Issue IV-25 (CNAM)

The interconnection agreement should require Verizon to allow WorldCom to obtain "full," "batch" access to Verizon's entire calling name ("CNAM") database in a bulk, downloadable format because CNAM is a UNE, and the Act's nondiscrimination provisions entitle MCIm to the same ready access to that call-related database as Verizon enjoys. In its brief, Verizon acknowledges that the law requires Verizon to provide WorldCom with access to the CNAM database, but states that it currently provides access to the CNAM database on a per query basis and that this access is sufficient to meet its legal obligations. See Verizon Br. at UNE-98 - UNE-99. The per query access that Verizon currently provides is not sufficient because a download of the database is a better means of providing access to the database, and because downloads are the only non-discriminatory form of access. See WorldCom Exh. 17, Direct Test. of M. Lemkuhl; WorldCom Exh. 33, Rebuttal Test. of M. Lemkuhl. The Commission should therefore reject the Verizon proposal.[55]

A. Verizon's Duty To Provide Nondiscriminatory Access To the CNAM Database Requires It To Give WorldCom Batch Access.

As Verizon admits, Rule 319(e)(2)(i) requires Verizon to provide nondiscriminatory access to the CNAM call-related database. See 47 C.F.R. § 51.319(e)(2)(i). To be "nondiscriminatory," the access that Verizon provides to WorldCom must be at least equal to what Verizon provides to itself and other carriers,

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[55] Although Verizon initially proposed the inclusion of its general UNE language and a paragraph discussing CNAM, in the November DPL it appears to invoke several new provisions listed under Issue IV-23. As explained supra, Verizon's attempt to use the November DPL to raise new contract language is improper, and that language should be stricken.

because allowing Verizon to provide a CLEC with access inferior to that it provides itself would be inconsistent with the goal of establishing competition in all telecommunications markets. See, e.g., Local Competition Order ¶¶ 100-105. Although Verizon suggests otherwise, providing WorldCom with dip access to the database would not give WorldCom access comparable to the access that Verizon possesses. The database resides in Verizon's facilities, and Verizon therefore has a level of control and access to the database that WorldCom does not. See WorldCom Exh. 17, Direct Test. of M. Lemkuhl at 4. Verizon may use the database in any manner that it desires, and may charge other carriers for use of the database. Therefore, even if Verizon currently dips into the CNAM database, see Verizon Br. at UNE-101, its ability to access the database is not limited to per dip access. Limiting WorldCom's access to per-dip access would give WorldCom considerably less access and control than Verizon possesses, and would therefore be discriminatory.

B. Verizon's Assertion that Limiting WorldCom to Per-Dip Access Would Not Create Problems For WorldCom or Its Customers Is Incorrect.

Verizon's assertion that WorldCom has not alleged that per-dip access would pose a problem for WorldCom and its customers is incorrect. If MCIm is limited to per-dip access it cannot utilize the entire database to provide more efficient service to its customers, and MCIm cannot provide access to the database for use by other carriers. See WorldCom Exh.17, Direct Test. of M. Lemkuhl at 4. In addition, giving MCIm the relevant information in a readily accessible format would facilitate the incorporation of the data into MCIm's facilities with no dialing delays. See id. Further, requiring MCIm to dip Verizon's database or access the database on a "per query" basis only "forces

MCIm to incur development costs associated with a complex routing scheme within MCIm's UNE platform to provide quality service to its customers." Id. at 7. Limiting WorldCom's access in this manner also restricts MCIm's ability to offer other innovative service offerings that may be provided more efficiently, quickly, and cheaply, and generally inhibits MCIm's ability to offer CNAM database services to other carriers via less costly and more efficient alternatives. See id. at 8-9.

Although Verizon asserts otherwise, see Verizon Br. at UNE-102, the record also contains evidence that limiting WorldCom's access to CNAM to per-dip access would cause delays. As WorldCom's witness explained:

> CNAM allows the called customer premises equipment, connected to a switching system via a conventional line, to receive a calling party's name and the date and time of the call during the first silent interval in the ringing cycle. This is a very limited time frame within which to determine the name associated with the calling number. As the call reaches the terminating switch and a Caller ID request is made, the request must route through the network to reach the database holding the "name" information. MCIm must first determine which LEC owns the number, then route the call out to that LEC and back to make the dip. If the LEC does not have the name, then exception handling procedures must be used to find the name and the result is finally returned to the called party. The time it takes to route the number request to the correct LEC's database to make the dip, return the request, and provide exception handling when the number is not found in the database cannot always be completed within the short ring cycle required. If, however, MCIm maintains its own database, a lengthy step of the process can be eliminated, allowing MCIm to provide service at least as well as Verizon provides for itself.

WorldCom Exh. 17, Direct Test. of M. Lemkuhl at 7-8. Accordingly, giving MCIm batch access to the CNAM database will result in increased quality of service to MCIm customers, and would give MCIm more control over the quality of the service it offers. See id.

C. The Commission's Recognition That Limiting Access To the DA Database to Per-Query Access Is Discriminatory And Supports WorldCom's Request For Batch Access to the CNAM Database.

