Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition of WorldCom, Inc. Pursuant	)	
to Section 252(e)(5) of the	)	
Communications Act for Expedited	)	
Preemption of the Jurisdiction of the	)	CC Docket No. 00-218
Virginia State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon Virginia Inc., and for	)	
Expedited Arbitration	)	
	)	
In the Matter of	)	
Petition of Cox Virginia Telecom, Inc.	)	
Pursuant to Section 252(e)(5) of the	)	
Communications Act for Preemption	)	CC Docket No. 00-249
of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	
Interconnection Disputes with Verizon	)	
Virginia Inc. and for Arbitration	)	
	)	
In the Matter of	)	
Petition of AT&T Communications of	)	
Virginia Inc., Pursuant to Section 252(e)(5)	)	CC Docket No. 00-251
of the Communications Act for Preemption	)	
of the Jurisdiction of the Virginia	)	
Corporation Commission Regarding	)	
Interconnection Disputes With Verizon	)	
Virginia Inc.	)	

OPPOSITION OF AT&T CORP.

AT&T Corp. ("AT&T") hereby respectfully submits this Opposition to the Petition for Clarification and Reconsideration filed by Verizon Virginia Inc. ("Verizon") on August 16, 2002.

In its Petition, Verizon attacks in shotgun fashion many of the key holdings of the Bureau's July 17, 2002 Memorandum Opinion and Order ("*Order*"). The *Order* was issued after extensive hearings and briefing on these issues and a thorough analysis of the evidence and the Commission's rules by the Bureau Staff. And that is why Verizon's Petition largely seeks reconsideration on the basis of *new* arguments and evidence that were not presented to the Bureau, and on the basis of arguments that would require the Bureau to disregard binding Commission rules. Such arguments cannot serve as the basis for reconsideration of the *Order* and, as explained below, are in all events unfounded.

ARGUMENT

I. THE *ORDER* PROPERLY RESOLVED THE NETWORK ARCHITECTURE ISSUES.

A. Verizon's Requested Clarification Of General Network Architecture Issues Is Simply A Back Door Attempt To Revive Its Discredited VGRIP Proposal.

Although Verizon's Petition purports to request that the Bureau "clarify" the *Order*'s holding on several network architecture issues, in reality Verizon is seeking to revive through the back door its "VGRIP" proposal that the *Order* properly rejected. *See Order* ¶¶ 51-54. More specifically, Verizon complains that the *Order* adopted language which would make the default Verizon point of interconnection ("POI") the trunk side of AT&T's switch. Petition at 3 (citing *Order* ¶ 51 n.116). Verizon takes issue with this language, arguing that the Act permits a POI to be established only "within the incumbent LEC's network." *Id.*.

As Verizon well knows, this is much ado about nothing. AT&T's local exchange switches are most frequently collocated at AT&T's (IXC) POPs *and connected to Verizon's* *network at that location*. Thus, in the vast majority of cases, Verizon has deployed its network to the location of AT&T's local exchange switch.[1]

Footnote 10 of Verizon's Petition makes clear that Verizon's real motivation is not to change the POI *per se*, but rather to use this issue as cover for limiting the compensation it must pay AT&T and other competitive carriers when they terminate Verizon's traffic. In that footnote, Verizon claims that when the POI for Verizon traffic is located at Verizon's switch (which, in Verizon's incorrect view, must always be the case), the competitive LEC may only charge Verizon for the cost of terminating its traffic and *not* for any transport necessary to carry the traffic from the POI at Verizon's switch to the competitive LEC's terminating switch, as the *Order* requires. Petition at 5 n.10. This transport from the Verizon switch to AT&T's switch is basically the transport that was at issue in Verizon's VGRIP proposal. However, Verizon is now attempting to avoid compensating the competitive LEC for this transport by arguing that its POI must be located at its switch, and by imposing a limit on its reciprocal compensation obligations.

