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

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

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

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

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

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

*Local **Competition Order*** ¶ 362.

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

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

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

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

III. THE ARBITRATOR CORRECTLY DETERMINED THAT NPA-NXX'S SHOULD BE USED TO DETERMINE WHETHER A CALL IS LOCAL OR TOLL (ISSUE 1-6).

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

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

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

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

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

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

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

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

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

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

Verizon's attempt to alter the analysis by pointing to § 251(g) of the Act **and 47** C.F.R. § 51.710(b)(1) is utterly unavailing. Indeed, **§ 51.710**(b)(1) *supports* the Arbitrator's decision. That rule makes clear that ***access services*** **are** exempted from the reciprocal compensation regime – but access services, by definition, are not provided for "local" traffic. Thus, by its own terms § 51.710 (b)(1) does not provide an exemption for the traffic at **issue** here. And Verizon's reference to **§ 251(g)** of the Act is even **more** puzzling. In *WorldCom, Inc. v. FCC,* **288** F.3d 429 (D.C. Cir. **2002).** the Court **of** Appeals for the District of Columbia Circuit **squarely** rejected the argument that § 251(g) provides a basis for exempting local traffic from the reciprocal requirement obligations of § 251(b)(5). ***Id.*** at 432-34. Not only does § 251(g) apply only to "the 'continued enforcement of certain pre-Act regulatory 'interconnection restrictions and obligations,'" the Court held, **it** "speaks only of services provided 'to interexchange carriers and information service providers'; LECs' services to **other** LECs . . . are not 'to' . . . **an** IXC." *Id.* at **432,434.** Thus, the D.C. Circuit has squarely foreclosed the argument that § 251(g) justifies the refusal to pay reciprocal compensation for calls handled **by** two local exchange carriers that, by virtue **of** the NPA-NXX of the calls, have been deemed "local" by the Commission.

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

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

Nor did the Commission "rule in that situation, that AT&T **was** required *to* pay access charges for the Richmond end of that call-even **though** the call was locally **rated** for the caller, because AT&T **was** still using access service to complete **an** interLATA call to the called party." Pet. for Recon. at **21.** The Commission ruled that the *CCL* was applicable because a common line was used to provision the FX service. The Commission simply did *not* find, as Verizon asserts, that AT&T was using an access service to complete an interLATA call.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

traffic be excluded From intercarrier compensation is thus flatly inconsistent with governing law. To grant Verizon's request, the Arbitrator would have to alter the terms of the *ISP Remand Order,* creating an exemption in this arbitration proceeding that the Commission did not itself create in the ***ISP Remand Order.***[11] The Arbitrator should firmly decline Verizon's invitation to do so.

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

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

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

base. Nothing in Verizon's Petition warrants reconsideration of the Bureau's **resolution** of this issue.

The Act requires local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." **47** U.S.C. § 251(b)(5). In the ***Local Competition Order,*** the Commission determined that incumbent carriers' reciprocal compensation rates should be adopted **as** the "presumptive proxy" for the competing carrier's rates, unless the competing carrier establishes that its transport and termination costs ***are*** higher than those **of** the incumbent carrier. *Local Competition* ***Order*** ¶ 1098; 47 C.F.R. $51.711(b). Specifically, "[w]here the interconnecting carrier's switch serves a geographic **area** comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy **for** the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Local Competition* ***Order*** ¶ 1090; ***see*** *also* 47 C.F.R. § 51.711(a)(3) (establishing the same rule).

As the Commission has since reiterated, the geographic comparability requirement is a rule without exception or qualification. ***See Developing a Unified*** *Intercarrier Compensation* ***Regime,*** 16 F.C.C. R. 9610 **¶ 105** (2001) (***"Intercarrier Compensation NPRM")*** (confirming that the ***Local Competition Order*** required *"only* a geographic area test" and that a carrier that shows its switch serves a comparable geographic area is entitled to the tandem interconnection rate); ***see*** *also* ***Arbitration Order*** **¶ 309** (citing *Intercarrier Compensation* ***NPRM).*** **Verizon** nonetheless attempts to limit the geographic comparability rule by asserting that **a** competing **carrier** must demonstrate that it actually serves a geographically dispersed customer base within its serving area.

