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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 10, 2002

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Federal Communications Commission
Office of the Secretary
The Portals
445 12th Street, S.W.
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Washington, D.C. 20554

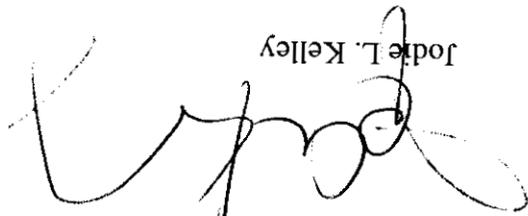
Re: CC Docket No. 00-218

Dear Ms. Dortch:

Enclosed for filing please find an original and four copies of the Opposition Of Worldcom, Inc. To Verizon's Petition For Clarification And Reconsideration Of July 17, 2002 Memorandum Opinion And Order. Also enclosed are eight copies for the arbitrator. An extra copy is enclosed to be file-stamped and returned.

If you have any questions, please do not hesitate to call me at 202-639-6058. Thank you very much for your assistance with this matter.

Very truly yours,



Jodie L. Kelley

Encl.

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SEP 10 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 Virginia State Corporation)	CC Docket No. 00-218
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)	CC Docket No. 00-249
Preemption 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) of the)	CC Docket No. 00-251
Communications Act for Preemption of the)	
Jurisdiction of the Virginia Corporation)	
Commission Regarding Interconnection Disputes)	
With Verizon Virginia Inc.)	

**OPPOSITION OF WORLDCOM, INC. TO
VERIZON'S PETITION FOR CLARIFICATION AND RECONSIDERATION
OF JULY 17, 2002 MEMORANDUM OPINION AND ORDER**

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY 1

ARGUMENT..... 6

I. VERIZON’S PROPOSAL TO IMPOSE A DIRECT TANDEM TRUNKING REQUIREMENT AT ALL TANDEMS IN A LATA MUST BE REJECTED (ISSUE 1-4)..... 6

II. THE ARBITRATOR PROPERLY REJECTED VERIZON’S ATTEMPT TO IMPOSE USE RESTRICTIONS ON WORLDCOM’S PURCHASE OF DEDICATED TRANSPORT (ISSUE IV-6)..... 11

III. THE ARBITRATOR CORRECTLY DETERMINED THAT NPA-NXX’S SHOULD BE USED TO DETERMINE WHETHER A CALL IS LOCAL OR TOLL. (ISSUE I-6)..... 16

 A. Verizon’s Request for Reconsideration Must be Denied Because it Relies on “Evidence” That is Not Part of This Record and Cannot be Considered 16

 B. Verizon’s “Legal” Arguments are Meritless..... 17

 C. Verizon’s Newly Proposed Suggestion That FX Traffic Delivered To An ISP Should Be Excluded From the Intercarrier Compensation Regime Established In the *ISP-Remand Order* Must be Rejected..... 21

IV. THE ARBITRATOR’S CONCLUSION THAT WORLDCOM IS ENTITLED TO THE TANDEM INTERCONNECTION RATE WAS CORRECT 23

V. VERIZON’S BELATED REQUEST FOR A “DARK FIBER RESERVATION RATE” SHOULD BE DENIED 27

VI. THERE IS NO BASIS FOR RECONSIDERATION OF THE ARBITRATOR’S DECISION ON SPECTRUM MANAGEMENT (ISSUE IV-14) 28

VII. THE TEN CALENDAR DAY PERIOD FOR SUBMITTING INVOICES IS LAWFUL, BUT WORLDCOM IS WILLING TO ACCEPT VERIZON’S PROPOSED TEN BUSINESS DAY INTERVAL (ISSUE IV-74)..... 33

VIII. VERIZON'S CHALLENGE TO THE ASSURANCE OF
PAYMENT PROVISION SHOULD BE DENIED
(ISSUE IV-1 (N))..... 35

CONCLUSION..... 37

INTRODUCTION AND SUMMARY

Pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106(g), WorldCom, Inc. ("WorldCom") respectfully submits this Opposition to Verizon's Petition for Clarification and Reconsideration of July 17, 2002 Memorandum Opinion and Order,¹ CC Docket Nos. 00-218, *et al.* (filed Aug. 16, 2002) ("Pet. for Recon.").

Several principles of law inform the inquiry to be made when assessing Verizon's requests. First, Verizon frequently asserts that the decisions rendered are inconsistent with the Commission's rules. But the Wireline Competition Bureau (the "Bureau") is uniquely situated to determine what the Commission's current rules mean. Indeed, well established principles of administrative law hold that deference to an agency decision is at its zenith when the agency is deciding the scope and meaning of its own rules. *See, e.g., Auer v. Robbins*, 519 U.S. 452, 461(1997) (noting that agencies are entitled to deference when interpreting own regulations and that such interpretations are controlling unless "plainly erroneous or inconsistent with the regulation"); *Lyng v. Payne*, 476 U.S. 926, 939 (1986) ("[A]n agency's construction of its own regulations is entitled to substantial deference"); *Global Crossing Telecomms., Inc. v. FCC*, 259 F.3d 740, 746 (D.C. Cir. 2001) (courts "must defer to an agency's reading of its own regulations unless that reading is plainly erroneous or inconsistent with the regulations. . . [and] must accord deference to an agency's reasonable interpretation of its own precedents") (internal citations omitted); *Cassell v. FCC*, 154 F.3d 478, 483 (D.C. Cir. 1998) (describing deference due to agency's interpretation to its own precedent).

