

- 18.3 When this Agreement is filed with the Commission for approval, the Parties will request that the Commission: (a) approve the Agreement, and (b) refrain from taking any action to change, suspend or otherwise delay implementation of the Agreement.
- 18.4 Each Party shall be responsible for obtaining and keeping in effect all FCC, Commission, franchise authority and other governmental approvals, that may be required in connection with the performance of its respective obligations under this Agreement.

19 Headings Not Controlling

The headings of Attachments and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

20 Indemnification

- 20.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees (collectively, a "Loss") incurred by the indemnified Party to the extent that such Loss is: (a) suffered, made, instituted, or asserted by any other person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent legally caused by the acts or omissions of the indemnifying Party, regardless of the form of action; or (b) suffered, made, instituted, or asserted by the indemnifying Party's own customer(s) against the indemnified Party arising out of the indemnified Party's provision of services to the indemnifying Party under this Agreement, except to the extent the Loss arises from a breach of this Agreement by the indemnified Party. Notwithstanding the foregoing indemnification, nothing in this Section 20 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws.
- 20.2 The indemnification provided herein shall be conditioned upon:
- (a) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification, provided that failure to notify the indemnifying Party shall not relieve it of any liability it might otherwise have under this Section 20 to the extent it was not materially prejudiced by such failure of notification.
 - (b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event the indemnifying Party does not accept the defense of any such action, the indemnified Party shall have the right to employ counsel for its own defense at the expense of the indemnifying Party.
 - (c) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

- (d) In any action for which indemnity is sought, the indemnified Party shall assert any and all provisions in applicable Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of applicable limitations of liability.
- (e) The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

21 Insurance

- 21.1 MCIIm shall maintain during the term of this Agreement and for a period of two years thereafter all insurance and/or bonds required to satisfy its obligations under this Agreement (including, but not limited to, its obligations set forth in Section 20 hereof) and all insurance and/or bonds required by Applicable Law. The insurance and/or bonds shall be obtained from an insurer having an A.M. Best insurance rating of at least A-, financial size category VII or greater. At a minimum and without limiting the foregoing undertaking, MCIIm shall maintain the following insurance:
 - 21.1.1 Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least \$2,000,000 combined single limit for each occurrence.
 - 21.1.2 Motor Vehicle Liability, Comprehensive Form, covering all owned, hired and non-owned vehicles, with limits of at least \$2,000,000 combined single limit for each occurrence.
 - 21.1.3 Excess Liability, in the umbrella form, with limits of at least \$10,000,000 combined single limit for each occurrence.
 - 21.1.4 Worker's Compensation Insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than \$2,000,000 per occurrence.
 - 21.1.5 All risk property insurance on a full replacement cost basis for all of MCIIm's real and personal property located at any Collocation site or otherwise located on or in any Verizon premises (whether owned, leased or otherwise occupied by Verizon), facility, equipment or right-of-way.
- 21.2 Any deductibles, self-insured retentions or loss limits ("Retentions") for the foregoing insurance must be disclosed on the certificates of insurance to be provided to Verizon pursuant to Sections 21.4 and 21.5, and Verizon reserves the right to reject any such Retentions in its reasonable discretion. All Retentions shall be the responsibility of MCIIm.
- 21.3 MCIIm shall name Verizon, Verizon's Affiliates and the directors, officers and employees of Verizon and Verizon's Affiliates, as *additional insureds* on the foregoing insurance.
- 21.4 MCIIm shall, within two (2) weeks of the Effective Date hereof, on a semi-annual basis thereafter, and at such other times as Verizon may reasonably specify, furnish certificates or other proof of the foregoing insurance reasonably acceptable to Verizon. The certificates or other proof of the foregoing insurance

shall be sent to: Director –Interconnection Services, Verizon Wholesale Markets, 1095 Avenue of the Americas, Room 1423, New York, NY 10036.