See Verizon Br. at IC-23 to **IC-25;** Pet. **For** Recon. at **23-25.** Rule 51.711 contains no such requirement, and Verizon's efforts to graft one onto the existing rule must fail.

At the outset, Verizon's proposed geographically-dispersed customer base requirement provides no relevant information, although it may provide insight into the new entrant's marketing and sales success. Conditioning a CLEC's entitlement to the tandem rate upon the success **of** its marketing efforts to capture ILEC customers, however, has no basis in the Commission's rule and would simply penalize new entrants. ***See Arbitration Order*** ¶ 309. Indeed, given the substantial investment that a competing carrier must make in its network to be able to serve customers, making a geographically dispersed customer base a prerequisite for obtaining tandem interconnection rates would seriously burden new entrants. ***See*** Rebuttal Test. of D. Grieco and G. Ball at **51** **(WorldCom** Exh. **15).** Moreover, the geographic area served by a competing carrier's switch is ***a*** function of the network utilized by that **carrier,** not the location **of** its actual customers; as WorldCom previously explained, "[i]f a CLEC has established network facilities and opened NPA/NXXs that allow end users within rate centers **to** originate and terminate local exchange service, such rate centers are within the physical or geographic reach of the CLEC's network regardless of the number or location of customers the CLEC has been able to attract." WorldCorn Br. at 95; **see *also*** Rebuttal Test. of D. Grieco and G. Ball at 49 (WorldCom Exh. **15).**

Second, Verizon's proposal is utterly impractical. Verizon has not proposed, either during the proceeding, or in its Petition for Reconsideration, a specific test for establishing 'a geographically dispersed customer base.' For example, Verizon has not explained *how* dispersed the customer base must be to satisfy its proposed standard, or how many customers must reside in a particular geographic area. Indeed Verizon's own witness was unable to explain how the Commission would define and administer the proposed customer base standard. ***See*** WorldCom Reply Br. at 80-81 (quoting testimony).

Finally, Venzon's assertion that the standard the Commission adopted creates a meaningless distinction between end office and tandem rates because "[a]ny switch is *capable* of serving a very large area [and] it is the loop/transport facility to end users that determines geographic reach, not the switch itself," Pet. For Recon. at ***25,*** ignores the distinctions between the WorldCom and Verizon network architecture. **See** Direct Test. of D. Grieco **and** G. Ball at **75** (WorldCom Exh. **3)** (explaining that WorldCom's local network has a substantially different architecture than the Venzon network). ILEC networks, developed over many decades, employ an architecture characterized by a large number of switches within a hierarchical system, with relatively short copper based subscriber loops. ***See*** *id.* By contrast, WorldCom's local network employs optical fiber rings utilizing SONET transmission. ***See id.*** In general, using this transmission based architecture, WorldCom accesses a much larger geographic area from a single switch than does the ILEC switch in the traditional copper based architecture, and can serve such large geographic areas via its extensive transport network. ***See id.*** Thus, although Venzon's network architecture may prevent its end office switches from serving a **very** large area, each of WorldCom's Washington-area switches serves **an** area that is at the very least comparable *to* if not greater than the service area of any of ***the*** 12 tandem switches used by Verizon in serving **the** samc Virginia rate centers. ***See id.*** The tandem ratc rule reflects this network architecture—switchesworking in conjunction with a transport network, and Verizon's suggestion that a capability rule is meaningless denies CLECs credit for the capabilities of their loop/transport facilities.

In sum, the Arbitrator should reject Verizon's attempt to impose new limitations on new entrants' ability to obtain tandem rates, and should affirm its decision to administer the geographic comparability test by reference to the new entrants' ability to serve a broad geographic area with their switches.