As explained in WorldCom's brief and its testimony, the Commission's discussion of the inequity of limiting CLEC access to the DA database to per-query access highlights the discriminatory effects of Verizon's proposal to limit WorldCom's access to the CNAM database to dip access. By focusing on the purposes of the two databases, Verizon ignores the fact that the Commission's decision recognized that the per-query method of access would cause new entrants to incur the "additional time and expense that would arise from having to take the data from the providing LEC's database on a query by query basis then entering the data into its own database in a single transaction . . . Such extra costs and the inability to offer comparable services would render the access discriminatory." 1999 Directory Listings ¶ 153; see also WorldCom Exh. 17, Direct Test. of M. Lemkuhl at 5. These principles have nothing to do with the purpose of the DA database, and are equally applicable to the CNAM database. Indeed, as discussed above, WorldCom's witnesses have testified that per-dip access to the CNAM database would cause precisely the same type of delays and extra costs that the Commission discussed in the 1999 Directory Listings, and that a downloaded CNAM database would be more economical than paying for access on a dip by dip basis. See WorldCom Exh. 17, Direct Test. of M. Lemkuhl at 7.

D. Verizon's Professed Concerns With Customer Privacy and Its Commitment To Other CLECs Do Not Warrant the Denial of Batch Access.

Verizon's claim that providing batch access to the CNAM database

would "raise a variety of issues, including customer privacy and commitments made to other CLECs that would have to first be resolved" is incorrect. Verizon Br. at UNE-100. As explained below, WorldCom is legally obligated to comply with the statutory protections afforded to confidential consumer information, and Verizon's assumption that WorldCom would misuse the information in the database in a manner that violates the customers' privacy is unfounded. Verizon's agreements with other carriers are irrelevant because promises that Verizon has made to other carriers should not be allowed to trump Verizon's legal duty to provide WorldCom with batch access. Accordingly, neither of these claims refutes WorldCom's position.

Batch access to the CNAM database would not compromise "customer privacy" or consumer proprietary information ("CPNI"). As discussed in connection with issues IV-97 and I-8, WorldCom is fully cognizant of the requirements of section 222 of the Act, and is committed to adhering to the Act's limitations on the use of CPNI. Consistent with that obligation, WorldCom would respect a customer's desire for privacy regarding transmission of its number. While a customer may request that its DA listing be non-published or unlisted, in the case of CNAM, the customer must actively initiate a privacy indictor in addition to being non-published or unlisted for DA purposes. See WorldCom Exh. 33, Rebuttal Test. of M. Lemkuhl at 6. That privacy indicator allows a calling party to permanently block a read-out to all called parties, and as Verizon has admitted, is stored in the CNAM database and would be included in a download of the database. See id.; see also Tr. 10/4/01 at 613 (Woodbury, Verizon). WorldCom's network switches are configured to recognize the privacy indicator and prevent the information from being shown on the terminating equipment, and WorldCom would treat

the privacy indicator in the same manner as Verizon. See WorldCom Exh. 33, Rebuttal Test. of M. Lemkuhl at 6-7. If the customer has not configured its privacy indicator, either through procedures made available by the ILEC or by dialing *67 before a call, even Verizon would not be prevented from displaying the customer's calling name information. See id. In sum, granting WorldCom batch access to the CNAM database would not pose a risk to consumer privacy or the protection of consumer proprietary information.

The fact that Verizon's CNAM database may contain information from other local exchange carriers, and that Verizon may have promised other LECs that choose to store their data in CNAM that their data will be provided only via "per-query access," Verizon Br. at UNE-102, does not require that WorldCom's access to the database be limited to per-dip access. Verizon has not explained why the inclusion of the number of customer lines, or other data from other LECs, in Verizon's CNAM database would require Verizon to impose such limits on WorldCom's access to the CNAM database. See WorldCom Exh. 33, Rebuttal Test. of M. Lemkuhl at 2. Although WorldCom is not interested in the extraneous information Verizon may have included in its CNAM database, if other carriers are concerned that WorldCom will access their information for other purposes, for example to target the competitor's top customers, they could ask WorldCom to contractually agree not to engage in such actions, and/or seek a Commission Order prohibiting that form of use of the information in the database. See Tr. 10/4/01 at 611 (Woodbury, Verizon). Verizon's assertions regarding the field information it gathers from other CLECs (such as the number of their lines, etc.) which is stored in its CNAM database are therefore irrelevant to the form of access to be

provided.[56] Moreover, Verizon's private commitments do not divest the Commission of its legal authority to order batch access to CNAM, and do not alter the fact that Verizon's refusal to provide that form of access is discriminatory.

E. Verizon's Assertion That It Has Not Developed the Processes to Effect a CNAM Download Does Not Justify Denying WorldCom This Form of Access.