- 21.5 MCIIm shall require its contractors, if any, that may enter upon the premises or access the facilities or equipment of Verizon or Verizon's affiliated companies to maintain insurance in accordance with Sections 21.1 through 21.3 and, if requested, to furnish Verizon certificates or other adequate proof of such insurance acceptable to Verizon in accordance with Section 21.4.
- 21.6 If MCIIm or MCIIm's contractors fail to maintain insurance as required in Sections 21.1 through 21.5, above, Verizon may purchase such insurance and MCIIm shall reimburse Verizon for the cost of the insurance.
- 21.7 Certificates furnished by MCIIm or MCIIm's contractors shall contain a clause stating: "Verizon Virginia Inc. shall be notified in writing at least thirty (30) days prior to cancellation of, or any material change in, the insurance."
- 21.8 MCIIm may satisfy the foregoing obligations of this Section 21 through self-insurance if and, to the extent that, it has a net worth of not less than one hundred million U.S. Dollars (\$100,000,000.00) or an MCIIm Affiliate with such a net worth serves as a guarantor of MCIIm's obligations hereunder.

22 Intellectual Property

- 22.1 Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for the limited right to use (in accordance with this Agreement) a Party's intellectual property that is embedded in, a part of, or necessary or reasonably appropriate to the use of the facilities, equipment, or services provided under this Agreement, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or any other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Except as provided above, neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party; except in accordance with the terms of this Agreement or a separate license agreement between the Parties granting such rights.
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- 22.3 Intentionally Left Blank.
- 22.4 MCIIm acknowledges that services and facilities to be provided by Verizon hereunder may use or incorporate products, services or information proprietary to third party vendors and may be subject to third party intellectual property rights. In the event that proprietary rights restrictions in agreements with such third party vendors do not permit Verizon to provide to MCIIm, without additional actions or costs, particular unbundled Network Element(s) otherwise required to be made available to MCIIm under this Agreement, then, as may be required by Applicable Law:
 - (a) Verizon agrees to notify MCIIm, directly or through a third party, of such restrictions that extend beyond restrictions otherwise imposed under this Agreement or applicable Tariff restrictions ("Ancillary Restrictions"); and

- (b) Verizon shall use its best efforts, as commercially practical, to procure rights or licenses to allow Verizon to provide to MCI the particular unbundled Network Element(s), on terms comparable to terms provided to Verizon, directly or on behalf of MCI ("Additional Rights/Licenses"). Costs associated with the procurement of Additional Rights/Licenses shall be passed through to MCI as permitted under Applicable Law. In the event that Verizon, after using its best efforts, is unable to procure a right or license for MCI, Verizon will promptly notify MCI of the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as any and all related facilities or equipment; the extent to which it asserts MCI's use has exceeded (or will exceed) the scope of the license; and the specific circumstances that prevented it from obtaining the revised provisions.

22.5 To the extent that the providers of equipment or software used in Verizon's network provide Verizon with indemnities covering intellectual property liabilities and those indemnities allow a flow through of protection to third parties, Verizon shall flow those indemnity protections through to MCI.

23 Joint Work Product

This Agreement is the joint work product of the representatives of the Parties. For convenience, this Agreement has been drafted in final form by one of the Parties. Accordingly, in the event of ambiguities, no inferences shall be drawn against either Party solely on the basis of authorship of this Agreement.

24 Law Enforcement

Each Party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by Applicable Law in matters related to Services provided by it under this Agreement, including, but not limited to, the production of records, the establishment of new lines or the installation of new services on an existing line in order to support law enforcement and/or national security operations, and, the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment. In addition, each Party shall provide reasonable assistance to the other Party, to the extent permitted by Applicable Law, in connection with the foregoing, and with respect to emergency traces on and information retrieval from customer invoked CLASS services.

25 Liability

25.1 Neither Party shall be liable to the other for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing limitation, a Party's liability shall not be limited by the provisions of this Section 25.1 in the event of its willful or intentional misconduct, including gross negligence. Verizon shall be liable to MCI for lost revenues resulting from Verizon's breach of this Agreement only to the same extent that Verizon's Tariffs provide liability for Verizon end user subscribers' revenue losses. A Party's liability shall not be limited with respect to its indemnification obligations.

