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

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

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 8, 2002** **Released: October 8, 2002**

By the Chief, Wireline Competition Bureau:

## I. INTRODUCTION

1. On July 17, 2002, the Wireline Competition Bureau (Bureau), acting through authority expressly delegated from the Commission and standing in the stead of the Virginia State Corporation Commission, issued a decision resolving all questions, other than pricing questions, arising under three petitions for arbitration of interconnection agreements between Verizon Virginia, Inc. (Verizon), and the three petitioning carriers: AT&T Communications of

Virginia, Inc. (AT&T), Cox Virginia Telcom, Inc. (Cox), and WorldCom, Inc. (WorldCom).[1] In the *Arbitration Order*, the Bureau instructed the parties to incorporate its determinations into final interconnection agreements, setting forth both the negotiated and arbitrated terms and conditions, pursuant to section 252(e)(1) of the Communications Act of 1934.[2] Section 252(e)(1) also instructs the State commission (or, in this case, the Bureau) to approve or reject the agreement, with written findings as to any deficiencies. Consistent with the timetable set forth in the *Arbitration Order*, each petitioning party filed a conforming contract jointly with Verizon on September 3, 2002.[3]

2. In this Order, again under authority delegated from the Commission,[4] we approve each of the three agreements submitted by the parties. We find no deficiencies in these agreements, nor do we find any other reason to withhold approval. We note that these agreements were jointly prepared and submitted and, except for the issues identified below with respect to the AT&T-Verizon submission, reflect agreement between the parties on how to implement the determinations contained in the *Arbitration Order*.[5] Accordingly, to the extent these agreements reflect the determinations made in the *Arbitration Order*, we find them to meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, and they are thus not subject to rejection.[6] We note that three parties, AT&T, Verizon and WorldCom, filed petitions with the Commission seeking review of certain

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1 *See Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission*, CC Docket Nos. 00-218, 00-249 and 00-251, Memorandum Opinion and Order, DA 02-1731 (rel. Jul. 17, 2002) (*Arbitration Order*).

2 47 U.S.C. § 252(e)(1).

3 *See* Letter from Kelly L. Faglioni, Counsel for Verizon, and Mark A. Keffer, Counsel for AT&T, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 00-251 (filed Sept. 3, 2002) (*AT&T-Verizon Sept. 3 Letter*); Letter from Kelly L. Faglioni, Counsel for Verizon, and J.G. Harrington, Counsel for Cox, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 00-249 (filed Sept. 3, 2002) (*Cox-Verizon Sept. 3 Letter*); Letter from Kelly L. Faglioni, Counsel for Verizon, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 00-218 (filed Sept. 3, 2002) (*Verizon Sept. 3 Letter*); Letter from Jodie L. Kelley, Counsel for WorldCom, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 00-218 (filed Sept. 3, 2002) (*WorldCom Sept. 3 Letter*).

4 *See* 47 U.S.C. § 155(c)(1); *see also Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended,* 16 FCC Rcd 6231, 6233, paras. 8-10 (*Arbitration Procedures Order*).

5 *See Cox-Verizon Sept. 3 Letter; Verizon Sept. 3 Letter*; *WorldCom Sept. 3 Letter*.

6 The agreements the parties have submitted for approval do not contain pricing terms and conditions because those will be the subject of a later order in this proceeding. Accordingly, we have not reviewed the parties' submissions for compliance with section 252(d). This Order should not be construed as containing any finding regarding the compliance with section 252(d) of the pricing terms and conditions under which the parties will continue to operate until the release of the pricing order in this proceeding. *See infra* para. 3.

aspects of the *Arbitration Order*.[7] Under the Commission's rules, the pendency of these petitions does not affect the finality of the *Arbitration Order*, and does not prevent this Order from being effective and binding upon release.[8]

3. We note that the three agreements that the parties have submitted for approval do not contain a pricing schedule. As noted in the *Arbitration Order*, prices will be the subject of a separate order in this proceeding.[9] It appears that Cox and AT&T have both agreed with Verizon to prepare a pricing schedule using current rates that will continue in effect until the issuance of the order in this proceeding that sets prices.[10] We similarly direct Verizon and WorldCom to continue to use current rates under the agreement that we approve today until the release of the subsequent order arbitrating pricing issues.

## II. OUTSTANDING DISPUTES BETWEEN AT&T AND VERIZON

4. Unlike the other parties, AT&T and Verizon, in jointly preparing their conforming interconnection agreement, were unable to agree upon contract language in three areas. Instead, AT&T and Verizon submitted a contract listing, for each item in dispute, competing language proposed by each party. At the request of the Bureau, the parties then submitted comments on September 17, 2002, and reply comments on September 27, 2002. Based on these supplemental comments, and on the determinations set forth in the *Arbitration Order*, we resolve these remaining disputes and approve the contract submitted by AT&T and Verizon, as set forth below.