Verizon's arguments may now be slightly different, but the results must be the same: the Bureau should again reject Verizon's anticompetitive proposal. Verizon's argument is necessarily predicated on its incorrect notion that the POI can never be located at AT&T's switch. As noted above, however, in the vast preponderance of situations, Verizon will have its own network facilities adjacent to AT&T's switch, and a POI located there will thus be at a point on Verizon's network. Moreover, Verizon has numerous options for getting its traffic to a POI located adjacent to AT&T's switch. For example, Verizon can use its existing facilities, it can lease facilities from a third party or it can deliver traffic to AT&T's collocated space and use

[1] In those few cases where AT&T's switch is not on Verizon's network, AT&T agrees that it will designate its POI for the delivery of its traffic at a point on Verizon's network.

AT&T's facilities to reach its POI.[2] In all events, *Verizon* is responsible for getting its traffic to the POI and must bear the associated costs of the originating transport. 47 C.F.R. § 51.703. Once the traffic is delivered to AT&T at the POI, AT&T will terminate the traffic and assess Verizon the appropriate reciprocal compensation charge for transporting the traffic from that switch to the called party. This compensation arrangement, of course, works both ways – if AT&T selects a POI for delivery of its traffic that is adjacent to AT&T's switch (and on Verizon's network), it will pay Verizon a reciprocal compensation charge that includes compensation both for the transport of that traffic from the POI to Verizon's terminating switch and for termination of the traffic from that switch to the called party. Thus, the efficient, and entirely lawful, application of the rules expressed in the *Order* is symmetrical compensation; Verizon's anticompetitive "heads-I-win," "tails-you-lose" proposal, like its rejected VGRIP proposal, is patently asymmetrical.[3]

The language adopted by the Bureau tracks exactly the symmetrical compensation requirement. *See Order* ¶ 51 n.116 (adopting AT&T Proposed Agreement, Schedule 4). In contrast, Verizon is requesting that the POI for both parties necessarily be established at a Verizon switch location and that AT&T bear the full costs of transporting both parties' traffic between AT&T's switch location and the POI when the POI is located at a Verizon switch,

[2] The POI for delivery of Verizon's traffic is subject to mutual agreement. Under the default language proposed by AT&T and adopted by the Bureau, if the parties cannot agree, the default location for the POI is the AT&T switch location. In any case, it must be a point on AT&T's network, just as the POI for the delivery of AT&T's traffic must be a point on Verizon's network.

[3] It is important to note that symmetrical compensation does not mean that equal compensation is required regardless of the services provided by the terminating party. Rather, the rule is that rates must be "equal to those that the incumbent LEC assesses on the other carrier for the *same* services." 47 CFR § 51.711(a)(1).

meaning that AT&T would receive *no* compensation for the costs of transporting Verizon's traffic from Verizon's switch to AT&T's switch. This is nothing more than a repackaging of the VGRIP proposal that the Bureau properly rejected as contrary to the Commission's rules. *Id.* ¶¶ 52-53. Verizon's request for "clarification," therefore, should be denied.

B. The *Order* Properly Resolved The Direct End Office Trunking Issue (Issue I-4).

Verizon also seeks to overturn the Bureau's finding that AT&T should not be required to establish a direct trunk between two end offices when the traffic exceeds a DS1 level. Petition at 7-10. Verizon presents no basis for calling into question the Bureau's resolution of this fact-bound issue.[4]

Verizon complains that the Bureau placed on Verizon the burden of proving its claim that requiring competitive LECs to establish direct trunk transport was necessary to prevent a specific and significant adverse impact to Verizon's network. Petition at 7-8. But this was clearly reasonable. Not only is Verizon permitted to refuse to interconnect at a point requested by another carrier only if it "prove[s] . . . with clear and convincing evidence[] that specific and significant adverse impacts would result from the requested interconnection," *Local Competition Order*, 11 FCC Rcd. 15499, ¶ 230 (1996), but Verizon alone has control of the information necessary to support its claim that competitive LECs are causing tandem exhaust.

