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December 9, 2002

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Re: CC Docket No. 00-218

Dear Ms. Dortch:

Enclosed for filing please find an original and four copies of the foregoing Opposition of WorldCom, Inc. to Verizon Virginia Inc.'s Motion to Permit Parties to Supplement the Record. Also enclosed are eight copies for the arbitrator. An extra copy is enclosed to be file-stamped and returned.

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

Very truly yours,



Jodie L. Kelley

Encl.

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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.)

**OPPOSITION OF WORLDCOM, INC. TO
VERIZON VIRGINIA INC.'S MOTION TO PERMIT PARTIES TO
SUPPLEMENT THE RECORD**

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WorldCom, Inc., (“WorldCom”) respectfully submits this opposition to Verizon Virginia Inc.’s (“Verizon”) motion to permit the parties to supplement the record in the cost phase of the above-captioned docket. Verizon’s motion to reopen the record at this stage should be rejected. The remainder of this case can and should be decided quickly on the record that already exists. As this Commission is well aware, this case has been pending for almost two years. Following the submission of written testimony, live hearings were held; those hearings concluded over a year ago. Final briefs were submitted in the cost phase of the proceeding in January of 2002. The petitioning parties have been awaiting a decision since that time, and need – indeed, are entitled to – resolution of the issues that remain undecided.

Verizon’s motion provides absolutely no valid reason to countenance further delay, and there is none. Instead, it is merely the latest in a series of attempts to delay the resolution of those issues. The Commission should reject that attempt, deny Verizon’s motion, and quickly issue a decision on the merits in the cost phase of this case.

I. VERIZON PROVIDES NO BASIS TO RE OPEN THE RECORD.

In its motion, Verizon points to absolutely no “facts not previously presented” which could not have been presented during the initial hearings and would warrant further review of the disputed pricing issues under the Commission’s reconsideration rules, 47 C.F.R. § 1.106(b)(2)(i), let alone provide a basis for re-opening the record in the present proceeding. Instead, Verizon alludes only to several court decisions – which either do not address issues relevant to these proceedings, or which support WorldCom’s views regarding the appropriate application of TELRIC – and to unspecified “factual developments.” Nothing in Verizon’s motion remotely supports its request to re-open the record and inject further unwarranted delay into this proceeding.

A. The Law Has Not Changed In Any Way That Necessitates Further Briefing.

Since the record in this proceeding closed, there has been no change in law that warrants re-opening that record. To the contrary, every relevant legal development over the past year confirms that the Commission has before it the evidence needed to decide this case expeditiously, and that no further evidence or briefing is needed. Indeed, given that the Supreme Court has now definitively concluded that the FCC's pricing rules are valid, Verizon's attempt to use purported "developments" in the law to further delay this proceeding is nothing short of remarkable.

The first and perhaps only relevant decision issued since the record in this proceeding closed is *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646(2002), in which the Supreme Court held that the pricing rules under which the instant arbitration was conducted are lawful and binding. As the Commission is well aware, in that case incumbent LECs (including Verizon) challenged the FCC's pricing rules on numerous grounds – *and lost in every respect*. Because those pricing rules were in effect at the time the evidence in this proceeding was submitted and the hearings were conducted, the issuance of the *Verizon* decision thus maintains the legal status quo. No further briefing is necessary to make that clear.

Similarly, the FCC's consideration of various 271 applications during the pendency of this proceeding provides no basis for re-opening this record. As an initial matter, in its 271 decisions, the Commission has repeatedly declined to recalculate individual rates, but has instead relied on state processes in determining whether rates for unbundled network elements are sufficiently consistent with basic TELRIC principles to meet the 271 checklist. And in several of those decisions, the Commission has used "benchmarking" to set prices by reference to the rates in a particular state (frequently New York), instead of evaluating the individual pricing

determinations of multiple states. The Commission’s 271 determinations thus make clear the importance of completing the instant proceeding, while saying nothing about what particular rates should be adopted in this arbitration based on this record. In any event, the Commission itself is quite aware of the 271 decisions it has issued, and certainly does not need Verizon to submit further briefing pointing out what the Commission itself has or has not said in its own decisions.’

B. The Submission Of Further Factual Evidence Is Unwarranted.

Verizon’s plea for permission to submit extensive further factual evidence (including written testimony of up to **125** pages *and* “supporting documentation,” *see* Verizon Motion at 8) fares no better. Again, Verizon alludes vaguely to recent “factual developments,” but points to nothing that would warrant reopening this record and further delaying these proceedings. Instead, Verizon’s pleading is merely a rehash of assertions it has made repeatedly – including in the record of this arbitration proceeding – regarding specific inputs. The Commission has before it **an** adequate record to evaluate Verizon’s claims, and it should do so without accepting yet another round of evidence.

