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FILE NO:

July 10, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Jeffrey Dygert
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

**Verizon Arbitrations
CC Docket No. 00-218 et al.**

Dear Mr. Dygert:

This is in response to WorldCom's letters to you dated (i) May 17, 2002, transmitting a copy of the Supreme Court's recent decision in *Verizon Communications, Inc. v. FCC*¹ (*Verizon Communications*), and (ii) June 11, 2002, transmitting copies of the *NY/GNAPs/Verizon Order*² and the *CA GNAPs/Verizon Order*.³

I. *Verizon Communications*

¹ No. 00-511, ___ U.S. ___, 122 S.Ct. 1646 (May 13, 2002).

² *Petition of Global NAPs, Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York*, Case No. 02-C-0006, Order Resolving Arbitration Issues (N.Y. Public Service Comm'n May 24, 2002) ("*NY GNAPs/Verizon Order*").

³ *In re Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Co. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application No. 01-11-045, Final Arbitrator's Report (Cal. Pub. Util. Comm'n May 15, 2002) ("*CA GNAPs/Verizon Order*").

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WorldCom asserts that *Verizon Communications* “directly supports WorldCom’s position on issues III-6 and III-7 [concerning combinations of unbundled network elements],” and that it “removes any doubt which may have existed regarding the validity of WorldCom’s proposed terms.” WorldCom is wrong.

Although the Supreme Court’s decision reinstates Commission Rules 315(c)-(f), 47 C.F.R. § 51.315(c)-(f), it specifically recognizes that “the duties imposed under the rules are subject to restrictions limiting the burdens placed on the incumbents.”⁴ WorldCom’s proposed language ignores those restrictions, and would essentially require Verizon to combine network elements in all circumstances except for “novel combinations.”⁵ WorldCom’s broad language is not supported by *Verizon Communications* or the Commission’s rulings.

For example, the Supreme Court held that an ILEC’s duty to combine network elements “arises only if the requested combination does not discriminate against other carriers by impeding their access, and only if the requested combination is ‘technically feasible.’”⁶ As to the latter restriction, the Supreme Court noted that is meant to preserve network reliability and security, and “a combination is not technically feasible if it impedes an incumbent carrier’s

⁴ *Verizon Communications*, 122 S.Ct. at 1685.

⁵ The pertinent provisions of WorldCom’s proposed language are as follows:

Interconnection Agreement 2002, Attachment III, Section 2.4

Except as provided in Section 2.4.1 below, Verizon shall provide each Network Element individually or in combination with any other Network Element or Network Elements.... At MCI’s request, except as noted below, Verizon shall provide Combinations of Network Elements ordinarily combined in its network, whether or not those Network Elements are currently combined in Verizon’s network. Verizon may impose cost-based charges as specified in the pricing provisions of this agreement for any work reasonably undertaken to combine Network Elements at MCI’s request that were not previously provided.

2.4.1 Notwithstanding Section 2.4 above, Verizon shall not be required to provide Network Elements in novel combinations, that is, configurations that are not present somewhere in Verizon’s network....

⁶ *Verizon Communications*, 122 S.Ct. at 1685.

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ability 'to retain responsibility for the management, control, and performance of its own network.'"⁷ WorldCom's proposed language does not include either of these restrictions.

Moreover, under the terms of the Commission's prior orders, an ILEC is obligated to provide loop/transport combinations only if the requesting carrier uses those elements to provide a substantial amount of local exchange service. See *Supplemental Order Clarification, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 15 FCC Rcd 9587 (2000). Although the principal application of the *Supplemental Order Clarification* necessarily has been to existing loop/transport combinations, both the express terms and reasoning of the Commission's order apply to new loop/transport combinations as well. See Verizon's June 11, 2002 Notice of Ex Parte and attached document (addressing application of the *Supplemental Order Clarification* to new combinations) (Attachment A). Indeed, it could not otherwise. The Commission's order expressly acknowledged both that an express finding of impairment would have to be made before ILECs could be required to provide loop/transport combinations (whether existing or new) under circumstances where they are not used to provide a significant amount of local exchange service, and that the existing record did not allow it to make such a finding. *Id.* Accordingly, any order issued here should make clear that the substantial local usage requirement applies to both existing and new loop transport combinations. WorldCom's proposed language, however, does not do so.