¹ *In Re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (rel. July 17, 2002) ("Arbitration Order").

Second, a number of Verizon's challenges rest on factual assertions, and arguments that the Arbitrator misunderstands the relevant facts. But the Arbitrator heard the evidence, and is best situated to make factual judgments. It is for this reason that courts reviewing arbitration decisions such as the one at issue here have uniformly held that the factual decisions of the relevant commissions are entitled to great deference, and may only be overturned if the rulings are arbitrary and capricious. *See, e.g., MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3d Cir. 2001); *Southwestern Bell Tel. Co. v. Waller Creek Communications, Inc.*, 221 F.3d 812, 816 (5th Cir. 2000); *GTE South v. Morrison*, 199 F.3d 733, 745-46 (4th Cir. 1999); *AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia*, 197 F.3d 663, 668 (4th Cir. 1999); *see also GTE South v. Morrison*, 199 F.3d at 745 (state commission factual findings must be upheld if supported by substantial evidence in the record); *MCI Telecommunications Corp. v. U S West Communications*, 204 F.3d 1262, 1266-67 (9th Cir. 2000) (same).

As explained in further detail in the section addressing Verizon's individual claims, Verizon's petition raises issues that are uniformly meritless. Perhaps even more troubling, however, although the record is closed, Verizon continues to inject new factual assertions, entirely new arguments and new contract language despite the fact that it is unquestionably improper for it to do so. The rules established for this proceeding, the rules of the Commission, the requirements of the Administrative Procedures Act ("APA"), and the requirements of due process all mandate that the Commission strike

any new factual assertions, and decline to address the new arguments and contract language proposed by Verizon.²

The Due Process Clause of the Fifth Amendment of the U.S. Constitution requires that a party not be deprived of “life, liberty, or property without due process of law.” U.S. Const. amend V. In the context of agency decisionmaking, this requires a party to be given an opportunity to respond both to proposals, and evidence submitted in support of such proposals. The Administrative Procedures Act imposes similar requirements. Because Verizon has attempted to inject new proposals well after the time within which WorldCom can submit evidence and cross-examine Verizon’s witnesses, both the Due Process Clause and the APA require that such proposals be struck. Indeed, if the Commission were to consider them at this juncture, that decision would constitute reversible error.

Almost seven decades ago, the Supreme Court recognized that “[t]he right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them.” *Morgan v. United States*, 304 U.S. 1, 18 (1938). The Court reiterated the critical importance of a party’s ability to fairly address relevant claims in *Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281 (1974), stating:

A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.

² WorldCom notes that Cox Virginia Telecom, Inc. has filed a “Motion to Strike the Declaration of William Munsell and Other Inappropriate New Matter.” WorldCom is in complete accord with the arguments made by Cox in that pleading, and adopts those arguments as if fully set forth herein.

Id. at 288 n.4; *see also Ralpho v. Bell*, 569 F.2d 607, 628 (D.C. Cir. 1977) (“[a]n opportunity to meet and rebut evidence utilized by an administrative agency has long been regarded as a primary requisite of due process”).

Similar requirements are imposed by the Administrative Procedures Act. The APA provides, *inter alia*, that a “reviewing court shall ... (2) hold unlawful and set aside agency action, findings, and conclusions found to be - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law... [or] (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute.” 5 U.S.C. §§ 706(2)(A), 706(2)(E). Encapsulated within these mandates is a requirement that the facts on which an agency bases its decision are sufficient, and that other parties have had the opportunity to respond to such submissions. *See generally City of New Orleans v. SEC*, 969 F.2d 1163, 1167 (D.C. Cir. 1992); *accord CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1159-60 (D.C. Cir. 1987) (“A precept fundamental to the administrative process is that a party have an opportunity to refute evidence utilized by the agency in decisionmaking affecting his or her rights.”).

This Commission’s rules create a limited exception to these requirements in petitions for reconsideration. A party may raise arguments that rely on new facts in a reconsideration petition *only* if the new factual determinations “relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters,” 47 C.F.R. §1.106(b)(2)(i); *see id.* §1.106(c)(1); if they were “unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned by such opportunity,” *id.*

§1.106(b)(2)(ii); *see id.* §1.106(c)(1); or if the party demonstrates that consideration of the new facts is “required by the public interest.” *Id.* § 1.106(c)(2). Verizon’s reconsideration petition does not even purport to meet these stringent requirements, and Verizon has failed to articulate any intervening events, changed circumstances, prior lack of knowledge, or public interest concerns that would warrant consideration of the newly minted facts included in its arguments.³ Verizon’s effort to raise new facts thus finds no support in Rule 1.106.