V. VERIZON'S BELATED REQUEST FOR A "DARK FIBER RESERVATION RATE" SHOULD BE DENIED (ISSUE III-12).

The Arbitrator adopted WorldCom's proposed Attachment III section 5.2.4, see *Arbitration Order* ¶ 461; WorldCom-Verizon Interconnection Agreement, Network Element Attachment § 7.4, which requires Verizon to hold requested dark fiber for WorldCom's use for ten business days from WorldCom's receipt of confirmation of the availability of the fiber. Verizon challenges this provision in its reconsideration petition, asserting that "neither the contract language adopted by the Bureau, nor the Order, addresses Verizon's right to charge CLEC's for their reservation of fiber," Pet. For Recon. at 30, and requesting "clarification" of its purported right to impose a non-recurring charge upon competitive carriers for dark fiber reservation. As explained below, Verizon's request should be denied.

First, Verizon's failure to propose during the proceedings and pleadings that it be allowed to charge new entrants for the reservation of dark fiber bars its attempt to obtain "clarification" from the Arbitrator that it may impose such fees. Both AT&T and WorldCom proposed dark fiber reservation language in the early stages of this case, and Verizon therefore had numerous opportunities to address the reservation fee issue it now raises. Instead of responding to the WorldCom and Verizon proposals by requesting the right *to* impose a fee for those reservations, however, Verizon simply objected to the imposition of a reservation requirement. **See** Verizon Br. at **UNE-58; Tr.** at 402-03. Verizon may not cure that omission by raising new arguments after the Arbitrator has issued a decision, and styling it as a request for "clarification." ***See*** pp. 3-7, ***supra.***

Verizon's request to supplement the record in the cost phase of the proceedings to include newly-submitted evidence regarding the cost of reserving dark fiber for requesting carriers, and other purportedly **new** costs associated with meeting the requirements the Arbitrator established in the Arbitration Decision, **see** Pet. for Recon. at **32** n.68, should be denied for similar reasons. ***See*** pp. **3-7, *supra.*** Venzon could have presented evidence regarding any of these items during the cost phase of this case and/or addressed them in its briefs. Indeed AT&T and WorldCom presented **cost** information on "lntellimux" (a separately stated DCS system) and multiplexing, **two** of the items for which Verizon now seeks the right to supplement the record. **See** Rebuttal Test. of Baranowski, Murray, Pitts, Riolo, and Turner, at 130-132. AT&T/WCOM Exh. 12P (AT&T/WorldCom Recurring Cost Panel Reb.). Verizon could also have presented cost information on these items in its Surrebuttal Testimony, Recurring Cost **Panel** (Verizon Exh. 122). The record should not be reopened on Reconsideration to allow Verizon to belatedly submit such evidence. **See** pp. 3-7, ***supra.***

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

The Arbitrator adopted sections 4.2.11 and 4.2.11.1 of WorldCorn's proposed Attachment III, see WorldCom-Verizon Interconnection Agreement, Network Elements

Attachment §3.21.1, which establish requirements for spectrum management.[14] Verizon failed to address the merits of these provisions, or any of the definitions WorldCom proposed under Issue IV-14, in its briefs. It now claims, however, that the spectrum management provisions conflict with the requirements of this Commission's *Line Sharing Order*, and should be removed from the parties' interconnection agreement. *See* Pet. for Recon. at 32-34. Specifically, Verizon asserts that it should not be required to develop spectrum management procedures. to the extent such procedures are not already in place, because industry-wide standards will be adopted in the future. *See id.* For the reasons set forth below, Verizon's position is both procedurally and substantively defective.

At the outset, Verizon has waived any objections to the disputed provisions by failing to address them in its pleadings and testimony. As WorldCom noted in its reply brief, Verizon chose to focus only on the broad principle of referencing "applicable law," instead of discussing the substance of the definitions WorldCom proposed in connection with Issue IV-14. *See* WorldCom Reply Br. at 127; *see also* Verizon Br. at WE-70 to UNE-73; Venzon Reply Br. at UNE-40 to UNE-41. Verizon had ample opportunity to present its objections to the WorldCom language at that stage of the proceedings, and its attempt to raise challenges to the spectrum management provisions in a post-decision filing must be rejected as untimely. *See* pp. 3-7, *supra.*

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14 This Commission has defined spectrum management as "loop plant administration, *such* as binder group management and other deployment practices that are designed to result in spectrum compatibility, preventing harmful interference between services and technologies that use pairs in the same cable." *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 F.C.C.R. 20912 ¶ 178 (1999) ("*Line Shoring Order*").

