terminate competitive LEC access to all OSS in case of abuse of any OSS.[2228] AT&T, Cox, and WorldCom oppose this language, contending it permits an extreme remedy which is not justified by any past abuse of the Web GUI. Cox proposes alternate language governing disputes over OSS use,[2229] and AT&T and WorldCom simply request that we reject Verizon's proposal. We agree with AT&T, Cox, and WorldCom, and reject Verizon's proposed language. We adopt Cox's proposed language for its contract with Verizon.

**b. Positions of the Parties**

674. AT&T argues that Verizon has presented no adequate justification for terminating access to OSS, and suggests that it would be draconian for Verizon to terminate AT&T's access to all OSS because of a problem with only one system.[2230] In addition, AT&T asserts that competitive LECs have an incentive to protect Verizon's OSS, because the systems are just as critical to competitive LECs' businesses as they are to Verizon's business.[2231]

675. Cox maintains that the termination rights are unnecessary because of other contractual protections, and that Verizon has failed to justify them.[2232] Specifically, Cox notes that Verizon is empowered to suspend the contract for material breach by a competitive LEC, and Cox has agreed that misuse of OSS would be deemed a material breach.[2233] Cox points out that none of the past problems Verizon discussed during this proceeding would warrant termination; while these problems may have caused system slowdowns, they have not damaged the Web GUI.[2234] According to Cox, Verizon has other protections as well: software changes, standards for use of OSS, and a competitive LEC's incentive to protect OSS which is important to its own business.[2235] In addition, Cox argues that Verizon could easily abuse its termination right to affect a competitive LEC's use of OSS or to spy on proprietary competitive LEC

[2228] *See* Verizon's November Proposed Agreement to AT&T, Schedule 11, § 5.1; Verizon's Proposed November Agreement to Cox, Schedule 11.7, §§ 1.6.5.1-1.6.5.3; Verizon's Proposed November Agreement to WorldCom, Part C, Additional Services Attach., §§ 8.1-8.10.

[2229] *See* Cox's November Proposed Agreement to Verizon, Schedule 11.7, § 1.7.1.

[2230] AT&T Brief at 195-96.

[2231] *Id.* at 196.

[2232] Cox Brief at 48-49.

[2233] *Id.*

[2234] *Id.* at 49.

[2235] *Id.* at 49-50.

information.[2236] Cox does not oppose Verizon's monitoring OSS usage, but Cox points out that this is different from monitoring customer proprietary network information (CPNI).[2237]

676. WorldCom also opposes Verizon's proposed language. Although Verizon "promised" during the hearings in this proceeding only to exercise its termination right as a last resort, according to WorldCom, the proposed contract language does not impose this limitation on Verizon.[2238] WorldCom also contends that Verizon's remedy is unnecessary, because Verizon has identified no past instances of abuse where Verizon would have terminated a competitive LEC's access to all OSS.[2239] WorldCom argues that lesser remedies exist, including remedies Verizon has used effectively in the past when it suspected competitive LECs were using robots to access the Web GUI.[2240] WorldCom also charges that Verizon improperly added to its November proposal additional and irrelevant contract language which pertains to OSS questions unrelated to Issue I-11 and which would grant Verizon broad rights to alter competitive LEC access to OSS.[2241]

677. Verizon is concerned about the misuse of its Web GUI OSS, which is designed solely for use by human operators at computer terminals, and was not designed to handle the large volumes of orders associated with an electronic (or "robot") interface.[2242] However, on occasion, Verizon has detected competitive LECs' using the Web GUI through an electronic interface, which permits large volumes of information requests to be sent in a short period of time.[2243] Verizon states that it can tell when a competitive LEC is using a robot to access the Web GUI, because a single human user could not initiate queries at the same quick rate.[2244] Verizon argues that a competitive LEC's robot use of the Web GUI constitutes a misuse of Verizon's

---

[2236] *Id.* at 50.

[2237] Cox Reply at 33-34. We discuss this CPNI issue above with Issues I-8/IV-97.

[2238] WorldCom Brief at 181, citing Tr. at 2570-71, 2579.

[2239] WorldCom Brief at 182-83; WorldCom Reply at 162-63

[2240] WorldCom Brief at 182-83. WorldCom indicates that disputes over OSS use are normally resolved through negotiated solutions or, failing that, review or enforcement by the state commission that arbitrated the parties' contract. *Id.* at 182.

[2241] WorldCom Reply at 163-67. WorldCom has substantive objections to the new language as well. For example, WorldCom asserts that, contrary to the ordinary collaborative and change management processes, the language grants Verizon the sole discretion both to determine how competitive LECs may access OSS and to change OSS. *Id.* at 164, 166. In addition, WorldCom argues that the language provides for overly broad cooperative testing, and would require WorldCom to submit a business plan to Verizon. *Id.* at 165- 66.

[2242] Verizon Business Process (BP) Brief at 5.

[2243] *Id.* at 5-6.

[2244] *Id.* at 5 (stating that robots have previously initiated tens of thousands of queries in an eight-hour period).

system, which the petitioners have admitted can cripple the Web GUI OSS.[2245] Verizon testified at the hearing that it would exercise its proposed right of termination only on extraordinary occasions,[2246] involving "serious interference with [Verizon's] OSS [such] that either no other CLEC could use it, or [Verizon VA's] back-end systems would . . . be seriously impaired, such as the loss of database records."[2247] Verizon would only terminate access to OSS, it says, after giving the offending competitive LEC ten days' notice, and only if the competitive LEC failed to cure its misuse within those ten days.[2248] In addition, while AT&T, Cox, and WorldCom have not abused the Web GUI in the past, Verizon says this provision is necessary to protect against the conduct of competitive LECs that may choose to opt-in to this agreement in the future.[2249]

#### c. Discussion

678. We agree with the petitioners and reject Verizon's proposed language.[2250] The record does not support Verizon's assertions that a competitive LEC could likely disable the Web GUI or any other OSS.[2251] Verizon has testified that no event has occurred to date that would justify termination of access to OSS.[2252] While some competitive LECs may have used a robot interface with Verizon's Web GUI in the past, causing a system slowdown,[2253] Verizon has not shown that such misuse has resulted in anything more than a temporary system slowdown.[2254] Moreover, in the past, Verizon has chosen effective remedies, short of termination, to deal with the few instances of abuse that have occurred.[2255] In each instance, Verizon suspended system

---

[2245] Verizon BP Reply at 2.

[2246] Tr. at 2569-71.

[2247] Verizon BP Brief at 7, quoting Tr. at 2570.

[2248] Verizon BP Brief at 7. Verizon also points out that in all incidents of past abuse, the offending competitive LEC was able to cure its misuse within ten days. *Id.*

[2249] Verizon BP Reply at 3.

[2250] Because we reject Verizon's proposed language for this issue on the merits, WorldCom's motion is moot as it relates to Issue I-11. *See* WorldCom Motion to Strike, Ex. E at 55-65.

[2251] While Verizon asserts that damage to the Web GUI would have adverse effects on Verizon and all other competitive LECs that access Verizon's Web GUI, Verizon has not demonstrated that such damage is as severe as it claims. *See* Verizon BP Reply at 3.

[2252] Tr. at 2586.

[2253] Verizon BP Brief at 5-6; *Id.* at 3, citing Tr. at 2044.

[2254] Verizon's own witness indicated at the hearing that "Volumes in and of themselves do not harm our systems." Tr. at 2569. *See also* Tr. at 2578-80.