Thus, were the Commission to allow Verizon to introduce new proposals at this late stage, both the Due Process Clause and the APA would be violated. First, WorldCom has had no reasonable opportunity to address Verizon’s proposals. All opportunity to present direct evidence and to cross-examine witnesses has long since passed. Similarly, allowing Verizon to alter its proposals *after* all testimony has been submitted, and *after* the hearings in this matter have concluded would be fundamentally arbitrary and capricious. Indeed, it would render these proceedings largely irrelevant with respect to these new proposals.

In addition to violating due process requirements and being arbitrary and capricious, Verizon’s attempt to inject new proposals at this point also violates the Commission’s procedural order. In that Order, the Commission made clear new evidence could not be introduced even *during the hearing* (much less after a decision in the case has been rendered): “No party may introduce an exhibit (including expert reports) or call a witness *unless the exhibit or witness was identified in that party’s pre-hearing submission*, except for good cause shown.” *Procedures Established for Arbitration of*

³ Verizon does include a conclusory assertion that the Munsell Declaration meets these requirements, Pet. For Recon. at 22n.49, but fails to explain how it does so.

Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom, 16 F.C.C.R. 3957, 3946 (2001) (emphasis added). This makes clear that, at a minimum, the parties' proposals should have come to rest by the time the hearing began.

Accordingly, the Commission should decline to address any new proposal or evidence introduced by Verizon at this stage of the proceeding. The remainder of Verizon's requests are inconsistent with Commission precedent, relevant law, and record evidence. Accordingly, all of Verizon's arguments should be rejected.

ARGUMENT

I. VERIZON'S PROPOSAL TO IMPOSE A DIRECT TANDEM TRUNKING REQUIREMENT AT ALL TANDEMS IN A LATA MUST BE REJECTED (ISSUE I-4).

Verizon first asks the Arbitrator to revise its decision with respect to end office trunking. Verizon's request should be rejected for two, independent reasons. First, although Verizon asserts that it seeks to "clarify" its agreement with WorldCom, in fact it is an attempt to relitigate an entirely different issue – its GRIPs proposal – that the Arbitrator squarely, and appropriately rejected. If Verizon's request is somehow not deemed merely a rehash of that rejected proposal, it would be a request for an entirely new requirement that was not proposed during the arbitration. For these reasons alone, the Arbitrator must reject Verizon's request. In any event, even if this matter were properly before the Arbitrator, Verizon's request is meritless. In its proposal on *this issue*, WorldCom *voluntarily agreed to* a solution (direct end-office trunking at the DS-1 threshold) that goes beyond the requirements of existing law – as evidenced by the fact that the Arbitrator declined to *impose* this same requirement on either AT&T or Cox. And the Arbitrator chose *Verizon's* proposed language implementing this requirement,

reasoning that “Verizon’s proposed language measure[d] the relevant traffic in a manner consistent with WorldCom’s proposed language,” but was more complete. *Arbitration Order* ¶ 90. That language does not contain the requirement that Verizon now proposes. *Id.* ¶ 90. Verizon now seeks to “clarify” its own language by adding additional requirements that WorldCom did not agree to and that the Commission did not impose on any party, including AT&T or Cox. The Commission must reject this request. Verizon has already obtained more than it is entitled to and certainly enough to satisfy the requirements of relevant law.

Verizon’s request that the Arbitrator “Clarify That WorldCom’s Agreement To Establish Direct End Office Trunks At The DS-1 Threshold Applies Even If WorldCom Establishes Physical Interconnection At A Single Tandem In The LATA,” Pet. for Recon. at 11, is disingenuous, at best. What Verizon seeks goes well beyond the establishment of direct end office trunks at the DS-1 threshold – a requirement to which WorldCom has agreed. Instead, Verizon now asks the Arbitrator to hold that when the single physical point of interconnection WorldCom establishes is at a tandem, WorldCom will establish direct trunks to all other tandems located in the same LATA. Far from being a minor “clarification,” Verizon’s proposal is merely an attempt to relitigate its failed GRIPs proposal. Indeed, the contract section Verizon asks the Arbitrator to “clarify” is that adopted in conjunction with Issue I-1, which is the GRIPs issue, not Issue I-4, which is the issue dealing with end office trunking.

As it has here, under Issue I-1 Verizon asked that competitive LECs be required to establish multiple “interconnection points” in each LATA. The competitive carriers objected on the ground that this is squarely prohibited by the FCC’s rules, which

expressly allow competitive carriers to establish a single point of interconnection per LATA. They also explained that this would prevent competitive carriers from establishing an efficient network configuration, and would instead require their network to mirror the configuration of Verizon's network. *See, e.g.*, WorldCom Br. at 8-13; WorldCom Reply Br. at 4-5. The Arbitrator agreed with the competitive carriers, and adopted petitioners' proposed contract language, reasoning that it "more closely conforms to the Commission's current rules governing points of interconnection and reciprocal compensation than do Verizon's proposals." *Arbitration Order* ¶ 51.