Even if Verizon had presented its arguments before the Arbitrator issued its decision, they would provide no basis for rejecting WorldCom's spectrum management provisions. As the Commission has recognized, incumbent carriers' efforts to unilaterally determine whether particular advanced services may be deployed on the network side of the demarcation point, and the pro-incumbent bias and delay inherent in the industry srandards-setting bodies' past efforts to adopt specbum management standards "have undermined the deployment **of** the technology to provide competitive deployment of xDSL services, contrary to Congress's goals in section **706** of the 1996 Act that the Commission 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."' ***Line Sharing Order* ¶ 179.** Accordingly, the Commission was obligated to intervene, and set "minimal ground rules" concerning spectrum management. *Id.*

WorldCorn's proposed spectrum management provisions memorialize the parties' obligation to develop spectrum management procedures that comply with appropriate standards. ***See*** WorldCom Br. at 127. The adopted language establishes a time frame for Venzon to comply with its regulatory obligation to provide its preexisting spectrum management procedures to WorldCom, **see 47** C.F.R. § 51.231(a)(1). In addition, the language requires Verizon and WorldCom to **work** together to develop such procedures, to the extent they do not yet exist, within thirty days of WorldCom's written request, and requires the parties to seek expedited resolution by the Commission if they cannot complete the development of these procedures within **six months.** By establishing a timeline for the development of spectrum management procedures, and providing a mechanism for Commission intervention in the event the parties cannot reach agreement, this provision furthers the Commission's goal of promoting "reasonable and timely" advanced services deployment. ***See Line Sharing Order*** ¶ **179.**

Allowing Verizon to refuse to develop spectrum management procedures until comprehensive industry-wide standards are in place would create the delay that the Commission criticized in the ***Line Sharing Order.*** Industry standards-setting bodies have historically been **slow** to develop spectrum management procedures, ***see Line Shoring Order*** ¶ 179, and it may take a considerable amount of time for them to develop industry-wide spectrum management guidelines; **indeed.** nearly three years have passed since the issuance of the ***Line Sharing Order,*** and the process is not yet complete. Accordingly, accepting Verizon's proposal would indefinitely postpone WorldCom's ability to offer advanced services. The Commission's adoption of WorldCom's proposed language was therefore reasonable.

Verizon's assertion that the adoption of the WorldCom language would usurp the role of the Network Reliability and Interoperation Council ("NRIC"), ***see*** Pet. for Recon. at **33-34,** is incorrect. To be sure, the Commission charged the Network Reliability and Interoperation Council with monitoring the industry-standard-setting bodies' development of industry-wide spectrum management **rules,** and with reporting and submitting recommendations to the Commission on those issues. ***See Line Sharing Order*** ¶¶ 184-185. However, the NRIC's role is "advisory," ***id.*** ¶ **184,** and nothing in the ***Line Sharing Order*** suggests that such procedures may not be established through the arbitration of interconnection agreements before more global **standards** are adopted. The adopted language does not force the carriers to duplicate the current and future efforts of the NRIC and the industry bodies whose work it monitors because the procedures will only govern the Verizon and WorldCom relationship; WorldCom and **Verizon** need not take into account the nature of other incumbent carriers' and competing carriers' networks and advanced services deployment, and other factors that the industry bodies must consider when adopting nationwide spectrum management policies.

Venzon's suggestion that the adopted language will undermine the development of national spectrum management standards, **see** Venzon Pet. for Reconsideration and Clarification at **34,** is equally meritless. The disputed provision expressly provides that the procedures developed by WorldCom and Verizon "should comply with national standards and Applicable law." WorldCom-Verizon Virginia Interconnection Agreement, Network Elements Attachment §3.21.1. Thus the spectrum management procedures will, by definition, comport with the standards that exist at the time the procedures *are* negotiated (or ordered by the Commission). **If** standards are developed after spectrum management procedures have been negotiated by WorldCom and Verizon, or ordered by the Commission, either party may seek to negotiate to amend the agreement to reflect those standards **or,** to the extent it has a valid basis for doing so, litigate the validity of the provision in an enforcement action. Further, if the industry bodies do not produce uniform procedures, and the Commission intervenes to adopt spectrum management procedures recommended **by *the*** NRIC, the agreement's change of law provisions would allow the parties to modify the agreement to conform with those new requirements. In sum, requiring Verizon to develop spectrum management procedures to the extent that it has not yet done so is reasonable given the current **lack** of industry-wide **standards,** presents no likelihood of conflict with national spectrum management **standards, and** furthers **the** Commission's goal of facilitating the timely **deployment of advanced** services. The Arbitrator should therefore deny Verizon's request for reconsideration **of** this issue