[2255] Tr. at 2575-79, 2585-86.

access for the offending individual user and alerted the competitive LEC to the misuse,[2256] and in no case did Verizon suspend the competitive LEC's access to all OSS.[2257]

679. Nevertheless, Verizon proposes a powerful remedy that, if exercised, would have a serious adverse impact on the offending competitive LEC, dramatically restricting its ability to do business. Verizon's proposed contract language neither confines termination to a particular type of abuse nor limits Verizon's termination rights to instances of actual damage to the Web GUI or other OSS. Other than committing Verizon to giving ten days' notice of its intention to terminate a competitive LEC's access to OSS, the contract language contains no limitations on the exercise of this termination right.[2258] In fact, Verizon's language provides no guidance on the type or level of OSS abuse that would justify termination.[2259] Verizon has failed to establish that the other, less draconian, remedies the petitioners suggest are insufficient for Verizon to maintain its OSS in working order.

680. For these reasons, we reject Verizon's proposed Issue I-11 language for its contracts with AT&T, Cox, and WorldCom.[2260] We conclude that Verizon's proposed remedy is disproportionate to any OSS harm that it has experienced, or is likely to experience. We adopt Cox's proposed language for its contract with Verizon.[2261] Verizon has not suggested that it has any problems with Cox's proposed language, other than to insist on its own proposal.[2262]

---

[2256] Tr. at 2578. Verizon has not indicated that these problems have recurred. Tr. at 2585-86; Verizon BP Brief at 7.

[2257] *Id.* at 7, Tr. at 2585-86.

[2258] Verizon's proposed language states that Verizon has sole discretion to terminate OSS: the proposed contract language grants competitive LECs neither the specific opportunity to dispute the alleged abuse within the ten days, nor any opportunity to influence Verizon's judgment of what would constitute terminable OSS abuse. For example, Verizon's language does not anticipate that it will reach any collaborative agreement with its requesting carriers as to what level of abuse justifies termination. *See also* Tr. at 2540-2544 (regarding competitive LEC influence on Verizon's decision to terminate OSS).

[2259] Even in its testimony and pleadings in this proceeding, Verizon has not clearly established which sorts of extraordinary abuse would justify termination. *See* Tr. at 2579-2582.

[2260] Verizon's November Proposed Agreement to AT&T, Schedule 11, § 5.1 [we note that AT&T refers to this same language as "Schedule 11.6, § 5.1"] ; Verizon's Proposed November Agreement to Cox, Schedule 11.7, §§ 1.6.5.1-1.6.5.3; Verizon's Proposed November Agreement to WorldCom, Part C, Additional Services Attach., §§ 8.1-8.10.

[2261] *See* Cox's November Proposed Agreement to Verizon, Schedule 11.7, § 1.7.1.

[2262] Neither AT&T nor WorldCom propose alternate language. WorldCom prefers to rely on the contract's general remedy provisions.

### 2. Issue III-15 (Intellectual Property of Third Parties)

#### a. Introduction

681. WorldCom and Verizon disagree about how to ensure that Verizon will use its "best efforts" to obtain intellectual property licensing rights from third parties on behalf of WorldCom so that WorldCom may use the intellectual property embedded in Verizon's network. WorldCom seeks to include, among other things, indemnification language that would apply if Verizon fails to use its best efforts. Verizon opposes WorldCom's proposal, arguing that applicable law and the contract's general enforcement provisions provide WorldCom with adequate remedial protection.[2263] Section 251(c)(3) of the Act requires incumbent LECs to provide nondiscriminatory access to UNEs.[2264] The Commission's *UNE Licensing Order* clarified an incumbent's obligations under this section, stating that "it is reasonable to require incumbent LECs to use their best efforts to obtain coextensive intellectual property rights from the vendor on terms and conditions that are equal in quality to the terms and conditions under which the incumbent LEC has obtained these rights."[2265] Additionally, the Fourth Circuit held that Verizon was required to "attempt to renegotiate its existing intellectual property licenses to cover use by" the competitive LEC but that if negotiations fail, it does not interpret section 251(c)(3) to impose an absolute duty to provide identical licensing terms in the case of existing agreements.[2266] For reasons we explain below, we adopt Verizon's proposal.

#### b. Positions of the Parties

682. WorldCom argues that it must rely on Verizon's relationships and negotiations with the vendors whose intellectual property is used in Verizon's network.[2267] For this reason, WorldCom contends that Verizon is best positioned to determine whether its existing contracts with third-party vendors would permit WorldCom to use UNEs without modification, to renegotiate the contracts if necessary, and to negotiate future contracts to ensure that they contemplate WorldCom's use of the intellectual property present in a UNE.[2268] According to WorldCom, its proposed indemnification, warranty and notification clauses are a commercially reasonable means of implementing the Commission's *UNE Licensing Order* and the Fourth

---

[2263] We note that AT&T and Verizon reached agreement on this issue after Verizon revised its proposal. *See* Verizon General Terms and Conditions (GTC) Brief at 3.

[2264] 47 U.S.C. § 251(c)(3).

[2265] *Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements*, CC Docket No. 96-98, Memorandum Opinion and Order, 15 FCC Rcd 13896, 13908, para. 21 (2000) (*UNE Licensing Order*).

[2266] *See AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc.*, 197 F.3d 663, 671 (4th Cir. 1999).

[2267] WorldCom Brief at 234, citing WorldCom Ex. 31 (Rebuttal Testimony of R. Peterson and M. Harthun), at 2-3.

[2268] *Id.*, citing *UNE Licensing Order*, 15 FCC Rcd at 13902, para. 10.

Circuit's decision.[2269] Specifically, WorldCom asserts that when a party is obligated to negotiate certain license terms under a best efforts test, it is standard business and legal practice to require indemnification for a failure to use best efforts.[2270] WorldCom argues that Verizon's proposal would delay negotiations over license rights until a point at which the breach is pending or threatened and that such a position is inconsistent with the *UNE Licensing Order* and the Fourth Circuit's decision.[2271] WorldCom also claims that its proposed warranty language ensures that Verizon does not intentionally modify existing licensing agreements in a manner detrimental to WorldCom.[2272] Furthermore, WorldCom contends that its notification language, which requires Verizon to inform it of any pending or threatened intellectual property claims by third-party licensors, is customary and sensibly implements the *UNE Licensing Order* and the Fourth Circuit's decision.[2273] Finally, WorldCom argues that its proposal is consistent with that proposed by Verizon elsewhere in the contract (*e.g.*, indemnifying Verizon if WorldCom fails to comply with its regulatory obligation to examine the eligibility of WorldCom's customers for Lifeline/Link-Up services).[2274]

683. Verizon states that the *UNE Licensing Order* requires it to: (1) make UNEs available; (2) provide notification of any restrictions in third-party licensing agreements that affect the competitive LEC's use of the UNEs; (3) use best efforts to procure rights or licenses that allow the competitive LEC coextensive usage of UNEs; and (4) recover costs from the competitive LEC to the extent permitted under applicable law.[2275] Verizon argues that WorldCom's proposal seeks to replace the best efforts standard with a strict liability standard by "illegitimately injecting warranty and indemnification obligations not required" by either the *UNE Licensing Order* or the Fourth Circuit ruling.[2276] According to Verizon, the Fourth Circuit and the Commission merely require Verizon to use its best efforts and not to guarantee the procurement of intellectual property rights, nor do they require Verizon to indemnify WorldCom for what may be an impermissible use of third-party intellectual property.[2277] Verizon contends that under WorldCom's proposal, either WorldCom would receive the intellectual property rights

[2269] *Id.* at 234-35.

[2270] *Id.* at 235, citing WorldCom Ex. 16 (Direct Testimony of R. Peterson and M. Harthun), at 8.