Verizon's proposed language, by contrast, specifically provides that Verizon will provide combinations in accordance with applicable law, and therefore few changes are required to reflect the Supreme Court's decision in *Verizon Communications*. Those few changes are shown in Attachment B. In fact, prior to the Supreme Court's decision, Verizon already offered new UNE-platform combinations for new lines and second lines to existing customers, and also provided existing loop/transport combinations consistent with the terms of the Commission's prior orders. Moreover, consistent with the change in applicable law as a result of the Supreme Court's decision, Verizon already has announced that it will also accept orders for new loop/transport combinations (subject to the availability of facilities) in accordance with revised guidelines and procedures set forth in the Verizon Wholesale Customer Handbook. See Verizon's May 30, 2002 industry announcement (contained on Verizon's web site and at Attachment C). Verizon will also process requests for other combinations not currently offered by Verizon through the existing bona fide request process, described in the Verizon Wholesale Customer Handbook (contained on the Verizon web site and at Attachment D).

⁷ *Id.*

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WorldCom is equally wrong in suggesting that *Verizon Communications* somehow invalidates § 1.2 of Verizon's proposed UNE attachment. That section provides that Verizon has no obligation to construct new facilities to offer an unbundled network element or combination.

Although the Supreme Court held that Verizon must provide combinations, there is absolutely nothing in its decision that even suggests that Verizon must first construct new facilities and then combine them for WorldCom. Instead, as the Eighth Circuit made clear, a CLEC has "access only to an incumbent LEC's existing network--not to a yet unbuilt superior one."⁸ The Commission has expressly adopted this view with respect to dedicated transport:

... we do not require incumbent LECs to construct new transport facilities to meet specific competitive point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.⁹

There is no legal basis for a different finding related to other UNEs. Accordingly, there is no basis for WorldCom's attempt to expand the decision in *Verizon Communications* to include an additional requirement for Verizon to construct new facilities for WorldCom.

Of course, as noted above, Verizon will provide new UNE-platform combinations at new and existing customer locations even though retail service has not been activated over those facilities.¹⁰ Moreover, Verizon has gone even further and accommodated CLEC requests to install line cards and to cross connect new UNEs with existing multiplexors. Verizon's policy in this regard previously has been affirmed by the Commission in various section 271 proceedings,¹¹ and is set out in Attachment E (page 4 of attachment to October 25, 2001 Notice of Ex Parte).

⁸ *Iowa Utilities I*, 120 F.3d at 813.

⁹ *UNE Remand Order* at ¶ 324.

¹⁰ See Verizon VA UNE Direct Testimony Panel (UNE Panel) at 4.

¹¹ See, e.g., *In the Matter of Application of Verizon Pennsylvania Inc. Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region InterLATA Services in Pennsylvania*; Memorandum Opinion and Order, CC Docket No. 01-318, FCC 01-269 (Sept. 21, 2001); *In the Matter of Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, Memorandum Opinion and Order, CC Docket No. 01-100 (2001).

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Contrary to WorldCom's claims, there is no basis for requiring anything more.

II. State Commission Proceedings

WorldCom submits two recent "decisions" of the New York and California Commissions that it asserts "directly support WorldCom's position on Issues I-1 [allocation of financial responsibility associated with single POI] and I-6 [compensation for virtual NXX traffic] in the above-captioned docket." Neither supports WorldCom's contract proposals relative to these two issues in Virginia.

First, in citing to the outcome in the *NY GNAPs/Verizon Order*, WorldCom mistakenly relies on precedent from a state that determined to adopt LATA-wide calling for intercarrier compensation purposes many years ago in a generic docket.¹² That is not the case in Virginia. Moreover, the New York Commission in the *NY GNAPs/Verizon Order* considered Verizon's concerns about allocation of financial responsibility associated with a CLEC's single POI "legitimate," but it was "disinclined to disturb" its existing rules in light of the upcoming *Inter-carrier Compensation NPRM*.¹³

Similarly, a review of the record resulting in the *CA GNAPs/Verizon Order* reveals that the arbitrator favored Verizon's proposal to allocate financial responsibility associated with a CLEC's single POI.¹⁴ Although the final decision in California rejects Verizon's proposed allocation, it is based on the mistaken conclusion that Commission Rule 703(b) presents a "road block" to implementing Verizon's proposal pending Commission action in the *Inter-carrier Compensation NPRM*.¹⁵ Moreover, the final decision in *CA GNAPs/Verizon*

¹² See *Omnibus Proceeding to Investigate Telephone Numbering Resources*, Order Instituting Wide Area Rate Centers and Number Pooling, Case 98-C-0689 (issued Dec. 2, 1999).

¹³ *NY GNAPs/Verizon Order* at 9-10, n. 13.