Finally, WorldCom should not be denied bulk access to the database simply because Verizon claims that it lacks the technological processes to effect a CNAM download. Verizon claimed that it could not support downloads of the DA database when it first became obligated to provide those downloads, but developed the processes after it was directed to do so. See WorldCom Exh. 33, Rebuttal Test. of M. Lemkuhl at 4-5. The same should be true for the CNAM database. The fact that at least one ILEC, Ameritech-Michigan, has already developed these processes in response to a state Commission directive demonstrates that it is possible and technically feasible. See id. at 3-4. Moreover, if data from other LECs can be entered into and manipulated in its CNAM database, it seems reasonable that the information can also be extracted for the purpose of making the information available as a download. See id. at 4.

In sum, the Commission should adopt the language proposed by WorldCom, which provides detailed terms regarding provision of CNAM via a database dump. This form of access is the only means of ensuring that WorldCom's access to the CNAM database is comparable to the level of control and access that Verizon enjoys, and is thus

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[56] If, as Verizon claims, it only uses this database for the provision of calling name services, it would only need to collect and record the 15 digit identifier, the automatic number identification ("ANI"), and the privacy indicator. Verizon does not indicate why it collects and keeps other extraneous information in its CNAM database.

mandated by the rules requiring Verizon to provide CLECs with nondiscriminatory access to the database.

Issues IV-80 & IV-81 (Customized Routing and OS/DA Services)

The interconnection agreement should establish Verizon's obligation to provide customized routing of WorldCom's OS/DA traffic to the Feature Group D (FGD) trunks designated by WorldCom in the manner described in the direct testimony of Edward Caputo. See WorldCom Exh. 10, Direct Test. of E. Caputo at 13. Verizon has indicated that it will provide the customized routing described by WorldCom's witness through Verizon's AIN capabilities, but has balked at including language in the interconnection agreement that memorializes that commitment or that addresses customized routing in any level of detail. See Verizon Exh. 24, Rebuttal Test. Unbundled Network Elements at 31-32; Tr. 10/4/01 at 614 (Woodbury, Verizon). Thus, Verizon has proposed contract terms that say nothing about customized routing and defer to another day the negotiation of any customized routing terms. As explained in WorldCom's opening brief and in connection with other issues, it is critical that the interconnection agreement reflect Verizon's obligations and WorldCom's rights. The lack of such terms can generate significant delays and disputes because, absent appropriate contract language, WorldCom has no means of enforcing Verizon's commitment. See WorldCom Br. at 2, 149. The Commission should therefore order the inclusion of customized routing terms memorializing Verizon's commitment to provide customized routing to the Feature Group D trunks designated by WorldCom through the AIN architecture available in Verizon VA's service territory.

In addition to memorializing Verizon's promise to provide customized routing through the AIN architecture, the interconnection agreement should include terms that provide for the customized routing of OS/DA traffic to the Feature Group D trunks

designated by WorldCom through means other than AIN, in the event the AIN method becomes unavailable or does not work, and making clear that DA/OS is available as a UNE in the event that Verizon is unable to provide the required customized routing. See WorldCom Br. at 149-50. It is important to include provisions addressing this continued obligation to provide customized routing, or to offer DA/OS as a UNE, because the AIN routing has not yet been tested by Verizon, and Verizon's witness has agreed that testing the AIN customized routing solution would be advisable. See Tr. 614-15, 619 (Woodbury, Verizon). WorldCom's proposed language reasonably implements these principles and should be adopted.

Verizon's assertion that its inability to provide the AIN service would not harm WorldCom, see Verizon Br. at UNE-109, ignores the fact that Verizon is legally obligated to either provide customized routing or provide access to OS/DA as a UNE. See UNE Remand Order ¶¶ 462-463. Thus, if the AIN method does not work, Verizon must still provide customized routing to the FGD trunks designated by WorldCom, or provide OS/DA as a UNE.[57] See id. ¶ 441 n.867. WorldCom's proposed language implements these paragraphs of the UNE Remand Order, and is therefore both necessary and required by the Act. Verizon's assertion that WorldCom would not be harmed by its failure to provide customized routing through AIN is also incorrect because Verizon must provide adequate customized routing in order for WorldCom to provide OS/DA services from its own OS/DA platform to UNE-P customers; if Verizon's customized routing does not work, WorldCom cannot use its operator services to provide OS/DA service to

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[57] In addition, Verizon remains obligated to provide OS/DA pursuant to the resale obligations of section 251(c)(4) of the Act.

UNE-P customers.

Verizon's remaining objections to the WorldCom language are also unpersuasive. Although Verizon claims that WorldCom's proposed language is outdated and cumbersome in its detail, the WorldCom language was proposed during the mediation phase of this proceeding earlier this year, and WorldCom has already deleted the sections that Verizon claimed were outdated. Similarly, WorldCom has proposed this language to implement Verizon's legal obligation to provide customized routing or to provide OS/DA as a UNE, and not because of an alleged "hope to export it to another jurisdiction where AIN architecture has not been deployed." Verizon Br. at UNE-110. In any event, the proposed language cannot be exported under the BA/GTE Merger Order conditions because this language will be arbitrated, and not negotiated. Finally, Verizon's assertion that WorldCom has requested "unique terms requiring specialized and different call handling processes to meet its own preferred specifications," Verizon Br. at UNE-110, makes little sense because, as explained above, the UNE Remand Order obligates Verizon to provide the customized routing requested by WorldCom and Verizon has committed to provide it. In sum, the Commission should order the inclusion of WorldCom's customized routing provisions.

