

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**REPLY IN SUPPORT OF WORLDCOM, INC.'S APPLICATION FOR REVIEW**

Pursuant to Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, WorldCom, Inc. ("WorldCom") respectfully submits this Reply in Support of Its Application For Review, submitted August 16, 2002. In that Application, WorldCom sought clarification of two aspects of the Commission's July 17 Arbitration Order. First, WorldCom asked the Commission to make clear that although the Arbitrator determined the Commission's current rules do not mandate "batch" access to the Calling Name ("CNAM") database, that decision does not invalidate decisions in which state commissions have provided such access pursuant to their independent authority. Second, WorldCom requested that the Commission hold that Verizon is

not free to refuse to provide resold services other than xDSL (such as operator services and directory assistance) simply because WorldCom intends to use those services in conjunction with UNE-P to provide services to its customers.

On September 10, 2002, Verizon-Virginia, Inc. ("Verizon") filed a Response to the WorldCom Application For Review, opposing WorldCom's position on both issues. As explained in more detail below, the arguments presented in the Verizon Response are uniformly unpersuasive and the Commission should grant WorldCom's Application For Review.

**I. The Bureau Should Grant WorldCom's Request For Clarification That The Arbitrator's Decision Regarding Access To The Calling Name Database Does Not Overrule Existing Precedent.**

In the Application for Review, WorldCom requested clarification that the *Arbitration Order* addresses only the question whether the Commission's current rules *mandate* the batch, downloadable access to the CNAM database sought by WorldCom, and does not hold that the law *prohibits* such access. As WorldCom explained, several state commissions have already required incumbent carriers to provide WorldCom batch access to that database, and if the Commission's rules were interpreted to prohibit that form of access, those decisions would become invalid. *See* WorldCom Application For Review at 4-5. Because some of the language in the *Arbitration Order* could be construed as holding that federal law prohibits the provision of such access, WorldCom requested clarification that the *Arbitration Order* was not meant to create such a change in the law. *See id.*

Verizon does not dispute the validity of WorldCom's assertion that the Act and the Commission's orders allow state commissions to supplement the requirements of federal law with additional pro-competitive requirements, and do not prohibit state commissions from requiring incumbent carriers to provide batch access to the CNAM database. Nor does it dispute

the fact that the *Arbitration Order* contains language that could be construed as holding that state commissions may not order incumbent carriers to provide batch access to the CNAM database, or that reading the *Arbitration Order* in that manner would dramatically alter existing law and invalidate the decisions of several state commissions. Instead, it asserts only that the Commission should deny WorldCom's Application For Review because the issues raised should be addressed in other forums. *See Verizon Response* at 2-3. Thus, Verizon's only argument is that the Commission should intentionally leave its Order vague, forcing state commissions to attempt to guess at its meaning (even though Verizon does not currently dispute the meaning of the Order). That assertion is obviously meritless.

WorldCom's Application For Review seeks clarification of an issue that is highly relevant to this proceeding – the scope and meaning of the Arbitrator's resolution of an issue in this case. It does not ask the Commission to determine *how* state commissions should resolve batch access issues under existing or previous law, or whether they should grant WorldCom batch access. Instead, it requests that the Commission clarify that the *Order* does not itself restrict their ability to do so, and make clear that the portions of the *Arbitration Order* that could be construed in a manner that would forbid states from ordering a particular form of access to the CNAM database were not intended to have that effect. It is entirely appropriate to present such a question in an application for review, as the Arbitrator and Commission are uniquely positioned to resolve questions concerning the meaning of their own orders. State commissions, in contrast, have no such expertise, and should not be required to speculate regarding the intent and meaning of the relevant portions of the *Arbitration Order*.

Indeed, Verizon has sought a very similar type of review in its own appeal of the *Arbitration Order*. In connection with Issue I-6, it requested that the Bureau "clarify its *Order* in

two important respects to confirm that it did not (indeed, could not) *sub silentio* overrule other binding orders by the full Commission.” Petition For Clarification and Reconsideration of July 17, 2002 Arbitration Order at 15 (filed Aug. 16, 2002). WorldCom seeks the same form of clarification in its Application for Review, and the Commission should grant its request.

**II. The Commission Should Grant WorldCom’s Request For Clarification That Unresolved Issues Concerning The Extent Of An Incumbent LEC’s xDSL Resale Obligations In Conjunction With A Competitive LEC’s Use Of UNE-P Do Not Affect Verizon’s General Duty To Resell Telecommunications Services Such As OS/DA.**

In the Application For Review, WorldCom also sought clarification of the Arbitrator’s rejection of WorldCom’s proposed contract language obligating Verizon to provide both unbundled network elements (“UNEs”) and resold services which WorldCom could, in turn, use together to provide service to its own customers. Specifically, WorldCom asked that the Commission make clear that the language in the *Arbitration Order* with respect to resale of xDSL (for which there are unique implementation issues) does not extend to the resale of other services – such as operator services and directory assistance (“OS/DA”) – that can be, and currently are, provided in conjunction with UNE-P. As WorldCom explained, this result is mandated by the language and purpose of the Act, which prohibits an incumbent from requiring a new entrant to utilize only one entry method to provide competitive local service. Verizon mounts a number of arguments in response to WorldCom’s request. Many of Verizon’s assertions are simply irrelevant; the balance are wrong as both a factual and legal matter. None warrants denial of WorldCom’s request for review of this issue.