¹⁴ See in the *Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company and Verizon California Inc Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.01-11-45 and A.01-12-026, Draft Arbitrator's Report (rel. April 8, 2002).

¹⁵ Other state commissions have allocated financial responsibility similar to what Verizon proposes consistent with Rule 703(b). See, e.g., *In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.*, Order, Docket No. 2002-66-C Order No. 2002-450, at 55-59, South Carolina Public Service Commission (rel. June 12, 2002) (reaffirming conclusion "that a CLEC is responsible for paying for facilities necessary to carry calls from distant local calling areas to a single POI . . ."); *In the Matter of the Petition of Global NAPs*,

(continued...)

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Order (Attachment F) supports Verizon's contention that a CLEC should provide an ILEC compensation when using the ILEC's network to provide what is effectively a toll-free calling service through assignment of virtual NXX codes.¹⁶

Moreover, WorldCom pointedly omits additional authority from this Commission itself that lends strong support to Verizon's view that it is entitled to compensation under these circumstances. Specifically, since the filing of reply briefs, the Commission's enforcement bureau has reaffirmed that, even in the context of CMRS traffic, an ILEC is entitled to compensation when it carries calls outside its originating local calling area to deliver that call to a CMRS provider.¹⁷ Specifically, the Commission has concluded that under these circumstances the ILEC is providing a toll service, and is entitled to charge its end user customer toll charges for any such traffic. If the CMRS provider does not want the end user to be assessed toll charges for these calls, then it is up to the CMRS provider to compensate the ILEC directly.¹⁸ Likewise, under the circumstances at issue here, the CLEC effectively disguises the location of the point at which the traffic is handed off to the CLEC and by doing so deprives Verizon of the ability to recover toll charges from its end user customers. Under these circumstances, it is the CLEC who is receiving a toll service from Verizon and, under the terms of the Commission's prior orders, it is the CLEC that should compensate Verizon for the service it is receiving.

Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint, et al., Arbitration Award, Case No. 01-2811-TP-ARB (P.U.C. OH. May 9, 2002), at 7 ("*OH GNAPs/Sprint Order*") ("[a]warding this issue to Ameritech and Sprint will not result in GNAPs being forced to mirror the ILECs' networks. Instead, this Award will merely ensure that GNAPs will have to balance costs and benefits rationally when designing and deploying its network in accordance with the Act and the FCC's interconnection, transport, termination, and pricing rules.").

¹⁶ Many state commissions have recognized that, based on the actual end points of the call, virtual NXX traffic is not traffic that is subject to reciprocal compensation pursuant to § 251(b)(5) of the Act. See, e.g., Verizon Post-Hearing Brief at IC-15 through IC-22; *OH GNAPs/Sprint Order* at 8 (finding that if a call utilizing virtual NXX service originates or terminates outside ILEC local calling area, then the call is subject to access charges).

¹⁷ See *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, No. EB-00-MD-017, Mem. Op. and Order at 12-13 (rel. Feb. 4, 2002), citing, *TSR Wireless, LLC v. U S West Communications, Inc.*, Mem. Op. and Order, 15 FCC Rcd 11166, 11177 (2000), *aff'd sub. nom.*, *Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). Unlike the circumstances at issue here, in the CMRS context the Commission's rules include the entire MTA in determining whether reciprocal compensation applies. Here, in contrast, the relevant local calling area for purposes of determining whether reciprocal compensation applies is the local calling area as defined by the state commission.

(continued...)

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Sincerely yours,

A handwritten signature in cursive script that reads "Kelly L. Faglioni".

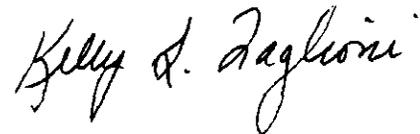
Kelly L. Faglioni

Consequently, the Commission's conclusion that the ILEC is entitled to compensation for carrying calls outside its originating local calling area applies even more strongly here than in the wireless context.

¹⁸ *Id.*

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Sincerely yours,

A handwritten signature in cursive script that reads "Kelly L. Faglioni".

Kelly L. Faglioni

cc: Dorothy T. Attwood
Secretary (4 copies)
Jodie L. Kelley, counsel for WorldCom
Mark A. Keffer, counsel for AT&T
J.G. Harrington, counsel for Cox

Consequently, the Commission's conclusion that the ILEC is entitled to compensation for carrying calls outside its originating local calling area applies even more strongly here than in the wireless context.