Issue VI-(1)(E) (UNE Restrictions/Changes In Applicable Law)

The Commission should reject Verizon's proposed sections 1.1 through 1.6, which establish a separate change-of-law provision for UNEs and impose numerous restrictions on the availability of UNEs. As explained in WorldCom's opening brief and below, Verizon's proposed limitations on the provision of UNEs are unreasonable and anticompetitive. In addition, Verizon's proposed change-of-law provisions are unnecessary because the interconnection agreement's general change-of-law provisions will adequately address any changes in Verizon's obligations to provide UNEs.

A. Verizon's Proposed Embargo on the Provision of UNEs Is Unreasonable, Anticompetitive, and Should Be Rejected.

Verizon's proposed Section 1.2 contains a number of provisions that limit Verizon's obligation to provide UNEs, including a remarkable (and outrageous) provision that permits Verizon to embargo the provision of services and facilities to WorldCom.[58] This new provision is considerably more draconian in scope and consequence than the Section 1.2 initially proposed by Verizon in this proceeding and

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[58] Verizon proposes the following:

"Consistent with the foregoing, should ** CLEC engage in a pattern of behavior that suggests that ** CLEC either i) knowingly induces Verizon Customers to order Telecommunications Services from Verizon with the primary intention of enabling ** CLEC to convert those Telecommunications Services to UNEs or Combinations, or ii) itself orders Telecommunications Services in order to induce Verizon to construct facilities that **CLEC then converts to UNEs or Combinations, then Verizon will provide written notice to **CLEC that its actions suggest that **CLEC is engaged in a pattern of bad faith conduct. If **CLEC fails to respond to this notice in a manner that is satisfactory to Verizon within fifteen (15) business days, then Verizon shall have the right, within thirty (30) calender days advance written notice to **CLEC, to institute an embargo on provision of new services and facilities to **CLEC. This embargo shall remain in effect until **CLEC provides Verizon with adequate assurance that the bad faith conduct shall cease. Should **CLEC repeat the pattern of conduct following the removal of the service embargo, then Verizon may elect to treat the conduct as an act of material breach in accordance with the provisions of this Agreement that address default.

discussed in WorldCom's testimony, and Verizon has not discussed, let alone justified, the inclusion of such an extreme remedy in the agreement. Verizon's insertion of this provision in the DPL illustrates quite clearly why the Commission must review all of Verizon's proposed contract language extremely carefully before accepting any of it. In addition to being procedurally improper, this newly proposed language unreasonably gives Verizon the unilateral right to abrogate its responsibilities under the Act. Verizon cannot reserve unto itself the right to eliminate WorldCom's ability to do business using an entry method made available by the 1996 Act. Nor can Verizon unilaterally decide that it will no longer provide UNEs as required by the Act and this Commission's regulations. Accordingly, Verizon's proposal that it be given "embargo" rights must be rejected.[59]

B. Verizon's Change-of-Law Provision Is Unnecessary and Improperly Distinguishes Between Changes In Law That Benefit Verizon and Those That Benefit WorldCom.

WorldCom's proposed change-of-law provision, which is discussed in Issue IV-113, is properly applied to all changes in relevant law, including changes related to UNEs, and should be adopted. There is no reason to treat this subset of changes in law any differently than modifications to the laws that govern other aspects of the interconnection agreement, and Verizon has failed to justify carving out network elements for separate and disparate treatment.[60] Verizon's proposal to include a separate

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[59] WorldCom notes that Verizon has also included this new language in Issue I-1.

[60] WorldCom has proposed a specific change-of-law provision applicable to implementation of the ISP Remand Order because of the unique nature of that issue and the continued litigation that ISP-bound traffic is likely to engender. Verizon has failed to demonstrate a similar need regarding UNEs.

change-of-law provision for UNEs that imposes numerous restrictions on UNE availability, see Verizon Proposed ICA §§ 1.1-1.6, is unreasonable and anti-competitive and should be rejected.

The UNE-specific change-of-law provisions that Verizon has proposed are anti-competitive. In Sections 1.1 and 1.5 of its proposed agreement, Verizon reserves the right to discontinue offering, and to disconnect, network elements that Verizon unilaterally determines it is no longer required to provide WorldCom under applicable law. Specifically, Verizon has asserted that it should not have to negotiate with WorldCom in this situation, and that, in the absence of a specific regulatory transition period, within 45 days it can simply terminate access to the UNE it believes it is no longer required to provide. See Verizon Br. at UNE-70. Termination of access to a UNE jeopardizes WorldCom's ability to serve its customers, and it would be improper to give a competitor this ability to disrupt WorldCom's business operations. See WorldCom Br. at 152-53; WorldCom Exh. 12, Direct Test. of C. Goldfarb, A. Buzacott, and R. Lathrop at 24.