[2271] *Id.* at 238.

[2272] *Id.* at 235-36.

[2273] *Id.* at 236.

[2274] *Id.* at 237-38.

[2275] Verizon General Terms and Conditions (GTC) Brief at 3-4.

[2276] *Id.* at 4.

[2277] *Id.*

it seeks or Verizon would be required to pay it for being unsuccessful in negotiating those rights.[2278]

684. Verizon states that, in a recent arbitration order, the New York Commission rejected an identical proposal made by AT&T, finding that AT&T's proposal "would, in effect, have Verizon guarantee the performance of third-party vendors to AT&T."[2279] Instead, Verizon notes, the New York Commission ordered Verizon to provide notice to AT&T if and when it is unsuccessful in negotiating co-extensive terms for AT&T, and held that this notice, together with the general enforcement provisions of the agreement, give AT&T sufficient remedies.[2280] According to Verizon, WorldCom has offered no viable reason why it cannot agree to the Verizon-AT&T language, which memorializes Verizon's obligation to use its best efforts to negotiate with third parties so that AT&T will have the right to use the intellectual property embedded in Verizon's network.[2281]

### c. Discussion

685. We adopt Verizon proposal because we find that it appears to be a fair interpretation of the Commission's directives set forth in its *UNE Licensing Order*.[2282] Accordingly, we direct the parties to include language requiring Verizon to notify WorldCom of any restrictions preventing it from providing particular UNEs to WorldCom, absent additional action or cost, and to use its best efforts, as commercially practical, to procure rights or licenses so that it may provide to WorldCom the particular UNE(s).[2283] If Verizon is unsuccessful in obtaining a right or license for WorldCom, it shall promptly notify WorldCom of the specific facilities or equipment at issue as well as the specific circumstances that prevented it from obtaining the revised provisions.[2284]

---

[2278] *Id.*

[2279] *Id.* at 4-5, citing Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues, at 23 (issued by New York Comm'n July 30, 2001) (*New York Commission AT&T Arbitration Order*).

[2280] *Id.* at 5, citing *New York Commission AT&T Arbitration Order* at 23.

[2281] *Id.* at 3, 5, citing Verizon's November Proposed Agreement to AT&T, § 28.16.4.

[2282] In this order, the Commission expressly declined to mandate a particular method by which the incumbent could satisfy its obligations but did list a minimum amount of information that it expected the incumbent to share with the affected competitive LEC. *See UNE Licensing Order*, 15 FCC Rcd at 13902, 13906, paras. 9, 17. Specifically, we adopt Verizon's proposed Part A, section 22.4.

[2283] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 22.4. We note that, although Verizon cites to its proposed agreement with AT&T (section 28.16.4) in its brief and DPL, it incorporated this same language in its proposed contract to WorldCom at section 22.4.

[2284] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 22.4.

686. In addition, we deny WorldCom's motion to strike Verizon's revisions reflected in its November proposal to WorldCom.[2285] We find that Verizon's modification benefits WorldCom by providing it with additional information about Verizon's inability to procure a right or license for WorldCom. Specifically, Verizon proposes to provide WorldCom with the following information:

> the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as any and all related facilities or equipment; the extent to which it asserts MCIm's use has exceeded (or will exceed) the scope of the license; and the specific circumstances that prevented it from obtaining the revised provisions.[2286]

Verizon's earlier proposal merely obligated it to notify WorldCom of its inability to procure a right or license for WorldCom. Since we find for Verizon on the merits of this issue and on other grounds, we determine that WorldCom should benefit from Verizon's revision, which it made in response to concerns raised by AT&T. We also conclude that Verizon's new language is consistent with the level of detail required by the Commission's *UNE Licensing Order*.[2287] Finally, we do not have procedural concerns with Verizon's revised proposal. The parties agreed to waive cross examination on this issue and, instead, brief their dispute. Since Verizon filed its revision prior to the post-hearing briefs, we find that WorldCom had adequate opportunity to explain why it opposes this particular modification.

687. We recognize WorldCom's concerns about having to rely on the best efforts of Verizon to ensure its ability to obtain UNEs that Verizon is otherwise required to provide pursuant to the contract or applicable law. In the *UNE Licensing Order*, the Commission, too, understood this concern and noted that incumbents are under a "rigorous and continuing obligation to negotiate in good faith" and that this good faith obligation is violated if, for example, the incumbent "frustrates the ability of a requesting carrier to obtain co-extensive rights to use [UNEs]."[2288] If WorldCom believes that Verizon failed to use its best efforts in negotiating on WorldCom's behalf, it may, of course, use the contract's dispute resolution process. We would expect that through this process, WorldCom would obtain the necessary information for it to confirm whether Verizon had, in fact, used its best efforts on WorldCom's behalf.

---

[2285] *See* WorldCom Motion to Strike, Ex. E at 65-66.

[2286] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 22.4(b).

[2287] *See, e.g., UNE Licensing Order*, 15 FCC Rcd at 13906, para. 17.

[2288] *Id.*, para. 18. *See also id.* at 13902, para. 10:

> If incumbent LECs were not required to obtain the right [to use intellectual property] for requesting carriers to use the network elements, they would likely have an incentive to interpret their licenses with these [third-party] providers as narrowly as possible to make it more difficult for competing carriers to obtain access to the elements.

### 3. Issue IV-45 (Fraud Prevention)

#### a. Introduction

688. WorldCom and Verizon disagree about how to address losses caused by fraud on either party's network. WorldCom proposes that each party indemnify and hold the other harmless for any losses payable to interexchange carriers (IXCs) caused by "clip-on" fraud.[2289] Verizon opposes this proposal and argues that each party should bear the responsibility for all fraud associated with its customers and accounts. As described below, we adopt portions of each party's proposal.

#### b. Positions of the Parties

689. WorldCom argues that Verizon should be responsible for clip-on fraud because it controls the facilities where this fraud occurs and, therefore, is in the best position to prevent this type of loss.[2290] WorldCom contends that its proposal is consistent with the current interconnection agreement, as well as Verizon's historic practice of investigating instances of fraud.[2291] According to WorldCom, Verizon holds WorldCom responsible for the costs of fraud committed against Verizon customers in the long-distance context when the fraud occurs on WorldCom's network; therefore, WorldCom argues that Verizon seeks to impose costs on WorldCom in the local arena that it refuses to bear in the long-distance context.[2292] In responding to Verizon's argument that it can only monitor and protect against clip-on fraud by "sheer luck," WorldCom contends that there is no reason to believe that WorldCom could perform that task at all.[2293] Finally, WorldCom disagrees that the Commission orders cited to by Verizon apply to the question of financial responsibility for clip-on fraud.[2294]

---

[2289] As described by the parties' witnesses, "clip-on" fraud, which the parties agree is the type of fraud at issue in this proceeding, occurs when an unauthorized person physically attaches a device to a carrier's phone line in its outside plant, typically at the demarcation point and in facilities such as "closets" located in the basement of large buildings or in other out-of-the-way places. *See* Tr. at 1925-27; WorldCom Ex. 22 (Direct Testimony of R. Zimmerman), at 4; Verizon General Terms and Conditions (GTC) Brief at 7.

[2290] WorldCom Brief at 184-85. WorldCom also argues that the burden of bearing the cost of clip-on fraud should not turn on the identity of the customer but, rather, the carrier in the best position to deter the fraud. WorldCom Reply at 168.

[2291] WorldCom Brief at 185, citing WorldCom Ex. 36 (Rebuttal Testimony of R. Zimmerman), at 3-4.