¹⁸ *Id.*

Attachment A

W. Scott Randolph
Director – Regulatory Affairs



Verizon Communications
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June 11, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Ex Parte: Review of the Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers – CC Docket No. 01-338**

**Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996 - CC Docket No. 96-98**

**Deployment of Wireline Services Offering Advanced Telecommunications
Capability – CC Docket No. 98-147**

Dear Ms. Dortch:

On June 10, 2002, Don Evans of Verizon provided the attached document to Dorothy Attwood and Michelle Carey of the Wireline Competition Bureau. The attachment outlines the reasons why the terms of the *Supplemental Order Clarification* (15 FCC Rcd 9587(2000)) and its reasoning make clear that the limitation on ILEC's obligation to provide loop/transport combinations applies to new combinations as well.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Scott Randolph".

W. Scott Randolph

Attachment

cc: Dorothy Attwood
 Michelle Carey

Restrictions on Special Access Bypass Apply to New Combinations

In the *Supplemental Order Clarification*,¹ the Commission confirmed its determination that ILECs are not required to provide combinations of unbundled loops and dedicated interoffice transport unless the requesting carrier uses those elements to provide a substantial amount of local-exchange service. See 15 FCC Rcd at 9591-92, ¶ 7. To date, the principal application of the *Supplemental Order Clarification* necessarily has been to conversion of existing special access circuits, because ILECs have been under no obligation to provide new combinations under existing law.² Nonetheless, both the terms of the *Supplemental Order Clarification* and its reasoning make clear that the limitation on ILECs' obligation to provide loop/transport combinations applies to new combinations as well.

- The *Supplemental Order Clarification* by its terms squarely applies to use of all loop/transport combinations – not just existing combinations – to provide special access service.
 - “[A]llowing requesting carriers to use loop-transport combinations solely to provide exchange access service to a customer, without providing local exchange service, could have significant policy ramifications.” *Supplemental Order Clarification*, 15 FCC Rcd at 9588, ¶ 2.
 - “[P]ermitting the use of combinations of unbundled network elements in lieu of special access services could cause substantial market dislocations and would threaten an important source of funding for universal service.” *Id.*, 15 FCC Rcd at 9592, ¶ 7.
 - “IXCs may not substitute an incumbent LEC’s unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.” *Id.* ¶ 8.
- The Commission correctly concluded that the “exchange access market occupies a different legal category from the market for telephone exchange service,” and that the Commission had not determined that the “impair” standard of section 252(d)(2) was satisfied with respect to provision of UNE combinations “solely or primarily for use in the exchange access market.” *Id.*, 15 FCC Rcd at 9594-95, ¶ 14.
 - On the record before it, the Commission was unpersuaded that denial of access to UNE combinations for the provision of access would “impair” carriers’ ability to provide special-access services. *Id.* at 9596, ¶ 16.

¹ *Supplemental Order Clarification, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 15 FCC Rcd 9587 (2000).

² The Supreme Court’s recently reinstated the Commission’s “new combinations” rules. See *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002).

- The Commission correctly concluded that it had to complete its “impair” analysis *before* requiring access to loop/transport combinations to provide special access. *See id.* (“[W]e must gather evidence on the development of the marketplace for exchange access . . . *before* we can determine the extent to which denial of access to network elements would impair a carrier’s ability to provide special access services.”) (emphasis added).
- The Commission’s conclusions jibe with the D.C. Circuit’s statutory analysis in *United States Telecom Association v. FCC*, Nos. 00-1012, *et al.*, slip op. at 18 (D.C. Cir. May 24, 2002) (holding that the 1996 Act requires “a more nuanced concept of impairment” that takes into account “specific markets or market categories.”).
- The Commission found that permitting special access bypass would undermine both special and switched access revenues, and by doing so interfere with universal-service and access-charge reform efforts. *Id.* at 9592, ¶ 7.
 - The Commission correctly recognized that the availability of loop/transport combinations to provide special access would undermine both special and switched access. *See id.* (“[A]llowing the use of combinations of unbundled network elements for special access could undercut universal service by inducing IXCs to abandon switched access for unbundled network element-based special access on an enormous scale.”).
 - That conclusion applies to all loop-transport combinations to provide special access, not just existing combinations. New loop/transport combinations could be substituted for both special and switched access services just as existing ones could.
- The Commission found that providing access to such combinations at UNE rates would undermine existing facilities-based competition in the market for special access services. *Id.* ¶ 18.
 - That conclusion applies to all loop/transport combinations to provide special access, not just existing arrangements. *Id.* (“An immediate transition to unbundled network element-based special access could undercut the market position of many facilities-based competitive access providers.”).