Indeed, Verizon’s assertion that the record must be reopened to allow it to submit perfectly up to date evidence is plainly wrong. First, there is no question that given normal lag times in decisionmaking, any given rate adopted will not perfectly reflect costs at the moment it

¹ Verizon’s citation to the D.C. Circuit’s decision in *United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), is even further off the mark. That decision involved a challenge to this Commission’s establishment of unbundling requirements, and says nothing about the way in which the prices for UNEs should be calculated. *Competitive Telecommunications Association v. FCC*, 309 F.3d 8 (D.C. Cir. 2002), is also inapposite. There the D.C. Circuit reviewed a challenge to the Commission’s adoption of rules related to EELs, and again had no occasion to determine how UNEs should be priced. Neither decision purports to define how UNE rates should be calculated generally – much less the way they should be calculated based on the Virginia-specific evidence in this record.

is issued. But as the Supreme Court made clear in a passage on which Verizon itself purports to rely, that is inherent in ratemaking and, indeed, is a feature of TELRIC the Supreme Court lauded. See *Verizon*, 122 S. Ct. at 1669 (noting that TELRIC incorporates some deviations from a perfect market including “built-in lags in price adjustments” and thus does not discourage facilities-based investment).

That this “lag” is inevitable does not provide a basis for reopening the record. In a market in which costs are not static, costs will invariably change between the time a record is closed and the time a decisionmaker sets rates based on that record. If that precluded rates from being set, rates could never be set. The FCC’s pricing rules plainly do not countenance such an absurd result.

In any event, as a general matter, costs in the telecommunications industry are declining, not rising. Thus, if the entire record were reopened, and all costs were revisited, the results would benefit the petitioners, not Verizon.² Although this decline in costs will, at some point, require that rates be reevaluated in Virginia, the critical point is that rates which take account of the dramatic declines in cost demonstrated by the current record be established initially. At that

² Verizon’s entirely unsupported suggestion that WorldCom’s bankruptcy, other CLECs’ financial difficulties, and the development of facilities-based competition have created conditions that would warrant higher rates provides no basis to reopen this record and, indeed, makes little sense. To the extent the capital markets are now more hesitant to fund speculative telecommunications investments, that development would make Verizon’s wholesale products *less* risky, not more so; there is therefore no basis to conclude that these purported changes in the marketplace have greatly increased the cost of capital. Indeed, the dramatic decrease in the number of CLECs poses less of a competitive threat than investors believed incumbent carriers faced in 1999, and therefore should *decrease* Verizon’s net forward-looking risk. And the “bad debt” and similar costs which Verizon claims have risen are statistically irrelevant to the UNE rates. Even if they were relevant, Verizon’s conclusory assertion that its “uncollectibles” have increased fourteen-fold neither demonstrates that the alleged increase is anything more than a temporary spike caused by a period of financial difficulties in the telecommunications sector, nor shows that the current rate of uncollectibles reflects the rate that a prudent and efficient supplier of UNEs would experience in the long run.

point, if Verizon chooses to petition for a new proceeding that takes into account further declines in costs, it is free to do so. It should not be allowed to delay the establishment of rates at this time, however, under the guise of a concern about changing cost structures.

II. VERIZON'S PROPOSAL WOULD CREATE SUBSTANTIAL, UNWARRANTED DELAY.

At bottom, Verizon's motion represents a thinly veiled effort to further delay these proceedings, and reopen a record that completely undermines the inflated cost figures upon which Verizon relied. That attempt must be rejected. Although petitioners are mindful of the various constraints under which Commission staff operates, petitioners are also mindful of the fact that the current arbitration has been pending for roughly two years, and that the case has been fully submitted and awaiting decision for over ten months. As the FCC has repeatedly acknowledged, pricing is an absolutely critical term in any interconnection agreement. Petitioners are entitled to resolution of this important issue as quickly as possible.

Granting Verizon's motion would significantly postpone adoption of rates. Verizon has proposed three rounds of briefing, and two rounds of additional testimony plus "supporting documentation" spanning a five week period. Their proposal to file this material at break-neck speed is itself disingenuous – although Verizon is presumably in the process of preparing such testimony and briefs, petitioners have not begun this additional work. Thus, to avoid prejudice to all parties, additional time **would** certainly be needed.

Nor could the Commission cabin the testimony to the limited areas Verizon would prefer to explore. If the record were reopened, to ensure fairness and accuracy the parties would have to be allowed to put in current cost data on every single price component. There is no question that the additional testimony, supporting material, and briefs would run into the hundreds if not thousands of pages. And, depending on the material submitted, due process and fundamental

fairness might well require discovery and submission of additional material based on the discovery results.

In short, the result of Verizon's proposal would be chaos, at best. Commission staff would be saddled with hundreds of pages of additional material; any work completed to date by Commission staff would have to be redone; and the process of establishing rates would be delayed for months. Such a result would be inconsistent with the rules this Commission has established, with basic procedural fairness and, most importantly, with the letter and spirit of the 1996 Act, which contemplates that issues presented for arbitration will be decided expeditiously. That Verizon may wish to create a new record because it is unhappy with the one developed at the time of the hearing provides no basis for further delaying the conclusion of this case. The Commission should therefore firmly reject Verizon's motion, and quickly order UNE rates for Virginia.

CONCLUSION

For the foregoing reasons, Verizon's motion should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Opposition of WorldCom, Inc. to Verizon Virginia Inc.'s Motion To Permit Parties To Supplement the Record were delivered this 9th day of December, 2002, by email and in the manner indicated below, to:

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