[2292] WorldCom Brief at 185-86, citing Tr. at 1928; WorldCom Ex. 36, at 4. *See also* WorldCom Reply at 169.

[2293] WorldCom Reply at 168, citing Verizon GTC Brief at 8.

[2294] WorldCom Reply at 169-70. According to WorldCom, the *Advanced Services Order II* provides that incumbents may impose security arrangements that are as stringent as those that the incumbent maintains at its own premises, and the *Local Competition First Report and Order* permits incumbents to require reasonable security arrangements to separate the competitive LEC's collocation space from the incumbent's facilities. *Id.*, citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First (continued....)

690. According to Verizon, the parties have agreed to contract language that memorializes their commitment to work cooperatively to minimize various types of fraud and that Verizon will make available fraud prevention features embedded in its network.[2295] Verizon rejects WorldCom's suggestion that Verizon is in any better position than WorldCom to deter or prevent clip-on fraud[2296] and that, like any other type of LEC, WorldCom must accept the day-to-day risks of doing business.[2297] Verizon states that, because it is willing to provide WorldCom with nondiscriminatory access to Verizon's fraud detection information, the only dispute involves WorldCom's indemnity proposal.[2298] Verizon also contends that WorldCom's proposal ignores the fact that it is not possible to prevent every possible instance of this particular type of fraud, which has occurred only twice in Virginia since 1999.[2299]

### c. Discussion

691. We adopt Attachment IX, sections 3.1 and 3.2 of WorldCom's proposal to Verizon and sections 17.1 and 17.3 of Verizon's proposal to WorldCom.[2300] Although we recognize that WorldCom's proposed section 3.3 is in the parties' current interconnection agreement, we agree with Verizon that each party should bear the financial responsibility for clip-on fraud associated with its customers and accounts and, thus, we adopt Verizon's section 17.3 instead.[2301] The record indicates that this fraud is an uncommon problem in Virginia,[2302] but

(Continued from previous page)
Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4787, para. 47 (1999) (*Advanced Services Order II*), *aff'd in part, and vacated and remanded in part sub nom GTE Service Corp. v. F.C.C.*, 205 F.3d 416 (D.C. Cir. 2000); *Local Competition First Report and Order*, 11 FCC Rcd at 15803, para. 598.

[2295] Verizon GTC Brief at 7, citing Verizon's November Proposed Contract to WorldCom, sections 17.1 and 17.2.

[2296] Verizon contends that clip-on fraud occurs for a limited period of time and, typically, is perpetrated in basement closets and other out-of-the-way places; therefore, even if Verizon hired additional employees to patrol its network, Verizon asserts that it would only be by sheer luck that Verizon would catch someone in the act of clip-on fraud. Verizon GTC Reply at 3.

[2297] Verizon GTC Brief at 8 (arguing that, in essence, WorldCom is seeking free insurance against the criminal acts of third parties). Verizon also argues that requiring it to insure against loss due to fraud exceeds its obligation to implement reasonable security procedures. *Id.*, citing *Advanced Services Order II*, 14 FCC Rcd at 4787-88, paras. 46-48; *Local Competition First Report and Order*, 11 FCC Rcd at 15803, para. 598.

[2298] Verizon GTC Reply at 2.

[2299] *Id.* at 3.

[2300] We deny, with respect to this issue, WorldCom's motion to strike Verizon's revised language in its November contract proposal. *See* WorldCom Motion to Strike, Ex. E at 66. A comparison of Verizon's sections 17.1 and 17.3, which we adopt herein, and its previously proposed language reveals no legally or operationally significant difference. *See id.* (setting out previously proposed sections 17 and 26.1).

[2301] In reaching this conclusion, however, we do not agree with Verizon that the Commission's findings on security at Verizon's facilities with respect to collocating competitive LECs are applicable to the instant dispute. *See* WorldCom Reply at 169-70.

that preventing it poses substantial logistical challenges to Verizon.[2303] Requiring the parties to cooperate in a commercially reasonable manner and share the fraud prevention features embedded in their networks offers a more practical solution to this crime than simply requiring each party to indemnify the other for its losses. Accordingly, we would expect Verizon to investigate complaints made by WorldCom in a reasonable and timely manner, including, if appropriate, performing a site check.[2304] Should WorldCom believe that Verizon has not acted in a reasonable manner, it may use the agreement's dispute resolution process.[2305] Finally, we note that the record is unclear about the circumstances under which Verizon demands indemnification from WorldCom for fraud by Verizon customers on WorldCom's long distance network. Consequently, we reject the argument that Verizon's position in that context requires a ruling for WorldCom here.[2306]

692. Although there was much discussion in our record about WorldCom's proposed section 3.3, there was none about section 3.2, which provides that uncollectible and unbillable revenues from fraud and resulting from error shall be the responsibility of the party causing such error. Given the lack of a record on this section and the fact that this section is in the existing contract, we find that its inclusion is reasonable.[2307] We also find reasonable Verizon's proposed section 17.1, which requires the parties to work cooperatively in a commercially reasonable manner to minimize fraud.[2308]

(Continued from previous page)

[2302] *See* Tr. at 1931 (Verizon's witness testifying that in the past three years, there were two cases of clip-on fraud in Virginia).

[2303] *See, e.g.,* WorldCom Ex. 22, at 4 (stating that clip-on fraud typically does not occur in areas open to the public but that it tends to occur in facilities such as telephone closets in the basements of large apartment buildings); Verizon GTC Reply at 3 (asserting that this crime occurs for a limited period of time, usually ending before the fraudulent calls are noted on the customer's bill).

[2304] *See* Tr. at 1932 (Verizon's witness testifying that after receiving a signal from WorldCom that fraud may be occurring, Verizon will work with WorldCom to perform a site check).

[2305] During the hearing, Verizon's witnesses testified that three to four years ago a dispute involving clip-on fraud was arbitrated in New York and, due to Verizon's actions or inaction, Verizon was directed to indemnify MCI. *See* Tr. at 1929-30. We note that nothing in this Order would prevent a subsequent finding that Verizon acted unreasonably in a particular situation and should be directed to indemnify WorldCom for that specific incident. We simply disagree that the contract should contain a blanket indemnification clause for clip-on fraud.

[2306] *See* Tr. at 1927-28. For the reasons provided above, however, we would maintain our findings regardless of what requirements Verizon makes of WorldCom in the long distance context.

[2307] We note that this finding is not inconsistent with our determinations about WorldCom's proposed indemnification clause, below, because we assume that in section 3.2 some showing must be made by the contesting party that the other party erred or was at fault in permitting the fraud to occur. WorldCom's section 3.2 thus differs from its proposed section 3.3, which requires no showing of fault.

[2308] Although Verizon indicates that WorldCom has agreed to Verizon's proposed section 17.1, WorldCom's proposal does not contain this language and its briefs are silent on this point. Even without WorldCom's express (continued....)

### 4. Issue IV-95 (Costs of Compliance)

#### a. Introduction

693. WorldCom and Verizon disagree about what language should be included to address costs incurred in complying with the terms of the interconnection agreement. WorldCom explains that its language is necessary to make clear that, subject to certain specified exceptions, each party is responsible for all costs and expenses incurred in complying with its obligations under the interconnection agreement. WorldCom's proposed language states that, except as otherwise specified in the interconnection agreement, each party shall be responsible for all costs and expenses incurred in complying with its obligations under the agreement, and for the development, modification, technical installation and maintenance of any systems which are required for compliance. While Verizon argues that we should exclude this WorldCom proposal from the contract, in the alternative, Verizon has offered to accept this proposal if it is modified to include an exception for when the agreement's obligations to which this provision refers are "otherwise provided for under Applicable Law."[2309] Without the addition of this phrase, Verizon opposes WorldCom's language. We adopt WorldCom's proposed language, with the modification proposed by Verizon.