Although it does not challenge this holding directly, Verizon mounts a collateral attack on the Commission's decision in the guise of a request for a clarification of a different issue – that related to end office trunking (Issue I-4). Thus, Verizon asks the Arbitrator to "clarify" that, although WorldCom may establish a single point of interconnection per LATA, if WorldCom chooses to do so at a Verizon tandem it must also "configure its trunk groups to aim trunks at each Verizon tandem switch in the LATA. . . ." Pet. for Recon. at 11. Thus, Verizon seeks to require WorldCom to interconnect at each and every tandem in a LATA. This is plainly inconsistent with the Commission's ruling with respect to Issue I-1, and with the underlying legal regime that led the Commission to reject Verizon's position with respect to that issue in the first instance. Accordingly, the Commission should summarily dismiss Verizon's request.

If, for any reason, the Commission believes this issue was not previously litigated and decided in conjunction with Issue I-1, Verizon's request must be dismissed as an attempt to inject a new issue into the proceeding. There is no question that the issue Verizon raises was not raised at any point during the arbitration with respect to end-office

trunking as evidenced by, among other things, the briefs filed by the parties and the Arbitrator's decision on this issue (all of which utterly fail to discuss this proposal). Nor was it included in contract language related to this issue – indeed the contract language that Verizon complains of is that adopted in paragraph 51 of the *Arbitration Order* – which involves the GRIPs issue. Verizon cannot now, in the guise of a request for reconsideration, attempt to shoehorn this issue into the end-office trunking language. *See pp. 3 - 7, supra.*

In any event, Verizon's proposal is utterly flawed on the merits. Because it is economically efficient and rational for it to do so, WorldCom *agreed* to establish direct end-office trunking when traffic reaches a DS-1 level threshold. The Commission declined to impose this same requirement on other competitive carriers, concluding that Verizon had not met its burden of proof on this issue. *See Arbitration Order* ¶ 89. Given that Verizon has not even shown that direct end-office trunking is required, it plainly has not demonstrated that direct tandem trunking is required.

Indeed, the Arbitrator *rejected* the only argument Verizon did make regarding purported exhaust problems at tandem switches. Specifically, Verizon attempted to limit WorldCom's ability to connect to tandem switches to 240 trunks. The Arbitrator noted, however, that "Verizon's witness conceded that end office interconnection at the DS-1 threshold would get Verizon '95 percent of the way' to solving the tandem exhaustion problems in Virginia, rendering the 240 tandem trunk cap superfluous." *Arbitration Order* ¶ 90 (internal citations omitted). The Arbitrator thus declined "to impose this restriction on WorldCom for such a marginal and speculative benefit. . . ." *Id.*

The requirement Verizon now seeks – that WorldCom connect to each and every tandem switch in a LATA if it picks a tandem switch as its point of interconnection – is even more unnecessary and superfluous than the rejected 240 trunk limit. Verizon’s new proposal would require WorldCom to connect to every tandem, even if traffic to any given tandem was *de minimis*. No record evidence indicates that this is necessary, or even that it would be useful. To the contrary, as WorldCom’s witness Don Grieco explained, allowing WorldCom to connect to a single tandem frees up ports that would otherwise be used if WorldCom were to connect to multiple tandems. *See* Tr. 1622-1624. This configuration is also more efficient, because it allows a single trunk group to be utilized to carry traffic destined for one tandem that may be busy during the day, for example, while carrying traffic to another tandem that may be busy during the evening. *See id.* at 1624. And, of course, if sufficient traffic were destined to one end office, WorldCom would establish direct trunking to that office, removing such traffic from the tandem altogether.

As the record evidence demonstrates, this very architecture is used in other states, and it works well. *See, e.g., id.* at 1624, 1635. That alone demonstrates that it is practical and technically feasible. But WorldCom’s witnesses also explained precisely how it works, and why it is the most efficient use of resources. *Id.* at 1621 (explaining that Verizon’s tandems are all linked,⁴); *id.* at 1622-23 (explaining architecture and the efficiencies that result); *id.* at 1624 (explaining that fewer trunk groups are needed pursuant to this type of architecture); *id.* (explaining this is used successfully with other

⁴ Indeed, Verizon itself routes traffic from a single tandem, through other tandems, to any end office which subtends any of the multiple tandems in the arrangement. *See* Verizon’s August 19, 2002 Industry Letter (“*Industry Letter*”) (attached hereto as exhibit A) (available online at <http://128.11.40.241/east/wholesale/resources/master.htm>).

LECs, and that tandems are capable of routing calls through other tandems to relevant end office); *id.* at 1635 (explaining that connecting with a single tandem eliminates trunking requirements at other tandems in a LATA).

Finally, Verizon's assertion that its "clarification" is necessary because the LERG lists no more than two routing points (the end office switch and the single tandem that that end office subtends) for a particular NPA-NXX is wrong. The LERG currently can reflect a variety of routing options. Indeed, the *Industry Letter* provides a concrete example of the way in which a call destined for any of 21 different end offices can be routed through multiple tandems. That the LERG does not stand as an impediment to establishing a single POI at a tandem is merely confirmed by the fact that, as discussed above, WorldCom employs precisely this architecture in other parts of the country without problem.

For all these reasons, the Commission should reject Verizon's request to dramatically transform WorldCom's agreement to establish direct end-office trunking when traffic reaches a DS-1 level into a requirement that WorldCom connect at every tandem in a LATA.

