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**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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

## MEMORANDUM OPINION AND ORDER

**Adopted: July 17, 2002** **Released: July 17, 2002**

By the Chief, Wireline Competition Bureau:

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## I. INTRODUCTION

1. In this order, we issue the first of two decisions that resolve questions presented by three petitions for arbitration of the terms and conditions of interconnection agreements with Verizon Virginia, Inc. (Verizon). Following the enactment of the Telecommunications Act of 1996 (1996 Act),[1] the Commission adopted various rules to implement the legislatively mandated, market-opening measures that Congress put in place.[2] Under the 1996 Act's design, it has been largely the job of the state commissions to interpret and apply those rules through arbitration proceedings. In this proceeding, the Wireline Competition Bureau, acting through authority expressly delegated from the Commission, stands in the stead of the Virginia State Corporation Commission. We expect that this order, and the second order to follow, will provide a workable framework to guide the commercial relationships between the interconnecting carriers before us in Virginia.

2. The three requesting carriers in this proceeding, AT&T Communications of Virginia, Inc. (AT&T), WorldCom, Inc. (WorldCom) and Cox Virginia Telcom, Inc. (Cox) (collectively "petitioners"), have presented a wide range of issues for decision. They include issues involving network architecture, the availability of unbundled network elements (UNEs), and inter-carrier compensation, as well as issues regarding the more general terms and conditions that will govern the interconnecting carriers' rights and responsibilities. As we discuss more fully below, after the filing of the initial pleadings in this matter, the parties conducted extensive discovery while they participated in lengthy staff-supervised mediation, which resulted in the

[1] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). We refer to the Communications Act of 1934, as amended by the 1996 Act and other statutes, as the Communications Act, or the Act. *See* 47 U.S.C. §§ 151 *et seq.*

[2] *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

settlement of a substantial portion of the issues that the parties initially presented. After the mediation, we conducted over a month of hearings at which both the petitioners and Verizon had full opportunity to present evidence and make argument in support of their position on the remaining issues. We base our decisions in this order on the analysis of the record of these hearings, the evidence presented therein, and the subsequent briefing materials filed by the parties.

3. Many of the issues that the parties have presented raise significant questions of communications policy that are also currently pending before the Commission in other proceedings. For example, certain of the network architecture issues implicate questions that the Commission is addressing through its ongoing rulemaking relating to inter-carrier compensation.[3] The Commission's pending triennial review of UNEs also touches on many of the issues presented here.[4] While we act, in this proceeding, under authority delegated by the Commission,[5] the arbitration provisions of the 1996 Act require that we decide all issues fairly presented.[6] Accordingly, in addressing the issues that the parties have presented for arbitration – the only issues that we decide in this order – we apply current Commission rules and precedents, with the goal of providing the parties, to the fullest extent possible, with answers to the questions that they have raised.

4. In our review of each issue before us, we have been mindful of recent court decisions relating to the Commission's applicable rules and precedent. Most significantly, we recognize that the United States Court of Appeals for the District of Columbia Circuit recently issued an order reviewing two Commission decisions that set forth rules governing unbundled network elements (UNEs) and line sharing.[7] The court's order remanded the *UNE Remand Order* for further action by the Commission, and it vacated and remanded the *Line Sharing Order*. Because the court remanded the *UNE Remand Order* without vacating or otherwise

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[3] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[4] *See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*Triennial UNE Review NPRM*).

[5] *See* 47 U.S.C. § 155(c)(1); *see also Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, 16 FCC Rcd 6231, 6233, paras. 8-10 (2001) (*Arbitration Procedures Order*) (delegating authority to the Bureau to conduct and decide these arbitration proceedings).

[6] *See* 47 U.S.C. § 252(b)(4)(C) (state commission shall resolve each issue in petition and response); *id.* § 252(c) (state commission shall resolve by arbitration any open issue).

[7] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA v. FCC*"). The court reviewed two Commission decisions: the *UNE Remand Order* and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

modifying it, its rules governing the availability of UNEs remain in effect pending further action by the Commission in response to the court's order. Similarly, because the Commission has sought rehearing of the court's order, the effect of that order has been stayed, even with respect to the line sharing rules, until further action by the court.[8] Accordingly, to the extent they are implicated in issues presented by the parties, we apply the Commission's existing UNE and line sharing rules. To the extent that these rules are modified in the future, the parties may rely on the change of law provisions in their respective agreements.

5. This order is the first of two that will decide the questions presented for arbitration. Below, we decide the "non-cost" issues that the parties have raised. Specifically, we resolve those issues that do not relate to the rates that Verizon may charge for the services and network elements that it will provide to the requesting carriers under this agreement. We have determined that it will best serve the interests of efficiency and prompt resolution of the parties' disputes to issue our decision on these non-cost issues in advance of the pricing decision, which will follow.

6. The requesting carriers in this proceeding, AT&T, WorldCom and Cox, originally brought their interconnection disputes with Verizon to the Virginia State Corporation Commission (Virginia Commission), as envisioned in section 252(b).[9] In the case of each requesting carrier, the Virginia Commission declined to arbitrate the terms and conditions of an interconnection agreement under federal standards, as required by section 252(c) of the Act.[10]

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[8] *See* Petition of FCC and United States for Rehearing or Rehearing *En Banc*, D.C. Circuit Nos. 00-1012, *et al.* & 00-1015, *et al.*, filed July 8, 2002.

[9] 47 U.S.C. § 252(b). WorldCom filed an arbitration petition with the Virginia Commission. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc. for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC000225 (filed with Virginia Commission Aug. 10, 2000). Cox requested a declaratory ruling reconsidering the Virginia Commission's prior refusals to apply federal law in arbitrating interconnection disputes and, in the event the Virginia Commission granted that request, sought the arbitration of its interconnection dispute. *See Petition of Cox Virginia Telcom, Inc., for Declaratory Judgment and Conditional Petition for Arbitration*, Case No. PUC000212 (filed with Virginia Commission July 27, 2000). AT&T also requested a declaratory ruling that the Virginia Commission would arbitrate its interconnection dispute. *See Petition of AT&T Communications of Virginia, Inc., et al., for Declaratory Judgment*, Case No. PUC000261 (filed with Virginia Commission Sept. 25, 2000); AT&T subsequently sought arbitration of its interconnection dispute with Verizon. *See Application of AT&T Communications of Virginia, Inc., et al., for Arbitration*, Case No. PUC000282 (filed with Virginia Commission Oct. 20, 2000).

[10] 47 U.S.C. § 252(c). Section 252(c) requires that, in arbitrating an interconnection agreement, a state commission apply the "requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251" and apply the pricing standards of section 252(d). 47 U.S.C. § 252(c)(1) – (2). The Virginia Commission declined to follow section 252(c), offering instead to apply Virginia state law in its disposition of the three requesting carriers' disputes with Verizon. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc., for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC000225, Order, at 3 (issued by Virginia Comm'n Sept. 13, 2000) (*WorldCom Virginia Order*); *Petition of Cox Virginia Telcom, Inc.*, Case No. PUC000212, Order of Dismissal, at 5 ( issued by Virginia Comm'n Nov. 1, 2000); *Petition for Declaratory Judgment and Application for* (continued....)

The Virginia Commission explained that it had concluded it could not apply federal standards in interconnection arbitrations without potentially waiving its Eleventh Amendment sovereign immunity, which it did not have the authority to do.[11] The three requesting carriers then petitioned the Commission to preempt the Virginia Commission pursuant to section 252(e)(5).[12] The Commission granted those petitions in January of 2001 and assumed jurisdiction to resolve the requests for arbitration.[13]

7. On January 19, 2001, the same date on which it granted WorldCom's preemption petition, the Commission issued an order governing the conduct of section 252(e)(5) proceedings in which it has preempted the arbitration authority of state commissions. The order delegates to the Chief of the Bureau the authority to serve as the Arbitrator.[14] As discussed at greater length below, the Commission also revised the interim rule that it had previously adopted and established a hybrid scheme of "final offer" arbitration for interconnection arbitrations. The revised standard grants the Arbitrator the "discretion to require the parties to submit new final offers, or adopt a result not submitted by any party, in circumstances where a final offer

(Continued from previous page)
*Arbitration of AT&T Communications of Virginia, Inc., et al.*, Case Nos. PUC000261 and PUC000282, Order, at 3 (issued by Virginia Comm'n Nov. 22, 2000).

[11] *See, e.g., WorldCom Virginia Order* at 2. *Cf. Petition of Cavalier Telephone, LLC,* Case No. PUC990191, Order, at 3-4 (issued by Virginia Comm'n June 15, 2000) ("We have concluded that there is substantial doubt whether we can take action in this matter solely pursuant to the Act, given that we have been advised by the United States District Court for the Eastern District of Virginia that our participation in the federal regulatory scheme constructed by the Act, with regard to the arbitration of interconnection agreements, effects a waiver of the sovereign immunity of the Commonwealth.").

[12] *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, (filed Oct. 26, 2000); *Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-249 (filed Dec. 12, 2000); *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-251 (filed Dec. 15, 2000).

[13] *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001) (*WorldCom Preemption Order*); *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, Memorandum Opinion and Order, 16 FCC Rcd 2321 (2001); *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, 16 FCC Rcd. 2326 (2001).

[14] *Arbitration Procedures Order*, 16 FCC Rcd 6233. The Commission's rules governing review of action taken on delegated authority are found at 47 C.F.R. § 1.115. At the time of the *Arbitration Procedures Order*, the Commission delegated its authority to the Chief of the Common Carrier Bureau. Since then, the Bureau has been renamed the Wireline Competition Bureau. *See In the Matter of Establishment of the Media Bureau, Wireline Competition Bureau and Consumer and Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002).

submitted by one or more of the parties fails to comply with the Act or the Commission's rules."[15]

## II. PROCEDURAL HISTORY

8. In March, 2001, as required by the *Procedural Public Notice*, the parties contacted the Arbitrator to schedule a pre-filing conference.[16] On March 22, 2001, the parties met with the Arbitrator and Bureau staff to discuss a list of issues identified in the *Procedural Public Notice*, including the status of negotiations, procedures to be followed in the arbitration proceeding, potential consolidation of the proceedings, and a procedural schedule. On March 27, we issued a letter ruling on several issues raised during the pre-filing conference. Among other rulings, we set a procedural schedule, under which the parties were to conduct discovery and file testimony throughout the summer. The evidentiary hearing was scheduled for September, 2001 and post-hearing briefs were to be due in October, 2001. At the request of the parties, we postponed until July 2, 2001, the due date for cost studies, which originally were to be filed with the petitions for arbitration. The parties preferred that they be permitted to file separate petitions, with the option of later seeking consolidation of the proceedings; however, we instructed them each to assign shared issues the same number, to facilitate staff's review.

9. On April 23, AT&T, Cox and WorldCom filed separate petitions for arbitration. Consistent with the *Procedural Public Notice*, each petition contained a Request for Arbitration, listing with specificity both the resolved and unresolved issues, along with the relevant contract language, and a Statement of Relevant Authority for each issue. On May 31, 2001, Verizon filed its Answer, responding to each issue raised by petitioners, and raising additional issues. On June 18, petitioners filed their responses to Verizon's additional issues. In all, petitioners identified approximately 180 issues in their initial petitions, some of them raised jointly, and Verizon raised an additional 68 issues in its Answer.