25.2 Responsibility for Environmental Contamination

25.2.1 MCI shall in no event be liable to Verizon for any costs whatsoever

resulting from a violation of a federal, state or local environmental law by Verizon, its contractors or agents arising out of this Agreement (a "Verizon Environmental Violation"). Verizon shall, at MCI's request, indemnify, defend, and hold harmless MCI, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys fees) that are caused by a Verizon Environmental Violation.

25.2.2 Verizon shall in no event be liable to MCI for any costs whatsoever resulting from a violation of a federal, state or local environmental law by MCI, its contractors or agents arising out of this Agreement (an "MCI Environmental Violation"). MCI shall, at Verizon's request, indemnify, defend, and hold harmless Verizon, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys fees) that are caused by an MCI Environmental Violation.

25.2.3 In the event any suspect materials within Verizon-owned, operated or leased facilities are identified to be asbestos-containing, MCI will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such MCI activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by MCI or equipment placement activities that result in the generation or placement of asbestos containing material, MCI shall not have any responsibility for managing, nor be the owner of, not have any liability for, or in connection with, any asbestos containing material at Verizon-owned, operated or leased facilities. Verizon agrees to immediately notify MCI if Verizon undertakes any asbestos control or asbestos abatement activities that potentially could affect MCI equipment or operations, including, but not limited to, contamination of equipment.

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28 Notice of Network Changes

Verizon shall make any notification of changes to the underlying Verizon services in conformance with the requirements of Section 251(c)(5), Notice of Changes, of the Act, and the FCC's rules and regulations.

29 Notices

29.1 Except as otherwise provided in this Agreement, notices given by one Party to the other Party under this Agreement:

29.1.1 shall be in writing;

29.1.2 shall be delivered (a) personally, (b) by express delivery service with next business day delivery, (c) by First Class, certified or registered U.S. mail, postage prepaid, (d) by facsimile telecopy, with a copy delivered in accordance with (a), (b) or (c), preceding, or, (e) by electronic mail, with

a copy delivered in accordance with (a), (b) or (c), preceding; and

29.1.3 shall be delivered to the following addresses of the Parties:

To MCI: MCImetro Access Transmission Services of Virginia, Inc.
Attn: Vice President
Eastern Telco Line Cost Management
2 Northwinds Center
2520 Northwinds Parkway, 5th Floor
Alpharetta, GA 30004
Facsimile: (770) 625-6889

Copies to: MCImetro Access Transmission Services of Virginia, Inc.
Attn: Senior Manager – Carrier Agreements
205 North Michigan Avenue
Chicago, Illinois 60601
Facsimile: (312) 470-5575

MCImetro Access Transmission Services of Virginia, Inc.
Attn: Vice President
Chief Network Counsel
22001 Loudoun County Parkway
Ashburn, VA 20147
Facsimile: (703) 886-5807

MCImetro Access Transmission Services of Virginia, Inc.
Attn: Commercial Counsel
1133 19th Street, N.W., 2nd Floor
Washington, DC 20036
Facsimile: (202) 736-6181

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201-2909
Facsimile: 703/351-3664

or to such other address as either Party shall designate by proper notice.

29.2 Notices will be deemed given as of the earlier of (a) where there is personal delivery of the notice, the date of actual receipt, (b) where the notice is sent via express delivery service for next business day delivery, the next business day

after the notice is sent, (c) where the notice is sent by First Class U.S. Mail, three (3) business days after mailing, (d) where notice is sent via certified or registered U.S. mail, the date of receipt shown on the Postal Service receipt, (e) where the notice is sent via facsimile telecopy, on the date set forth on the telecopy confirmation if sent before 5 PM in the time zone where it is received, or the next business day after the date set forth on the telecopy confirmation if sent after 5 PM in the time zone where it is received, and (f) where the notice is sent via electronic mail, on the date of transmission, if sent before 5 PM in the time zone where it is received, or the next business day after the date of transmission, if sent after 5 PM in the time zone where it is received.