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

Although Verizon had not previously presented any arguments in opposition to WorldCorn's proposal that invoices **be** delivered to the billed party within ten calendar days of the bill date," ***see Arbitration Decision* ¶ 671, it now seeks** reconsideration ***of*** the Arbitrator's decision to adopt that aspect of the WorldCom billing proposal. Specifically. Verizon **claims** that it should only **be** required to submit invoices within ten business days of the bill date, and that granting WorldCom's request would be inconsistent with existing performance metrics and standards in Virginia and the conditions of the ***Bell Atlantic/GTE Merger Order.***[16] ***See*** Pet. for Recon. at **34-36. As** discussed briefly below, the ten calendar day billing period does not conflict with **the *Merger Order*** and performance standard conditions in the manner Verizon asserts. However, in the spirit of cooperation, WorldCom is willing to accept the ten business day interval that Verizon has now proposed.

In doing so, however, WorldCom in no way concedes the validity **of** any **of** Verizon's arguments. Indeed, **Verizon's** assertions are wrong. The ***Merger Order*** and

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[15] WorldCom has consistently included this in its proposed contract language, ***see*** Direct Test. of Sherry Lichtenberg on Behalf of WorldCom, Inc. at 13-14 (Issue **IV-74**)(WorldCom Exh. 7); Rebuttal Test. of Sherry Lichtenberg **on** Behalf of WorldCom, Inc. at ***5-6*** (Issue IV-74) (WorldCom Exh. 34), and expressly addressed the provision in its brief, See Initial Br. of WorldCom, Inc. at **252** (explaining **that** fen calendar day interval ensures that billed carrier will receive the bill in a timely fashion). These submissions made **WorldCom's** position **clear.** *and* Verizon could **have** voiced its objections *to* this ***proposal in*** its pleadings. Verizon's suggestion that it had no previous opportunity to **address** the ten-calendar-day billing interval, *see* Pet. for Recon. at 34-35. is therefore incorrect.

[16] ***Application 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,*** Memorandum Opinion and Order. 15 F.C.C.R **14032 (June *16, 2000*) *("Merger Order").***

the Virginia Performance Metrics Orders cited by Verizon, for **example,** do not prohibit the adoption of a ten calendar day cycle for submitting invoices. Although those Orders evaluate the timeliness with which Verizon sends invoices by reference to a ten business day time period, they expressly contemplate that Verizon may make alternate arrangements with a competing local exchange camer ("LEC"). ***See Merger Order,*** Attachment A-2a (defining timeliness **of** bill as "[t]he percent **of** carrier bills sent to the carrier, unless the CLEC requests special treatmenl, within ten business days of the bill date."); ***Establishment of Carrier Performance Standards for Verizon Virginia Inc.***, Case No. PUC010206, Compliance Filing at **104, B1-2** (Va. State Corp. Comm'n Jan. **22. 2002)** (same). Requesting a shorter interval during the arbitration of an interconnection agreement is a reasonable means of requesting "special treatment," and is wholly consistent with these requirements. Indeed, bills submitted in accordance with the ten calendar day interval adopted in the ***Arbitration Order*** would by definition meet the requirements for measuring Verizon's adherence to the standards articulated in those orders because that interval **is** shorter than a ten business day billing period. Neither set of standards purports to define the limits of Verizon's obligations to provide interconnection and services to new entrants like WorldCom, and the fact that the orders permit any CLEC to **request** "special treatment" belies Verizon's suggestion that granting WorldCom a shorter billing interval would be unlawfully discriminatory. The Arbitrator therefore possessed the authority to require Verizon to provide invoices to WorldCom more quickly **than** those conditions require.