10. *Supervised Negotiations*. On July 10, 2001, the Arbitrator convened a status conference to discuss, among other things, parties' efforts to simplify or settle issues and the schedule for the remainder of the proceeding. At this meeting, the parties jointly requested that Bureau staff assist with the settlement of certain issues, through supervised negotiations or mediation, and agreed to identify a list of "mediation issues." The parties also requested a delay of several weeks in all aspects of the procedural schedule, to allow them to focus on settlement negotiations, and to accommodate their request for an additional "surrebuttal" round of written testimony on cost issues.

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[15] *See* 47 C.F.R. § 51.807(f)(3).

[16] Procedures Established For Arbitration Of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-270 (rel. Feb. 1, 2001) (*Procedural Public Notice*) (setting forth additional procedures, including requirements regarding contents of arbitration petition and response, discovery process and conduct of the evidentiary hearing).

11. We convened ten days of supervised negotiations, pursuant to a schedule set by the parties and staff, on July 25 through August 9. With the help of questions and other input from staff and, in particular, all sides' willingness to work toward compromise, the parties were able to reach agreement on new language for many issues, and agreed to continue unsupervised discussions on many others.

12. *Written, Pre-Filed Testimony.* The procedural schedule that we set in March, 2001 originally envisioned the submission of pre-filed direct and rebuttal testimony on all issues according to the same schedule. In light of the parties' request for supervised negotiations, and for additional time to prepare their cost-related arguments, we extended the filing deadlines and split the schedule into several tracks. Accordingly, for the bulk of issues, the parties filed direct testimony on July 31, and rebuttal testimony on August 17; and for "mediated" issues, the parties filed direct testimony on August 17, and rebuttal testimony on September 5.[17]

13. *Discovery.* Our February 1, 2001 *Procedural Public Notice* established general guidelines governing the discovery process. Pursuant to the schedule set by the Arbitrator, discovery began on May 31, 2001 and, after various extension requests from the parties, concluded for non-cost issues on August 31, and for cost issues on September 26. The parties were permitted to obtain discovery through document requests, interrogatories, oral depositions, and requests for admissions.

14. *Evidentiary Hearing.* The non-cost evidentiary hearing, at which the parties submitted documentary evidence and examined witnesses, began on October 3 and concluded on October 18, 2001. Before the hearing, the parties had developed a detailed schedule with Bureau staff, under which the non-pricing issues would be addressed first, followed by the consideration of pricing-related issues. The hearing was transcribed, and a copy of the transcript was filed with the Secretary of the Commission for inclusion in the record.

15. *Joint Decision Point Lists and Revised Contract Language.* At three points in the proceeding, the staff requested that the parties submit a "Joint Decision Point List" (JDPL) – a list and summary of the disputed issues, positions and relevant contract language, intended as a tool to assist Bureau staff in navigating the considerable record. The first JDPL was submitted jointly by the parties on June 18, 2001. The parties submitted revised JDPLs separately in September, before the evidentiary hearing, with final JDPLs submitted in early November. Importantly, in addition to listing their proposed language on an issue-by-issue basis in the JDPL after the evidentiary hearing, parties also submitted their full, proposed contracts on November 13, 2001.[18]

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[17] The parties marked their pre-filed direct and rebuttal testimony as exhibits and moved them into evidence at the hearing. Below, we refer to the pre-filed testimony by its exhibit number.

[18] Our review of these documents revealed that, in certain instances, the JDPLs and the proposed contracts did not match, and each contained certain inaccuracies. Reviewing the full contracts, the November JDPL, and the parties' briefs, we determined that there were fewer inaccuracies in the parties' complete contracts than in the earlier-filed (continued....)

16. *Post-Hearing Briefs.* The parties filed post-hearing briefs and reply briefs. As with many other aspects of this proceeding, the schedule was divided and postponed at the joint request of all parties to allow additional time to address certain issues. Briefs for the non-pricing issues were submitted on November 16, 2001, with replies on December 11, 2001.

## III. OUTSTANDING PROCEDURAL MOTIONS

### A. Verizon's Renewed Motion to Dismiss Consideration of Performance Measures and Assurance Plan Issues

17. On November 9, 2001, Verizon submitted its renewed motion to dismiss several unresolved issues relating to performance measurements and remedies.[19] Verizon argues that the Virginia Commission has not failed to act in this context, pursuant to section 252 of the Act, because it has agreed to act on and determine exactly the same performance-related issues raised by the petitioners.[20] Verizon also contends that, as a matter of comity, the Commission should defer to the Virginia Commission, which has the expertise and is expending significant resources to resolve these performance-related issues.[21] According to Verizon, the Act does not impose a specific requirement that remedies be incorporated into an interconnection agreement and it argues that including a performance assurance plan (PAP) in a contract is unnecessary and administratively problematic.[22] AT&T and WorldCom argue that, despite having established a collaborative on performance measures, the Virginia Commission failed to act on the parties' petitions, which included performance-related issues.[23] Consequently, the petitioners' contend that these issues are appropriate for consideration and decision by the Arbitrator.

18. We grant Verizon's renewed motion to dismiss consideration of issues related to performance measures and assurance plans.[24] While we disagree with Verizon that we lack jurisdiction to decide the issues set forth in AT&T's and WorldCom's petitions, we agree that, as a practical matter and a matter of comity, we should defer to the Virginia Commission on

(Continued from previous page)
November JDPLs. Consequently, unless expressly noted otherwise, the contract proposals that we refer to below are from the parties' full contracts; our citations to a party's "November Proposed Agreement" are to the full contracts.

[19] The issues that are the subject of this Verizon motion are: Issues III-14, IV-120, IV-121, and IV-30.

[20] Verizon's Renewed Motion to Dismiss Consideration of Issues Related to Performance Measures and Assurance Plans at 1-2 (Verizon Renewed Motion).

[21] Verizon Renewed Motion at 6.

[22] Verizon Reply 5, 6.

[23] WorldCom Response to Verizon Renewed Motion at 2 (arguing that it is "wholly irrelevant" that the Virginia Commission is addressing performance measures and remedies in generic proceedings); AT&T Opposition to Verizon Renewed Motion at 4-5 (asserting that the Commission's finding that the Virginia Commission failed to carry out its section 252 responsibilities encompassed all of the issues AT&T designated in its petition).

[24] Specifically, we dismiss Issues III-14, IV-120, IV-121, and IV-130.

performance issues. Subsequent to the parties' filings on this motion, the Virginia Commission issued an order adopting performance measurements and standards applicable to Verizon.[25] Moreover, the parties to a collaborative proceeding in Virginia have reached agreement on a remedy plan for Verizon.[26] Since the Virginia Commission appears close to issuing an order approving a remedy plan, which will include an effective date, we determine that it is appropriate for us to defer to the state commission on all performance matters, including remedies. As noted by AT&T in its opposition to Verizon's renewed motion, we find that there is no present need for us to "retrace the steps" of the Virginia Collaborative and Virginia Commission.[27] However, in recognition of the possibility that the Virginia Commission may decide that the effective date for Verizon's PAP should be some date after the interconnection agreements go into effect, we direct Verizon to make retroactive, if necessary, any payments due to AT&T or WorldCom under the Virginia Commission-approved remedy plan. Should any dispute arise about whether payment is due and for what amount, we expect the parties to follow the dispute resolution processes set forth in their respective contracts.

### B. Miscellaneous Motions

19. Before discussing each remaining motion individually, we determine that it would be helpful to explain several guiding principles we will follow in deciding these motions. First, we recognize the importance of a full and robust record to decide the unresolved issues presented by the parties. To that end, we will generally rule on the side of allowing information presented by any party into the record and then according that material the appropriate evidentiary weight. Next we will consider whether the petitioning party was afforded a meaningful opportunity to examine and respond to the other party's submission (*e.g.*, revised contract language). In making that determination, we will look at whether the parties agreed to waive cross examination on a particular issue that is now the subject of one of these motions. Finally, we note that this is not a static process and we will not rule in a manner that deters parties from revising their proposals either to reflect agreement reached during the proceeding or to acknowledge and address the other party's stated concerns.

#### 1. Verizon's Objection to AT&T Response to Record Requests

20. On December 10, 2001, Verizon filed an objection to AT&T's Response to Record Requests, which the Bureau received on November 8, 2001. According to Verizon,

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[25] *See Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change Metrics (issued by Virginia Comm'n on Jan. 4, 2002) (*Virginia Commission Performance Metrics and Standards Order*).

[26] The remaining dispute among the parties to this collaborative, which includes AT&T and WorldCom, is the effective date of the remedy plan. *See Establishment of a Performance Assurance Plan for Verizon Virginia, Inc.*, Case No. PUC-2001-00226, Fourth Preliminary Order (Virginia Commission, April 17, 2002).

[27] AT&T Opposition at 6-7.

AT&T's filing is nothing more than an inappropriate attempt to supplement the record testimony of its witness on Issues V-3, V-4, and V-4-a.[28] Specifically, Verizon argues that Commission staff did not request AT&T to supplement the record at a later date and that it would be inappropriate to admit AT&T's information to the record and unfair to Verizon. Consequently, Verizon urges us to strike AT&T's response to the "fictitious" "Record Request 1."[29] AT&T argues that the record is best served by the inclusion of complete information on the issues and, to that end, AT&T states that it understood that, as a consequence of its witness's statements made at the hearing, it owed the Commission the complete answer that its witness was unable to provide at the hearing.[30]

21. We deny Verizon's objection but admit its filing, and AT&T's response to "Record Request 1," as exhibits.[31] In this particular instance we do not rely on either party's response as a basis for our decision in Issues V-3, V-4, and V-4-a.[32] However, as stated above, we determine that our record would benefit by the inclusion of such additional information.[33]

### 2. WorldCom's Objection and Response to Verizon's Corrections to WorldCom Responses to Record Requests

22. On December 4, 2001, WorldCom filed its objection to Verizon's corrections to WorldCom's record request responses.[34] WorldCom argues that Verizon has no procedural right to "correct" WorldCom's responses to record requests, set forth in its exhibit 52.[35] Moreover, WorldCom contends that its responses are accurate and Verizon's "corrections" contained in its exhibit 83 are inaccurate.[36] Although WorldCom asks us to exclude Verizon exhibit 83 from the

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[28] Verizon's Objection to AT&T Response to Record Requests at 1.

[29] *Id.* at 2. As an alternative, Verizon suggests that we accept its objection into the record as Verizon exhibit 84. *Id.* at 5.

[30] AT&T Reply at 2, 3. AT&T also states that it has no objection to admitting Verizon's December 10 filing as Verizon exhibit 84. *Id.* at 3.

[31] We mark and admit into the record AT&T's response as AT&T exhibit 40 and Verizon's objection as Verizon exhibit 84.

[32] *See* Issues V-3/V-4-A and V-4 *infra,* for our discussion of these unresolved issues.

[33] We also note that since AT&T filed its response on November 8, Verizon had the opportunity to respond to AT&T's information in both its brief and reply.

[34] Verizon filed its corrections on November 28, 2001, arguing that since WorldCom's responses were submitted after the hearing, Verizon should be given the opportunity to correct the record and asks the Commission to admit its response as Verizon exhibit 83. Verizon's Corrections to WorldCom's Responses to Record Requests

[35] WorldCom's Objection and Response to Verizon's Corrections to WorldCom's Responses to Record Requests at 1-2.

[36] *Id.* at 2.

record, in the alternative, it requests that we include its objection and response as WorldCom exhibit 53.[37]

23. Consistent with our holding above, we deny WorldCom's objection and, instead, mark as exhibits and admit both carriers' responses into the record.[38] Also, as is the case above, we do not rely on either party's newly-admitted exhibit as a basis for our decisions in Issues I-1 and IV-1.[39] Consequently, we find that neither party is prejudiced by supplementing the record in this fashion.