30 Ordering Intervals/Desired Due Date (“DDD”)

- 30.1 Subject to Section 30.2 below, for services for which a Party has standard intervals, such intervals shall apply, unless the Parties agree otherwise. For services with agreed upon intervals, the purchasing Party shall select on each order the DDD consistent with the agreed upon intervals. For services with variable intervals, the purchasing Party shall select among available due dates, obtained through an electronic interface, for specific services with variable intervals. The providing Party shall not complete the order prior to the DDD. Subject to practical timing limitations on communications between the Parties, the providing Party shall not complete the order later than the DDD unless authorized by the purchasing Party.
- 30.2 If the DDD falls after the standard order completion interval, the providing Party shall complete the order on the DDD, as long as the DDD falls on a day and at a time that the providing Party normally completes orders for its own end user customers.
- 30.3 Subsequent to an initial order submission, the purchasing Party may request a new/revised DDD that is earlier than the minimum defined interval. The providing Party shall use reasonable efforts to meet such date and may assess non-discriminatory expedite charges. The Parties agree that expedite orders are not to be used as a mechanism for routine avoidance of the standard DDD or the providing Party’s standard interval(s). The Parties shall not use the expedite process to gain a competitive advantage over each other.

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32 Point of Contact for MCI_m Customers/Identification of Services

- 32.1 Upon request by MCI_m and at prices, terms and conditions to be negotiated by MCI_m and Verizon, Verizon shall provide Verizon Resold OS/DA Services and OS/DA delivered through UNE-P that are identified by MCI_m’s trade name, or that are not identified by trade name, trademark or service mark.
- 32.2 Verizon will recognize MCI_m as the customer of record of all services ordered by MCI_m under this Agreement. MCI_m shall be the single point of contact for MCI_m customers with regard to all Services, facilities or products provided by Verizon to MCI_m and other services and products which they wish to purchase from MCI_m or which they have purchased from MCI_m. Communications by MCI_m customers with regard to all services, facilities or products provided by Verizon to MCI_m and other services and products which they wish to purchase from MCI_m or which they have purchased from MCI_m, shall be made to MCI_m, and not to Verizon. MCI_m shall instruct MCI_m customers that such communications shall be directed to MCI_m.

32.3 Neither Verizon nor MCIIm may offer services to its end users or others under any of the brand names of the other Party or any of its parents, subsidiaries or affiliates, regardless of whether or not such brand names are registered trademarks or servicemarks, without the other Party's written authorization. Notwithstanding the foregoing, Verizon shall not be required to remove (or remove references to) the brand name or logo "Verizon" or similar names or connotations of brand identifying Verizon or its parents, subsidiaries or affiliates from any items or Services which it provides, except insofar as Verizon's obligation, pursuant to Applicable Law, to re-brand (with the MCIIm identification) and except that (x) Verizon shall not provide to MCIIm's end user customer a copy of its branded time and material rates authorization form, (y) to the extent Verizon provides a "left in dial tone" recording (applicable to inactive telephone lines that have access solely to 800, local business office or 911 service) it shall provide a statement that the end-user should contact its local service provider (without reference to Verizon) to activate service and (z) Verizon may include on the "no access" cards left by Verizon personnel at customer premises responding to activation or maintenance service requests the following statement:

"Verizon was here.

Verizon was here on behalf of your service provider to address your activation or maintenance request. Please re-contact your service provider to arrange for a future appointment."

or such other substantially similar statement as will not bear the logo or brand name of Verizon other than to simply identify the personnel leaving such card. The brand name of Verizon shall appear on any "no access" card with no greater prominence than the remainder of the printed statement. Any reprinting of the "no access" cards subsequent to the Effective Date of this Agreement shall exclude the first sentence of the above-captioned statement.

32.4 This Section 32 shall not confer on either Party any rights to the service marks, trademarks and trade names owned by or used in connection with services by the other Party or its Affiliates, except as expressly permitted by this Section 32.

32.5 Requests by MCIIm customers for information about or provision of products or services which they wish to purchase from MCIIm, requests by MCIIm customers to change, terminate, or obtain information about, assistance in using, or repair or maintenance of, products or services which they have purchased from MCIIm, and inquiries by MCIIm customers concerning MCIIm's bills, charges for MCIIm's products or services, and, if the MCIIm customers receive dial tone line service from MCIIm, annoyance calls, shall be made by the MCIIm customers to MCIIm, and not to Verizon.