II. THE ARBITRATOR PROPERLY REJECTED VERIZON'S ATTEMPT TO IMPOSE USE RESTRICTIONS ON WORLDCOM'S PURCHASE OF DEDICATED TRANSPORT (ISSUE IV-6).

This issue involves the situation in which WorldCom and Verizon jointly "provision . . . switched exchange access services to IXCs. . . ." *Arbitration Order* ¶ 177. The Arbitrator correctly concluded that, in such circumstances, "Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom." *Id.* No party appears to dispute this conclusion. The Arbitrator also held that WorldCom has the right

to purchase dedicated transport from Verizon as an unbundled network element to extend its facilities to the POI, and that Verizon may not place use restrictions on WorldCom's use of such elements. *Id.* This conclusion is not only in accord with, but is mandated by, governing law.

Verizon continues to insist, however, that if WorldCom purchases such an element, it may use it only to provide local service. If WorldCom intends to provision exchange access over such unbundled network elements, Verizon insists that WorldCom should have to pay much higher rates for "access toll connecting trunks" for such a network element. Verizon's challenges to the Arbitrator's straightforward determinations largely represent a rehash of the argument it previously made, and properly lost.

First, Verizon repeats its assertion that WorldCom (the local exchange carrier) purchases Verizon's access services and thus should have to pay access rates for dedicated transport. *See* Pet. for Recon. at 11-13. This is wrong. WorldCom, as the local exchange carrier, *provides* access services to interexchange carriers – in this case jointly with Verizon. It never purchases access services. In particular, in a meet-point trunking arrangement, WorldCom provides access services to the IXC up to the point of interconnection, and Verizon provides access services from its side of the POI to the IXC. As the Arbitrator correctly found, Verizon simply does not provide interexchange service to local exchange carriers, such as WorldCom. *See Arbitration Order* ¶ 177.

Given that, there is no question that the Arbitrator's decision was not only reasonable, it was the only one consistent with relevant law. Incumbent carriers such as Verizon have an obligation to provide unbundled network elements, including dedicated transport, in order for CLECs to provide *any* telecommunications service. 47 U.S.C.

§ 251(c)(3). The statute itself does not allow the ILEC to restrict the service to telephone exchange service as opposed to exchange access service. The Commission has strongly affirmed this requirement, making clear that ILECs are prohibited from imposing “limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.” 47 C.F.R. § 51.309(a); *see also Local Competition Order* ¶ 264 (concluding that section 251(c)(3) “does not impose any service-related restrictions or requirements on requesting carriers in connection with the use of unbundled elements” and that “[a] single network element can be used to provide many different services”); *id.* ¶ 292 (noting that requesting carriers leasing a network from an incumbent may “provide *any* telecommunications services that can be offered by means of the element”) (emphasis added); *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 F.C.C.R. 3696, ¶ 484 (1999) (“*UNE Remand Order*”), *modified*, 15 F.C.C.R. 1760 (1999). These provisions unequivocally prevent Verizon from denying WorldCom the ability to purchase unbundled dedicated transport simply because WorldCom intends to use it, in part, to provide exchange access service.⁵

Thus, Verizon’s assertion that meet point facilities “are used for a transiting function not interconnection” is not only incorrect, it is irrelevant. It is wrong because

⁵ Verizon appears to suggest that the Commission must consider the “service” WorldCom intends to offer through the use of an unbundled network element before it can conclude that the element must be provided on an unbundled basis. Although WorldCom disagrees with Verizon’s premise, what is relevant for these purposes is that the Commission has concluded that dedicated transport is a network element. Verizon may disagree with that analysis, at least in certain applications, but it may not collaterally attack that determination in this proceeding.

WorldCom is purchasing dedicated transport in order to extend its facilities to the point of interconnection. It is irrelevant because, pursuant to the Act and the Commission's rules, incumbent carriers may not restrict a competitive LEC's right to use unbundled network elements to provide *any* telecommunications service, no matter what name the ILEC assigns to the service. Indeed, in this very proceeding, the Arbitrator expressly concluded that a LEC has the right to use unbundled network elements *to exchange transit traffic* with third party carriers. *See Arbitration Order* ¶ 121 (affirming the right of CLECs to use UNEs for the provision of any telecommunications service, including transiting traffic to third-party carriers). This finding of law, which is manifestly correct, has not been contested by Verizon. Thus, Verizon's attempt to inject the label "transiting" service does not alter the conclusion reached by the Arbitrator in any way.

Finally, this analysis is not altered in any way by section 251(g) of the Act. Although Verizon asserts that 251(g) "exempts exchange access.... and exchange services for such access to interexchange carriers from the requirements of section 251," *Pet. for Recon.* at 12, that interpretation of section 251(g) has been squarely and repeatedly rejected by the Commission:

We believe [section 251(g)] does not apply to the exchange access services requesting carriers may provide themselves or others after purchasing unbundled elements. Rather, the primary purpose of section 251(g) is to preserve the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent.

Local Competition Order ¶ 362.

Verizon's half-hearted reference to *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, 2002 WL 1677642 (rel.