### 3. Cox's Objection and Request for Sanctions

24. On November 7, 2001, Cox filed an objection to new language proposed by Verizon and a request for sanctions. Cox argues that, in its November JDPL, Verizon filed new language that significantly changes its previous position on Issues I-1, I-2 and I-9.[40] Cox asserts that none of these proposals was made to Cox during negotiations or in any previous contract language filings made with the Commission.[41] Consequently, Cox contends that it has been deprived of the opportunity to prepare direct and rebuttal testimony on these proposals and of a fair opportunity to cross examine Verizon witnesses on this new language.[42] For these reasons, Cox argues that the Commission should reject Verizon's new language and require Verizon to return to its earlier positions stated in September. Additionally, Cox states that Verizon should be sanctioned for its ongoing disregard for the Commission's requirements in this proceeding.[43] On November 20, 2001, Verizon submitted its opposition to Cox's objection and request for sanctions.

25. As we discuss further below, we rule for Cox, and against Verizon, on the three issues for which Cox challenges Verizon's language as belatedly revised. Accordingly, we deny as moot Cox's objection and request for sanctions.

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[37] *Id.* at 8.

[38] Verizon's November 28 filing will become Verizon exhibit 83 and WorldCom's objection and response will become WorldCom exhibit 53.

[39] *See* Issues I-1 and IV-1 *infra* for our discussion of these issues.

[40] Cox Objection and Request for Sanctions at 1.

[41] *Id.* at 2. For Cox's discussion of the three issues in dispute, *see id.* at 4-8, 10-11 for Issue I-1; *id.* at 11 for Issue I-2; and *id.* at 12 for Issue 1-9.

[42] *Id.* at 3.

[43] *Id.*

### 4. WorldCom Motion to Strike

#### a. Positions of the Parties

26. On November 27, 2001, WorldCom filed a motion to strike contract language proposed by Verizon in the November JDPL that was not contained in the September JDPL. WorldCom asserts that Verizon submitted new contract provisions on over 30 issues in this November filing.[44] According to WorldCom, the Due Process Clause of the Fifth Amendment and the APA require that each party has the opportunity to respond to other parties' submissions.[45] WorldCom contends that permitting Verizon to introduce new proposals at such a late stage in the proceeding denies WorldCom the opportunity to present evidence refuting Verizon's positions and would be arbitrary and capricious.[46] WorldCom also asserts that the Commission's procedural orders make clear that the parties' proposals should have come to rest by the time the hearings began.[47]

27. Verizon filed its opposition to WorldCom's motion on December 14, 2001. Verizon argues that the nature of Verizon's edits to the November JDPL are consistent with the Commission's purpose in requesting a corrected and updated JDPL, which was to ensure that the JDPL included all contract language pertinent to an issue that was updated to reflect Verizon's most current substantive proposal on an issue.[48] Moreover, Verizon contends that the majority of what WorldCom terms "new contract provisions" are, in fact, edits derived from Verizon's previous JDPLs or its originally filed proposed contract with WorldCom.[49] The few remaining edits, Verizon argues, reflect Verizon's efforts to update its proposal based on testimony or to ensure consistency or correct mistakes.[50] Verizon asserts that updating its proposal to conform to testimony does not make the resulting contract language a "new proposal" when WorldCom was "fully informed of, and presented with a full and fair opportunity to explore" Verizon's position as set forth in testimony on the open issues.[51] Verizon also argues that due process requires the opportunity to be heard at a meaningful time in a meaningful manner and WorldCom had such an opportunity to rebut Verizon's substantive positions.[52]

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[44] WorldCom Motion to Strike at 5.

[45] *Id.* at 5-6, citing 5 U.S.C. § 706(2)(A), (E).

[46] *Id.* at 7.

[47] *Id.* at 7-8.

[48] Verizon Opposition to WorldCom Motion to Strike at 3.

[49] *Id.* at 3, citing Ex. B.

[50] *Id.* at 4, citing Ex. C.

[51] *Id.* at 4.

[52] *Id.* at 6.

### b. Discussion

28. We deny, in whole, WorldCom's motion to strike. With respect to the substantial majority of the issues for which WorldCom alleges that Verizon submitted new language, WorldCom's motion is moot, either because we reject Verizon's proffered language, or because the parties had settled the issue by the end of the hearing.[53] For other issues that WorldCom identifies, the language Verizon proposed in November was more favorable to WorldCom than Verizon's previous proposals, and we therefore perceive no prejudice that WorldCom could have suffered arising from any inability to respond to the new proposals.[54] Additionally, we conclude that WorldCom had ample opportunity, during the initial and reply briefs, to respond to any changes in Verizon's November language.[55] Lastly, on one issue, Verizon's November language, while not identical to its earlier proposal, does not differ in any legally or operationally significant respect.[56]

## IV. UNRESOLVED ISSUES

### A. Standard of Review

29. Section 252(c) of the Act sets forth the standard of review to be used in arbitrations by the Commission and state commissions in resolving any open issue and imposing conditions upon the parties in the interconnection agreement.[57] This section states that any decision or condition must meet the requirements of section 251 and accompanying Commission regulations, establish rates in accordance with section 252(d), and provide an implementation schedule.[58] As mentioned earlier, section 252(e)(5) requires the Commission to issue an order preempting a state commission that fails to act to carry out is responsibilities under section 252, and to assume the responsibility of the state commission. In its *Local Competition First Report*

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[53] *See, e.g.*, Network Architecture Issues I-1, III-2, III-4, IV-1, IV-8, IV-11; Intercarrier Compensation Issues I-6, III-5, IV-35; UNE Issues III-6, III-7, III-8, III-9, III-10, III-11/IV-19, IV-23, IV-24, IV-25, VI-3-B; Business Process Issue IV-56 (settled); Rights of Way Issue III-13-H (settled); General Terms and Conditions Issues I-11, IV-101, IV-110 (settled).

[54] *See, e.g.*, Intercarrier Compensation Issue I-5 (language regarding calling party number percentage requirement changes from 95 to 90); General Terms and Conditions Issue III-15 (Verizon agrees to provide WorldCom additional information regarding Verizon's inability to obtain intellectual property rights).

[55] *See, e.g.*, Intercarrier Compensation Issue I-5 (WorldCom fully briefed issues relating to compensation for ISP-bound traffic); UNE Issues III-12 (WorldCom counsel cross examined Verizon witness on language WorldCom now challenges as late-proposed), IV-18 (despite opportunity in two briefs, WorldCom failed to identify how Verizon's language conflicted with statute or regulations).

[56] *See infra*, Issue IV-45, n.2300.

[57] 47 U.S.C. § 252(c).

[58] 47 U.S.C. § 252(c)(1)-(3).

*and Order*, the Commission promulgated rule 51.807 implementing section 252(e)(5).[59] Rule 51.807 provides, among other things, that (a) the Commission is not bound to apply state laws or standards that would have otherwise applied if the state commission were arbitrating the section 252 proceeding; (b) except as otherwise provided, the Commission's arbitrator shall use final offer arbitration; and (c) absent mutual consent of the parties, the Arbitrator's decision shall be binding on the parties.[60]

30. Based on the states' experience arbitrating interconnection disputes since 1996, the Commission modified rule 51.807 last year to provide the Arbitrator additional flexibility to resolve interconnection issues.[61] Specifically, rule 51.807(f)(3) was amended so that, if a final offer submitted by one or more parties fails to comply with the other requirements of this rule, or if the Arbitrator determines in unique circumstances that another result would better implement the Act, the Arbitrator has discretion to direct the parties to submit new final offers or to adopt a result not submitted by any party that is consistent with section 252 of the Act and the Commission's rules adopted pursuant to that section.[62] In its order approving this modification, the Commission explained that it would not identify those unique circumstances under which the Arbitrator could conclude that another result is appropriate. Below, we attempt to summarize two main categories of those instances in which we have found it necessary to depart from the proposals of the parties.

31. *Modifying to Achieve Consistency with the Act and Commission Rules*. In certain instances, we have modified one party's proposal, rather than either adopt one party's proposal or reject both and direct the parties to submit new final offers.[63] In these instances, where modification of the language can bring the agreement into conformity with the Act and Commission rules, we find that it conserves administrative resources to direct the parties simply to submit a compliance filing containing the corrected language that we provide.[64] Furthermore, just as the Commission recognized that the Arbitrator may conduct issue-by-issue final offer arbitration (as opposed to selecting one entire proposed contract over another), so too we find that, for certain issues, it is appropriate *within* an issue to select language from both parties to

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[59] *Local Competition First Report and Order*, 11 FCC Rcd at 16127-32, paras. 1283-95.

[60] *See* 47 C.F.R. § 51.807(b), (d), (h).

[61] *See Arbitration Procedures Order*, 16 FCC Rcd at 6232, paras. 4-6

[62] *See* 47 C.F.R. § 51.807(f)(3); *Arbitration Procedures Order*, 16 FCC Rcd at 6232, para. 5.

[63] *See, e.g.*, Issues III-3/III-3-A, III-11, and III-12.

[64] We note that, on a few occasions, we have directed a petitioner and Verizon to incorporate corrected language provided by a second petitioner or by Verizon to that second petitioner (after determining that neither the first petitioner's proposal nor Verizon's proposal to that first petitioner was consistent with our rules or the Act). *See* Issues III-1/III-2/IV-1 and III-3/III-3-A. Similarly, we have determined that, in at least one issue, the proposals offered by the parties are unnecessary and language adopted elsewhere in the contract addresses their concerns. *See, e.g.*, Issue III-8.

resolve the dispute (*i.e.*, to choose one subsection from one party and another subsection from the other party) or to adopt some but not all of a party's proposal.[65] We reiterate that we base our decisions on current Commission rules and precedent, and therefore reject or modify parties' proposals that extend beyond existing law.

32. *Modifying to Reflect Concessions Made at Hearing or on Other Issues.* During the course of the hearings, the parties made numerous concessions or compromises, some of which were incorporated into their most recent contract proposals[66] and several of which were not.[67] In those instances where one party clearly indicated that it supported or no longer opposed the other party's conceptual proposal or contract language[68] or indicated that it was willing to modify its own proposal to reflect the other party's concerns,[69] we determine that it is appropriate to direct the parties to submit language conforming to such statements.[70]

33. We also feel it necessary to comment on a theme running through many of the issues in this proceeding. In response to a petitioner's proposal that simply paraphrases or quotes a particular Commission rule, Verizon often indicates that its proposed language requires it to comply with the requirements of "applicable law," and argues that the petitioner's language is therefore unnecessary. We generally determine that Verizon should prevail on such issues. If there is no disagreement between the parties about what is the "applicable law" (*e.g.*, the relevant section of the Act, Commission rule or order) and the petitioner's proposed language is a mere recitation of that Commission rule or order, we typically conclude that the petitioner's proposal adds little to no value to the contract. Simply memorializing a Commission requirement in an interconnection agreement is unnecessary to ensure a carrier's rights or make clear a carrier's obligations with respect to that requirement. Indeed, we find it unlikely that quoting or

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[65] *See, e.g.*, Issues IV-74 (finding that both parties had legitimate concerns that could be addressed harmoniously by adopting language from each proposal), V-12, and IV-45. In this regard, we note that the parties defined the content of each numbered issue without our involvement. *See also, e.g.*, Issues IV-4, III-9, and IV-32 (adopting part, but not all, of a carrier's proposal).