#### b. Positions of the Parties

694. WorldCom argues that the interconnection agreement should contain its proposed section 8.2, because it would clarify that neither party should be financially responsible for the other party's compliance with the terms of the agreement.[2310] WorldCom states that the additional clause proposed by Verizon is unnecessary and should be rejected for several reasons.[2311] First, WorldCom argues that changes in law are already addressed in the interconnection agreement's pricing attachment, which provides that the rates will change if there is a change in the law governing those rates.[2312] Second, WorldCom asserts that the undefined nature and breadth of Verizon's "applicable law" clause will permit Verizon to attempt to foist charges on it that WorldCom does not agree are required under any existing law.[2313] According to WorldCom, if Verizon desires to change its rates to cover additional costs, it may seek an order

(Continued from previous page)
agreement, we still direct the parties to include this section because we support the policy of encouraging the parties to work cooperatively to minimize fraud.

[2309] As modified by Verizon, section 8.2 would state, "Except as otherwise specified in this Agreement, or otherwise provided for under Applicable Law, each Party shall be responsible for" various costs of compliance. *See* Verizon General Terms and Conditions (GTC) Brief at 14.

[2310] *See* WorldCom Pet. at 175; WorldCom Ex. 21 (Direct Testimony of J. Trofimuk, *et al.*), at 30-32; WorldCom Ex. 32 (Rebuttal Testimony of J. Trofimuk, *et al.*), at 21-22.

[2311] WorldCom Brief at 197.

[2312] *Id.*

[2313] *Id.*, citing WorldCom Ex. 32, at 22.

from a state commission; absent such an order, however, the parties should be required to bear their own costs and charge only those rates articulated in the pricing attachment.[2314]

695. Verizon asserts that the additional phrase is needed to clarify that Verizon must be compensated for its costs in providing services to WorldCom, even if those costs are not contained in the parties' pricing schedule.[2315] Verizon is concerned that if WorldCom's proposal is adopted, WorldCom or another competitive LEC opting into the agreement may later argue that Verizon is estopped from recovering future costs associated with complying with this agreement. Furthermore, Verizon maintains that without its proposed addition, WorldCom may try to use this provision to avoid or delay legitimate charges that arise as a result of changes in applicable law.[2316] As an example, Verizon asserts that if a competitive LEC desired a particular costly modification to Verizon's OSS, under WorldCom's proposed language on this issue, WorldCom or a competitive LEC opting into the agreement might argue that Verizon bears the total responsibility for this cost, even if the Commission had already issued an order setting forth how the costs for the modification should be allocated.[2317] Through its proposed additional language, Verizon believes that such future Commission orders will be given their appropriate intended effect.[2318]

#### c. Discussion

696. We adopt WorldCom's proposed Part A, section 8.2, with Verizon's proposed modification. We agree with Verizon that, under the example it provided in both of its post-hearing briefs, it should be permitted to recover its costs as set forth in a Commission order. We thus adopt Verizon's proposed language to the extent it is necessary to give Commission orders their appropriate intended effect. We also note, as does WorldCom, that the adopted language does not preclude Verizon from seeking to recover costs incurred in the future, through rates approved by a commission of competent jurisdiction. We do not credit WorldCom's argument that the "applicable law" clause is unnecessary because changes in law are already addressed in the agreement's pricing attachment. Even if true, the clause is not inconsistent with the change in law provision, and benefits the parties by clarifying their rights and responsibilities under the agreement.

---

[2314] *Id.* at 197-98; WorldCom Reply at 175.

[2315] Verizon GTC Brief at 14; Verizon GTC Reply at 5.

[2316] *Id.*

[2317] Verizon GTC Brief at 14-15; Verizon GTC Reply at 5.

[2318] Verizon GTC Brief at 15.

### 5. Issue IV-101 (Alternative Dispute Resolution)

#### a. Introduction

697. Alternative dispute resolution procedures, such as arbitration, allow the parties to resolve disputes under the interconnection agreement without litigation. WorldCom and Verizon disagree about whether the contract's arbitration provisions should make clear that an arbitrator's award is final and binding, and should permit WorldCom to maintain its right to use the alternative dispute resolution process set forth in the merger conditions of the *Bell Atlantic-GTE Merger Order*.[2319] We adopt Verizon's proposal, with one modification.

#### b. Positions of the Parties

698. WorldCom contends that it should not be required, as it would have to do under Verizon's proposed language, to waive its rights to use the alternative dispute resolution process set forth in the Bell Atlantic-GTE merger conditions, which were explicitly "designed to . . . enhance competition in the local exchange and exchange access markets in which Bell Atlantic or GTE is the incumbent local exchange carrier."[2320] According to WorldCom, contractually binding WorldCom to waive its rights under the merger order would frustrate the goals of the merger conditions.[2321] WorldCom also disagrees with Verizon's contention that we lack the authority to order that the interconnection agreement's binding arbitration provisions be modified as WorldCom suggests.[2322] According to WorldCom, it does not matter that parties to an ordinary contract could not be compelled to accept a provision that has been designated for arbitration under the Act; interconnection agreements created under the section 252 process contain terms and conditions that ordinary contracting parties could not be compelled to accept.[2323] Finally, WorldCom argues that, although it believes that any award under the contract's dispute resolution process should be final, it is willing to accept a provision that provides for limited review, such as under an "arbitrary and capricious" standard.[2324]

699. Verizon argues that any arbitration award should not be enforceable until the Virginia Commission has the opportunity to review the award.[2325] Verizon contends that allowing an arbitration to become effective prior to review "could lead to a situation where a party is forced

[2319] *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (*Bell Atlantic-GTE Merger Order*).

[2320] WorldCom Brief at 201-202, quoting *Bell Atlantic-GTE Merger Order*, 15 FCC Rcd at 14036, para. 4. *See also* WorldCom Ex. 21 (Direct Testimony of M. Harthun, *et al.*), at 50.

[2321] WorldCom Brief at 202.

[2322] *Id. at 199-200*; WorldCom Reply at 176-77.

[2323] WorldCom Brief at 200.

[2324] *Id.* at 201 n.107, citing Tr. at 2087-88.

[2325] Verizon General Terms and Conditions (GTC) Brief at 17; Verizon GTC Reply at 6.

to implement some change in practice pursuant to an arbitration award, only to have to try to undo that change when the Commission sets the arbitration award aside or otherwise modifies the award."[2326] Under Verizon's proposal, within 30 days of the arbitrator's opinion, the parties shall submit the decision to the Commission for review. Within 30 days of receipt of the decision, the Commission shall accept or modify the decision; failure to issue an order within 30 days would be deemed to be acceptance of the order. Thus, an arbitration award would become final or set aside within 60 days.[2327] Verizon also argues that we should reject WorldCom's proposal that allows it to pursue disputes both under the agreement's alternative dispute resolution procedures and under the dispute resolution procedures in the *Bell Atlantic-GTE Merger Order*.[2328] According to Verizon, "[s]uch forum shopping is inconsistent with the notion that, when parties have agreed to binding arbitration as the exclusive remedy to resolve disputes, they should be held to their agreement."[2329]

700. In addition, Verizon argues that because the Act does not require parties to include arbitration clauses in their interconnection agreements, we cannot require the inclusion of such provisions in the parties' agreement.[2330] According to Verizon, arbitration of disputes is a matter of contract, not statute, and as such, no party can be required to arbitrate any dispute that it has not agreed to submit to arbitration.[2331]

#### c. Discussion

701. We adopt Verizon's proposal that any arbitration award not be effective until the Virginia Commission has had the opportunity to review the decision.[2332] We find that a maximum of 60 days is not an unreasonable amount of time before an arbitration award becomes effective. This period of review is appropriate in light of the substantial costs that a party might face to reverse any changes ordered by the arbitrator and subsequently set aside or modified by subsequent Commission action.