[4] Verizon is also wrong on the law when it claims that requiring direct end office trunking would not entail changing the location of the POI at the tandem to one different than that selected by the competitive LEC. *Id.* at 7. As required by the Act, the Commission's rules allow a competitive LEC to select not only the location of the POI, but the method of interconnection as well in order to enable the competitive LEC to lower its costs and maximize its efficiency. *See* 47 C.F.R. § 51.321(a); *see also Local Competition Order* ¶ 549. Accepting Verizon's position, therefore, would nullify AT&T's right to select the location and method of interconnection for its traffic.

The Bureau reasonably found that Verizon failed to shoulder that burden. Verizon's own evidence demonstrated that competitive LECs accounted for only a minority of tandem trunks (15%) while Verizon's own traffic accounted for nearly half. *See* AT&T Post Hearing Br. at 27 (citing Cox Exh. 12). Nonetheless, Verizon says it is the "growth" in competitive LEC traffic that is causing exhaust. To the contrary, no one category – particularly a category that is a small minority of overall traffic – can be considered the "cause" of exhaust because it is the *total* level of traffic that contributes to exhaustion. Indeed, Verizon's own experts conceded precisely this point on cross-examination. Tr. 8 at 2231; Tr. at 1287.

Verizon's position is also patently anticompetitive. As AT&T demonstrated, tandem exhaust can be avoided by "proper forecasting, trunk rearrangements and deployment of additional tandem switching capacity." AT&T Post Hearing Br. at 27 (citing evidence). To the extent that these actions both increase overall network capacity (such as adding tandem switching capacity) and require additional investment, any efficiently incurred costs should be recovered on a non-discriminatory basis from *all* network users. But what Verizon is seeking to do is make competitive LECs bear *all* of the additional costs associated with solving tandem exhaustion even though there are numerous other carriers whose traffic traverses Verizon's tandems. *See Order* ¶ 89 (finding that CMRS providers, IXCs, and other incumbent LECs "account for nearly twice as many tandem trunks as do competitive LECs, yet the record does not indicate that Verizon has sought to limit the ability of any of those carriers to use Verizon's tandem switches").

Verizon's proposal would harm competitive LECs in a second anticompetitive way. Even if it were true that Verizon automatically installed direct trunks for its traffic as soon as the

DS1 threshold were met,[5] it does not follow that this level of traffic is appropriate for competitive LECs. To the contrary, the record evidence shows that competitive LECs need to balance several factors in addition to traffic volume in determining whether it is efficient to direct trunk traffic. AT&T Post Hearing Br. at 29. For example, competitive LEC traffic can be more "spiky" than incumbent LEC traffic. Forcing competitive carriers to direct trunk traffic therefore could result in those carriers carrying excess capacity if traffic suddenly declines or insufficient capacity if traffic suddenly escalates. AT&T Post Hearing Br. at 29.

Finally, there is simply no need for the Commission to mandate Verizon's one-size-fits-all trunking policy. In its *Local Competition Order*, the Commission recognized that competitive LECs would have strong incentives to establish efficient trunking arrangements:

> New entrants will only be encouraged to interconnect at end-office switches, rather than tandem switches, when the decrease in the incumbent LEC transport charges justifies the extra costs incurred by the new entrant to route traffic directly through the incumbent LECs end-office switches. Carriers will interconnect in a way that minimizes their costs of interconnection, including the use of cost-based LEC network elements.

Local Competition Order ¶ 1091.

In its Petition, Verizon now disputes this, arguing that

> The difference between Verizon's tandem switching and end office rate cannot act as an incentive when Verizon originates traffic to one of the CLECs . . . . [A]s an ILEC, Verizon originates far more traffic to the CLECs than CLECs originate to Verizon. Therefore, the difference between tandem and end office switching rates provides no significant incentives to move traffic to a direct end office trunk.

[5] Verizon states, without citation, that it was "uncontradicted" that Verizon direct trunks its own traffic when the DS1 threshold is met. Petition at 8. That assertion is false. AT&T demonstrated that in many instances Verizon did not follow this "policy." AT&T Post-Hearing Br. at 28-29.