Even if it were appropriate for Verizon to decide unilaterally to terminate access to a UNE – and it plainly is not – the 45-day grace period that Verizon has proposed is unreasonably short. Although Verizon claims that 45 days is sufficient time for WorldCom to petition the Commission (or the Virginia Commission) regarding Verizon's proposed schedule, and to notify customers, this is plainly not the case. First, there is absolutely no justification for putting the onus on the competitive carrier to file an emergency petition seeking to block what it believes is Verizon's unilateral misinterpretation of the law. Nor is it clear that a commission could, or would

necessarily, resolve the dispute within 45 days in any event. If Verizon abruptly terminated access to UNEs after 45 days, and the relevant commission later deemed Verizon's interpretation of law incorrect, there would be no way to undo the damage caused by the disruption of service to WorldCom's customers. Particularly with respect to a new competitive carrier like WorldCom, the loss of customer goodwill that would be caused would constitute irreparable harm. Finally, even if Verizon's interpretation of law were correct, and even if a commission so stated within 45 days, WorldCom would not have sufficient time to replace a withdrawn UNE. WorldCom could be serving thousands of customers using a UNE Verizon decides to terminate, and if the Commission did confirm that a given UNE need not be provided, a transitional period considerably greater than Verizon's proposed 45 days is required to prevent interruption of service. Tr. 10/05/01 at 681 (Lathrop, WorldCom). Because the amount of time required will vary depending on the nature of UNE and the number of customers served through that UNE, the precise amount of time allowed should be negotiated through the general change of law provision. If the parties cannot agree, either would be free to seek commission intervention.

The unreasonableness of Verizon's proposed language is highlighted by the asymmetry between the procedures that Verizon has proposed when it is allowed to discontinue providing a UNE, and those that would apply when it is required to begin providing one. While Verizon's proposed language gives it the right to terminate services unilaterally and without limitation, Verizon fails to provide for swift implementation of changes in law that add to its obligations to provide UNEs. Instead, Verizon proposes an open-ended negotiation process to define the contract terms of any

network elements that Verizon must provide in such a situation. The carriers' abilities to respond to changes in law should not turn on the identify of the carrier that benefits from the change, and the Commission should therefore reject Verizon's proposed language and instead subject any changes in the laws governing UNEs to the general change-of-law process discussed in Issue IV-113.

Issue VI-3(B) (Network Elements – Technical Standards and Specifications)

As WorldCom explained in its opening brief, the language proposed pursuant to Issue VI-3(B) ensures that WorldCom obtains the technical data required by 47 C.F.R. § 51.307(e), and therefore should be adopted in this proceeding. That language was previously agreed to, and has been included in every MCImetro/BellAtlantic-South interconnection agreement, including the most recent agreement entered into in Maryland, as a negotiated provision.

Verizon has raised no serious objection to inclusion of this provision. Although Verizon again complains that the clause uses the undefined term "parity," see Verizon Br. at UNE-130, during the hearing in this matter Verizon's witness conceded that if that word was replaced with the phrase "at least equal in quality to that which the incumbent LEC provides to itself" – a substitution WorldCom would accept – this objection is mooted. Tr. 10/03/01 at 121-122 (C. Antoniou, Verizon).

Verizon also complains extensively about WorldCom's proposed section 3.2.2. See Verizon Br. at UNE 131-132. Although WorldCom believes that provision remains as valid today as it did when Verizon agreed to it in the past, as WorldCom indicated during the hearings it would not object to removal of that provision. See Tr. 10/03/01 at 151 (R. Lathrop, WorldCom). Verizon is correct that the paragraph was not removed from the November DPL – as a general matter, unless the parties expressly agreed to alter a proposal WorldCom did not change the proposal made in its DPL. WorldCom reiterates, however, that it does not object to removal of section 3.2.2.

V. UNE ADVANCED SERVICES

Issue III-10 (Advanced Services Requirements)

As WorldCom explained in its opening brief, the only remaining dispute between the parties is whether language assuring nondiscriminatory access to loops in a Next Generation Digital Loop Carrier configuration should be included in the Agreement. In its brief, Verizon offers no meaningful opposition to this provision. Instead, it states that it is "premature" because it has not yet made any "definitive" decisions to provide DSL-based services out of remote terminals. But WorldCom's proposed language only applies "[i]f and when" Verizon provides deploys such equipment.

More troubling is Verizon's objection to WorldCom's proposal on the ground that if Verizon does upgrade its network, "it will provide access on a nondiscriminatory basis to the extent required by applicable law." Verizon Br. at ASP-8. This suggests that Verizon may later argue that WorldCom's proposal goes beyond the requirements of applicable law (although that is contrary to what its counsel stated on the record of this proceeding). Thus, as with other provisions, adoption of this provision will provided needed clarity and prevent future disputes about what the law requires. For these reasons, the Commission should order inclusion of this substantively noncontroversial provision.

Issue IV-28 (Collocation Requirements)

In our opening brief, WorldCom explained that no substantive dispute with Verizon exists with respect to WorldCom's proposed language. In particular, Verizon does not dispute that it is obliged to comply with this Commission's recent Collocation Order, that WorldCom's language fairly characterizes that Order, or that the particular requirements concerning the collocations of DLSAMs and splitters accurately characterizes Verizon's legal obligations. Accordingly, WorldCom expressed concern that Verizon's retraction of its agreement to specific language on this issue reflected its intent to decline to honor the Commission's Order while it is on appeal.