702. We agree with WorldCom, however, that it should not be required under this contract to give up its rights to seek dispute resolution under the terms of the *Bell Atlantic-GTE Merger Order*. Consequently, we strike the last sentence of Verizon's proposed section 14.2 so that it is clear that WorldCom may avail itself of the alternative dispute resolution procedure in the *Bell Atlantic-GTE Merger Order*, as appropriate. A contrary ruling would essentially modify that

[2326] Verizon GTC Brief at 17. *See also* Verizon GTC Reply at 6-7.

[2327] Verizon GTC Brief at 17.

[2328] *Id.*

[2329] Verizon GTC Reply at 7.

[2330] Verizon GTC Brief at 18-19; Verizon GTC Reply at 7.

[2331] Verizon GTC Brief at 18.

[2332] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 14.2.2. We note that only the last sentence of this section was disputed by the parties.

Commission order, which we cannot do, because we are acting on delegated authority in this proceeding.

703. We disagree with Verizon that we lack authority to require the inclusion of an alternative dispute resolution provision in this agreement. The Act gives us broad authority, standing in the shoes of a state commission, to resolve issues raised in this proceeding. The only limitations that section 252(b)(4)(C) and (c) place upon any individual issue addressed during arbitration are that the issue must be an "open issue," and that resolution of the issue does not violate or conflict with section 251.[2333] In this particular case, we find that an alternative dispute resolution procedure is integral to the smooth operation of this agreement, and will lead to the speedy and cost-efficient resolution of disputes.

704. Finally, we determine that WorldCom's motion to strike is moot because we are adopting Verizon's language with the noted modification above, proposed by WorldCom in the September JDPL and in Verizon's November Proposed Agreement to WorldCom, Part A, section 14.[2334] Verizon apparently offered alternative language to WorldCom in the November JDPL; however, since we are not considering that new proposal but, rather, adopting language, with one modification noted above, proposed by WorldCom in September, we do not need to address WorldCom's motion with respect to this issue.

### 6. Issue IV-106 (Indemnification)

#### a. Introduction

705. WorldCom and Verizon disagree about what language should be included in the contract to address indemnification. WorldCom explains that its proposal is necessary to establish that Verizon and WorldCom each would indemnify the other party for certain specified liability arising from the interconnection agreement. Verizon opposes this provision unless language contained in the parties' 1997 interconnection agreement is reinstated. This language would limit indemnification to losses "suffered, made, instituted, or asserted by the indemnifying Party's own customers against the indemnifying Party," except to the extent that the loss arises from a breach by the indemnified party.[2335] We adopt Verizon's proposal.

#### b. Positions of the Parties

706. WorldCom argues that each party should be required to indemnify the other for third-party claims that arise out of the indemnifying party's breach of the agreement.[2336] WorldCom maintains that its proposed language accomplishes this goal by "equitably

[2333] *Cf. USWest v. Minnesota Pub. Utils. Comm'n*, 55 F.Supp. 2d 968, 986 (D.Minn. 1999).

[2334] *See* WorldCom Motion to Strike, Ex. E at 67-70.

[2335] *See* Verizon General Terms and Conditions (GTC) Brief at 20; WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Part A, 11.1(b).

[2336] WorldCom Brief at 207.

allocat[ing] responsibility for damages and injury to the appropriate carrier, and prevent[ing] a carrier from being held financially responsible for costs and liabilities that are outside its control."[2337] WorldCom states that its provision confers reciprocal duties on the parties by applying to *all losses* arising from the indemnifying party breach of the agreement.[2338] WorldCom argues that Verizon's proposed language would unfairly apportion liability based solely on whose customer raises the third-party claim, and not on which party caused the harm.[2339] According to WorldCom, this approach would give Verizon a disincentive to perform its obligations under the agreement because Verizon would know that WorldCom, its competitor, would bear the costs of any customer claims arising from Verizon's failure to perform its duties.[2340] WorldCom asserts that such a result is anticompetitive.[2341]

707. Furthermore, WorldCom states that, contrary to Verizon's characterization, WorldCom does not ask Verizon to serve as a guarantor of third-party claims; rather, it seeks indemnification only when Verizon has breached the agreement and caused damage to a third party.[2342] WorldCom recognizes that mistakes will happen, and simply requests that Verizon bear the costs of those mistakes in the event that they rise to the level of a breach of the interconnection agreement and that an end-user brings a claim.[2343]

708. Verizon states that it cannot agree to include WorldCom's proposed section 19.1 unless the agreement incorporates a clause in the parties' 1997 interconnection agreement.[2344] According to Verizon, this language "provides an important incentive for each party to place in its tariffs and customer contracts limitations on the liability of its suppliers on account of the supplier's provision of services."[2345] In contrast, Verizon argues that WorldCom's proposal would make Verizon a guarantor, by requiring Verizon to indemnify WorldCom for any claims that WorldCom's customers make against WorldCom on account of Verizon's provision of services to WorldCom.[2346] Verizon states that, as a result, any time that Verizon does not provide perfect service (such as not performing a hot cut at the specified time), Verizon would be required to indemnify WorldCom if WorldCom's customer brings a claim against WorldCom.[2347] Verizon argues that instead, each party's liability under the interconnection agreement should

---

[2337] *Id.* at 205.

[2338] *Id.* at 208. WorldCom characterizes its proposed provision as "simply mak[ing] the parties responsible for their own mistakes." *Id.*

[2339] *Id.* at 208; WorldCom Reply at 180.

[2340] WorldCom Brief at 208-09.

[2341] *Id.* at 209.

[2342] WorldCom Reply at 181.

[2343] *Id.*

[2344] Verizon GTC Brief at 20.

[2345] *Id.*

[2346] *Id.*

[2347] *Id.* at 21; Verizon GTC Reply at 9.

generally be limited to the value of the services provided to the other party that are the subject of the claim.[2348] Verizon further states that, under its retail tariffs, Verizon's liability to its own end user customers for less than perfect service is generally limited to the amount of the charge for which Verizon billed, and the same should be true for WorldCom as a customer of Verizon.[2349] Finally, Verizon states that the Act requires that Verizon provide competitive LECs with nondiscriminatory service, not perfect service, and that WorldCom has no right to demand service from Verizon that is superior to that which Verizon provides to its own end user customers.[2350]

#### c. Discussion

709. We adopt Verizon's proposal to delete WorldCom's proposed section 19.2 and reinsert section 11.1(b) from the parties' 1997 agreement.[2351] WorldCom has failed to convince us that this provision is unreasonable or unnecessary. Specifically, we find that, in determining the scope of Verizon's liability, it is appropriate for Verizon to treat WorldCom in the same manner as it treats its own customers. Verizon has no duty to provide perfect service to its own customers; therefore, it is unreasonable to place that duty on Verizon to provide perfect service to WorldCom. In addition, we are not convinced that Verizon should indemnify WorldCom for all claims made by WorldCom's customers against WorldCom. Verizon has no contractual relationship with WorldCom's customers, and therefore lacks the ability to limit its liability in such instances, as it may with its own customers. As the carrier with a contractual relationship with its own customers, WorldCom is in the best position to limit its own liability against its customers in a manner that conforms with this provision.