Attachment B1

11.7.2 Without limiting Verizon's rights pursuant to Applicable Law or this Agreement to terminate its provision of a Network Element or a Combination, if Verizon provides a Network Element or Combination to AT&T, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such Network Element or Combination, Verizon may terminate its provision of such Network Element or Combination to AT&T. If Verizon terminates its provision of a Network Element or a Combination to AT&T pursuant to this Section 11.7.2 and AT&T elects to purchase other services offered by Verizon in place of such Network Element or Combination, then: (a) Verizon shall reasonably cooperate with AT&T to coordinate the termination of such Network Element or Combination and the installation of such services to minimize the interruption of service to customers of AT&T; and, (b) AT&T shall pay all applicable charges for such services.

11.7.3 Nothing contained in this Agreement shall be deemed to constitute an admission by Verizon that any item identified in this Agreement as a Network Element is (i) a Network Element under Applicable Law, or (ii) a Network Element Verizon is required by Applicable Law to provide to AT&T on an unbundled basis. Nothing contained in this Agreement shall limit either Party's right to appeal, seek reconsideration of, or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance, or statute issued by the Commission, the FCC, any court, or any other governmental authority related to, concerning or that may affect a Party's rights or obligations under this Agreement or under Applicable Law.

11.7.4 Except as otherwise required by Applicable Law: (a) Verizon shall be obligated to provide a UNE or Combination pursuant to this Agreement only to the extent such UNE or Combination, and the equipment and facilities necessary to provide such UNE or Combination, are available in Verizon's network; (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination.

11.7.5 Except as otherwise expressly stated in this Agreement, AT&T shall access (via its own facilities or facilities it obtains from a third party) Verizon's unbundled Network Elements and Combinations specifically identified in this Agreement via Collocation in accordance with Section 13 at the Verizon Wire Center where those elements exist, and each Loop or Port shall, in the case of Collocation, be delivered to AT&T's Collocation node by means of a Cross Connection.

11.8.2 A Network Element obtained by AT&T from Verizon under this Section 11.8 may be used in combination with the facilities of AT&T only to provide a Telecommunications Service.

11.8.3 Notwithstanding anything to the contrary in this Section 11.8, Verizon shall not be required to provide a proprietary Network Element to AT&T under this Section 11.8 except as required by Applicable Law.

11.11.1 Verizon shall provide access to 4-Wire 56 kbps Loops, DS-3 Loops, NIDs, Combinations, Sub-Loops, Dark Fiber Loops, Dark Fiber IOF and House and Riser Cables subject to charges based on rates and/or rate structures that are consistent with Applicable Law (rates and/or rate structures for access to 4-Wire 56 kbps Loops, DS-3 Loops, NIDs, Combinations, Sub-Loops, Dark Fiber Loops, Dark Fiber IOF and House and Riser Cables, collectively, the "Rates" and, individually, a "Rate"). AT&T acknowledges that the Rates are not set forth in Exhibit A as of the Effective Date but that Verizon is developing the Rates and Verizon has not finished developing the Rates as of the Effective Date. When Verizon finishes developing a Rate, Verizon shall notify AT&T in writing of such Rate in accordance with, and subject to, the notices provision of this Agreement and thereafter shall bill AT&T, and AT&T shall pay to Verizon, for services provided under this Agreement on the Effective Date and thereafter in accordance with such Rate, subject to Section 20.2 of this Agreement. Any notice provided by Verizon to AT&T pursuant to this Section 11.11.1 shall be deemed to be a part of Exhibit A immediately after Verizon sends such notice to AT&T and thereafter.

.....

11.12 Combinations

Subject to the conditions set forth in Section 11.7, Verizon shall be obligated to provide combinations of unbundled Network Elements ("Combinations") including, those set forth below only to the extent provision of a Combination is required by Applicable Law. To the extent Verizon is required by Applicable Law to provide a Combination to AT&T, Verizon shall provide such Combination in a manner consistent with Applicable Law. To the extent required by Applicable Law, such Combinations may include the following Combinations as defined below; provided, however, such definitions are subject to the change of law provisions of Section 27 and shall change to the extent the FCC or other governmental body with jurisdiction over the subject matter otherwise defines or describes such Combinations.

11.12.1 UNE Platform ("UNE-P") is a combination of a Loop (including the NID), a Local Switching port, transport unbundled network elements and other Network Elements, if any, Verizon is required under Applicable Law to provide as

part of "UNE-P" and which are used to provide circuit-switched voice service. There is no collocation requirement associated with AT&T's access of UNE-P as defined herein.