Nothing in Verizon's brief alters WorldCom's concerns. Instead, Verizon merely recites the vague language it has introduced in its Collocation attachment, which says only that Verizon will provide collocation only to the extent required by applicable law, and asserts that this generic language is sufficient. Verizon's refusal to reduce to writing the fact that currently "applicable law" is the Commission's Collocation Order, however, appears to confirm WorldCom's concern that Verizon does not intend to comply with that Order (and confirms more generally the need for specific, as opposed to general, contract language). Because Verizon makes no argument of substance against WorldCom's proposed language, the Commission should adopt WorldCom's proposal.

VI. PRICING TERMS AND CONDITIONS

Issue I-9 (Capping CLEC Rates)

The Commission should reject Verizon's proposal to cap CLEC rates for certain services at the level of Verizon's rates for similar services. Verizon seeks a Commission declaration that WorldCom's rates for services that are not typically included in the interconnection agreement must always be at or below the level of Verizon's rates for similar services, but has failed to identify any process for reviewing the reasonableness of those rates, and apparently intends to reserve to itself the discretion to judge the reasonableness of WorldCom's rates. For the reasons set forth below, Verizon's proposal is unreasonable, and its language should not appear in the interconnection agreement.

Verizon's proposal would improperly use the interconnection agreement to modify rates that are wholly outside the interconnection agreement and the Act's interconnection regime. The services to which Verizon's proposed rate cap would apply are intrastate switched access charges, transport facilities such as interconnection trunks, and collocation space. See WorldCom Br. at 163-64. The Act does not require WorldCom to provide these services, and the rates for these services are not typically included in interconnection agreements. Instead the rates are set in WorldCom's tariffs. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 3. The interconnection agreement should not be used to impose limits on rates that are outside the scope of the agreement, and Verizon's proposal to create such a cap should therefore be rejected.

Even if it were appropriate to include such a provision in the agreement, Verizon's proposed rate cap should be rejected because it is a prophylactic rule that ignores the differences between the carriers' networks and fails to require a measured

evaluation of the reasonableness of WorldCom's rates. As explained in WorldCom's testimony, it would be unreasonable to require parity between WorldCom's rates and Verizon's rates given the lack of parity between the carriers' networks. As WorldCom witness Argenbright explained,

> WorldCom is a new entrant, with a nascent network that is not yet fully deployed. In contrast, Verizon is an incumbent monopolist, with a fully deployed network. In addition, the two companies utilize different network architectures. Finally, Verizon's monopoly status and rate of return regulation may have allowed it to fund the cost of its network and network architecture through past subsidies and monopoly overcharges. As a new entrant, WorldCom has not had the benefit of building its network with the certainty of a guaranteed rate of return. Therefore, even if both carriers provide a service such as switched access, the means of providing the service is hardly identical. WorldCom's costs may or may not exceed Verizon's costs, and there may well be variants in the quality of the service – for example, WorldCom's service may be superior in terms of functionality and/or quality.

WorldCom Exh. 1, Direct Test. of M. Argenbright at 7. Verizon's proposal does not envision any comparison of the carriers' networks or means of providing the services, or any other inquiry into the reasonableness of WorldCom's rates, but instead simply presumes that the WorldCom rates are unreasonable if they exceed Verizon's rates.

Further, Verizon's proposal improperly gives Verizon the right to review the reasonableness of its competitor's rates, and the discretion to determine whether an exception to its proposed price cap should be granted. WorldCom does not ordinarily justify its rates to its competitors, and it would be unprecedented and unlawful to create such a right for Verizon in Virginia. See WorldCom Exh. 1, Direct Test. of M. Argenbright at 6.[61] The fact that Verizon has not identified a process or factors to

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[61] The VSCC ordinarily conducts this reasonableness determination when it reviews WorldCom's tariffed rates for these services. See WorldCom Br. at 162-63; WorldCom Exh. 1, Direct Test. of M. Argenbright at 6.

consider when judging whether WorldCom's rates are reasonable (other than a comparison of Verizon's rates and costs for providing the services through a different network architecture) makes its proposal even more objectionable.

Finally, Verizon's assertion that the VSCC caps CLECs' retail rates at the level of Verizon's retail rates is incorrect. Although Verizon has failed to provide a citation for this argument, it presumably refers to 20 Va. Admin. Code § 5-400-180, which governs the rates for new entrants' local exchange service offerings. That regulation does not create the type of mandatory price cap that Verizon has proposed, but instead gives the VSCC the discretion to allow a new entrant to charge rates that exceed the highest tariffed rates of any ILEC offering comparable services within the state, provided that pricing the services at the higher rates is not contrary to the public interest. See 20 Va. Admin. Code § 5-400-180. In sum, the Commission should reject Verizon's proposed price cap for the reasons discussed above, in WorldCom's initial brief, and its witnesses' testimony.