Petition at 10. As an initial matter, this argument is waived because it was not made by Verizon in its briefs to the Bureau. But even if it were preserved, and if it was not in violation of a competitive LEC's right to choose a POI, it still makes no sense. Verizon suggests that a rule is necessary to force *competitive LECs* to direct trunk traffic.[6] Even if competitive LECs originate relatively less traffic than Verizon, it is still undisputed that they pay a higher rate for terminating traffic at the tandem than at the end office. Thus, as the Commission recognized in the *Local Competition Order*, the differences in those rates provide competitive LECs with an incentive to use direct trunk transport and minimize their interconnection costs.

II. INTERCARRIER COMPENSATION

A. The *Order* Properly Resolved The Toll Rating And FX-Like Traffic Issue (Issue I-6).

In the *Order*, the Bureau rejected Verizon's proposed interconnection language that would allow it to "rate calls according to their geographical end points" rather than by "comparing the originating and terminating NPA-NXX codes." *Order* ¶ 301. Thus, the *Order* enables competitive carriers to offer a FX-like service in which AT&T gives its customers the ability to be assigned a telephone number in a location that is different than the customer's actual location.[7] AT&T Post Hearing Br. at 87. Verizon challenges this aspect of the *Order* on the ground that it requires Verizon to pay "reciprocal compensation on calls that Verizon hands off

---

[6] AT&T does not object to Verizon ordering direct end office trunking to AT&T's switch for Verizon's traffic. The use of one-way trunking, which was agreed to between the parties, provides for that flexibility (*e.g.*, AT&T tandem routes lower volumes of traffic, while Verizon direct routes higher volumes of traffic). The key point is that AT&T is proposing that each party determine what is efficient routing for its own traffic without substantial (and unreasonable) interference by the other party. Talbott-Schell Direct Testimony ¶ 50.

[7] AT&T is able to provide this service because its switches serve a very broad geographic area, encompassing multiple Verizon legacy rate centers. AT&T Post-Hearing Br. at 87 n.297.

to [competitive LECs] outside the originating local calling area and that they deliver to customers outside the originating local calling area." Petition at 18. According to Verizon, the Act and Commission precedent allow Verizon to assess originating access charges on such calls. *Id* at 15-21.

The *Order* properly resolved this issue. Verizon's principal argument is that competitive carriers primarily offer FX-like service to ISPs and that ISP-bound traffic is not governed by the Act's reciprocal compensation provisions. Petition at 15. That is false. In its *ISP Remand Order*, the Commission found that, on its face, section 251(b)(5) "require[s] . . . reciprocal compensation arrangements for the transport and termination of *all* "telecommunications" they exchange with another carrier, without exception." 16 FCC Rcd. 9151, ¶ 31 (2001) (emphasis in original). FX-like traffic, including traffic that is ISP-bound, is clearly "telecommunications" within the meaning of the Act.[8] To be sure, the Commission found that section 251(g) "carved-out" ISP-bound traffic. That aspect of the *ISP Remand Order*, however, was squarely rejected by the court of appeals. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Thus, as the law now stands, even to the extent FX-like services are offered to ISPs – and, of course, that is not always the case – the Act's reciprocal compensation obligations apply.[9]

In the alternative, Verizon claims that the *Order* is in tension with the Bureau's decision in *Mountain Communications, Inc. v. Qwest Communications Int'l, Inc.*, 17 FCC Rcd. 2091 (2002) ("*Mountain Order*"), *aff'd,* 2002 WL 1677642 (July 25, 2002). The *Mountain Order* is

[8] Telecommunications is defined in the act as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153 (43).