[66] *See, e.g.*, Issue III-10 (AT&T modifying its proposal by eliminating many "operational details" to address Verizon's concern about the level of detail in AT&T's earlier proposal).

[67] *See, e.g.*, Issues III-4-B (directing parties to file compliance language incorporating AT&T's agreement, expressed during hearing and in post-hearing briefs, to return a firm order confirmation within a certain number of days).

[68] *See, e.g*, Issues I-7/III-4 (Verizon's witness testifying that WorldCom's 15 percent overhead proposal "sounds fine to us"). *See also* Tr. at 1501.

[69] *See, e.g*, Issue VI-3-B (WorldCom indicating that it is willing to delete one section of its proposal).

[70] *See, e.g.*, Issue IV-5. Also, in resolving one issue related to assurance of payment, we determine that it is appropriate to apply a compromise offered in another issue, concerning insurance. For these two issues (Issues VI-1-N and VI-1-P), we find that our rationale for adopting the compromise in one issue is equally applicable to the second.

paraphrasing a Commission rule in the parties' contract would reduce the likelihood of disputes over interpretation of that rule.

34. Including language that requires Verizon to comply with all applicable law affords a petitioner the same contractual remedies that would be available if the contract paraphrased the relevant Commission rule. Moreover, for those issues that we arbitrate, quoting a Commission rule will not "grandfather" or insulate it from the contract's change of law clause. To be clear, pursuant to section 252(a), and subject to the disclosure requirements of section 252(h), parties are permitted to negotiate terms and conditions without regard to subsections (b) and (c) of section 251. [71] In other words, if they so choose, the parties may memorialize in the contract a Commission rule or directive and exempt it from the agreement's change of law language. Similarly, they may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act. However, if the parties have not reached such an understanding and have asked the Commission to arbitrate their dispute, we will do so based on existing law and expect that any change in that law will be reflected in the contract. Notwithstanding this general approach towards use of the term "applicable law," we find that language clarifying a particular rule, or adding details of how the rule should operate in a commercial environment, may well be appropriate for adoption, if the proposed language is consistent with the Commission's rules and the Act.[72]

35. Finally, we note briefly that, in addressing the parties' disputes, we attempt to dispose fully of the substantive issue that the parties have presented and to provide adequate direction on how the parties should memorialize our decision in their respective interconnection agreements. As discussed above, our decision may take the form of adopting or rejecting proffered language, or adopting one side's language in modified form. We emphasize, however, that we have largely restricted ourselves to addressing the issues and the contract language that the parties have directly placed at issue through their presentations during the hearings we conducted and, most importantly, through their post-hearing briefs. There may be instances in which we have not specifically spoken to particular contract language because neither party addressed it in their advocacy, although it may have appeared in the contracts that the parties submitted after the hearings or even have appeared under a particular issue number in the JDPL. In those cases, we expect that the parties will generally be able to apply the analysis of the relevant portion of this order and the Commission precedents discussed therein to resolve any remaining disputes that they may have relating to contract language that the parties – and therefore the Bureau – left unaddressed.

[71] *See* 47 U.S.C. § 252(a), (h).

[72] *See, e.g.,* Issue VI-3-B, *infra.*

## B. Network Architecture

### 1. Issues I-1/VII-1/VII-3/VII-4 (Single Point of Interconnection and Related Matters)[73]

#### a. Introduction

36. The parties disagree about language governing interconnection between the parties, and associated operational and cost issues. In general, petitioners argue that the Commission's rules clearly establish their right to interconnect at a single point in each Local Access and Transport Area (LATA), and that this chosen point of interconnection (POI) represents the financial demarcation point between the parties. Verizon, on the other hand, argues that it should not have to bear the cost of inefficient network design choices made by competing LECs, and proposes contract language which, it argues, represents the most reasonable solution to the operational and cost issues caused by the CLECs' chosen interconnection choices.

37. Specifically, Verizon proposes language requiring AT&T, Cox and WorldCom to establish "geographically relevant interconnection points" (GRIPs) or "virtually geographically relevant interconnection points" (VGRIPs) with Verizon at designated or agreed upon points on the carriers' networks. While the GRIPs and VGRIPs interconnection proposals differ in various respects, under both plans the petitioners would be required to designate one or more "interconnection points" (IPs) within each LATA. Each carrier's IP, which may be different from the physical POI, would function as a point of demarcation of financial responsibility for the further transport of traffic delivered to its network. Under Verizon's GRIPs proposal to Cox, geographically relevant competitive LEC IPs would be located within the Verizon local calling area of equivalent Verizon end users, but would be positioned no more than 25 miles from the Verizon rate center of the Verizon NXX serving equivalent Verizon end users. Under the VGRIPs proposal, geographically relevant competitive LEC IPs would be located at a collocation site at each tandem office in a multiple-tandem LATA, at each Verizon end office in a single-tandem LATA, or at other Verizon-designated wire centers in LATAs with no tandem offices.

38. The petitioners oppose the inclusion of this language, arguing that it undermines their right to select a single technically-feasible POI in each LATA. They further argue that Verizon's proposed language is inconsistent with the Commission's rules, which prevent Verizon from assessing charges for traffic subject to reciprocal compensation that originates on Verizon's network. In lieu of Verizon's language, petitioners propose language implementing

[73] Because these issues present interrelated sets of contract language and disputed matters, we address them together. Issue I-1 concerns the financial implications of establishing a "single point of interconnection" in a LATA, and the parties' proposals defining their respective obligations to compensate each other for delivering traffic. Issue VII-4 addresses Verizon's proposed terms to AT&T for lowering reciprocal compensation payments under its "VGRIPs" compensation proposal. Issues VII-1 and VII-3 both address Verizon's objection to AT&T not using the term "interconnection point" in its interconnection proposal presented for arbitration. Issue VII-1 also addresses additional Verizon objections to AT&T's proposed Schedule 4, containing AT&T's interconnection proposal.

their own view of the Commission's rules.[74] Verizon raises additional specific objections to AT&T's proposed language, designated as Issues VII-1, VII-3 and VII-4, which we address at the end of this section.

39. As set forth below, we adopt petitioners' language and reject Verizon's. In making our determination on this issue, we look to the Commission's orders and rules governing interconnection and reciprocal compensation, particularly the Commission's *Local Competition First Report and Order* and Commission Rules 51.305 and 51.703.[75]

### b. Point of Interconnection (Issues I-1 and VII-4)

#### (i) Positions of the Parties

40. AT&T contends that Verizon's VGRIPs proposal would enable Verizon to select the locations where each parties' traffic is delivered to the other's network for termination, and would transfer a substantial amount of the costs for Verizon's originating traffic, such as Verizon's originating transport costs, to AT&T.[76] AT&T argues that these features of VGRIPs render it inconsistent with the Act and the Commission's rules. AT&T also objects to Verizon's language lowering its reciprocal compensation payments to AT&T if AT&T does not allow Verizon to deliver traffic to AT&T at a Verizon-designated end office (the AT&T IP).[77] According to AT&T, this is another way of transferring Verizon's costs of delivering traffic onto AT&T, by circumventing Verizon's obligations to pay reciprocal compensation to AT&T.[78]

41. AT&T states that both the Act and the Commission's rules provide that new entrants may interconnect at any technically feasible point.[79] AT&T relies in part on the Commission's *SWBT Texas 271 Order*, citing it for the proposition that section 251 and the Commission's implementing rules "require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point," including "the option to interconnect at only one technically feasible point in each LATA."[80] AT&T further states that under the Commission's

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[74] *See* AT&T's November Proposed Agreement, Sch. 4; WorldCom's November Proposed Agreement, Attach. IV, §§ 1.1 through 1.1.3.3, and 1.3 through 1.3.2; and Cox's November Proposed Agreement, Sec. 4.2.2.

[75] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*); 47 C.F.R. § 51.305; 47 C.F.R. § 51.703.

[76] *See* AT&T Brief at 12. AT&T's objections are directed at Verizon's VGRIPs proposal only, which AT&T states was the only Verizon interconnection proposal put at issue with respect to AT&T. *See id* at 12 and n.24.

[77] *See* AT&T Brief at 71.

[78] *See id* at 72.

[79] *See id.* at 6.

[80] *See id.* at 7, citing *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of* (continued....)

rules each carrier is responsible for its costs to deliver originating local traffic to the point of interconnection.[81] Specifically, AT&T states that the Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.[82]

42. AT&T contends that, as provided in its proposal, each party should be financially responsible for (1) transporting its own originating traffic to the point of interconnection on the terminating party's network; and (2) paying for any transport and termination of the traffic to the end user on the terminating party's network.[83] Accordingly, AT&T rejects Verizon's claims that the petitioners' interconnection proposals require Verizon to subsidize virtually all of the costs of interconnection. AT&T argues that Verizon has presented no evidence of the extent of the additional costs (such as the cost of transporting originating traffic to a competitive LEC's POI) that Verizon claims it must bear as a result of the petitioners' interconnection proposals. AT&T further argues that, while Verizon may in fact pay incrementally more to transport its traffic in a competitive market than it would if it were the sole service provider, the Act does not insulate Verizon from all costs that result from opening local telecommunications markets to competition.[84]

43. AT&T also disputes the claim that its proposed language implicitly endorses the concept of an IP. According to AT&T, the AT&T language Verizon cites is simply a reflection of the Commission's rules defining transport for purposes of reciprocal compensation. AT&T states that its language, consistent with these rules, reflects the fact that the POI is the location where the transport portion of reciprocal compensation begins.[85] Finally, AT&T also disputes Verizon's claim that AT&T's arguments regarding points of interconnection represents, somehow, an impermissible change of position.[86]

44. Cox also disagrees with Verizon's proposals, offering objections similar to those of AT&T.[87] According to Cox, section 251(c)(2) of the Act and Commission Rule 51.305(a)(2)

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*the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, para. 78 (2000) (*SWBT Texas Order*).

[81] *See* AT&T Brief at 5.

[82] *See id.* at 9, citing 47 C.F.R. § 51.703(b) (for traffic subject to reciprocal compensation, prohibiting any LEC from charging other telecommunications carriers for traffic originating on the LEC's network). *See also* 47 U.S.C. § 252(d)(2)(A).

[83] *See* AT&T Reply at 2.

[84] *See id.* at 3.

[85] *See id.* at 34-35, citing 47 C.F.R. § 51.701(c).

[86] *See* AT&T Brief at 66-67.