July 25, 2002) (“*Mountain Order*”), is even more misguided. That Order has nothing whatsoever to do with whether a local exchange carrier can use unbundled network elements to provide certain services. Instead, it involved a CMRS provider which asserted that *no* charges were applicable when a local exchange carrier transported paging traffic to the CMRS provider. The Order also deals with an entirely different arrangement than meet point trunking—Mountain’s establishment of a wide area calling arrangement by ordering DID numbers and T-1 services out of an access tariff. The Commission ruled that in such circumstances, a *transiting* LEC may enter into a wide area calling arrangement with a CMRS provider in order to reduce end-user charges for CMRS services. Thus, the LEC forbears from charging for toll in exchange for the wide area calling arrangement with the CMRS provider.

Thus, the Commission’s decision in *Mountain Communications* dealt with the situation where the LEC is a toll provider, and would charge an *end user* toll but for the wide area calling arrangement. Here, the IXC provides toll, or long-distance services. For all such toll calls to or from a WorldCom end user, regardless of the identity of the IXC, WorldCom and Verizon jointly provide *access to* that IXC, and the IXC charges the appropriate party the full applicable toll. *Mountain Communications* simply does not apply.

Accordingly, the Commission should once again reject Verizon’s attempt to prevent WorldCom from using unbundled network elements, including dedicated transport, to provide telecommunications services as the Act allows.

III. THE ARBITRATOR CORRECTLY DETERMINED THAT NPA-NXX'S SHOULD BE USED TO DETERMINE WHETHER A CALL IS LOCAL OR TOLL (ISSUE I-6).

In the *Arbitration Order*, the Commission declined to alter the current regime, which relies on a comparison of the originating and terminating central office codes, or NPA-NXXs, associated with a call” to determine “whether a call passing between [the parties’] networks is subject to reciprocal compensation (traditionally referred to as ‘local’) or access charges (traditionally referred to as ‘toll’).” *Arbitration Order* ¶ 286. In reaching its decision, the Commission noted that “Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide,” *id.* ¶ 301; that “[t]he parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete workable solutions at this time,” *id.*; and that, although Verizon proposed the use of a traffic study to develop a factor to account for virtual FX traffic, “Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.” *Id.* ¶ 302 (internal citations omitted). Based on all of this, the Arbitrator concluded that the only sensible approach was to continue the existing practice of using NPA-NXXs to determine whether a call is local or toll. The Arbitrator’s decision was consistent with existing law and, particularly given the evidence before it, is unassailable.

A. Verizon’s Request for Reconsideration Must be Denied Because it Relies on “Evidence” That is Not Part of This Record and Cannot be Considered.

Verizon nonetheless seeks reconsideration of the Arbitrator’s decision, relying primarily on a traffic study Verizon conducted in Florida *after* the arbitration ended,

coupled with an accompanying declaration purporting to demonstrate how such a study could be imported into Virginia and contract language suggested for the first time in Verizon's Petition for Reconsideration. None of this may be considered, however. As explained above, the Commission's rules prohibit the introduction of new evidence at this stage, unless such evidence was not available and could not have been reasonably ascertained during the proceeding below. *See pp. 3-7, supra; 47 C.F.R. § 1.106(b)(2).* Verizon could have performed a traffic study and introduced it during the Arbitration had it chosen to do so, and similarly could have proffered the contract language it now purports to introduce. It simply failed to meet its burden of proof, and cannot rectify that now by submitting further facts in an effort to buttress its position. *See pp. 3-7, supra.*⁶ For that reason alone, the Commission must affirm its prior conclusion.⁷

B. Verizon's "Legal" Arguments Are Meritless.

The balance of Verizon's arguments are merely a rehash of arguments previously rejected, or are makeweights. As explained below, they are uniformly meritless, and should be rejected.

As an initial matter, Verizon asks the Arbitrator only "to reconsider its decision to the extent it requires Verizon to pay reciprocal compensation on calls Verizon hands off to Petitioners outside the originating local calling area and that they deliver to customers outside the originating local calling area." Pet. for Recon at 18. In essence, then, Verizon asks the Arbitrator to exempt a category of "local" calls from the requirements of

⁶ As explained above, it would also violate the Administrative Procedures Act and the requirements of due process to reconsider the Arbitrator's decision on the basis of evidence which Verizon failed to introduce during the proceeding below, thus precluding other parties from submitting appropriate evidence and conducting cross-examination in response.

⁷ In any event, Verizon's "new" evidence adds nothing of substance to its arguments. The one-page Declaration sheds no more light on the policy, billing and technical issues associated with Verizon's traffic study proposal than does Verizon's testimony and Brief submitted during the proceedings.

§ 251(b)(5) of the Act. Nothing in the Commission's existing rules sanctions such a result, however, and, as the Arbitrator repeatedly made clear, only existing law is relevant to the decisions rendered in this arbitration.

In implementing the Act's requirements, the Commission concluded that § 251(b)(5) of the Act requires the payment of reciprocal compensation for "local" calls. *In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499 (1996), ¶ 1040 ("Local Competition Order"). The Arbitrator correctly concluded that the parties are to rely on originating and terminating central office codes to determine if calls are "local". Its corresponding determination that such local calls are subject to reciprocal compensation is thus mandated by the Commission's existing rules.