[9] Because the court of appeals did not vacate the Commission's current, interim compensation rules for ISP-bound traffic, competitive LECs are entitled to receive compensation for ISP-bound traffic in accordance with those rules.

clearly distinguishable. There, in lieu of establishing a single POI with Qwest and bearing the costs of transporting traffic from that POI, Mountain (a paging carrier) requested that Qwest provide it with "dedicated" T-1 facilities that "connect the Direct Inward Dialing ('DID') numbers that Mountain has obtained in each of Qwest's local calling areas to Mountain's interconnection point in another Qwest local calling area." *Mountain Order* ¶ 3. Although the Bureau agreed with Mountain that Qwest could not charge Mountain the costs of originating traffic that was to be exchanged with Mountain via an interconnection arrangement, the Bureau found that this was not an interconnection arrangement because Qwest had no obligation to build new dedicated facilities to points of Mountain's choosing. *Id.* ¶¶ 12-13. Instead, the Bureau found that Mountain had effectively ordered a "service" from Qwest and it could not get Qwest to build new dedicated facilities and then avoid paying their costs. *Id.* ¶ 13. This decision and its findings are irrelevant to the FX-type of arrangement at issue here. AT&T is not asking Verizon to establish new private lines to connect Verizon's end offices to AT&T's switch, but merely to deliver Verizon-originating FX-type traffic to the POI over the existing trunking groups that carry Verizon-originating non-FX-type traffic, as Verizon is required to do.

Indeed, in stark contrast to the situation in the *Mountain Order*, the record evidence clearly established that the arrangement sought by AT&T imposes no additional costs on Verizon. As AT&T explained, "Verizon's costs to deliver a call to AT&T do not vary depending on whether the call is destined to a customer in the calling party's native rate center or a customer in a foreign rate center. The cost to Verizon is *exactly* the same." AT&T Post-Hearing Br. at 89. This is because AT&T specifies a single POI for an NPA-NXX, regardless of the physical location of the AT&T terminating customer. AT&T Exh. 3 at 98. And because the POI to which Verizon delivers traffic is the same whether or not "virtual" FX traffic is involved, Verizon's network costs to deliver traffic to that POI are necessarily the same. On the other hand, when there are any additional costs between AT&T's switch and the customer to complete such traffic, those costs are borne by AT&T – as Verizon acknowledged during the arbitration. Tr. at 1893.

Finally, Verizon asks the Bureau to reverse its factual finding that there is no practical way to rate calls on anything other than originating and terminating NPA-NXX. Petition at 21. In the *Order*, the Bureau found that Verizon had failed to provide any evidence showing that it would be technically feasible to shift from the current regime of using NPA-NXX ratings to rating calls by their geographical end points. *Order* ¶ 301. In the arbitration, Verizon suggested that competitive LECs could undertake a "traffic study" to "develop a factor to account for virtual FX traffic that appears to be 'local' traffic," but Verizon did not describe any specific method or mechanism for implementing such a study. *Id.* ¶ 302.

Now, Verizon proffers evidence of a "traffic study" it conducted *in another state* for traffic *destined to Verizon FX numbers* and asks that this newly minted "evidence" be entered into the record as evidence that competitive LECs can do the same for traffic destined to their FX-like numbers. Petition at 22.[10] Doing so would violate fundamental notions of due process.

[10] Verizon cites 47 C.F.R. § 1.106 as providing a legal basis for the Bureau to accept this "newly minted" evidence, but that provision provides that the Commission will entertain a petition for reconsideration based on a claim of new evidence "only if one or more of the following circumstances is present: (i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity." As explained below, even if this provision were relevant, neither one of these conditions is met because Verizon had ample opportunity to introduce this study and propose a specific methodology (or, more to the point, a Virginia study) in the proceedings below. The fact that it simply did not occur to Verizon during the hearings to propose such a study does not amount to a "changed or new circumstance" or an "unknown fact" as required by (continued . . .)