[87] Cox believes that Verizon has formally offered only its GRIPs proposal to Cox, and not its VGRIPs proposal. *See* Cox Objection and Request for Sanctions at 1-3. Nonetheless, while preserving its procedural objection to (continued....)

require that competitive LECs be allowed to select any technically feasible point of interconnection within an incumbent LEC's network.[88] As did AT&T, Cox argues that Commission Rule 51.703(b) prevents an incumbent LEC from evading this requirement by imposing on a competitive LEC charges for transporting the incumbent LEC's traffic to the competitive LEC.[89] Cox argues that, as the Commission's *TSR Wireless Order* demonstrates, Verizon's GRIPs and VGRIPs proposals violate these provisions of the Act and the Commission's rules. Cox states that, in the *TSR Wireless Order*, the Commission held that a LEC cannot avoid its obligations to deliver traffic to another carrier's point of interconnection by charging the carrier for delivering traffic to the point of interconnection, regardless of how the LEC characterizes those charges.[90] According to Cox, Verizon's GRIPs and VGRIPs proposals violate the Commission's holding in the *TSR Wireless Order*, because Verizon's proposals would make Cox, rather than Verizon, responsible for the costs of delivering Verizon-originated traffic to Cox.[91]

45. Additionally, Cox argues that Verizon's proposals would limit Cox to collecting the end office rate for reciprocal compensation, rather than the tandem rate, for traffic Verizon delivers to Cox for termination.[92] According to Cox, these provisions violate the Commission's rules governing the treatment of competitive LEC switches for the purposes of calculating reciprocal compensation.[93] Cox also argues that Verizon has not clarified its proposed offset of transport and other costs against competitive LEC charges for delivery of Verizon's originating traffic. Cox asserts it is unclear precisely what would offset the competitive LEC charges under Verizon's proposal.[94] In addition, Cox argues that some elements of Verizon's proposals are arbitrary and unreasonable.[95] For example, Cox states that Verizon's own witness admitted that, under its GRIPs proposal, the 25-mile threshold triggering Verizon's selection of IPs is a number without basis in any engineering principle.[96] Cox also states that, while Verizon's VGRIPs

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Verizon's VGRIPs language, Cox's post-hearing briefs address substantive concerns with both proposals. *See* Cox Brief at n.3.

[88] *See* Cox Brief at 7; 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2).

[89] *See* Cox Brief at 7; 47 C.F.R. § 51.703(b).

[90] *See* Cox Brief at 7-8, citing *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (2000) (holding that LECs may not charge for either transport or facilities for traffic they deliver to paging companies), *aff'd sub nom. Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[91] *See* Cox Brief at 7.

[92] *See id.* at 9.

[93] *See id.* at 9, citing 47 C.F.R. § 51.711(a)(3). Both AT&T and WorldCom raise similar objections to proposed Verizon language under Issue III-5, *infra*.

[94] *See* Cox Brief at 12-13, citing Tr. at 1361-63.

[95] *See* Cox Brief at 13-16.

[96] *See id.* at 13.

proposal provides for competitive LEC compensation of Verizon's originating transport costs in a single-tandem LATA, Verizon regularly bears the costs of transport within its own network to a distant tandem in a single-tandem LATA.[97]

46. WorldCom objects to Verizon's GRIPs and VGRIPs proposals for similar reasons to those offered by AT&T and Cox. Specifically, WorldCom also believes Verizon's proposals contravene WorldCom's right under the Commission's rules to select any technically feasible point of interconnection and not to be charged for delivery of Verizon's traffic to the point of interconnection.[98] WorldCom states that, although Verizon purports to recognize the competitive LEC's right to select the point or points of interconnection, Verizon's proposals ignore one critical aspect of that principle: the carrier that originates traffic is financially responsible for transporting the traffic to the point of interconnection with the other carrier's network. Instead, according to WorldCom, Verizon's proposal relieves Verizon of its obligation to deliver its originating traffic to the network of a co-carrier, and shifts to the co-carrier Verizon's cost of facilities used to deliver its originating calls.[99] WorldCom also objects that Verizon's proposals are non-mutual, shifting financial responsibility only when WorldCom receives Verizon's originating traffic, without any corresponding shift when WorldCom delivers traffic to Verizon.[100]

47. In addition, WorldCom objects to provisions in Verizon's GRIPs and VGRIPs proposals which it argues would allow Verizon to transform WorldCom collocation arrangements into physical points of interconnection. WorldCom argues that collocation arrangements, which are quite expensive to establish, are typically not established by WorldCom for interconnection but for access to unbundled network elements (UNEs).[101] WorldCom also objects to provisions in Verizon's proposals allowing Verizon to reduce its reciprocal compensation payments in those instances where WorldCom does not agree to a Verizon-designated IP.[102] WorldCom objects that this language effectively permits Verizon to charge transport and tandem switching to WorldCom for Verizon's originating traffic,[103] and contravenes WorldCom's right to receive symmetrical reciprocal compensation.[104]

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[97] *See id.* at 13.

[98] *See* WorldCom Brief at 6.

[99] *See id.* at 10.

[100] *See id.* at 14; WorldCom Reply at 12-13.

[101] *See* WorldCom Brief at 11-12.

[102] Specifically, Verizon's proposal would reduce reciprocal compensation by the amount of its end office rate less transport and tandem switching rates. *See* WorldCom Brief at 12-13.

[103] *See id.* at 12-13.

[104] *See id.* at 15.

48. Verizon objects to the petitioners' interconnection proposals on the grounds that they require Verizon to bear the entire cost of transporting traffic to competitive LEC points of interconnection, even though these transport costs are the result of the competitive LECs' interconnection and network architecture choices.[105] Verizon states that its local traffic bound for a competitive LEC's customer often must leave the Verizon legacy local calling area before reaching the competitive LEC's customer. Verizon states that it must incur the cost to transport the call to the competitive LEC's chosen point of interconnection, which may be outside the originating local calling area. Verizon claims that this problem is exacerbated when competitive LECs offer "virtual FX" or virtual foreign exchange service, by assigning NPA-NXX codes associated with a particular rate center or local calling area to customers physically located outside of that rate center or local calling area. This allows these customers to receive calls rated as local rather than toll even though the FX customer is located in a different local calling area than the caller.[106] According to Verizon, it incurs costs to transport traffic bound for a competitive LEC's virtual FX customer in another local calling area, yet it would not receive toll revenues from its own end user, nor would it receive compensation for originating access service from the competitive LEC. Instead, Verizon would be required to pay reciprocal compensation to the competitive LEC, for what it regards as toll traffic.[107]

49. Verizon contends that its VGRIPs proposal, which it maintains it has offered to all three petitioners, represents the most reasonable solution to the operational and cost issues raised by the competitive LECs' interconnection choices.[108] Verizon argues that the contract should explicitly differentiate between the terms "POI" (referring to a physical point of interconnection) and "IP" (referring to the demarcation point for financial responsibility). Verizon suggests that, notwithstanding AT&T's objections to Verizon's use of these two terms, AT&T's proposed language implicitly contains the same distinction. Specifically, Verizon states that AT&T's language would allow it to designate an AT&T collocation at a Verizon tandem as Verizon's POI, but financially obligate Verizon to transport its traffic to the terminating AT&T switch.[109]

50. Verizon does not dispute that competitive LECs can determine where they will physically interconnect with Verizon's network. Accordingly, it explains that its VGRIPs proposal provides each party with a menu of interconnection options, and would allow petitioners to select one technically feasible point of interconnection in a LATA, if they chose to configure their network in that manner.[110] Verizon states that the competitive LEC IPs are the

[105] *See* Verizon Network Architecture Brief at 2.

[106] Verizon states that many of the competitive LECs' virtual FX customers are internet service providers (ISPs). *See* Verizon Network Architecture Brief at 2. The parties deal more fully with the issues of virtual FX service and assignment of NPA-NXX codes in Issue I-6, *infra*.

[107] *See* Verizon Network Architecture Brief at 2-3.

[108] *See id.* at 2.

[109] *See id.* at 20-21, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part A, § 1.5.

[110] *See* Verizon Network Architecture Brief at 5-6 and 21.

points beyond which the competitive LEC would be *financially* responsible for the further transport of traffic to its network. According to Verizon, its VGRIPs proposal, by establishing competitive LEC IPs, merely shifts onto competitive LECs some of the costs Verizon incurs to transport traffic to the point of interconnection.[111] Verizon adds that, under the terms of its VGRIPs proposal, a competitive LEC's IP may very well be outside the Verizon local calling area in which traffic originates; in such circumstances, Verizon would absorb the transport costs it incurs to carry traffic to the IP. According to Verizon, this aspect of VGRIPs represents a significant compromise for Verizon.[112] Verizon maintains that its proposal is consistent with the Commission's *Local Competition First Report and Order*, which stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection."[113] Verizon cites interconnection arbitration orders by the South Carolina Public Service Commission (South Carolina Commission) and the North Carolina Utilities Commission (North Carolina Commission) approving incumbent LEC interconnection proposals similar to Verizon's VGRIPs proposal.[114] Verizon also states that the U.S. Court of Appeals for the Third Circuit has recognized that state commissions may consider shifting onto a competitive LEC the costs that a competitive LEC's choice of points of interconnection would otherwise impose on the incumbent LEC.[115]

### (ii) Discussion

51. We adopt the petitioners' proposed interconnection language, rather than Verizon's proposed language implementing its "GRIPS" and "VGRIPS" proposals.[116] We find

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[111] *See id.* at 5-8.

[112] *See id.* at 6.

[113] *See id.* at 8, quoting *Local Competition First Report and Order*, 11 FCC Rcd at 15603, para. 199.

[114] *See* Verizon Network Architecture Brief at 12-16, citing South Carolina Commission, *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079 (2001); North Carolina Commission, *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73, P-646, Sub 7 (2001).

[115] *See* Verizon Network Architecture Brief at 16, citing *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania*, 271 F.3d 491, 518 (3rd. Cir. 2001).

[116] With respect to AT&T, we adopt AT&T's November Proposed Agreement, §§ 4.1 *et seq.* and 4.2 *et seq.*, and Schedule 4 (except for certain provisions modified or rejected elsewhere in this Order, such as in Issue III-3/III-3-a and Issue V-1/V-8); and reject Verizon's November Proposed Agreement, §§ 1.45(a), 1.63, 4.1 *et seq.*, 4.2 *et seq.*, 5.7.3 and 5.7.6 *et seq.* With respect to Cox, we adopt Cox's November Proposed Agreement, § 4.2 *et seq.*; and reject Verizon's November Proposed Agreement, § 4.2.2 *et seq.* With respect to WorldCom, we adopt WorldCom's November Proposed Attachment IV, §§ 1.1 through 1.1.3.3, and 1.3 through 1.3.2; and reject Verizon's November Proposed Agreement, Part B, §§ 2.49 and 2.71, and Interconnection Attachment, §§ 2.1 *et seq.*, 2.5, 7.1 *et seq.* and 7.5 *et seq.*

that petitioners' language more closely conforms to the Commission's current rules governing points of interconnection and reciprocal compensation than do Verizon's proposals. Because we adopt the petitioners' proposals, rather than Verizon's, we also determine that WorldCom's motion and Cox's objection are moot with respect to Issue I-1.

52. Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point.[117] This includes the right to request a single point of interconnection in a LATA.[118] The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network.[119] Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic. The interplay of these rules has raised questions about whether they lead to the deployment of inefficient or duplicative networks.[120] The Commission is currently examining the interplay of these rules in a pending rulemaking proceeding.[121] As the Commission recognized in that proceeding, incumbent LECs and competitive LECs have taken opposing views regarding application of the rules governing interconnection and reciprocal compensation.[122]

53. We find that the petitioners' proposed language more closely conforms to our existing rules and precedent than do Verizon's proposals.[123] Verizon's interconnection proposals

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[117] *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2).

[118] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650, paras. 72, 112 (2001) (*Intercarrier Compensation NPRM*); *SWBT Texas 271 Order*, 16 FCC Rcd at 18390, para. 78 n.174.

[119] *See* 47 C.F.R. § 51.703(b).

[120] *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9617, para. 14.

[121] *See id.*, 16 FCC Rcd at 9650-52, paras. 112-14.

[122] *See id.*, 16 FCC Rcd at 9650, para. 112.