### 7. Issue IV-107 (Intellectual Property of the Parties)

#### a. Introduction

710. WorldCom proposes language that would give each party a limited right to use the other's intellectual property that is embedded in, or reasonably appropriate to the use of, the facilities, equipment or services provided under the contract. Verizon opposes WorldCom's proposal for the reasons it provided in response to Issue III-15 above.[2352] We adopt WorldCom's proposed language.

---

[2348] Verizon GTC Brief at 21.

[2349] *Id.* at 22.

[2350] Verizon GTC Reply at 8.

[2351] *See* WorldCom Pet., Ex. D, Part A, § 11.1(b).

[2352] *See supra* Issue III-15.

### b. Positions of the Parties

711. WorldCom argues that its proposal makes clear that the agreement does not itself create or modify the parties' intellectual property rights and provides that when one party interconnects with the other or leases a portion of the network from the other, the lessee only obtains a limited right to use the intellectual property owned by the lessor.[2353] WorldCom contends that its current proposal is "typical of agreements involving the use of technology."[2354] By contrast, WorldCom notes in opposition that the agreement reached between AT&T and Verizon requires those carriers to enter a separate agreement in order to use each other's intellectual property.[2355] Moreover, WorldCom argues that Verizon's section 28.16.1 strips WorldCom of any right to use Verizon's intellectual property, even if such use is consistent with the contract.[2356] Finally, WorldCom asserts that, by failing to identify any substantive deficiencies with WorldCom's proposal, Verizon has waived any objections to it.[2357]

712. Verizon makes no mention of Issue IV-107 in its brief and reply. In pre-filed testimony, Verizon seeks protection against the unrestricted or unauthorized use of its intellectual property.[2358] Verizon also argues that this issue is related to Issue III-15 and that Verizon cannot be forced to obligate itself, through this contract, beyond the requirements of applicable law.[2359]

### c. Discussion

713. We adopt WorldCom's proposed language.[2360] WorldCom is correct that, although afforded the opportunity to do so, Verizon does not respond substantively to WorldCom's proposed language. We find that WorldCom fairly characterized its proposal in both its pre-filed testimony and its brief, and absent any expressed concerns from Verizon, we determine that this proposal is reasonable. For example, Verizon does not explain why WorldCom's proposed language, which appears only to recognize a limited license to use the other party's intellectual property, would lead to unrestricted or unauthorized usage. Indeed, we note that the existing

---

[2353] WorldCom Brief at 239.

[2354] *Id.* at 239, citing WorldCom Ex. 19 (Direct Testimony of R. Peterson and M. Harthun), at 15.

[2355] *Id.* at 240 (arguing that the separate agreement is contrary to standard practice), citing AT&T-Verizon Interconnection Agreement, § 28.16.1. We note that in its November JDPL, Verizon proposes to use the same language for WorldCom as that to which AT&T and Verizon have agreed. *See, e.g.,* Second Revised Joint Decision Point List XI, General Terms and Conditions, at 36-37.

[2356] WorldCom Brief at 240.

[2357] WorldCom Reply at 200.

[2358] Verizon Ex. 13 (Direct Testimony of C. Antoniou *et al.*), at 27.

[2359] *Id.* at 28 (repeating arguments made in Issue III-15).

[2360] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 20.1.

contract between the parties similarly provides for a limited license to use the other party's patents or copyrights to the extent necessary to use any facilities or equipment, or to receive any service, as provided under the contract.[2361] Since Verizon has not argued that the current language in its contract imposes obligations beyond its requirements under current law, we have no basis to conclude that WorldCom's proposed language would cause that result, as Verizon vaguely alleges in its pre-filed testimony.

### 8. Issues IV-113/VI-1-E (Application of General Change of Law Provisions and UNE-Specific Change of Law Rules)[2362]

#### a. Introduction

714. WorldCom and Verizon disagree over whether *all* changes in law that materially affect the parties' obligations should be governed by the same change of law provisions, regardless of whether the change increases or decreases Verizon's UNE obligations. While Verizon accepts WorldCom's language with respect to new obligations, it proposes a 45-day negotiation and transition period that applies only when a change in law releases it from an obligation to provide a UNE. According to WorldCom, prevailing on this issue is important to prevent an unreasonable and anticompetitive limitation on the availability of UNEs. We agree with WorldCom that the change of law process should not vary depending on whether the change adds or removes obligations, and instead adopt its single change of law provision.

#### b. Positions of the Parties

715. WorldCom proposes a change of law provision requiring the parties to "negotiate promptly" to amend the agreement if there are changes in law that materially affect the parties' obligations with respect to the provision of services, or any other terms of the agreement.[2363] Furthermore, WorldCom proposes that "if the parties cannot reach agreement through good faith negotiation, the issue should be decided through a dispute resolution process."[2364] According to WorldCom, this process is a "critical issue because WorldCom and Verizon frequently cannot agree on the impact or implementation of court decisions or Commission orders."[2365] WorldCom opposes Verizon's proposed language, which contains separate provisions for when a change of law releases Verizon from an obligation to provide a UNE.[2366] WorldCom contends that

[2361] *See* WorldCom Petition, Ex. D (Interconnection Agreement Governing Current Relations), at Part A, § 10.

[2362] Because we adopt a single change of law provision in this section, we address both Issues IV-113 and VI-1-E here.

[2363] *See* WorldCom Brief at 213; WorldCom Reply at 184; WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2.

[2364] *See* WorldCom Brief at 213, citing WorldCom Ex. 16 (Direct Testimony of M. Harthun *et al.*), at 52.

[2365] *See* WorldCom Brief at 213, citing WorldCom Ex. 16 (Direct Testimony of M. Harthun *et al.*), at 52.

[2366] *See* WorldCom Brief at 152.

Verizon's proposed rule would have an anticompetitive result because Verizon would unilaterally determine whether a change of law should be interpreted to permit Verizon to stop providing service. Moreover, WorldCom contends the proposed 45-day notice period is unreasonably short; if WorldCom disagrees with any aspect of Verizon's implementation of a UNE-related change in law, it would not permit sufficient time to negotiate with Verizon, petition the Commission or the Virginia Commission, or transition customers to a new provider.[2367]

716. While Verizon agrees that the parties generally should meet and negotiate in good faith over changes in law, and that any remaining disagreements should be settled through the contract's dispute resolution procedure, Verizon proposes an additional paragraph stating that if "it is determined that Verizon is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to WorldCom hereunder, then . . . Verizon may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted . . . by providing forty-five days prior written notice."[2368] Verizon suggests that this 45-day notice period would apply only "if the new law does not state the date on which the obligation to provide the service ends."[2369] Verizon argues that changes releasing it from an obligation to provide a UNE should become effective within a short period of time, otherwise Verizon would be "held hostage" in negotiations with WorldCom. Verizon justifies its two-part change of law approach, arguing that changes relieving Verizon of a UNE obligation are "fundamentally different" from changes that add obligations, because the latter may involve the creation of new ordering systems, operational procedures, and "very specific implementation mechanics."[2370] Moreover, Verizon states that the process cannot be viewed as an unchecked, unilateral right to terminate service because WorldCom may file a complaint anytime within the 45-day notice period if it feels that Verizon's announced action is unlawful.[2371]

### c. Discussion

717. Based upon the record in this proceeding, we agree with WorldCom that *all* changes in law that materially affect the parties' obligations should be governed by a single change of law provision, regardless of whether the change increases or decreases Verizon's UNE obligations. We thus adopt the language proposed by WorldCom with respect to this issue, and reject Verizon's language.[2372] We find that Verizon has failed to justify the special treatment of

---

[2367] *See* Verizon UNE Brief at 70.