11.12.1.1 Subject to the conditions set forth in Section 11.7 and this Section 11.12, AT&T may order, and Verizon shall make available, the following two (2) classes of UNE-P combinations, neither of which is subject to the conditions set forth in Exhibit B (Network Element Bona Fide Request Process):

- (i) **Migration** – The transfer of existing retail business or residence service of a Verizon Customer to the already combined UNEs that comprise the underlying retail service.
- (ii) **New** – The connection of a previously combined unbundled Loop and unbundled Local Switching port (to a specific business or residence end user customer) for the provision of local exchange and associated switched exchange access service.

11.12.2 **Enhanced Extended Link ("EEL")** consists of a combination of an unbundled Loop and unbundled Dedicated Transport, and multiplexing if required.

11.12.3 **Extended Dedicated Trunk Port** consists of a combination of unbundled Dedicated Trunk Ports and unbundled Dedicated Transport, where such unbundled Dedicated Transport may include multiplexing, and does not require AT&T to collocate. The Extended Dedicated Trunk Port is dedicated to the use of AT&T in its provisioning of local exchange and associated exchange access service.

11.12.4 Subject to Sections 11.11.1 and 11.11.2, charges, if any, for the conversion of an existing service to Network Elements (including Combinations) and/or the establishment of new UNE-P Combinations shall be as specified in Exhibit A.

Attachment B2

**WCOM CONTRACT: MARKED TO SHOW CHANGES IN CONNECTION WITH RECENT
SUPREME COURT DECISION REGARDING COMBINATIONS**

NETWORK ELEMENTS ATTACHMENT

[Issues III-6, IV-15 open; see also Section 17 (Combinations) of UNE Attachment]

1. General

- 1.1** Verizon shall provide to MCI, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, access to Verizon's Network Elements on an unbundled basis and in combinations (Combinations); provided, however, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide unbundled Network Elements (UNEs) and Combinations to MCI only to the extent required by Applicable Law and may decline to provide UNEs or Combination to MCI to the extent that provision of such UNEs or Combination are not required by Applicable Law.
- 1.2** Except as otherwise required by Applicable Law: (a) Verizon shall be obligated to provide a UNE or Combination pursuant to this Agreement only to the extent such UNE or Combination, and the equipment and facilities necessary to provide such UNE or Combination, are available in Verizon's network; and (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination; ~~and, Verizon shall be obligated to combine UNEs that are not already combined in Verizon's network.~~ Verizon shall be obligated to combine UNEs that are not already combined in Verizon's network only to the extent required by Applicable Law. Consistent with the foregoing, should MCI engage in a pattern of behavior that suggests that MCI either i) knowingly induces Verizon Customers to order Telecommunications Services from Verizon with the primary intention of enabling MCI to convert those Telecommunications Services to UNEs or Combinations, or ii) itself orders Telecommunications Services in order to induce Verizon to construct facilities that MCI then converts to UNEs or Combinations, then Verizon will provide written notice to MCI that its actions suggest that MCI is engaged in a pattern of bad faith conduct. If MCI 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) calendar days advance written notice to MCI, to institute an embargo on provision of new services and facilities to MCI. This embargo shall remain in effect until MCI provides Verizon with adequate assurance that the bad faith conduct shall cease. Should MCI 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.
- 1.3** MCI may use a UNE or Combination only for those purposes for which Verizon is required by Applicable Law to provide such UNE or Combination to MCI. Without limiting the foregoing, MCI may use a UNE or Combination (a) only to provide a Telecommunications Service and (b) to provide Exchange Access services only to the extent that Verizon is

required by Applicable Law to provide such UNE or Combination to MCI_m in order to allow MCI_m to provide such Exchange Access services.

1.4 Notwithstanding any other provision of this Agreement:

1.4.1 To the extent that Verizon is required by a change in Applicable Law to provide a UNE or Combination not offered under this Agreement to MCI_m as of the Effective Date, the terms, conditions and prices for such UNE or Combination (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Tariff of Verizon, or, in the absence of an applicable Verizon Tariff, as mutually agreed by the Parties.

1.4.2 Verizon shall not be obligated to provide to MCI_m, and MCI_m shall not request from Verizon, access to a proprietary advanced intelligent network service.

1.5 If Verizon terminates its provision of a UNE or a Combination to MCI_m pursuant the terms of this Agreement and MCI_m elects to purchase other Services offered by Verizon in place of such UNE or Combination, then: (a) Verizon shall reasonably cooperate with MCI_m to coordinate the termination of such UNE or Combination and the installation of such Services to minimize the interruption of service to Customers of MCI_m; and, (b) MCI_m shall pay all applicable charges for such Services, including, but not limited to, all applicable installation charges.