32.6 MCIIm and Verizon will employ the following procedures for handling misdirected repair calls:

32.6.1 *MCIIm and Verizon will educate their respective customers as to the correct telephone numbers to call in order to access their respective repair bureaus.*

32.6.2 To the extent Party A is identifiable as the correct provider of service to customers that make misdirected repair calls to Party B, Party B will immediately refer the customers to the telephone number provided by Party A, or to an information source that can provide the telephone

number of Party A, in a courteous manner and at no charge. In responding to misdirected repair calls, neither Party shall make disparaging remarks about the other Party, its services, rates, or service quality.

32.6.3 MCI and Verizon will provide their respective repair contact numbers to one another on a reciprocal basis.

32.7 In addition to Section 32.6 addressing misdirected repair calls, the Party receiving other types of misdirected inquiries from the other Party's customer shall not in any way disparage the other Party.

32.8 Without in any way limiting either Party's obligations under Section 4, each Party shall comply with Applicable Law with regard to customer selection of a primary Telephone Exchange Service provider, including, without limitation, the rules and procedures set forth in Section 64.1100 through 1190 of the FCC Rules, 47 CFR § 64.1100 through 1190, when ordering, terminating, or otherwise changing Telephone Exchange Service on behalf of the other Party's or another carrier's customers (including, without limitation, by not requiring evidence of verification of a carrier change request as a precondition for processing such change).

32.9 Point of Contact for MCI Customers

32.9.1 MCI shall establish telephone numbers and mailing addresses at which MCI customers may communicate with MCI and shall advise MCI customers of these telephone numbers and mailing addresses.

32.9.2 Except as otherwise agreed to by the Parties, each Party at all times shall be the primary contact and account control for all interactions with its own customers regarding such Party's services purchased by the customers. A Party's customers shall include active customers as well as those for whom it has service orders pending. Except as otherwise agreed by a Party, such Party shall have no obligation, and may decline, to accept a communication from a customer of the other Party, including but not limited to, a customer request for repair or maintenance. With respect to a Party that may receive inquiries from the other Party's customers, the Party shall not disparage the other Party or its products or services, or provide information about its own products or services during that same inquiry or customer contact, unless asked by the customer.

32.10 **Subscriber Premises Inspections and Installations**

21.1.1 MCI shall perform or contract for any needs assessments, including equipment and installation requirements, at the premises of the subscriber, for the provision of MCI services to such subscribers.

32.10.2 Any contact between a Verizon representative and an MCI end user customer during a premise inspection or installation shall be subject to Section 32.9 above.

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34 **Publicity and Use of Trademarks or Service Marks**

Unless otherwise mutually agreed upon, neither Party shall publish or use the other Party's logo, trademark, or service mark in any product, service, advertisement, promotion, or any other publicity matter, except that nothing herein shall prohibit lawful comparative advertising or comparative marketing.

35 References

- 35.1 All references to Sections, Appendices and Exhibits shall be deemed to be references to Sections, Appendices and Exhibits of this Agreement unless the context shall otherwise require.
- 35.2 Unless the context shall otherwise require, any reference to a Tariff, agreement, technical or other document (including Verizon or third party guides, practices or handbooks), or provision of Applicable Law, is to such Tariff, agreement, document, or provision of Applicable Law, as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision).