Verizon had ample time to conduct or propose a specific study in the proceedings below, but it failed to do so. Accepting evidence relating to such a study now as support for Verizon's assertion that there exists an acceptable methodology to implement in Virginia would reward Verizon's default because AT&T and the other participants – including the Bureau Staff – no longer have the opportunity to get discovery from Verizon or cross-examine the study's author on the details of the methodology, the accuracy of the results, the costs of implementation of the study including the potential billing costs related to crediting reciprocal compensation, and, most fundamentally, whether Verizon's approach makes sense for calls destined to competitive LEC FX-like numbers. Such rigorous examination of the proposed study methodology is particularly necessary because the proffered methodology was not even applied to Virginia traffic or to competitive LEC traffic. Thus, before any proposed methodology could be mandated for use by competitive LECs, it would be necessary to thoroughly understand the proposal, its scope, its accuracy, and its costs. Clearly, the only way that this could have been accomplished is if Verizon were to have proffered the specific proposals at the hearing. Having failed to do so, evidence of this study, or any other proposed methodology cannot be accepted as evidence now.

B. The *Order* Properly Resolved The Tandem Switching Rate Issue (Issue III-5).

Verizon's challenge of the *Order*'s decision on the tandem switching rate issue is quite simple and quite wrong. The Commission's rules state that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is an

(. . . continued)
the Commissions rules.

incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711(a)(3). In its Petition, Verizon renews its argument that the Commission's rules require that the "competitive LECs must demonstrate that their switches are actually serving . . . a geographic area comparable to that of Verizon's tandem." *Order* ¶ 308 (citing Verizon IC Br. at 24-25); *see also* Petition at 24.

Although Verizon says that its argument is compelled by the plain language of the rule, Petition at 24-25, it clearly is not. Had the Commission wished to adopt Verizon's interpretation, it would have made clear that "actual" service was required in its test, but it chose not to do so. Further, an "actual" service test would have required the Commission to adopt a host of additional rules to govern the examination of the number of and dispersion of customers that the competitive LEC serves and whether that is sufficient to demonstrate that the competitive LEC "actually" serves an area comparable to the incumbent's tandem.[11]

Verizon's position would also impede local competition. The tandem rate rule recognizes that while new entrants may adopt a network architecture different than the incumbents, they still have the right to be compensated for their costs of termination. Indeed, in order to deploy switches that achieve the same scale economies as incumbents, competitive LECs must attempt to serve a relatively broad geographic area because they lack the concentrated, captive customer base that the incumbents' enjoy. If Verizon's rule were adopted, competitive LECs would be hard pressed to achieve that customer base. Verizon's proposal "has the effect of penalizing CLECs entering the market, because they would not yet have had

[11] Verizon cites a handful of cases where state commissions have adopted an "actually serves" standard. Petition at 25 n.55. As AT&T showed, however, the overwhelming majority of state commission's have rejected that standard. *See* AT&T Post Hearing Reply Br. at 52 & n.89. Thus, the relevant precedent fully supports the *Order*'s resolution of this issue.

sufficient time to build their customer bases to be 'comparable' to the size and scope of the ILEC's." AT&T Post Hearing Br. at 100 n.334. Indeed, without earning reciprocal compensation that compensates the competitive LEC for its costs of termination and for deploying an architecture designed to serve an area comparable to the incumbent's, competitive LECs may be precluded from entering altogether.

Finally, even if Verizon's position were a permissible reading of the law and consistent with the pro-competitive purposes of the Act, it is not administratively feasible. As AT&T demonstrated – and the *Order* found – Verizon was unable at the hearings to explain how its proposed standard could be defined or implemented. *See Order* ¶ 309; AT&T Post Hearing Br. at 100-101. Verizon witnesses were unable to provide any formula to link the number of customers a competitive carrier serves and their geographic dispersion to the competitive carrier's costs of serving them. In addition, Verizon's proposed rule would cause competitive LECs to fall in and out of satisfying the standard over time because of fluctuations in their customer bases, thus creating the need for continual regulatory reviews, true-ups and tracking mechanisms. Indeed, under some possible scenarios envisioned by Verizon, a competitive LEC that lost a handful of customers in a few key locations could find itself suddenly ineligible for the higher tandem switching rate despite the fact that its termination costs for its customers had not changed. *Id.* at 101.