Verizon's attempt to alter the analysis by pointing to § 251(g) of the Act and 47 C.F.R. § 51.710(b)(1) is utterly unavailing. Indeed, § 51.710 (b)(1) *supports* the Arbitrator's decision. That rule makes clear that *access services* are exempted from the reciprocal compensation regime – but access services, by definition, are not provided for "local" traffic. Thus, by its own terms § 51.710 (b)(1) does not provide an exemption for the traffic at issue here. And Verizon's reference to § 251(g) of the Act is even more puzzling. In *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), the Court of Appeals for the District of Columbia Circuit squarely rejected the argument that § 251(g) provides a basis for exempting local traffic from the reciprocal requirement obligations of § 251(b)(5). *Id.* at 432-34. Not only does § 251(g) apply only to "the 'continued enforcement of certain pre-Act regulatory 'interconnection restrictions and obligations,'" the Court held, it "speaks only of services provided 'to interexchange carriers and

information service providers'; LECs' services to other LECs . . . are not 'to' . . . an IXC." *Id.* at 432, 434. Thus, the D.C. Circuit has squarely foreclosed the argument that § 251(g) justifies the refusal to pay reciprocal compensation for calls handled by two local exchange carriers that, by virtue of the NPA-NXX of the calls, have been deemed "local" by the Commission.

Thus, Verizon's only real claim is that the Arbitrator erred in determining that the originating and terminating NPA-NXX codes should be used to determine whether a call is deemed local. Nothing in the record or in existing case law remotely supports Verizon's argument.

Thus, for example, although Verizon asserts that the Commission's decision in *AT&T Corp. v. Bell Atlantic-Pennsylvania* "rejected the use of NPA-NXX in place of actual geographic end points of a call" for purposes of rating a call as local or interexchange, Pet. for Recon. at 20, that characterization of the Order is simply wrong. In *AT&T v. Bell Atlantic-Pennsylvania*, the Commission addressed the issue of whether FX service used common lines (such that the LECs' CCL charge was applicable) or private lines (such that the CCL charge was not applicable). Although the Order does not address the question whether calls to an FX service are jurisdictionally local calls or interexchange calls, it is notable that the LECs in that proceeding "argue[d] that intraLATA FX service is a type of *local* exchange service." *AT&T v. Bell Atlantic-Pennsylvania*, ¶ 76 (emphasis added); *see also id.* ¶ 77 ("The LECs emphasize that intraLATA FX service is a *local* exchange service.").

Nor did the Commission "rule in that situation, that AT&T was required to pay access charges for the Richmond end of that call-even though the call was locally rated

for the caller, because AT&T was still using access service to complete an interLATA call to the called party.” Pet. for Recon. at 21. The Commission ruled that the *CCL* was applicable because a common line was used to provision the FX service. The Commission simply did *not* find, as Verizon asserts, that AT&T was using an access service to complete an interLATA call.

Verizon also asks for “assurance” that the Bureau has not attempted to tacitly overrule the Commission’s *Mountain Order*, and attempts to equate the issues presented in the *Mountain Order* with the issues under consideration in this proceeding. That effort, however, is equally unavailing, because, again, the *Mountain Order* expressly addressed different issues. Specifically, the *Mountain Order* made two findings: 1) that Qwest was entitled to charge Mountain for transiting service (Mountain had argued that no charge should be made); and 2) that Qwest was entitled to charge Mountain for a wide area calling arrangement that Mountain had ordered out of a Qwest tariff. *See Mountain Order* ¶¶ 2, 5. The *Mountain Order* does not address the issue of reciprocal compensation although, notably, even Verizon is forced to concede that the traffic addressed in the *Mountain Order* is subject to a reciprocal compensation obligation.⁸

Verizon’s attempt to equate the wide area calling in Mountain with the FX arrangements at issue in this proceeding fails at a fundamental level. Mountain ordered transport facilities out of Qwest’s tariff in order to connect various DID numbers also purchased by Mountain out of an access tariff. The Commission ruled that Mountain must pay for the facilities and numbers it ordered. Here, of course, WorldCom is not ordering *any* facilities from Verizon. Instead, the ILEC simply provides (to its

⁸ *See also Mountain Order*, ¶ 3, n.13, (discussing the finding in the *Texcom Reconsideration Order* that a terminating carrier can charge reciprocal compensation, and include any transiting fee it pays, in the situations discussed therein).

customers) the service it holds itself out as providing as a Local Exchange Carrier, *i.e.*, to deliver the traffic originated by its customers to another carrier. Unlike the situation in *Mountain*, in the FX scenario, WorldCom does not use ‘dedicated transport facilities’ provided by Verizon. And Verizon does not provide a ‘dedicated toll service’ to the WorldCom. It delivers its originating traffic to WorldCom, a CLEC, for termination.⁹

Without factual or legal support for a reversal of the Arbitrator’s decision, Verizon is forced to regurgitate its previously rejected policy arguments. Specifically, Verizon asserts that CLEC FX traffic forces Verizon to provide transport to a distant calling area for free. As WorldCom explained below, this assertion is wrong. Verizon does not transport the call from the originating calling area to a distant calling area. Whether a call is handled via an FX arrangement or otherwise, Verizon’s obligation is to deliver the call to the Point of Interconnection. FX calls impose no special transport obligations or costs on Verizon. If an FX call involves substantial transport to a distant customer location, it is the terminating CLEC which bears the cost of transporting the call (on its network) to the end-users’ distant location.