Although there is no legal barrier to the inclusion of WorldCom's proposed ten calendar day interval, WorldCom would be willing to accept the ten business day period

Verizon has proposed. WorldCom notes, however, that Verizon should have raised its concerns in the testimony and briefing, and that a petition for reconsideration is not an appropriate vehicle for raising new arguments in opposition to the WorldCom contract language. Nonetheless, in good faith and a spirit of reasonableness, WorldCom is willing to entertain this single alteration to the recently-filed agreement.

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

The Arbitrator resolved the assurance of payment issue by adopting Verizon's proposed language, with a modification proposed by Verizon itself in a related context. Nonetheless, Verizon faults the Arbitrator's decision, and urges it to eliminate the single restriction imposed by the Arbitrator. Verizon's request should be rejected for two, independent reasons,

First, Verizon asserts that WorldCom's bankruptcy renders the modification imposed by the Arbitrator inappropriate. In fact, however, events occurring in the context of WorldCom's ongoing bankruptcy proceeding effectively negate the imposition of *any* assurance of payment requirement. As Verizon itself concedes, the question of the "amount and form of payment assurance that WorldCom must provide" is a matter to be decided by the Bankruptcy Court, not a matter to be resolved in the context of an arbitration under section 252 of the Act. *See* Pet. for Recon. at 38 (conceding that "the Bankruptcy Court will determine, among other things, the amount and form of payment assurance that WorldCom must provide, not this agreement"). The bankruptcy court has now resolved that issue in response to pleadings filed by, among others, WorldCom and Verizon. *See Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing WorldCom to Provide Adequate Assurance to Utility Companies*, August 14, 2002, Case No. 02-13533 (Bankr. S.D.N.Y.). In that Order, the Bankruptcy Court imposed specific requirements on WorldCom, and declined to impose others, including requirements proposed by Venzon. That Order may not be collaterally attacked in this proceeding. Thus, WorldCom's pending bankruptcy provides absolutely no basis to alter the assurance of payment provision in the current agreement. Indeed, given that "the Bankruptcy Court [has determined] . . . the amount and form of payment assurance that WorldCom must provide." this provision should be deleted from the agreement in its entirety. For this reason alone, at a minimum, Verizon's request must be denied.

Even if the bankruptcy court's order had not effectively mooted Verizon's request, it would be meritless. As the Commission noted in the Order, Venzon had proposed to exempt WorldCom from this requirement entirely via a "side agreement." *See* ***Arbifrution Order*** ¶ 728. WorldCom objected on the ground that such side agreements were contrary to the spirit and letter of the **1996** Act. The Arbitrator agreed, deeming it "more appropriate" to address the issue "through contract language." ***Id.*** In coming up with a particular contract-based solution, the Arbitrator merely adopted the $100 million net worth threshold that Verizon itself proposed in a related circumstance. ***See*** *id.* & n.2395 (*citing* Verizon GTC Brief at 31-32 (offering to permit WorldCom to self-insure if its net work surpasses $100 million)); **see** ***also*** Tr. at 2141-2143 (Antoniou, Verizon) (explaining Verizon's willingness *to* exempt CLECs whose net worth exceeds $100 million from insurance requirements). Such a solution was certainly a reasonable attempt *to* accommodate Verizon's **particular** concerns without imposing undue burdens on all competitive LECs. Thus, even if the Bankruptcy Court's recently issued Order had not entirely altered the landscape in this area – and it plainly has – **Verizon's** request for reconsideration of this aspect of the Arbitrator's decision would have to be rejected

CONCLUSION

For the foregoing reasons, the Arbitrator's decision should be affirmed in all relevant respects

Respectfully submitted,

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EXHIBIT A

August 19,2002

Subject: Verizon Virginia Inc. (Verizon) Adds Voice Telephony over ATY Tandem (VToA) **Arrangement** at 225 Franklin Rd., **SW,** Roanoke, VA.