Issues II-18 and IV-85 (Choosing Between Tariffs and Interconnection Agreements)

The interconnection agreement, and not a potentially conflicting tariff, should govern the rates, terms and conditions applicable to services and other items provided pursuant to the interconnection agreement, and any changes to those rates, terms, and conditions should be mutually discussed and agreed upon, as opposed to being subject to revision through a tariff process. As explained in WorldCom's brief and its testimony, allowing Verizon to use tariffs to trump the interconnection agreement would eviscerate the Act's interconnection scheme, and would subvert the Act's approval and review process by potentially insulating the terms and rates governing the parties' interconnection from federal court review. See WorldCom Br. at 168-69; WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 7. Moreover, such an arrangement would introduce a great deal of uncertainty into the interconnection agreement and would prevent WorldCom from knowing whether the agreed-to or arbitrated terms and rates will apply for the duration of the agreement. See WorldCom Br. at 169-70; WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 8. In its brief, Verizon attempts to defend its proposal by asserting that: WorldCom's proposal would allow WorldCom to veto tariffs and ignores CLEC participation in the tariffing process; WorldCom seeks arbitrage, so that it may choose more favorable rates; a New York PSC decision supports its proposal; and that the Verizon proposal is not an end-run around section 251 of the Act. As explained below, Verizon's arguments are unpersuasive and the Commission should adopt WorldCom's proposed language.

Verizon mischaracterizes WorldCom's proposed language as an attempt to veto "Verizon VA's commission-approved tariff rates or other rates that have been ordered or otherwise allowed to become legally effective in Virginia." Verizon Br. at PTC-28. WorldCom has not proposed that it be allowed to veto tariffs, but instead seeks only to ensure that Verizon cannot use tariffs to veto and/or override the provisions of the interconnection agreement.[62] If a state commission orders (in a tariff proceeding or other rate-making proceeding) that certain rates should apply to a category of services that have been priced differently pursuant to the interconnection agreement's pricing schedule, the parties could incorporate those new rates into the interconnection agreement through the change-in-law provision, which provides for the incorporation of new laws and commission orders. See WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk and L. Roscoe at 9-10. Allowing such modifications to simply take place upon the filing of the tariff would introduce uncertainty into the interconnection agreement and would unlawfully allow Verizon to unilaterally alter the terms of the interconnection agreement. See id. Moreover, Verizon's proposal would draw into question the validity of the tariff itself, as its reasonableness may turn on its consistency with the parties' interconnection agreement. See 208 Order, 15 F.C.C.R. 12946 ¶ 23 ("[I]t seems evident that any federal tariff purporting to govern inter-carrier compensation for ISP-bound traffic could be reasonable only if it mirrors any applicable terms of the party's interconnection agreement, as construed by the appropriate state commission.").

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[62] Verizon's professed concerns that other carriers could collectively "veto" and hence nullify the tariff process by opting into the agreement are therefore irrelevant. See Verizon Br. at PTC-29.

Verizon's assertion that CLECs "actively participate in tariff filings (and other dockets in which rates may be set)" ignores the fact that such proceedings are markedly one-sided. CLECs' participation in such proceedings is minimal, and there is no guarantee that the reviewing body will consider the arguments that the CLECs have raised when it decides whether to approve or reject the tariff changes. See WorldCom Br. at 168; WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 10. That WorldCom or other CLECs can participate in the tariff filing does not render the eventual tariff mutually acceptable to the parties. Nor is a tariff filing rendered mutual between the parties simply because it is subjected to state or federal commission review. Indeed, WorldCom's witnesses testified that "during the years that we have worked in the industry, we have never known incumbent LECs to consult or negotiate with competing LECs when setting the terms of their tariffs." WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk and L. Roscoe at 10. Verizon's proposal that it be allowed to "add, modify, or withdraw its Tariff(s) at any time, without the consent of, or notice to, the other Party," Verizon Proposed ICA § 1.3, further debunks Verizon's assertion that tariff charges are mutual. This method of modifying terms is fundamentally different than the process applicable to modifications in the interconnection agreement.

For these reasons, WorldCom's proposal is not an attempt to preserve an arbitrage opportunity, but is instead a means of protecting the integrity of the interconnection agreement. Specifically, WorldCom's proposed language would make clear that the agreed-to or arbitrated rates and terms of the interconnection agreement would apply for the duration of the agreement, unless they are changed in the manner prescribed by the

interconnection agreement. Accordingly, WorldCom's proposal would not "lock in" rates that should be updated to reflect changes in the legal landscape, but would simply ensure that the process by which such modifications are incorporated into the agreement is mutual and fair. See WorldCom Br. at 166-70.