First, although Verizon appears to assert that OS/DA is not a service that Verizon must offer for resale, *see* Verizon Response at 4-5, this assertion is flatly belied by agreements Verizon made elsewhere *in this very arbitration*. In section 1.1 of the Resale Attachment,

Verizon agreed that “Verizon shall provide to MCIIm . . . Verizon’s Telecommunications Services for resale by MCIIm (which services, as of the Effective Date in Virginia include, without limitation, . . . Operator Services and Directory Assistance Services (“OS/DA”). Thus, Verizon has acknowledged that OS/DA is a “telecommunications service” that Verizon makes available for resale. Given that, the Act itself requires that Verizon offer it for resale. *See* 47 U.S.C. § 251(c)(4) (requiring ILECs to offer “for resale at wholesale rates *any telecommunications service* that the carrier provides at retail”).<sup>1</sup>

Nor does Verizon appear to assert that it will not provide its OS/DA *service* in conjunction with UNE-P. To the contrary, in its Response on this issue, Verizon indicates that WorldCom “may choose to provide services through a UNE-P, in which case it may obtain customized routing to . . . access Verizon’s OS/DA services.” Verizon Response at 9. Thus, Verizon has conceded on the one hand that OS/DA services are telecommunications services that it will resell to WorldCom, and that WorldCom is entitled to provide local service through UNE-P, in conjunction with Verizon’s OS/DA services.

Thus, although Verizon’s brief does not make the assertion directly, the only argument it appears it could be making is that it is entitled to provide OS/DA services at rates other than wholesale rates if the new entrant will use that telecommunications service in conjunction with another entry method to provide competitive local service. And the basis for this remarkable assertion seems to be that the Act does not allow new entrants to use more than one of the three entry methods contemplated by the Act to provide a local service. *See* Verizon Response at 4 (asserting that new entrants are not entitled to “mix and match” entry methods to provide local service). Unsurprisingly, Verizon cites nothing in the Act in support of this assertion. Nor could

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<sup>1</sup> And, of course, quite apart from the question whether Verizon is *required* to resell OS/DA services (and it plainly is *required* to do so), it *has* agreed to do so.

it – new entrants are unquestionably entitled to use each of the entry methods provided for in the Act, alone or in conjunction with one other, to provide competitive local service. An obvious example is the Commission’s decision unbundling the sub-loop element. In doing so, the Commission expressly discussed the fact that this network element would be combined with another entry method – the use of the new entrants’ own facilities – to provide competitive local service. *See In The Matter Of Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 16 F.C.C.R. 1724 ¶ 205 (1999) (“UNE Remand Order”) (ordering subloop unbundling because “[I]ack of access to subloops discourages competitive LECs from attempting to combine their own feeder plant with the incumbent’s distribution plant”). Indeed, *any* time a new entrant buys unbundled network elements without buying the entire network platform, it is “mixing and matching” those elements with another entry method contemplated by the Act to provide local service.<sup>2</sup> In discussing one example in the UNE Remand Order, the Commission was merely acknowledging what is obvious from the Act itself – notwithstanding Verizon’s assertions to the contrary, new entrants may plainly use entry methods in conjunction with one another to provide competitive local service.

The remainder of Verizon’s arguments are makeweight. Verizon acknowledges WorldCom’s assertion that, if a prohibition on WorldCom’s ability to resell OS/DA in conjunction with other entry methods is adopted, WorldCom could not obtain OS/DA at a wholesale rate. *See Verizon Response* at 8. Verizon’s response, however, is a *non sequitur*. Indeed, Verizon notes only that because it has been ordered to provide customized routing,

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<sup>2</sup> Verizon’s position is particularly ironic as, in other contexts, the incumbent carriers have asserted (albeit unsuccessfully) that new entrants should be forced to use some of their own facilities in conjunction with the use of network elements.

WorldCom cannot obtain access to OS/DA as an unbundled network element. WorldCom does not dispute this; indeed, here it does not ask for OS/DA as a UNE. Instead, it asks that it be able to *resell* OS/DA services when it provides competitive service over UNE-ports or UNE-P. Verizon does not dispute that, if WorldCom is unable to do so, WorldCom will not be able to obtain OS/DA at a wholesale rate, just as WorldCom argued.