Verizon Virginia Inc. (Verizon) is adding a Voice Telephony over ATM Tandem (VToA) arrangement at **225** Franklin Rd., SW. Roanoke. VA. This project has been initiated to replace the existing tandems in Roanoke. RONKVALK52T, Staunton, STTNVAST03T, and Norton, NRTNVANO02T. Once complete. the new VToA will allow customers a single point of connectivity to access the entire Roanoke LATA.

Three (3) tandem gateways listed below will service this new tandem area. Traffic associated with twenty-one (21) area host end offices in the Roanoke LATA listed below, and their respective remote **offices** not listed below, will be re-horned to the new VToA landem arrangement. All CLECs. Wireless carriers. **Inter-exchange** Carriers (IXCs) and Independent Telephone Companies with service requirements from the re-homed offices will be required to build trunking to any one (1) of these three **(3)** tandem gateways listed below. This will then allow complete access to all twenty-one (21) end offices subtending the new VToA tandem. The new tandem will have a Master Common Language Location Identifier (CLLI) code of RONKVALKDC1 and a point code of **246-234-025**

The three tandem gateways to which new trunk groups may be established in this arrangement are as follows:

OFFICE	CLLI Code
Roanoke	**RONKVALKGTO**
Slaunton	**STTNVASTGTO**
Norton	NRTNVANOGTO

The twenty-one (21) end offices being re-homed to the VToA tandem are as follows:

OFFICE	CLLI Code	OFFICE	CLLI Code

Bedford	BDFRVABDDS0	Salem	SALMVASADS0
Blacksburg	BLBGVABBDS0	Stone Mountain	SNMTVASMDS0
Big Stone Gap	BSGPVABGDS0	Stewartsville	SWVLVASVDS0
Christiansburg	CRBGVACBDS0	Lebanon	LBNNVALBDS0
Dublin	DBLNVABUDS0	Norton	NRTNVANODS0
Pulaski	PLSKVAPUDS0	Pennington Gap	PNGPVAPGDS0
Pearisburg	PRBGVAPBDS0	Wise	WISEVAWIDS0
Radford	RDFRVARADS0	Stuarts Draft	STDRVASDDS0
Roanoke-Barkley	RONKVABKDS0	Staunton	STTNVASTDS0
Roanoke-Cave Spring	RONKVACSDS0	Raphine	RPHNVAXADS0
Roanoke-Luck Ave.	RONKVALKDS0		

Verizon anticipates being ready to accept ASRs for trunks to the new VToA tandem arrangement (i.e., to one of the three tandem gateways listed above) on or about February 14.2003. All ASRs for this new tandem arrangement must carry a project code of RONKVALKAO. Originating and terminating Intra-LATA traffic (CLEC. Wireless. Independent), as well as originating and terminating Inter-LATA traffic for these twenty-one (21) end offices and their remotes. will be served by the new VToA tandem arrangement immediately upon the completion of these newly established trunk groups. Verizon will work with each carrier to develop a schedule and to provide notification to each carrier prior to re-homing traffic. Until a re-homing plan is developed, carriers will continue to be served from the existing tandems. RONKVALK52T, STTNVAST03T, and NRTNVANO02T. With the many carriers involved, it will be critical that all carriers submit ASRs and translation questionnaires, and that they are prepared to turn up their trunk groups as required.

The tandem gateway CLLI Code where you wish to connect must be identified in the SECLOC field on all ASRs for the new VToA tandem. These orders will be processed on a first come, first served basis. Specific trunk testing dates will be individually negotiated as orders are received and reviewed.

Once re-homing is compleled. carriers should promptly send disconnect ASRs to Verizon for those existing trunk groups to the RONKVALK52T, STTNVAST03T, and NRTNVANO02T tandems.

As a reminder, LERG updates for any routing records that are affected by this activity should be made as necessary using the normal channels. Pertinent updates to the tandem's deployment plan will be provided through an Industry Letter as needed. If you have any questions about this deployment, please contact your Verizon account manager.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Opposition Of Worldcom, Inc. To Verizon's Petition **For** Clarification And Reconsideration Of July 17, 2002 Memorandum Opinion And Order **were** delivered this 10th day of September, 2002, by email and in the manner indicated below. to:

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