Verizon's reliance on a New York PSC decision is misplaced. At the outset, the New York commission decision is not binding on this Commission or in Virginia. Moreover, the Connecticut Department of Public Utility Control has reached a contrary result, holding that tariffed rates will not supercede those rates set forth in an interconnection agreement.[63] Further, although the New York Commission found that the "tariff approach is entirely suitable for implementing the interconnection and access requirements Verizon should bear under the Act," it failed to conduct any analysis of the Act and its requirements. 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., NYPSC Case 01-C-0095, at 4 (July 30, 2001). Moreover, that commission's statement that "as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship," does not contradict WorldCom's proposal. Id. at 4. WorldCom does not dispute that tariffs are one way to establish a commercial relationship. Indeed, the Act itself contemplates that

[63] See MCI Worldcom, Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SNET, No. 00-04-35, (July 11, 2001). On Issue 4 of that arbitration, the arbitrator specifically ruled against SNET's claim that the pricing table should simply reference SNET's tariff pricing. Ruling in WorldCom's favor, the Department let stand the arbitrator's order to include the following language: "The prices charged to WCOM for elements are as specified in the Appendix Pricing."

carriers may file Statements of Generally Available Terms ("SGATs") from which a carrier could purchase interconnection if it chose not to negotiate an agreement. However, the Act very clearly established a process for negotiating and (if necessary) arbitrating interconnection agreements – not tariffs. While carriers are free to purchase from SGATs or, where applicable, Verizon's tariffs, those carriers that choose the negotiation/arbitration process set out in the Act should be entitled the result of that process – namely a contract – not a Verizon tariff. Likewise, those carriers are entitled to the level of certainty that comes with such an agreement, and should not be forced to endure the uncertainty of continuous litigation or changing business terms at the whim of a competitor that has no incentive to deal with those carriers.[64] In any event, the New York PSC recognized that there may be situations in which "a tariff filing's generic resolution represents a significant change or does not adequately address the specific provisions in the interconnection agreements," id. at 6, and found that in such situations, tariff changes should be subject to the change-of-law provisions of the Agreement if good cause can be shown. Id. This supports WorldCom's assertion that the terms of the Agreement should control whether, and the manner by which, the parties assimilate any tariff changes.

Verizon's proposal also unlawfully circumvents the §§ 251 and 252 processes and conflicts with this Commission's decision in the 208 Order. In the Act, Congress

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[64] As stated above, WorldCom does not dispute that changes in rates, terms, and conditions that are ordered by a state commission as a result of a docketed proceeding should be incorporated into the parties' interconnection agreement (whether or not those changes are reflected in a revised tariff). WorldCom's proposal simply seeks to ensure that neither party can unilaterally avoid its obligations under the Agreement. Instead, the parties should reach mutual agreement on any relevant changes to their Agreement.

established a scheme that requires the parties to "negotiate the particular terms and conditions of agreements," and requires the parties to arbitrate if a voluntary agreement cannot be reached. 47 U.S.C. §§ 251, 252. Verizon's proposal would unravel this scheme by allowing Verizon to file tariffs with a state commission irrespective of the obligations memorialized in a hard-fought, binding agreement. It would be clearly inconsistent with the Act to permit Verizon to use a tariff filing to escape the rates that, pursuant to the requirements of the Act, were incorporated into the Agreement. See WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 8-9. In that respect, Verizon's proposal also violates the principle recognized in the 208 Order, that "[u]sing the tariff process to circumvent the section 251 and 252 processes cannot be allowed." 208 Order ¶ 23. Expressly authorizing such a result in the interconnection agreement does not alter the unlawfulness of permitting tariffs to trump the Act's interconnection process.

In sum, Verizon's proposal unlawfully allows Verizon to unilaterally nullify or supersede terms of the interconnection agreement through tariff filings, and introduces a considerable degree of uncertainty into the interconnection agreement. Changes to the interconnection agreement's rates and terms should be handled through the agreement's change-in-law provisions and WorldCom's proposed language regarding the term and means of changing the agreement's rates.[65] The Commission should therefore accept WorldCom's proposed Part A Sections 1.3.1 through 1.3.3.

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[65] That language, which appears at Attachment I, Section 1.1.1 of WorldCom's proposed agreement, is discussed in Issue IV-30, infra.

In addition, Verizon has listed several provisions in the DPL for this issue that are irrelevant to both the tariff vs. interconnection agreement discussed above and the general pricing terms and conditions issues discussed infra. For example, Verizon's proposed section 1.3 contains an integration clause for the contract, which was addressed in Issue IV-102,[66] and Verizon's attempt to slip this language into this section is inappropriate. Similarly, Verizon's proposed sections 4.1 and 4.2 are irrelevant to the pricing terms and conditions issues, and are different from the choice-of-law provisions to which Verizon agreed in its May 31, 2001 Answer regarding Issues IV-105 and IV-96. Verizon's proposed sections 4.3 and 4.4 are addressed under the force majeure clause to which Verizon agreed in Issue VI-2(B), and do not reflect that agreed-to language. Finally, Verizon's proposed sections 4.5 and 4.6 are change-of-law provisions, which are addressed in Issue IV-113 and are irrelevant to this issue. In the event that the Commission determines that Verizon's proposed resolution of the tariff/interconnection agreement issue should prevail, it should not inadvertently endorse these irrelevant (and unsubstantiated) provisions.

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[66] In its Answer to the WorldCom Petition for Arbitration, Verizon agreed to the first sentence of this provision and to a modified version of the second sentence.