[123] We note that the Commission declined to find that policies similar to GRIPs and VGRIPs violated the Act in the *Verizon Pennsylvania 271 Order*. *See Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17474-75, para. 100 (2001) (*Verizon Pennsylvania 271 Order*). The Commission has not, however, required that all "new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations" be resolved in a Bell Operating Company's (BOC) favor in order for the BOC's section 271 application to be granted. *See Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6246-47, para. 19 (2001) (*SWBT Kansas/Oklahoma 271 Order*). Thus, the *Verizon Pennsylvania 271 Order* is not determinative of the question we address here, which is whether Verizon's or petitioners' language is more consistent with the Act and our rules.

require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection.[124] By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.[125] Accordingly, we adopt the petitioners' proposals.

54. Verizon raises serious concerns about the apportionment of costs caused by a competitive LEC's choice of points of interconnection, such as, for example, the apportionment of costs for virtual FX traffic transported to distant points of interconnection.[126] As we have noted, the Commission is currently examining similar concerns on an industry-wide basis in a pending rulemaking proceeding.[127] Should the Commission's rules governing interconnection and reciprocal compensation change during that proceeding, we expect the agreements' change of law provisions to apply. As we indicate above, however, in this proceeding, we will decide the issues presented based on the Commission's existing rules, and the petitioners' interconnection proposals more closely conform to those rules than do Verizon's proposals.

#### c. Additional Interconnection Language (Issues VII-1 and VII-3)

##### (i) Positions of the Parties

55. The arguments raised by Verizon under Issues VII-1 and VII-3 overlap considerably with the questions addressed above under Issue I-1, and relate to the same sections of proposed language. While we thus discuss most of these arguments above, we discuss in this section a number of other specific criticisms raised by Verizon relating to AT&T's proposed Section 4. Specifically, Verizon contends:

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[124] *See* Verizon Network Architecture Brief at 6. Verizon states that a competitive LEC could discharge that financial responsibility, for example, by purchasing UNE transport from Verizon. *See id.* at 6.

[125] 47 C.F.R. § 51.703(b).

[126] For a more extensive discussion of Verizon's concerns regarding virtual FX traffic, *see infra,* Issue I-6.

[127] *See Intercarrier Compensation NPRM* at 9634-38, 9650-52, paras. 69-77, 112-15.

- AT&T has wasted time and resources by unilaterally changing provisions that the parties agreed upon during negotiations.[128]

- AT&T's proposed language allowing it to interconnect "at any technically feasible point" is too broad and vague, as the New York Commission recently held.[129]

- AT&T's proposal does not provide Verizon with many interconnection options, defaulting to providing Verizon's POI at the AT&T end office switch in the absence of mutual agreement.[130]

- AT&T uses the term "ESIT" in its proposed language, referring to intraLATA toll and local traffic, which would lead to treating intraLATA toll traffic subject to the Virginia Commission's tariffing authority in the same manner as section 251(b)(5) traffic.[131]

- AT&T's proposals contain timelines that are unnecessarily rigid, yet overly broad and vague.[132]

- AT&T's proposed language governing transition and trunk conversion costs unfairly holds Verizon responsible for half of AT&T's costs whenever AT&T decides to alter its existing network and interconnection arrangements with Verizon.[133] Verizon suggests that its own proposal is consistent with the New York Commission's recent determination that AT&T should pay for all relevant, incremental costs triggered by its actions during a network transition.[134]

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[128] *See* Verizon Network Architecture Brief at 21-22. For example, with respect to the parties' trunk group proposals, Verizon asserts that AT&T should have merely offered a redline comparison of AT&T's and Verizon's proposals if it wanted to point out any differences in the proposals, instead of putting already agreed upon language in dispute. *See, id.* at 23-24.

[129] *See* Verizon Network Architecture Brief at 22, citing Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues, at 28 (issued July 30, 2001) (*New York Commission AT&T Arbitration Order*) (in which, according to Verizon, the NY Commission adopted the same "POI" options offered here by Verizon).

[130] *See* Verizon Network Architecture Brief at 22-23.

[131] *See id.* at 23.

[132] *See id.* at 24, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part B, § 3 (timelines for transitioning to new interconnection arrangements).

[133] *See* Verizon Network Architecture Brief at 24, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part B, § 3 *et seq.*

[134] *See* Verizon Network Architecture Brief at 24, citing *New York Commission AT&T Arbitration Order* at 29.

- AT&T's proposal to interconnect with Verizon at a point of presence (POP) hotel or customer premise would be discriminatory because AT&T is uniquely advantaged, as a result of conditions dating back to the AT&T divestiture, by sometimes having wire centers in the same building as Verizon.[135]

56. AT&T responds to Verizon's objections to its proposed Schedule 4. Specifically, AT&T argues that any "reorganization" of its language prior to the hearing was almost entirely non-substantive, and was intended to make its language conform more closely to the structure of Verizon's model contract.[136] AT&T also contends that its use of the term "ESIT" to refer to local and toll traffic does not cause problems. AT&T states that the parties have agreed to carry both local and toll traffic on the same trunks, and apply a percent local usage factor to determine the relative amounts of reciprocal compensation and access charges owed to terminating carriers. AT&T argues that its treatment of toll traffic is thus consistent with section 251(b)(5) of the Act as well as Virginia's treatment of intrastate toll traffic.[137] To address Verizon's concerns regarding payment for network transitions, AT&T states that it has modified its language to make clear that each party bears its own non-recurring charges for network transitions.[138] The proposed language for intra-building interconnection is consistent with AT&T's right to interconnection at any technically feasible point, and would not allow the parties to grandfather existing interconnection arrangements indefinitely.[139]

**(ii) Discussion**

57. We reject Verizon's several arguments opposing inclusion of AT&T's Schedule 4 for the following reasons, and find that this proposed language is consistent with applicable law and precedent.

- Verizon's objection to AT&T's restructuring of its proposed language on trunk groups is without merit: there is simply no requirement that a petitioner for arbitration under section 252(b) must present the Arbitrator with the same language discussed during previous voluntary negotiations.

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[135] *See* Verizon Network Architecture Reply at 12.

[136] *See* AT&T Brief at 70, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part C.

[137] *See* AT&T Reply at 33-34. AT&T also disputes Verizon's concerns that AT&T's use of the term ESIT carries any slamming implications. *See id* at 34. According to AT&T, both parties have agreed that intrastate toll traffic will be carried to the end user's chosen intraLATA toll provider, over the exchange access trunks corresponding to that particular provider.

[138] *See* AT&T Brief at 69.

[139] *See id.* at 67. AT&T explains that its language merely allows the parties to *agree mutually* to grandfather existing interconnection arrangements while they transition to new ones.

- We disagree with Verizon's contention that AT&T's language allowing it to interconnect at any technically feasible point is too broad and vague.[140] AT&T's proposed language restates its rights under the Act and the Commission's implementing rules, and lists several examples ("tandems, end offices, outside plant and customer premises") of what might constitute technically feasible points.[141]

- We reject Verizon's objection that AT&T's proposed language offers Verizon fewer interconnection options than for itself. The standards governing incumbent LEC interconnection under section 251(c)(2) of the Act simply do not apply to competitive entrants like AT&T.

- We find Verizon's objection to AT&T's use of the term ESIT to be lacking. As AT&T explains, the use of this term merely recognizes the parties' agreement to exchange 251(b)(5) traffic and toll traffic on the same trunk groups, applying a percentage of use factor to determine the portion of traffic subject to reciprocal compensation and the portion subject to access charges. Verizon fails to explain how this does violence to Virginia's regime governing intrastate access.

- We reject Verizon's claim that AT&T's proposes an unnecessarily rigid and unworkable plan for implementing network reconfigurations consistent with the contract language adopted herein. Verizon offers no support for its claim – for example, it does not explain why AT&T's proposed 45-day timeline for developing an implementation plan is unworkable. AT&T's proposed timetable appears reasonable and, even if the target dates to be impractical, the proposal envisions using the contract's dispute resolution process in the event any deadlines are missed.

- With respect to AT&T's language governing trunk conversion costs, we find that AT&T's modified language adequately addresses Verizon's stated concern that AT&T would require Verizon to pay AT&T's costs for trunk conversion.

- We reject Verizon's arguments that AT&T's language allowing it to interconnect at any technically feasible point, including a customer premises (*i.e.,* intra-building interconnection), discriminates against other carriers. Technically feasible interconnection is the right of every competitive entrant. The fact that AT&T in some instances, by the development of historical events, maintains wire centers on the same premises as Verizon hardly renders its proposed language discriminatory against other carriers.

### 2. Issues I-2/VII-5 (Distance-Sensitive Rates and Transport of Verizon Traffic from the IP to the POI)

[140] *See* AT&T's November Proposed Agreement to Verizon, Sch. 4, Part A, § 1.1.

[141] *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305.

### a. Introduction

58. Verizon proposes language that would preclude petitioners from charging it distance-sensitive rates for "entrance facilities," in order to limit its transport costs in the event that it does not prevail on Issue I-1. These "entrance facilities" are interconnection facilities petitioners provide to Verizon that are used to transport Verizon-originated traffic to the petitioners' networks.[142] Verizon argues its proposed language would limit its transport costs in LATAs where a petitioner establishes only one, or few, points of interconnection (POIs). With respect to WorldCom, and as discussed in Issue I-1, Verizon seeks to include language requiring WorldCom to establish an interconnection point (IP) with Verizon, separate from the physical POI. The IP, rather than the POI, would serve as the demarcation of Verizon's financial responsibility for further transport of traffic.[143] Petitioners oppose Verizon's proposed language.[144] We reject Verizon's proposed language.

### b. Positions of the Parties

59. AT&T opposes Verizon's language; it proposes no language of its own. AT&T believes that Issue I-2 presents the question of price caps for competitive LEC services, which, it argues under Issue I-9, are inconsistent with law.[145] Thus, AT&T argues that it should be able to

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[142] The following sections of Verizon's proposed contracts raise the distance-sensitive rate issue. With respect to AT&T, under Issue VII-5: Verizon's November Proposed Agreement to AT&T, § 4.2.7; *see* Verizon Network Architecture (NA) Brief at 17, n.32. At the hearing, counsel for Verizon stated that Issue VII-5 is the same as Issue I-2. *See* Tr. at 2708-09. With respect to Cox for Issue I-2: Verizon's November Proposed Agreement to Cox, §§ 4.3.8, 4.5.3; *see* Verizon NA Brief at 17, n.32; *see also* Cox Objection and Request for Sanctions at Exhibit 3. Verizon's November Proposed Contract to Cox, § 4.2.4, which Cox also identifies as at issue (*see* Second Revised Joint Decision Point List, Network Architecture (Nov. 2, 2001), at 26), was withdrawn by Verizon in its November contract filing. *See* Verizon November Proposed Agreement to Cox, at 17-18. With respect to WorldCom: Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.1.3.5.1; *see* Verizon NA Brief at 17, n.32. WorldCom explains, however, that the "distance-sensitive rate" aspect of Issue I-2 is inapplicable to it because Verizon brings traffic on its own facilities to the point of interconnection with WorldCom. *See* n.165, *infra*. WorldCom also contests Verizon's proposed § 2.1.3.5.1 as part of the general language contested under Issue I-1. *See* Second Revised Joint Decision Point List, Network Architecture, Issue I-1, at 17.

[143] As discussed below, WorldCom frames its Issue I-2 differently than AT&T and Cox and, accordingly, challenges under Issue I-2 a different portion of Verizon's proposed contract, which it also challenges under Issue I-1. *See* Second Revised Joint Decision Point List, Network Architecture, Issue I-1, at 18-19 (challenging Verizon proposed §§ 7.1.1.2, 7.1.1.3, 7.1.1.3.1, 7.1.3), Issue I-2, at 24-25 (same).