### A. Section 6.2.4, Access Toll Connecting Trunks

5. First, AT&T and Verizon ask that we select between alternative versions of section 6.2.4 of the contract, relating to "Access Toll Connecting Trunks," which are used by AT&T to connect its switches to Verizon's access tandem switches. During the arbitration, neither party presented the precise issue over which they now disagree: whether AT&T must establish access toll connecting trunks to more than a single Verizon tandem in a multi-tandem LATA. Verizon has now agreed to accept language that AT&T originally offered, with slight modifications.[11] This language would require AT&T to establish separate access toll connecting trunks to each

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[7] *See* AT&T Petition for Reconsideration, CC Docket No. 00-251(filed Aug. 16, 2002); Verizon Petition for Clarification and Reconsideration, CC Docket Nos. 00-218, 00-249, 00-251 (filed Aug. 16, 2002); WorldCom Application for Review, CC Docket Nos. 00-218, 00-249, 00-251 (filed Aug. 16, 2002).

[8] *See Arbitration Procedures Order*, para. 9; *see also* 47 U.S.C. §§ 155(c)(3), 405(a), 408; 47 C.F.R. §1.102(b).

[9] *See Arbitration Order*, para. 5.

[10] *See AT&T-Verizon Sept. 3 Letter* at 2 & n.4.

[11] Verizon characterizes the modifications as "mutually agreed upon revisions" and AT&T does not challenge this characterization. *See* Verizon VA's Argument in Support of Disputed Contract Language, CC Docket Nos. 00-218, 00-249, 00-251, at 3 (filed Sept. 17, 2002) (Verizon Argument).

Verizon tandem in a multi-tandem LATA.[12] AT&T, on the other hand, proposes new language that would enable it to establish these trunks to a single tandem in each LATA – an arrangement which, AT&T argues, is consistent with the Bureau's determination in Issue I-1 of the arbitration relating to a "single point of interconnection."[13] AT&T also suggests that Verizon's proposed language would unfairly require it to deploy separate switches for each Verizon access tandem in a LATA.[14]

6. We order the inclusion of the language proposed by Verizon, finding it to be consistent with the Act and its implementing rules. We consider it significant that AT&T originally proposed the very language Verizon has now agreed to implement. AT&T has not adequately explained why it changed course, and now opposes this language. AT&T also has not adequately established that the Bureau's ruling in Issue I-1, relating to a "single point of interconnection" for the exchange of traffic between AT&T and Verizon, precludes adoption of, or conflicts with, Verizon's language. We thus decline to re-open the debate over AT&T's right to a "single point of interconnection," and instead find it reasonable to adopt the language initially proposed by AT&T. Finally, we are unconvinced by AT&T's suggestion that Verizon's language would require it needlessly to construct additional switches: AT&T itself suggests that it could "physically partition" an existing switch to subtend multiple Verizon switches.[15] In any case, we note that the adopted language allows for the further negotiation between the parties of alternative configurations, as part of their ongoing Joint Implementation and Grooming Process.

### B. Section 11.2.12.2, Use of Non-Verizon Loop Qualification Tools

7. AT&T and Verizon also disagree about whether AT&T can use non-Verizon loop qualification tools for stand-alone digital subscriber line (xDSL) loops. AT&T recognizes that the Bureau's holding in Issue III-10 of the *Arbitration Order*, and the language adopted under that issue, permitted AT&T to use non-Verizon loop qualification tools in the context of line splitting under certain circumstances, but did not address the question in the context of stand-alone xDSL loops.[16] AT&T argues, however, that the "same considerations that the Bureau discussed in connection with line splitting apply when AT&T uses DSL [stand-alone loops]."[17]

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[12] During the arbitration, AT&T proposed this language in an attempt to use unbundled local and tandem switching and transport to provide competitive access service to interexchange carriers. The Bureau rejected both AT&T's and Verizon's proposals on this issue. *See Arbitration Order*, para. 208 & n.691.

[13] *See* Memorandum of AT&T Corp. in Support of Contract Terms for Disputed Items, CC Docket No. 00-251, at 3-4 (filed Sept. 17, 2002) (AT&T Memorandum).

[14] *See id*.

[15] *See id.* at 4.

[16] *See id.* at 7; *see also* Reply Memorandum of AT&T Corp. in Support of Contract Terms for Disputed Items, CC Docket No. 00-251, at 3-4 (AT&T Reply).

[17] AT&T Memorandum at 7, citing *Arbitration Order*, para. 397 (stating that the Bureau adopted AT&T's proposal "to maintain the greatest amount of flexibility for both carriers").

According to AT&T, since Verizon delivers both line-split xDSL loops and stand-alone xDSL loops to AT&T's collocation cage, Verizon only needs to know that the loop will be used for xDSL service.[18] AT&T argues that requiring AT&T to use Verizon's loop qualification tool for stand-alone xDSL loops, but not for line splitting, serves no purpose other than to increase AT&T's costs and stifle its ability to deploy innovative services.[19] Verizon contends that the Bureau's holding on loop qualification related only to the context of line splitting and, in any event, AT&T did not raise the issue of loop qualification tools in the context of stand-alone xDSL loops.[20]

8. We adopt Verizon's proposed language. Verizon is correct that our decision in the *Arbitration Order* relating to AT&T's use of non-Verizon loop qualification tools was limited to the context of line splitting. We did not address the use of non-Verizon loop qualification tools for stand-alone xDSL loops, or proposed contract language implementing such use. Indeed, while AT&T did mention in one affidavit its desire to use non-Verizon loop qualification tools for stand-alone loops as well as in the line splitting context,[21] its advocacy presented the question only with respect to line splitting.[22] Most importantly, AT&T did not oppose Verizon's proposed contract language in section 11.2.12.2 that it now seeks to modify.

