 (UNE Features, Functions, and Capabilities)

WorldCom's proposed Attachment III, Section 1.1 memorializes Verizon's obligations to provide WorldCom with nondiscriminatory access to UNEs and the features, functions and capabilities of those UNEs. WorldCom's ability to provide broad-based competitive services in Virginia requires access to all the technically feasible features, functions, and capabilities of unbundled network elements, see WorldCom Exh. 12, Direct Test. of C. Goldfarb, A. Buzacott, and R. Lathrop at 8, and WorldCom's proposed language provides details intended to minimize ambiguity, litigation, and delayed access to the UNEs to which WorldCom is entitled. In contrast, Verizon proposes an alternative Section 1.1 that simply references "applicable law" and provides no detail at all. As explained in WorldCom's opening brief, such a minimalist articulation of the parties' rights and responsibilities is insufficient to ensure that WorldCom will receive the access to UNEs to which it is legally entitled. See WorldCom Br. at 1-2.

This issue highlights a recurring dispute between Verizon and WorldCom: whether the interconnection agreement should contain a considerable level of detail regarding the parties' rights and responsibilities of the parties, as WorldCom proposes, or whether the contract should simply provide instead that services or UNEs will be provided "pursuant to Applicable Law," as Verizon proposes. Including detailed provisions that spell out the parties' rights and responsibilities is essential because Verizon's proposal to simply indicate that it will provide services pursuant to "applicable law" would give Verizon an enormous amount of discretion to determine what the law requires. See WorldCom Br. at 1-2; Tr. 10/03/01 at 133-34 (Antoniou, Verizon)

(admitting that Verizon could impose its views of what the law "definitely is" as well as any extensions of law it believes are warranted based on the underlying "reasoning" of the rule or order). Verizon would likely interpret and apply "applicable law" in a manner that limits its obligations, even if the relevant laws do not clearly set forth such limitations, based on nothing more than Verizon's analysis of where the reasoning of Commission orders should lead. Verizon should not be given this unilateral right to impose its interpretation of the law upon CLECs under the guise of providing services pursuant to 'Applicable Law.' Instead, the contract should contain sufficient detail to ensure that WorldCom receives the services to which it is entitled.

As was true of Issue IV-14, in the section of Verizon's brief that purports to address Issue IV-15, Verizon has failed to address, let alone criticize, the specific terms that WorldCom has proposed regarding UNE features, functions or capabilities, and has instead chosen to discuss the change of law issue. Verizon Br. at UNE-70 - UNE-73. Accordingly, for the reasons articulated in WorldCom's opening brief, its testimony, and herein, the Commission should adopt WorldCom's proposed contract language. In addition, because Verizon's failure to discuss the merits of WorldCom's proposal deprived WorldCom of the opportunity to respond to its criticisms in this brief, any discussion of the merits that Verizon includes in its reply brief should be stricken and ignored by the Commission in its consideration of this case.