III. UNBUNDLED NETWORK ELEMENTS

A. The *Order* Properly Resolved The Line Sharing Issue (Issue III-10).

The *Order* (¶ 398) "gives AT&T the option of using non-Verizon loop qualification tools for line splitting," subject to certain conditions.[12] The Bureau (*id.*) noted that this ruling is

[12] Specifically, the Bureau held that if AT&T uses a non-Verizon loop qualification tool, it may (continued . . .)

"consistent with the holding in the *New York Commission AT&T Arbitration Order,*" which held that if it is technically feasible for Verizon to modify its systems to accommodate both AT&T's needs and those of other CLECs, and if AT&T is willing to pay for such modifications, Verizon should do so.

Verizon's Petition (at 25) urges the Bureau to reconsider its decision, asserting that this ruling "adopted language that is consistent with [the New York] ruling." Although Verizon's assertion incorporates an apparent typographical error, the actual language of its Petition is correct, and Verizon's request should be denied.

Indeed, Verizon's Petition is flatly inconsistent with its own positions in the arbitration. In Verizon's August 17, 2001 Rebuttal Testimony of Rosemary Clayton *et al.* on this issue (at 51) Verizon quoted the very language from the *New York Commission AT&T Arbitration Order* – including the specific sentence relied upon by the Bureau – and stated that it "*agrees* that only those modifications that are technically feasible, accommodate the needs of all CLECs and that the CLECs commit to paying for should be made to its systems" (emphasis added). Verizon's witness Mr. White (one of the declarants in the August 17 rebuttal testimony), reaffirmed at the hearing that this was Verizon's position (Tr. at 806). That is exactly the requirement adopted in the *Order*. *See Order* ¶ 398 (noting Verizon's Rebuttal Testimony "accepts these conditions").

Moreover, Verizon's witnesses at the hearing agreed (Tr. at 850-51) that when a CLEC submits an order for line splitting (or line sharing), it indicates whether it has or has not prequalified the loop, by checking a box on the existing order form. Assuming that the CLEC indicates that it has done so, the order is accepted for further processing in Verizon's systems.

(. . . continued)
not hold Verizon liable for the service performance of the loop. *Id*.

Thus, it is clear that no system modifications are necessary to accept line splitting orders for which AT&T has performed an alternative loop qualification process. And in all events, the *Order* makes Verizon's complaints about technical feasibility and cost irrelevant here, because it expects "that the determinations of technical feasibility and cost will be made in New York." Verizon's request for reconsideration should therefore be denied.[13]

B. The *Order* Properly Resolved The Dark Fiber Issue (Issue III-12).

Verizon asks the Bureau to "clarify" that Verizon may impose recurring charges for the 90-day dark fiber reservation period, and the 10-day hold period between preordering and ordering procedures for dark fiber, that the Bureau found to be required by the nondiscrimination requirements of the Act.[14] This initiative should be rejected, because such reservations charges simply would allow Verizon to use its rates to do indirectly what the Bureau has found Verizon cannot do directly – that is, discriminate against competitive LECs in the provision of dark fiber UNEs vis-à-vis the treatment enjoyed by Verizon itself when it services its retail customers.

The Verizon proposal would impose incremental costs on AT&T (and other CLECs) that Verizon itself does not have to bear. The Bureau found that AT&T has a "right to reserve fiber while filling customer orders," and that "[p]ermitting AT&T to hold fiber for 90 days puts AT&T, which may need to build or augment collocation, on a more equal footing with Verizon,

---

[13] AT&T does agree, however, that the interval referred to in its Section 1.3.4 applies to line sharing and line splitting, and it does not oppose a modification to Section 1.3.4 of its proposed contract language that adds the following language to the penultimate sentence: "*or such other period as may be called for pursuant to processes established by the New York Collaborative*." *See* Petition at 28-30.