1.6 Nothing contained in this Agreement shall be deemed to constitute an agreement by Verizon that any item identified in this Agreement as a UNE is (i) a Network Element under Applicable Law, or (ii) a Network Element Verizon is required by Applicable Law to provide to MCI_m on an unbundled basis.

1.7 Except as otherwise expressly stated in this Agreement, MCI_m shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with the Collocation Attachment at the Verizon Wire Center where those elements exist, and each Loop or Port shall, in the case of Collocation, be delivered to MCI_m's Collocation node by means of a Cross Connection.

.....
[Issues III-6, III-7, III-7-a, III-7-b, III-7-c, open]

17. Combinations

17.1 Subject to the conditions set forth in Section 1, Verizon shall be obligated to provide a combination of Network Elements (a "Combination") only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is required by Applicable Law to provide a Combination to MCI_m, Verizon shall provide such Combination in accordance with, and subject to, requirements established by Verizon that are consistent with Applicable Law (such requirements, the "Combo

Requirements”). Verizon shall make the Combo Requirements publicly available in an electronic form. To the extent required by Applicable Law, such combinations may include the following Combinations as defined below; provided, however, such definitions are subject to the change of law provisions of this Agreement and shall change to the extent the FCC or other governmental body with jurisdiction over the subject matter otherwise defines or describes such Combinations.

17.1.1 UNE Platform (“UNE-P”) is a combination of a Loop, (including the NID), a Local Switching port, transport unbundled network elements and other Network Elements, if any, Verizon is required under Applicable Law to provide as part of “UNE-P” and which are used to provide circuit-switched voice service. There is no collocation requirement associated with MCI’s access of UNE-P as defined herein.

17.1.2 Subject to the conditions set forth in Section 1 and this Section 17.1, MCI may order, and Verizon shall make available, the following two (2) classes of UNE-P combinations, neither of which is subject to the conditions set forth in the Network Element Bona Fide Request Process Exhibit:

i) Migration -- The transfer of existing retail business or residence service of a Verizon Customer to the already combined UNEs that comprise the underlying retail service.

ii) New -- The connection of a previously combined unbundled Loop and unbundled Local Switching port (to a specific business or residence end user customer) for the provision of local exchange and associated switched exchange access service.

17.1.3 Enhanced Extended Link (“EEL”) consists of a Combination of an unbundled Loop and unbundled Dedicated Transport, and multiplexing, if required.

17.1.4 Extended Dedicated Trunk Port consists of a combination of unbundled Dedicated Trunk Ports and unbundled Dedicated Transport, where such unbundled Dedicated Transport may include multiplexing, and does not require MCI to collocate. The Extended Dedicated Trunk Port is dedicated to the use of MCI in its provisioning of local exchange and associated exchange access service.

Attachment B3

Draft 05/22/02 pm
Revised combinations language for Cox

11.13 Combinations of Network Elements

11.13.1 Verizon shall be obligated to provide a new or an existing combination of Network Elements (“Combination”) under this Agreement only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is required by Applicable Law to provide a Combination of Network Elements to Cox, the terms, conditions and prices for the Combination of (including, but not limited to, the non-recurring charge to compensate Verizon for the Combination, terms and conditions defining the Combination and stating when and where the Combination will be available and how it may be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair and maintenance, and billing) shall be as provided in Verizon’s applicable Tariff. In the absence of an applicable Tariff, prior to provision of such Combination, the Parties will negotiate in good faith and include in this Agreement such terms, conditions, and prices.

11.13.2.1 In accordance with, but only to the extent required by Applicable Law, Cox may order and Verizon shall provide a a new or an existing combination of unbundled loop, unbundled local switching, unbundled shared transport, also known as a “UNE Platform” Combination. In accordance with Appendix B-2, Bell Atlantic/GTE Unbundled Network Elements Ordered Application-Application (LSR) of “In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order, FCC CC Docket No. 98-184, (June 16, 2000), as amended from time to time, Verizon shall provide to Cox electronic ordering capability for “UNE Platform” Combinations.

11.13.2.2 When Cox orders a Combination of Network Elements that are currently interconnected and functional, Verizon will provide such Combination of Network Elements on an interconnected and functional basis unless Cox requests otherwise. Verizon’s rates for Combinations of Network Elements will be in accordance with Applicable Law.