[144] In November, Verizon modified its proposed language to Cox. *See* Verizon's November Proposed Agreement to Cox, § 4.5.3; *see also* Cox Objection and Request for Sanctions at Exhibit 3 (comparing Issue I-2 language in Revised Joint Decision Point List with Issue I-2 language in Second Revised Joint Decision Point List). Cox filed an Objection and Request for Sanctions, arguing that this language introduces a new approval requirement. *See* Cox Objection and Request for Sanctions at 2, 11-12.

[145] With respect to Issue I-2, AT&T consistently has cross-referenced its Issue I-9 argument. *See, e.g.*, AT&T Ex. 4 (Direct Testimony of R. Kirchberger), at 3; AT&T Statement of Unresolved Issues at 280-81. Neither AT&T nor Verizon identified in any of the Joint Decision Point Lists any language from either party's proposed contract as at (continued....)

recover its distance-sensitive charges for any transport it provides from Verizon's network to its own.[146] As in Issue I-1, AT&T argues that each party has the financial obligation to deliver its originating traffic to the POI. This means that Verizon must fully compensate AT&T for costs that AT&T incurs to deliver Verizon-originated traffic to that point (*i.e.*, if Verizon uses AT&T entrance facilities for this purpose).[147] Accordingly, AT&T objects to Verizon's proposed language that precludes distance-sensitive rates.[148] Verizon's complaint that it is hostage to paying AT&T transport ignores the reality that Verizon is the incumbent with the ubiquitous network and rarely needs to lease facilities from any carrier, a point which Verizon conceded at the hearing.[149]

60. Cox argues that Verizon's proposal would create an asymmetrical relationship. Verizon would bar Cox from charging distance-sensitive rates for the transport of Verizon-originated traffic over Cox facilities,[150] but would still charge Cox distance-sensitive rates for carrying Cox-originated traffic over Verizon's transport facilities.[151] Cox argues that asymmetrical rates are not justified in this matter for three reasons. First, Cox notes that it has proposed language under which Verizon could self-provision transport up to the "entrance facility point" for Cox's switching offices (*i.e.*, up to the Verizon wire center closest to the Cox switch).[152] Cox estimates that in Virginia the distance between its switch and the nearest Verizon serving wire center does not exceed four miles.[153] Thus, if Verizon chooses this alternative, it would pay Cox no more than a four-mile entrance facility charge. Verizon's witness acknowledged that this is a reasonable distance for which to pay transport charges.[154] Second, Cox argues, the fact that the current and proposed agreements both allow for mid-span meets

(Continued from previous page)
issue under Issue I-2. As noted, at the hearing, counsel for Verizon stated that Issue VII-5, which is a Verizon-designated AT&T issue, is the same as Issue I-2. *See* Tr. at 2708-09.

[146] *See* Tr. at 2707.

[147] *See* AT&T Brief at 73.

[148] *See* Verizon's November Proposed Agreement to AT&T, § 4.2.7.

[149] AT&T Brief at 73 n.247, citing Tr. at 1237-38. Moreover, as discussed with respect to Issue V-2, AT&T claims that, when the situation is reversed and AT&T purchases transport from Verizon for the same purpose, Verizon wants to charge AT&T distance-sensitive, market-based exchange access rates – Verizon's highest tariffed rate. *Id.* This, AT&T argues, is clearly inequitable. *Id.*

[150] *See* Cox Brief at 17.

[151] *See* Cox Brief at 17, citing Tr. at 1255-56; Verizon Ex. 18 (Rebuttal Testimony of D. Albert and P. D'Amico), at 12.

[152] *See* Tr. at 1021-23; Cox Ex. 1 (Direct Testimony of F. Collins), at 11-12; *see also* Cox November Proposed Agreement to Verizon, § 4.3.4.

[153] Cox Brief at 17, citing Cox Ex. 2 (Rebuttal Testimony of F. Collins), at 13; Tr. at 1028-29.

[154] Cox Brief at 17-18, citing Tr. at 1259.

largely eliminates Verizon's concerns because Verizon can control when and if it will pay distance-sensitive rates to Cox.[155] Third, although Verizon argues that elimination of mileage-sensitive rates is essential to protect it from the situation in which a competitive LEC chooses a single POI in a LATA and places it far distant from the Verizon end-office, Cox has already agreed to multiple IPs in Virginia. Accordingly, Cox asserts, the problem of the single POI does not exist with respect to Cox.[156] Allowing Verizon to charge Cox distance-sensitive rates, while denying Cox the same opportunity, forces Cox to subsidize Verizon's services.[157]

61. Moreover, Cox argues, several regulatory control mechanisms already ensure that Cox's rates are reasonable. These include common carrier rules requiring nondiscriminatory rates and state and federal regulatory oversight of Cox's rates and practices.[158] Verizon has admitted that it does not deem any of Cox's rates to be unreasonable and has never challenged them before a regulatory body.[159]

62. Finally, Cox argues, Verizon's November VGRIPs language, which also would give Verizon the sole right to designate IPs (while continuing to limit Cox to non-distance-sensitive charges),[160] violates two settled Commission policies.[161] First, it is contrary to the Commission's determination that competitive LECs are permitted to choose their POIs.[162] Second, it would require the Commission to revise its policy of treating Cox and Verizon as co-carriers and treat Cox as a subservient carrier.[163] Cox contends the Commission has stated that each carrier derives a benefit from interconnection and each should be required to bear the reasonable cost of it.[164]

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[155] Cox Brief at 18, citing Tr. at 1022-24.

[156] Cox. Brief at 18, citing Tr. at 1252-53.

[157] Cox Brief at 19.

[158] Cox Reply at 11-12.

[159] Cox Reply at 12, citing Cox Exhibits 22-24 (the only Cox rate Verizon deems unreasonable is a late fee; Verizon has not filed a complaint against Cox but would do so if it deemed Cox rates unreasonable).

[160] *See* Cox Objection and Request for Sanctions at Exhibit 3 (comparing Issue I-2 language in Revised Joint Decision Point List with Issue I-2 language in Second Revised Joint Decision Point List).

[161] Cox Reply at 11.

[162] *See* Cox Brief at 19, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15608-09; 47 C.F.R. § 51.305(a); Cox Reply at 11.

[163] Cox Reply at 11, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15981[sic. 15781, para. 553].

[164] Cox Brief at 17, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15981[sic. 15781, para. 553].

63. According to WorldCom, Issue I-2 is different from Cox's Issue I-2 and does not concern distance-sensitive charges.[165] WorldCom states that, in a co-carrier environment, Verizon is responsible for delivering its traffic to the physical POI.[166] Under Verizon's proposed section 7.2 to WorldCom, however, WorldCom would be obligated to receive Verizon-originated traffic at points that Verizon designates as "WorldCom IPs" and then would be required to provide transport and termination of Verizon's traffic from that point.[167] Under Verizon's proposal, typically, a "WorldCom IP" would be at a point on Verizon's network before the POI, and WorldCom would not be able to assess charges other than reciprocal compensation for terminating traffic from the WorldCom IP.[168] Accordingly, WorldCom would have to provide "free transport" to Verizon between the WorldCom IP and the POI.[169] Reciprocal compensation does not reimburse WorldCom for the cost of this transport between the WorldCom IP and the POI, [170] because reciprocal compensation only recovers the cost of tandem switching by the terminating carrier, transport from that carrier's tandem to the terminating office, and end-office switching.[171]

64. Verizon argues that if the Commission does not accept the VGRIPs proposal, it should permit Verizon to address its legitimate transport concerns by preventing the petitioners

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[165] WorldCom Brief at 18 n.12. WorldCom explains that under the parties' current arrangement, Verizon is "able to self-provision facilities for the delivery of its traffic to WorldCom, and there is no factual basis for its proposal to limit WorldCom's transport charges to a non-distance-sensitive charge." WorldCom Reply at 19. Accordingly, Verizon's proposal to limit transport charges to a non-distance-sensitive charge is inapplicable to WorldCom.

[166] WorldCom Brief at 19 n.13.

[167] *See* WorldCom Brief at 18 & n.12; Verizon's November Proposed Agreement to WorldCom, Interconnection Attach., § 7.2 (compensation for transport and termination of § 251(b)(5) traffic shall be at the rates stated in the Pricing Attachment which "are to be applied at the MCIm-IP for traffic delivered by Verizon for termination by MCIm .... Except as expressly specified in this Agreement, no additional charges shall apply for the termination from the IP to the customer" of such traffic). Section 7.2 was not identified by either party in the Joint Decision Point Lists as at issue under either Issue I-1 or I-2.

[168] *See* WorldCom Brief at 18, citing WorldCom Ex. 3 (Direct Testimony of D. Grieco and G. Ball) at 28. The IP is either a Verizon end office or multiple Verizon tandems. These are not the POI in a multi-tandem LATA. WorldCom Brief at 18-19, citing WorldCom Ex. 3, at 29.

[169] WorldCom Brief at 18, citing WorldCom Ex. 3, at 28.

[170] *Id.*

[171] *Id.* at 19. Moreover, WorldCom argues, if it were, for example, to provide transport of Verizon traffic between a Verizon end-office (one potential manifestation of the WorldCom IP) and the POI at the Verizon tandem -- an average distance of ten miles in Virginia -- WorldCom should be able to charge for this transport service. WorldCom Brief at 19, citing WorldCom Ex. 3, at 28-29; WorldCom Reply at 20, citing WorldCom Ex. 15 (Rebuttal Testimony of D. Grieco and G. Ball), at 30-31. Further, any restriction on such a charge, such as limiting it to a non-distance-sensitive charge, would be unreasonable. *See* WorldCom Reply at 20. WorldCom would be providing transport over some distance, and limiting WorldCom's ability to levy a reasonable charge would force WorldCom to provide transport at below cost rates. *See id.*

from charging it distance-sensitive rates for transport.[172] It claims that its proposal protects it from being penalized if a competitive LEC locates only one or a limited number of POIs in the LATA.[173] Through its proposal, Verizon seeks options, just as the competitive LECs have options, to limit the costs of interconnection. If the competitive LECs can unilaterally dictate the location of the POI without assuming any financial responsibility for that choice, refuse to provide collocation,[174] and unilaterally dictate how to establish the mid-span meet, [175] Verizon has no options other than to purchase transport from the competitive LECs.[176] Verizon's proposal would preclude petitioners from charging excessive rates when Verizon delivers its traffic to a distant competitive LEC POI. [177]

65. In response to Cox's claim that it should be treated as a co-carrier, Verizon argues that Cox only wants such treatment when it is to Cox's benefit.[178] Verizon should be given the same choices as competitive LECs.[179] Consistent with petitioners' desire to be treated as "co-carriers," they should be willing to offer Verizon the same opportunities they have to limit interconnection costs.[180] Otherwise, petitioners should not be permitted to charge Verizon distance-sensitive rates for transport because Verizon's choice as to where it may deliver traffic is limited.[181] Verizon's lack of interconnection choices, combined with the competitive LECs' option to choose whatever interconnection method they desire, could operate to maximize Verizon's costs.[182]

#### c. Discussion

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[172] Verizon NA Brief at 16.

[173] Verizon NA Brief at 16-17, citing Tr. at 1255, 18; *see also* Tr. at 2708-05.

[174] *See infra*, Issue I-3.