[14] Petition at 30. The Bureau's findings are summarized at Paragraphs 460 and 461 of the *Order*.

which is able to assign fiber immediately to satisfy customer requirements."[15] Verizon does not incur the incremental costs that it wants AT&T to shoulder. While Verizon claims it has incurred the costs "paid to install the fiber,"[16] these are not incremental costs arising out of the reservation of fiber, but rather sunk costs that Verizon incurred in the past and that do not change regardless of whether Verizon itself or AT&T reserves the fiber for a customer. Thus, the imposition of a reservation charge would negate the rough equality that the Bureau sought to foster in mandating the 90-day reservations and 10-day hold requirements.

Verizon's argument that its proposal is akin to an "option on property that is purchased to take the property off the market for a limited period"[17] is nothing more than an argument that Verizon should be enabled to recover its opportunity costs (assuming without conceding that an opportunity for profit had actually been foregone by any particular reservation of dark fiber facilities, which, by definition, are not in use or projected to be in use). But Verizon has not demonstrated that it would suffer any real harm as a result of the reservation policy mandated by the *Order*. Verizon has failed to rebut the Bureau's correct findings that the brief reservation period does not amount to warehousing or hoarding, and that Verizon could, if it chose to do so, eliminate the need for a reservation period by implementing the parallel provisioning process that it has been trialing (for over two years now!) in Pennsylvania. *Order* ¶ 461. In any event,

---

[15] *Order* ¶ 460. Similarly, the Bureau found that the 10-day hold period helped to equalize access to fiber between the CLECs and Verizon, because "Verizon . . . as the incumbent, does not signal the fiber it wishes to use to its competitor through a pre-ordering process." *Id.* ¶ 461.

[16] Petition at 31.

[17] *Id.*

the Commission has already found that the concept of opportunity costs has no place in a pricing environment governed by TELRIC principles.[18]

Verizon also seeks to impose a nonrecurring charge for the development of ordering processes and billing systems for the 90-day reservation period and the 10-day hold period mandated by the *Order*. *See* Petition at 31-32. AT&T does not object as a matter of principle to an appropriate level of recovery by Verizon of its OSS development costs that are necessitated by the unbundling requirements of the Act, pursuant to the provisions of the Act. However, the nonrecurring charge cannot simply be whatever Verizon claims it to be, *ex cathedra*. The cost basis for any such nonrecurring charge must comply with the requirements of the Act, must be fully documented, and must be fairly allocated among all users, including Verizon. It can then be incorporated into the AT&T/Verizon interconnection agreement, or failing agreement between the parties, can be arbitrated. In the meantime, the Bureau should not permit Verizon to delay accepting dark fiber reservations until the nonrecurring charges, if any, are established.

---

[18] *Local Competition Order* ¶¶ 708-709. In the commercial world, the price of such options is typically credited to the purchase price when a transaction goes forward. Thus, even if Verizon's "option" analogy were apt – which it is not – there is no commercial basis to impose a fiber reservation fee when AT&T takes the reserved fiber.

CONCLUSION

Except in those limited instances noted above, the Petition should be denied.

/s/ Mark C. Rosenblum

David L. Lawson
C. Frederick Beckner III
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Mark C. Rosenblum
Lawrence J. Lafaro
Stephen C. Garavito
Richard H. Rubin
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-3539

Mark A. Keffer
G. Ridgley Loux
Ivars V. Mellups
Michael A. McRae
Stephanie Baldanzi
AT&T
3033 Chain Bridge Road
Oakton, Virginia 22185
(703) 691-6046

Ellen Schmidt
AT&T
99 Bedford Street
Boston, MA 02111
(617) 574-3179

September 10, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2002, I caused true and correct copies of the forgoing Opposition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: September 10, 2002
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

SERVICE LIST

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554*

Qulaex International
445 12th Street, SW
Washington, D.C. 20554

Karen Zacharia
David Hall
Verizon
1515 North Courthouse Road
Fifth Floor
Arlington, VA 22201

Jodie L. Kelley
Jenner & Block
601 13th Street, NW
Washington, D.C. 20005

J. G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, D.C. 20005

* Filed electronically