36 Relationship of the Parties

- 36.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement.
- 36.2 Each Party retains full control over the employment, direction, compensation and discharge of all of its employees, agents and contractors assisting in the performance of its obligations under this Agreement. Each Party will be solely responsible for all matters relating to payment of its employees, agents and contractors, and payment of Social Security and other taxes in association with such employees, agents and contractors, and withholding and remittance of taxes from such employees, agents and contractors.
- 36.3 Nothing contained within this Agreement shall:
 - 36.3.1 Make either Party the agent, servant or employee, of the other Party;
 - 36.3.2 Grant either Party the authority to enter into a contract on behalf of, or otherwise legally bind, the other Party in any way;
 - 36.3.3 Create a partnership, joint venture, or other similar relationship between the Parties; or
 - 36.3.4 Grant to either Party a franchise, distributorship, or similar interest.
- 36.4 The relationship of the Parties under this Agreement is a non-exclusive relationship. Each Party shall have the right:
 - 36.4.1 To provide services to be provided by it under this Agreement to persons other than the other Party; and
 - 36.4.2 To purchase services which can be purchased by it under this Agreement from persons other than the other Party.
- 36.5 In consideration of the services provided under this Agreement, the purchasing Party shall pay the charges set forth in the Pricing Attachment as those charges

may change in accordance with the Pricing Attachment. The billing and payment procedures for charges incurred by a purchasing Party hereunder are set forth in Section 9.

- 36.6 Except as otherwise specified in this Agreement or otherwise provided for under Applicable Law, each Party shall be responsible for: (i) all costs and expenses it incurs in complying with its obligations under this Agreement; and (ii) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

37 Reservation of Rights

The Parties acknowledge that the terms and conditions of this Agreement were established pursuant to an order of the Commission or the FCC. Any or all of the terms and conditions of this Agreement may be altered or abrogated by a successful legal challenge or appeal of this Agreement (or to the order approving the Agreement) as permitted by Applicable Law. By signing this Agreement, the Parties do not waive their right to pursue such a legal challenge or appeal. Subject to a legally effective stay, this Agreement shall be effective between the Parties as of the Effective Date, notwithstanding the pendency of proceedings challenging the Commission's or FCC's approval of the Agreement. In the event of a legally effective stay as contemplated by the foregoing sentence, the Parties agree that the previously existing interconnection agreement shall govern the relationship between the Parties during the pendency of such stay.

38 Subcontractors

- 38.1 If any obligation under this Agreement is performed through a subcontractor, the subcontracting Party shall remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations it performs through the subcontractor. The subcontracting Party shall be solely responsible for payments due its subcontractors. No subcontractor shall be deemed a third party beneficiary for any purposes under this Agreement.
- 38.2 If any obligation of either Party is performed by a subcontractor or Affiliate, such Party shall remain fully responsible for the performance of this Agreement in accordance with its terms.
- 38.3 A Party may fulfill its obligations under this Agreement itself or may cause an Affiliate of the Party to take the action necessary to fulfill the Party's obligations; provided that a Party's use of an Affiliate to perform this Agreement shall not release the Party from any liability or duty to fulfill its obligations under this Agreement.

39 Successors and Assigns

- 39.1 This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective legal successors and permitted assigns.

40 Survival

The rights, liabilities and obligations of a Party for acts or omissions occurring prior to the expiration, cancellation or termination of this Agreement, the rights, liabilities and obligations of a Party under any provision of this Agreement regarding confidential

information compliance with law, audits, and the rights, liabilities and obligations of a Party under any provision of this Agreement which by its terms or nature is intended to continue beyond or to be performed after the expiration, cancellation or termination of this Agreement, shall survive the expiration, cancellation or termination of this Agreement.