Verizon's final complaint – that “WorldCom dramatically altered its proposed contract language” in a way that deviated from the parties' prior agreement, Verizon Response at 6-7 – is both irrelevant and wrong. WorldCom did propose some alterations to the prior contract language in testimony submitted by its witness Mr. Argenbright, but that was because, as WorldCom explained there (and repeatedly thereafter), despite repeated oral clarifications, Verizon continued to purport to be confused about the intent of this provision (and to assert that this issue was merely about combinations). *See, e.g.*, Argenbright Direct Testimony at 38 (“Verizon misapprehends WorldCom's proposition and proposal. WorldCom is not proposing here that Verizon provide UNE combinations to WorldCom. . . . Instead, WorldCom proposes that, upon request by WorldCom, Verizon provide WorldCom with a mixture of entry paths (i.e., resale and the use of Verizon's UNEs). . . .”); Argenbright Rebuttal Testimony at 25-26 (explaining that in his direct testimony “WorldCom discussed offering customers resold OS/DA . . . in conjunction with UNEs” but that Verizon “does not address this aspect of WorldCom's proposal, and instead states that it is confused regarding the purpose of WorldCom's language and believes that ‘combinations’ should be addressed in the UNE attachment”); *id.* at 26 (indicating that as “explained in [his] direct testimony on this issue, this issue has nothing to do with UNE combinations, and instead addresses a mixture of service offerings. The revised contract language . . . included in [the] direct testimony makes this more clear, by referring to

‘arrangements’ instead of ‘combinations’”); WorldCom Reply Brief at 171 (“Verizon’s assertion that [this proposed section] . . . addresses combinations . . . rests on a misinterpretation of WorldCom’s proposed contract language. The disputed language simply ensures that WorldCom may provision services to an individual customer through a mixture of the three available forms of market entry, *see* WorldCom Br. at 187, and this issue has nothing to do with UNE combinations.”).<sup>3</sup>

As Mr. Argenbright indicated in his rebuttal testimony, “given WorldCom’s repeated explanation and clarification of this distinction during mediation and negotiations of this issue” as well as the explanations and clarifications made in testimony and in its briefs, “Verizon’s professed confusion about the purpose of WorldCom’s language makes little sense.” Argenbright Rebuttal at 26. It similarly makes little sense for Verizon to complain at this juncture that WorldCom proposed alterations to the language at issue in an attempt to ensure that the issue was clear, and to obtain a response to the issue actually presented.

Finally, Verizon complains that “[o]ther than OS/DA . . . WorldCom provides no further example of the resale services it hopes to provide over a UNE-P.” Verizon Response at 9. As an initial matter, as the party attempting to place restrictions on WorldCom’s ability to resell a telecommunications service, it is Verizon that should explain any limits it deems appropriate. Nonetheless, further examples are easy to provide. Another clear example of the need to

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<sup>3</sup> Nor do the limited alterations made by WorldCom begin to bear the weight Verizon attempts to place on them. The clause regarding Local Resale, for example, modifies the portion of the sentence before it dealing with the Bona Fide Request (“BFR”) process contained in another section of the contract. Thus, far from attempting to include resale issues where they were once excluded, WorldCom merely edited the portion of a single clause that made clear that the BFR process (which was otherwise applicable only to unbundled network elements) is inapplicable to local resale (which was governed by Attachment II to the contract). As the redlined version of the language makes clear, the primary alterations were to provide examples in an attempt to provide clarity to the issue.

combine UNE-P with resold services is Simplified Message Desk Interface ("SMDI") (which is also a telecommunications service Verizon agreed to resell in the resale attachment of the recently submitted conforming interconnection agreement). In order to sell voice mail from its own (or a third party's) platform, with features such as message waiting lamps and/or stutter dial tone, SMDI is required. SMDI provides the necessary link between the central office switch and the voice mail platform to enable these features. It is a stand-alone telecommunications service commonly purchased by sellers of voice mail services.

If WorldCom buys a UNE-P from Verizon, and WorldCom's customer desires voice mail service with features now common (and expected) with voice mail, SMDI is necessary. Verizon refuses to resell voice mail, because voice mail is not a telecommunications service. It is, however, a service many customers have come to expect from their local service provider. Thus, WorldCom must combine UNEs (UNE-P) with a resold service (SMDI) in order to provide a complete service similar to one offered by Verizon. If Verizon refuses to sell SMDI with UNE-P, WorldCom would be unable to offer competitive voice mail service to its customers. Again, there is no serious argument that the Act can be read to authorize such a blatantly anti-competitive result.

Respectfully submitted,

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Dated: September 20, 2002

## CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Reply In Support of WorldCom, Inc.'s Application For Review was delivered this 20th day of September, 2002, by email and in the manner indicated below, to:

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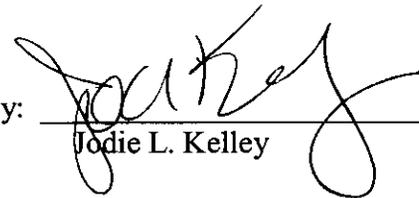
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