C. Verizon’s Newly Proposed Suggestion That FX Traffic Delivered To An ISP Should Be Excluded From the Intercarrier Compensation Regime Established In the *ISP Remand Order*¹⁰ Must be Rejected.

Finally, Verizon seeks “clarification” that the Bureau has not overruled the *ISP Remand Order*. In particular, Verizon asks for assurance that the *Order*’s conclusion that

⁹ Verizon misrepresents the Bureau order by claiming that “The Bureau concluded that when a Verizon customer places an interexchange call to one of the Petitioner’s customers, and Verizon carries that call to a distant calling area before handing it off to the Petitioner for delivery, Verizon must pay reciprocal compensation on that call.” This is Verizon’s characterization of the matter, not the Bureau’s. The Bureau did not characterize the calls at issue as interexchange calls. In fact, given the Bureau’s conclusion that calls must be rated pursuant to the calling and called NPA-NXXs, the Bureau concluded that the calls at issue here are local calls.

¹⁰ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151 (2001).

reciprocal compensation is applicable to FX traffic does not apply to ISP-bound traffic. *See* Pet. for Recon. at 15-16. This is nothing more than a restatement of the conclusion in the *ISP Remand Order*, and no party contends that, in the *Order*, the Arbitrator purported to overrule or alter the *ISP Remand Order*.¹¹

Indeed, even a cursory reading of Verizon's petition makes clear that this request is not truly one for "clarification," but instead represents yet another attempt to inject another new issue into this proceeding.¹² This new proposal cannot be considered for the reasons set out above. *See* pp. 3-7, *supra*. It is also inconsistent with governing law, and would have to be rejected on the merits if it did not have to first be rejected because it is procedurally improper.

In the guise of seeking assurance that the *ISP Remand Order* remains in effect, Verizon for the first time suggests that some ISP-bound traffic (specifically that delivered via an FX arrangement) is not entitled to even the intercarrier compensation established in the *ISP Remand Order* itself. *See* Pet. for Recon. at 23. There is absolutely no support in the language of the *ISP Remand Order* for this conclusion, nor is there any logic to Verizon's proposed exclusion of FX traffic to ISPs from the intercarrier compensation regime.

The *ISP Remand Order* sets forth rates to be paid to a local exchange carrier when it terminates traffic to an ISP. In that *Order*, the Commission does not distinguish between traffic delivered to an ISP via an FX arrangement and traffic delivered to an ISP via some other means. Instead, pursuant to the *ISP Remand Order*, *all* traffic delivered to an ISP is entitled to the compensation set forth in that *Order*. Verizon's request that FX

¹¹ WorldCom has sought judicial review of the *ISP Remand Order*.

¹² *See, e.g.*, Pet. for Recon. at 19 n.45; *id.* at 22 n.50.

traffic be excluded from intercarrier compensation is thus flatly inconsistent with governing law. To grant Verizon's request, the Arbitrator would have to alter the terms of the *ISP Remand Order*, creating an exemption in this arbitration proceeding that the Commission did not itself create in the *ISP Remand Order*.¹³ The Arbitrator should firmly decline Verizon's invitation to do so.

IV. THE ARBITRATOR'S CONCLUSION THAT WORLDCOM IS ENTITLED TO THE TANDEM INTERCONNECTION RATE WAS CORRECT.

The Commission's rules provide that new entrants such as WorldCom are entitled to receive the tandem interconnection rate for the cost of transport and termination of traffic routed through a switch that serves a geographic area comparable to the area served by the incumbent carrier's tandem switch. *See* 47 C.F.R. §51.711(a)(3). In the *Arbitration Decision*, the Arbitrator determined that, pursuant to the Commission's rules, WorldCom could satisfy the geographic comparability test by demonstrating that its switches are capable of serving an area comparable to that served by Verizon's switches. In doing so, the Arbitrator rejected Verizon's assertion that new entrants must prove that they are actually serving a geographically dispersed customer base. Because Verizon conceded that WorldCom's switches met that requirement, the Arbitrator deemed WorldCom's evidence of the capabilities of its switches sufficient to meet the geographic comparability requirement. *See Arbitration Order* ¶ 309. Verizon requests reconsideration of that determination, again asserting that Rule 51.711(a)(3) requires WorldCom to demonstrate that it is actually serving a geographically dispersed customer

¹³ Verizon's request is not only flatly inconsistent with current law, it is patently illogical. There is absolutely no reason to exclude ISP-bound traffic delivered via an FX arrangement from the intercarrier-compensation regime established in the *ISP Remand Order*. In that Order, the Commission concluded that characteristics unique to calls to ISPs justified a separate compensation regime. That determination did not turn on the physical location of the ISP; it turned on the nature of ISP-bound traffic.