41 Taxes

- 41.1 In General. With respect to any purchase hereunder of Services, the price is exclusive of any applicable federal, state, or local tax, fee, surcharge, including, but not limited to any 911, telecommunications relay service, universal service fund, or gross receipts surcharge, or other tax-like charge (a "Tax" or "Taxes"). If any Tax is required or permitted by Applicable Law or a Tariff to be collected from the purchasing Party by the providing Party, then (a) the providing Party may properly bill the purchasing Party for such Tax, and (b) the purchasing Party shall timely remit such billed Tax to the providing Party, provided such Tax is not on or determined by the providing Party's net income.
- 41.2 Taxes Imposed on the Providing Party. With respect to any purchase hereunder of Services, if any Tax is imposed by Applicable Law on the receipts of the providing Party, and such Applicable Law permits the providing Party to exclude certain receipts received from sales for resale to a public utility, distributor, telephone company, local exchange carrier, telecommunications company, or other communications company ("Telecommunications Company"), such exclusion being based solely on the fact that the purchasing Party is also subject to a tax based upon receipts ("Receipts Tax"), then the purchasing Party, if the purchase is for resale, shall provide the providing Party with a properly executed resale exemption certificate, other exemption certificate, or appropriate documentation in accordance with Applicable Law of its intent to resell the Service in accordance with Section 41.6 of this Agreement.
- 41.3 Taxes Imposed on customers. With respect to any purchase hereunder of Services that the purchasing Party intends to resell to a third party, if any Tax is imposed by Applicable Law on the subscriber, end-user, customer, or ultimate consumer ("Subscriber") in connection with any such purchase, which a Telecommunications Company is required to impose on and/or collect from a Subscriber, then the purchasing Party shall provide an exemption certificate to the providing Party evidencing its intent to resell the Service.
- 41.4 Liability for Unbilled and Uncollected Tax, Interest and Penalty. If the providing Party has not received an exemption certificate and fails to bill any Tax under Section 41.1, then, as between the providing Party and the purchasing Party, (a) the purchasing Party shall remain liable for such unbilled and uncollected Tax in accordance with Applicable Law and (b) the providing Party shall be liable for any interest assessed thereon and any penalty assessed by such authority on such unbilled and uncollected Tax. If the providing Party properly bills the purchasing Party for any Tax, but the purchasing Party fails to remit such Tax to the providing Party as required by Section 41.1, then, as between the providing Party and the purchasing Party, the purchasing Party shall be liable for such billed, but uncollected Tax and any interest assessed thereon, as well as any penalty assessed on such uncollected Tax by the applicable authority. If the providing Party does not bill or collect any Tax under Section 41.1 because the purchasing Party has provided such providing Party with an exemption certificate that is later found to be inadequate by an authority, then, as between the providing Party and the purchasing Party, the purchasing Party shall be liable for such unbilled and uncollected Tax and any interest assessed thereon, as well as any penalty assessed by the applicable authority on such

unbilled and uncollected Tax. If the purchasing Party provides the providing Party with a properly executed resale exemption certificate, other exemption certificate, or appropriate documentation in accordance with Applicable Law of its intent to resell the Service, in accordance with Section 41.6 of this Agreement, but the purchasing Party fails to pay the Receipts Tax to an authority on revenues from the sale of the purchasing Party's services to its Subscribers and thereby causes the providing Party's receipts to be ineligible for an exemption from the Receipts Tax, then, as between the providing Party and the purchasing Party, (a) the providing Party shall be liable for any Tax imposed on its receipts and (b) the purchasing Party shall be liable for any interest assessed thereon and any penalty assessed upon the providing Party with respect to such Tax by such authority. If the purchasing Party fails to impose and/or collect any Tax from Subscribers as provided under Section 41.3, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed on such uncollected Tax by the applicable authority. With respect to any Tax, interest or penalty that the purchasing Party has agreed to be liable for under this Section 41.4, or is required by Applicable Law to impose on and/or collect from Subscribers, if any such liability relates to an audit and proposed assessment of the providing Party, such liability shall be conditioned upon the providing Party giving the purchasing Party timely notice of any proposed assessment of Tax, interest, or penalty by the applicable authority so as to afford the purchasing Party an opportunity to cure any defect or formally contest the proposed assessment before final assessment of any additional Tax, interest, or penalty is made by the authority; provided, however, that no failure of the providing Party to give notice to the purchasing Party shall diminish the responsibility of the purchasing Party to pay any Tax, interest, or penalty unless, and then only to the extent that the purchasing Party's contest-participation rights, including refund actions, are effectively precluded by the providing Party's failure to notify or the providing Party's actions taken with such authority. In the event either Party is audited by an authority, the other Party agrees to cooperate fully with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

41.5 Tax exemptions and Exemption Certificates. If Applicable Law clearly exempts a purchase hereunder from a Tax, and if such Applicable Law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party shall not collect such Tax during the effective period of such exemption. Such exemption shall be effective upon receipt of the exemption certificate or affidavit in accordance with the terms set forth in Section 41.6. If Applicable Law clearly exempts a purchase hereunder from a Tax, but does not also provide an exemption procedure, then the providing Party shall not collect such Tax if the purchasing Party furnishes the providing Party with documentation certifying the purchasing Party's right to an exemption.