[2368] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 4.6.

[2369] *See* Verizon GTC Brief at 27.

[2370] *See* Verizon GTC Brief at 27; Verizon GTC Reply at 12 (citing, as an example, the detailed operational procedures necessary to implement the Commission's subloop unbundling requirements in the *UNE Remand Order*).

[2371] *See* Verizon UNE Reply at 40, citing Tr. at 673; Verizon Ex. 13, at 47-49.

[2372] We adopt WorldCom's proposed section 25.2, and reject Verizon's proposed sections 4.5 and 4.6.

changes in law that relieve it of obligations regarding network elements. We find that Verizon's concern that the Commission would issue rules that create new obligations or terminate existing obligations without specifying the effective date of such rules is unfounded. Commission orders adopting rules routinely specify effective dates. If, however, after the issuance of any particular Commission order, Verizon identifies operational concerns about the general applicability of a Commission decision, then Verizon should address those specific concerns with the Commission at that time.

### 9. Issue IV-129 (Definitions)

718. As framed by WorldCom, Issue IV-129 asks whether the interconnection agreement between WorldCom and Verizon should contain a "Part B," which provides definitions of certain capitalized terms and words used throughout the contract. The existing agreement between the carriers contains such a section.[2373] On June 14, 2002, WorldCom and Verizon jointly submitted revised definitions, highlighting almost 40 definitions that remain in dispute between the parties. Neither party chose to brief the substance of their dispute with respect to these definitions. Other than indicating in a few words what the dispute concerns, we have no record upon which to base any conclusions about which of the competing definitions is more consistent with the Act and the Commission's rules. Accordingly, where the parties have not agreed on a definition, we decline to adopt either party's proposed language. To be clear, our resolution of the substantive issues in this proceeding will effectively decide which party's position will be included in this contract for the majority of these contested definitions. For example, we adopted language regarding access to the FDI, which included a definition of "subloop" under Issue III-11, an issue that was subject to extensive cross-examination and argument by the parties. Including a separate definition of "subloop" in "Part B" would, at best, duplicate the language adopted in Issue III-11 and, at worst, could contradict our findings in Issue III-11 if we were to adopt Verizon's proposal. Consequently, we direct the parties to review our findings provided elsewhere in this Order to determine which definitions to incorporate in the contract.

### 10. Issue V-11 (Indemnification for Directory Listings)

#### a. Introduction

719. Verizon explains that it is important to be protected from claims resulting from its publication of erroneous directory information listings, if such listings are published as provided by WorldCom. WorldCom and Verizon disagree about whether the contract should include language on indemnification standards and procedures for when WorldCom provides Verizon with inaccurate directory listing information. Verizon proposes a provision requiring WorldCom to "release, defend, hold harmless and indemnify" Verizon from claims and losses arising from Verizon's publication of directory listing information, if such information is printed as provided

[2373] *See* WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Part B.

by WorldCom. WorldCom opposes this indemnification proposal. We adopt Verizon's proposal.

**b. Positions of the Parties**

720. WorldCom argues that we should reject the last sentence of Verizon's proposed section 4.7. This sentence reads: "[WorldCom] agrees to release, defend, hold harmless and indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's publication or dissemination of the Listing Information as provided by [WorldCom] hereunder."[2374] WorldCom concedes that if it gave Verizon an inaccurate listing and Verizon received a third-party claim, WorldCom should indemnify Verizon because WorldCom caused the harm.[2375] However, WorldCom argues that Verizon should be subject to a reciprocal obligation. Specifically, WorldCom maintains that if WorldCom gives Verizon an accurate directory listing but Verizon inaccurately publishes or disseminates that listing, and therefore exposes WorldCom to liability to that customer, Verizon should indemnify WorldCom to the extent of that liability.[2376]

721. WorldCom contends that its position -- which is addressed in language that WorldCom proposed with respect to Issue IV-106 -- rests on the principle that if a party fails to live up to its commitments, that party should bear the costs that arise from third-party claims arising from that breach.[2377] Although WorldCom admits that it has a more direct relationship with its customers than does Verizon, WorldCom asserts that this relationship does not justify imposing liability on it for Verizon's mistakes in directory listings.[2378] According to WorldCom, there is nothing that it can do to protect its customers from errors that Verizon makes when publishing or disseminating that information.[2379]

722. Verizon characterizes this dispute as whether WorldCom should indemnify it in cases where Verizon prints directory listing information about a WorldCom customer in precisely the manner that WorldCom provided the information to Verizon, and WorldCom's customer subsequently brings a claim against Verizon.[2380] Verizon argues that such a provision is appropriate, because Verizon is relying on the accuracy of information provided by WorldCom.[2381] Verizon asserts that since it has no involvement in obtaining that information,

---

[2374] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 4.7.

[2375] WorldCom Brief at 210.

[2376] *Id.*

[2377] *Id. See also supra* Issue IV-106.

[2378] *Id.* at 210-11.

[2379] *Id.* at 211.

[2380] Verizon General Terms and Conditions (GTC) Brief at 23; Verizon GTC Reply at 11.

[2381] Verizon GTC Reply at 11.

WorldCom should bear full responsibility for its inaccuracy.[2382] According to Verizon, it has already agreed to similar language with AT&T, and asks that this language be incorporated into the agreement with WorldCom.[2383]

#### c. Discussion

723. We adopt Verizon's proposal, and reject WorldCom's request to delete the last sentence of Verizon's proposed section 4.7. We agree that it is appropriate for WorldCom to indemnify Verizon in the event that WorldCom provides erroneous directory listing information to Verizon about its customers. For reasons provided above in our discussion of indemnification, we reject WorldCom's proposed section 19.2.[2384] We note that WorldCom failed to offer language specific to the instant dispute on directory listings. Specifically, WorldCom's argument that Verizon should indemnify WorldCom for inaccurately printing a directory listing that was correctly provided by WorldCom is not addressed by its suggestion to delete the last sentence of Verizon's proposed section 4.7. As noted above, that sentence only addresses the situation when Verizon prints directory listing information *as provided by WorldCom*. Since we determine that Verizon's proposal is reasonable, we do not direct the parties to submit conforming language making Verizon's language reciprocal. Thus, this issue must be governed by the general indemnification provisions addressed in Issue IV-106.

### 11. Issue VI-1-N (Assurance of Payment)

#### a. Introduction

724. WorldCom and Verizon disagree about whether to include language that establishes Verizon's right to receive assurances of payment of amounts due, or to become due, under certain circumstances, such as if WorldCom admits its inability to pay its future debts. Verizon's proposed provision would give Verizon the right to suspend its performance obligations under the agreement if WorldCom fails to fulfill the precise assurance of payment measures set forth in the relevant section. WorldCom opposes this proposal and argues that the provision is unnecessary, and therefore should be excluded from the agreement. We adopt Verizon's proposal, with modifications.

#### b. Positions of the Parties

725. Verizon argues that it must protect itself against the risk of nonpayment by non-creditworthy entities.[2385] Verizon asserts that this language is necessary to address the risk of non-payment in the event that WorldCom's financial situation were to deteriorate substantially,

---

[2382] *Id.*

[2383] Verizon GTC Brief at 23.

[2384] *See also supra*, Issue IV-106.

[2385] Verizon General Terms and Conditions (GTC) Brief at 31; Verizon GTC Reply at 15, 18.