11.13.3 Conversion of Special Access Services to Loop-Transport Combinations

11.13.3.1 Notwithstanding any other provision of this Agreement, Bell Atlantic will allow Cox to convert special access services to a Combination of unbundled Loop and unbundled transport Network Elements in accordance with, but only to the extent required by, Applicable Law. If and, to the extent that, such conversions are required under Applicable Law, Verizon will provide such conversions on the following terms (subject to changes, if any, that Verizon makes that are required or permitted under Applicable Law, notice of which changes Verizon will provide to Cox in writing):

11.13.3.1.1 The Parties acknowledge that special access services are ordinarily provided through channel terminations together with dedicated interoffice mileage. Special access services that are eligible, under Applicable Law, for conversion may be converted to a Combination of unbundled Loop and unbundled transport Network Elements pursuant to the terms of this Section 11.13.3. Bell Atlantic will convert a special access circuit to a Loop-transport Combination if Cox (1) appropriately identifies the subject circuit (i.e., Cox notifies Verizon in an electronic file format agreed to by the Parties of the applicable BAN, circuit ID, NC code, primary NCI code, secondary NCI code, ACTL CLLI of circuit ID, CFA, Traffic Factor 1, class of service, USOC, USOC quantities, billed rate per USOC, discount plan, start date of plan, and end date of plan), (2) certifies in writing, as set forth below, that the identified Loop-transport Combination will be used to provide a significant amount of local exchange service to a particular Cox end user Customer and if applicable, associated Switched Exchange Access Service to such Cox end user Customer (such certification specifying, among other things, the option under which Cox is making the certification), and (3) also meets the other requirements set forth in this Section 11.13.3. It is presumed that Cox is providing a significant amount of local exchange service to a particular Cox end user Customer if it meets each of the criteria set forth in one of the following three circumstances:

(a) Cox certifies that it is the exclusive provider of a Customer's local exchange service. The Loop-transport Combination must terminate at Cox's Collocation arrangement in at least one Verizon Central Office. This option does not allow Loop-transport Combinations to be connected to Verizon's tariffed services. Under this option, Cox is the Customer's only local service provider; or

(b) Cox certifies that it provides local exchange and Exchange Access service to the Customer's premises and handles at least one third of the Customer's local traffic measured as a percent of total Customer local dialtone lines; and for DS1 circuits and above, at least fifty (50) percent of the activated channels on the Loop portion of the Loop-transport Combination have at least five (5) percent local voice traffic individually, and the entire Loop facility has at least ten (10) percent local voice traffic. When a Loop-transport Combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet these criteria. The Loop-transport Combination must terminate at Cox's Collocation arrangement in at least one Verizon Central Office. This option does not allow Loop-transport Combinations to be connected to Verizon's tariffed services; or

(c) Cox certifies that at least fifty (50) percent of the activated channels on a circuit are used to provide originating and terminating local dialtone service and at least fifty (50) percent of the traffic on each of these local dialtone channels is local voice traffic, and that the entire Loop facility has

at least thirty-three (33) percent local voice traffic. When a Loop-transport Combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet these criteria. This option does not allow Loop-transport Combinations to be connected to Verizon's tariffed services. Under this option only, Collocation is not required.

11.13.3.1.2 The physical facilities used to provide a special access service to Cox must be the same facilities that will provide a Loop-transport Combination requested by Cox, and Verizon will not rearrange such facilities in connection with a conversion.

11.13.3.1.3 In addition to and without in any way limiting the audit rights provided elsewhere in this Agreement, Verizon has the right to perform limited audits only to the extent reasonably necessary to confirm Cox's compliance with the local usage requirements. Verizon will hire and pay for an independent auditor to perform any such audit, using the records that Cox keeps in the normal course of business (Cox hereby agreeing that it will maintain appropriate records that it can rely upon to support its local usage certifications), and Cox will promptly reimburse Verizon for the cost of such audit if the audit uncovers noncompliance with the local usage option to which Cox certified. Verizon will provide at least thirty (30) days' written notice to Cox prior to conducting any audit. Verizon will not conduct more than one (1) audit of Cox in any calendar year unless the audit finds noncompliance.

11.13.3.1.4 In connection with any conversion of special access services to a Combination of unbundled Loop and unbundled transport Network Elements, Cox agrees that it will promptly pay to Verizon (or, at Verizon's option, accedes to Verizon's set-off against any amounts otherwise owed to Cox) any termination liabilities and/or minimum service period charges under Verizon's applicable tariffs with respect to Cox ceasing to purchase the subject special access services that are being converted to a Loop-transport Combination.