41.6 All notices, affidavits, exemption-certificates or other communications required or permitted to be given by either Party to the other, for purposes of this Section 41, shall be made in writing and shall be delivered in person or sent by certified mail, return receipt requested, or registered mail, or a courier service providing proof of service, and sent to the addressees set forth in Section 29 as well as to the following:

To Verizon:

Tax Administration
Verizon Communications
1095 Avenue of the Americas
Room 3109
New York, NY 10036

MCIm:

Tax Department
1133 – 19th Street, N.W.
Washington, D.C. 20036

Either Party may from time to time designate another address or other addressees by giving notice in accordance with the terms of this Section. Any notice or other communication shall be deemed to be given when received.

42 Technology Upgrades

Notwithstanding any other provision of this Agreement but in accordance with the requirements of Section 251(c)(5) of the Act and the FCC's implementing regulations thereunder, Verizon shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. The Parties acknowledge that Verizon, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit or facilitate MCIm's ability to provide service using certain technologies. Nothing in this Agreement shall limit Verizon's ability to modify its network through the incorporation of new equipment or software or otherwise. MCIm shall be solely responsible for the cost and activities associated with accommodating such changes in its own network, unless otherwise required by Applicable Law. Nothing in this Section limits MCIm's right to challenge in an appropriate forum network deployment plans of Verizon.

43 Territory

- 43.1 This Agreement applies to the territory in which Verizon operates as an Incumbent Local Exchange Carrier in the Commonwealth of Virginia, as of the Effective Date of this Agreement.
- 43.2 **Transfer of Telephone Operations.** If Verizon sells, exchanges, swaps, assigns, or transfers ownership or control of all or any portion of Verizon's telephone operations (any transaction, a "Transfer") to any purchaser, operator, or other transferee, Verizon shall provide MCIm at least sixty (60) days prior written notice (in accordance with the Notice provisions of this Agreement) of such Transfer. In addition, insofar as such transfer affects the interests of MCIm pursuant to this Agreement, Verizon shall (i) comply with the requirements of Applicable Law, if any, with respect to such Transfer and (ii) at MCIm's written request, work cooperatively with MCIm and such transferee regarding the potential assignment (including delegation) of this Agreement (in whole or in part) to the transferee.

44 Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide any third parties (including, but not limited to, customers or subcontractors of a Party) with any right, remedy, claim, reimbursement, cause of action, or other privilege. The provisions of this Agreement are for the benefit of the Parties hereto and not for any other person; provided, however, that this shall not be construed to prevent either Party from providing its Telecommunications Services to any

entities.

45 Waiver

- 45.1 A failure or delay of either Party (including any course of dealing or course of performance) to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.
- 45.2 Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.
- 45.3 The Parties do not, by entering into this Agreement, waive any right granted to them pursuant to the Act.

46 Warranties

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED, OR TO BE PROVIDED, UNDER THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, **WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE** WARRANTIES AGAINST INFRINGEMENT, AND WARRANTIES ARISING BY TRADE CUSTOM, TRADE USAGE, COURSE OF DEALING OR PERFORMANCE, OR OTHERWISE.

47 USOC Codes

Upon Verizon's receipt from MCI of an executed non disclosure agreement in form and substance reasonably acceptable to Verizon, Verizon shall provide MCI with a complete, electronic copy of USOC codes, and an accompanying alphanumeric description of each code, used by Verizon for provision of services (including UNEs) under this Agreement; as of the Effective Date of this Agreement, Verizon acknowledges that it has received an acceptable non-disclosure agreement from MCI. In addition, the Parties shall continue to cooperate in the change management process to develop a document to show the relationship between USOCs and FIDs.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**MCI METRO ACCESS TRANSMISSION
SERVICES OF VIRGINIA, INC.**

VERIZON VIRGINIA INC.

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title _____