[175] Verizon says if it were able to establish mid-span meets with competitive LECs on terms and conditions agreeable to Verizon, then the mid-span meet would obviate the need for Verizon to collocate, but argues that the competitive LECs also want the unilateral ability to dictate how to accomplish the mid-span meet. Verizon NA Reply at 11, citing Issue III-3.

[176] Verizon NA Brief at 17; Verizon NA Reply at 11 n.32.

[177] *See* Verizon NA Brief at 17.

[178] Verizon NA Reply at 10, citing Cox Brief at 17.

[179] Verizon NA Reply at 11.

[180] *Id.* at 12.

[181] *Id.* at 11.

[182] *Id.* at 18.

66. Consistent with our decisions on Issues I-1 and I-9, we rule for petitioners on this issue. In Issue I-1, we rejected Verizon's GRIPs and VGRIPs proposals. Accordingly, and for the reasons we articulate under Issue I-1, we reject Verizon's proposal to WorldCom to establish an IP that is distinct from the POI.[183] We also will not prohibit distance-sensitive rates when Verizon uses petitioners' facilities to transport traffic originating on its network to petitioners' networks. Accordingly, we reject Verizon's proposed language.[184]

67. Verizon's contract proposals on Issue I-2 arise out of its complaints about the rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier. Specifically these rules establish that: (1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network[185]; (2) competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA[186]; (3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination[187]; and (4) competitive LECs may refuse to permit other LECs to collocate at their facilities.[188]

68. One result of these rules, which Verizon addresses in Issue I-2, is that sometimes Verizon must pay petitioners for transporting Verizon-originated traffic from the place where

[183] Thus, we reject section 4.5.3 of Verizon's November Proposed Agreement to Cox, which requires Cox to provide additional IPs in a LATA upon request. Because we reject Verizon's VGRIPs proposal, and find in favor of petitioners on Issue I-2, we deny as moot Cox's Objection and Request for Sanctions with respect to this issue. Further, because we reject Verizon's VGRIPs proposal, we also reject Verizon's proposed language to WorldCom in section 7.2. *See* Verizon's November Proposed Agreement to WorldCom, Interconnection Attach., § 7.2.

[184] Thus, in addition to the VGRIPs language we reject above, we reject Verizon's November Proposed Agreement to AT&T, § 4.2.7; Verizon's November Proposed Agreement to Cox, §§ 4.3.8 and 4.5.3; and Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.1.3.5.1 and 7.2. Because we reject Verizon's VGRIPs proposal, and find in favor of petitioners on Issue I-2, we deny as moot Cox's Objection and Request for Sanctions with respect to this issue.

[185] 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a); *Local Competition First Report and Order*, 11 FCC Rcd at 15608, para. 209.

[186] *See Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650-51, paras. 72, 112 (2001) (*Intercarrier Compensation Rulemaking*); *SWBT Texas 271 Order,* 15 FCC Rcd 18354, 18390 at para. 78 & n.170.

[187] This precept stems from rules 51.703(b) and 51.709(b), which on the one hand preclude all LECs from charging other carriers for local traffic that the LEC originates, 47 CFR § 51.703(b), and on the other hand permit carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will *terminate* on the providing carrier's network." 47 CFR § 51.709(b)(emphasis added); *see also Local Competition First Report and Order*, 11 FCC Rcd at 16027-28, para. 1062.

[188] *See infra,* Issue III-3.

petitioners interconnect with Verizon's network to the petitioners' networks.[189] Thus, using Cox as an example, because Cox has statutory rights to choose the point where it interconnects with Verizon, and to collocate at a Verizon facility, the interconnection facility between Verizon's network and Cox's network may be owned by Cox. But, Verizon complains, because it does not have reciprocal statutory rights, if Cox is unwilling to let it collocate, Verizon cannot build its own interconnection facility to deliver its traffic to Cox's network.[190] In that case, in order to deliver its traffic to Cox, Verizon may have to purchase transport from Cox and pay a distance-sensitive rate component. Verizon complains about the distance-sensitive pricing of these transport facilities in Issue I-2. Because Cox chooses the interconnection point between the two networks, Verizon cannot control the distance over which it may be required to purchase transport.

69. Although we recognize, as we did in Issue I-1, that Verizon raises serious concerns about the apportionment of costs caused by competitive LECs' choice of points of interconnection,[191] we do not believe that limiting competitive LECs' transport charges for carrying Verizon-originated traffic is the appropriate way to address these concerns. Rather, we agree with AT&T that, by limiting the rates that petitioners charge for facilities that are used by Verizon to transport Verizon-originated traffic, Verizon's proposal would effectively constitute a price cap for competitive LEC services. As we discuss with respect to Issue I-9, however, the Bureau, acting as the Virginia Commission in this proceeding, is authorized by section 252 to determine just and reasonable rates to be charged by Verizon, not petitioners.[192] Accordingly, here, we cannot limit petitioners' rates for these transport facilities. To the extent that it believes that petitioners' rates for these facilities, including the distance-sensitive rate component, are unjust and unreasonable, Verizon may challenge them in proceedings before the Virginia

[189] As discussed in Issue I-1, Verizon argues that the place where the competitive LECs interconnect with Verizon's network is not necessarily the location where Verizon would choose to route its traffic, particularly if that location is distant from the place where the traffic originates on Verizon's network. Thus, in Issue I-1, Verizon argues that it could be inconvenient and expensive for Verizon to route, across its own facilities, all traffic destined for the place where the competitive LEC chooses to interconnect with Verizon (which could also be, at the competitive LECs' option, the only point of interconnection in that LATA). In Issue I-1, Verizon seeks to limit transport over its own facilities. Specifically, in Issue I-1, and with respect to WorldCom in Issue I-2, Verizon seeks to require the competitive LECs either to physically pick up the Verizon traffic at an earlier point on Verizon's network or to pay Verizon for carrying the Verizon traffic across its own network to the competitive LEC network. In Issue I-1, we rejected this aspect of Verizon's proposal.

[190] *See* Tr. at 1134-36; Verizon NA Brief at 17-18; Verizon NA Reply at 9-10. We note that the Verizon witness testified that it need not always collocate to interconnect at the CLEC switch. *See* Tr. at 1143-44; *see generally id.* at 1137-44.

[191] *See supra*, Issue I-1.

[192] *See infra*, Issue I-9.

Commission.[193] Also, Verizon may advocate alternative payment regimes before the Commission in the pending *Intercarrier Compensation Rulemaking* docket.[194]

70. Moreover, although Verizon complains that it should not be forced to buy transport from petitioners, we note that this is not the only method that Verizon uses to deliver its traffic to them. Cox presented evidence showing that, under its current agreement with Verizon, the parties interconnect and exchange a substantial amount of traffic through a mid-span meet, under which each party transports its own traffic up to the meet point.[195] Cox also states that it has agreed with Verizon to include mid-span meet interconnection provisions in the parties' new agreement, which will permit Verizon to continue to control its costs and engineer and provision its own facilities.[196] The Verizon witness did not dispute this testimony.[197] In Issue III-3, we decide the terms under which AT&T and WorldCom may establish mid-span meets with Verizon.[198]

71. Finally, although it is true that the statute permits competitive LECs to choose where they may deliver their traffic to the incumbent,[199] carriers do not always deliver originating traffic and receive terminating traffic at the same place.[200] The "single point of interconnection" rule benefits the competitive LEC by permitting it to interconnect for delivery of *its* traffic to the incumbent LEC network at a single point. It does not preclude the parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it. It appears from the record that AT&T and Cox have offered to negotiate such additional

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[193] *See id.* As we note in our discussion of Issue I-9, Verizon has presented no evidence that any of the petitioners are charging it unreasonable rates and, with respect to Cox, has admitted it would challenge any unreasonable rates.

[194] *Intercarrier Compensation Rulemaking*, 16 FCC Rcd 9610.

[195] *See* Tr. at 1022; 1260; Cox Ex. 2, at 13.

[196] *See* Cox Ex. 1, at 12, citing Cox Proposed Agreement to Verizon at § 4.4. Cox also demonstrated that it currently offers two interconnection points in the Norfolk LATA, which is one of two LATAs in Virginia where these carriers currently interconnect. *See* Tr. at 1252-53; *see also* Cox's November Proposed Agreement to Verizon at § 4.2.3.

[197] *See* Tr. at 1260.

[198] *See infra*, Issue III-3.

[199] 47 U.S.C. § 251(c)(2).

[200] The Commission's rules define "interconnection" as the "linking of two networks for the mutual exchange of traffic." 47 C.F.R. § 51.5. The parties' respective obligations to interconnect with each other, however, arise from different provisions of the Act. Incumbent LECs are required by section 251(c)(2) to permit any requesting telecommunications carrier to interconnect "for the transmission and routing of telephone exchange service and exchange access" with the incumbent's network "at any technically feasible point within the [incumbent] carrier's network." Non-incumbent carriers, on the other hand, are required by section 251(a)(1) "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

points with Verizon.[201] WorldCom already permits Verizon to self-provision transport to WorldCom's facility.[202] To the extent that Verizon seeks prophylactically to "address future situations as well as other CLECs adopting this agreement,"[203] we do not think that is appropriate in this proceeding, particularly given the evidence presented, and thus decline to do so.

### 3. Issue I-3 (Reciprocal Collocation)

#### a. Introduction

72. Section 251(c)(6) of the Act requires incumbent LECs to permit the collocation of equipment at the incumbent's premises.[204] Verizon seeks the reciprocal right to collocate equipment at the premises of AT&T, Cox, and WorldCom, so that it can reduce its costs of transporting traffic to their networks.[205] The petitioners oppose this request. We reject Verizon's proposal.

#### b. Positions of the Parties

73. The petitioners assert that the Commission lacks authority to compel them to offer collocation to Verizon.[206] They argue that the Commission's rules forbid state commissions from imposing incumbent LEC obligations on competitive LECs,[207] and that several state commissions have held that competitive LECs cannot be required to offer collocation.[208] They claim that Congress distinguished between incumbent LECs and competitive LECs in enacting the

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[201] For example, AT&T's contract permits the parties to mutually agree to points where Verizon may interconnect with AT&T for delivery of its traffic, in addition to AT&T's switch. *See* AT&T's November Proposed Agreement to Verizon, Sch. 4, Part A, § 1.3, Part B § 2; *see also* AT&T Ex. 3 (Direct Testimony of D. Talbott & J. Schell, Jr.), at 139. Cox's witness testified that, in Virginia, Cox is willing to accept Verizon traffic from Verizon facilities within four miles from the Cox switch. *See* Tr. at 1021-23; *see also* Cox's November Proposed Agreement to Verizon at § 4.3.4. Verizon's witness agreed that was a reasonable distance. Tr. at 1259. In this regard we note that both parties have a duty to negotiate in good faith the terms and conditions of interconnection agreements. 47 U.S.C. § 251(c)(1).

[202] *See* WorldCom Reply at 19.

[203] *See* Tr. at 1261-62.

[204] 47 U.S.C. § 251(c)(6).

[205] Verizon's November Proposed Agreement to AT&T, §§ 4.2.2.3, 13.5; Verizon's November Proposed Agreement to Cox, §§ 4.3.4 (to the extent it addresses collocation), 4.3.5, 13.10; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.1.3.3-2.1.3.4. *See also* Tr. at 1265-66 (testimony of Verizon witness Albert).

[206] AT&T Brief at 31; Cox Brief at 20; WorldCom Brief at 20.

[207] Cox Brief at 20-21, citing 47 C.F.R. § 51.223(a).

[208] *See, e.g.*, AT&T Brief at 33; Cox Brief at 21.