### C. Schedule 11.2.17, Section 1.3.2, Charges for Use of Non-Verizon Loop Qualification Tools

9. Finally, AT&T and Verizon cannot agree on language to implement the Bureau's ruling that, if it is technically feasible and if AT&T is willing to pay, Verizon must modify its operations support systems (OSS) to permit AT&T to use non-Verizon loop qualification tools for line splitting. Verizon seeks to add language that would require AT&T to pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made "as a result of AT&T's decision to use non-Verizon loop pre-qualification tools."[23] AT&T's proposal would require it to pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made "at AT&T's request."[24] AT&T

[18] AT&T Memorandum at 8.

[19] AT&T Memorandum at 8.

[20] Verizon Argument at 7-8; Response of Verizon Virginia Inc. to AT&T's Memorandum in Support of Contract Terms for Disputed Items, CC Docket No. 00-251, at 9 (filed Sept. 27, 2002) (Verizon Reply).

[21] *See* AT&T Ex. 7 (Rebuttal Testimony of M. Pfau), at 5-6.

[22] The open issue AT&T presented to the Bureau to resolve in its petition was: How and under what conditions must Verizon implement Line Splitting and Line Sharing? *See* AT&T Ex. 1 (AT&T Pet.), at 155. While it may be that the use of non-Verizon loop qualification tools with respect to stand-alone xDSL loops raises the same issues as for loops used for line splitting, as noted above, AT&T did not adequately present this argument during the arbitration proceeding.

[23] Verizon Argument at 5-6 n.14.

[24] AT&T Memorandum at 8.

argues that Verizon's proposal would permit Verizon to charge AT&T for unquantified and unnecessary system modification costs.[25] AT&T also disputes the need for Verizon to modify its OSS at all when AT&T performs an alternate loop qualification.[26] Verizon argues that AT&T's proposal would leave it entirely to AT&T's discretion whether to pay Verizon for modifications that it makes to its OSS to accommodate AT&T's (or a third-party's) loop qualification tools.[27] According to Verizon, such a result would be contrary to the Bureau's ruling.

10. We find both parties' proposed language to be reasonable, and thus direct the parties to incorporate both proposals into the agreement as follows: "Verizon shall bill and AT&T shall pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made at AT&T's request and as a result of AT&T's decision to use non-Verizon loop pre-qualification tools." Both parties appear to be concerned about extreme interpretations of the other's language that are not supported by the *Arbitration Order*. We do not suggest, nor does the adopted language suggest, that AT&T may enjoy the benefits of modifications without paying for them. Nor may Verizon bill AT&T, as AT&T fears, for OSS modifications that are not reasonably required by AT&T's decision to use non-Verizon loop qualification tools. This must be a collaborative effort and we expect the parties to work together in good faith to address what modifications, if any, are necessary. We also expect Verizon to provide AT&T with information that is both adequate and sufficiently timely so that AT&T may decide whether to proceed with the use of non-Verizon loop qualification tools. Finally, we note that the *Arbitration Order* did not address the issue of whether any modifications to Verizon's OSS are necessary before AT&T may use non-Verizon tools, nor does either party's proposed language address this issue.[28] We expect that this fact-intensive issue of necessity will be handled, in the first instance, on a case-by-case basis in New York.[29]

## III. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 252 of the Communications Act of 1934, as amended, and Sections 0.91, 0.291 and 51.807 of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291 and 51.807, the Interconnection Agreement submitted jointly by Cox and Verizon IS APPROVED.

12. IT IS FURTHER ORDERED that, pursuant to Section 252 of the Communications Act of 1934, as amended, and Sections 0.91, 0.291 and 51.807 of the Commission's rules, 47

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[25] AT&T Memorandum at 9; AT&T Reply at 7.

[26] AT&T Memorandum at 9-10 (arguing that AT&T would merely have to check a box on the existing order form indicating that it has pre-qualified the loop).

[27] Verizon Argument at 6, citing AT&T's Petition for Reconsideration at 15 (contending that AT&T has already stated that no system modifications are necessary).

[28] *See* AT&T Memorandum at 9-10.

[29] *See Arbitration Order*, para. 389 (noting the New York Commission's expertise regarding Verizon's line sharing and line splitting offerings).

U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291 and 51.807, the Interconnection Agreement submitted jointly by WorldCom and Verizon IS APPROVED.

13. IT IS FURTHER ORDERED that pursuant to Section 252 of the Communications Act of 1934, as amended, and Sections 0.91, 0.291 and 51.807 of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291 and 51.807, the Interconnection Agreement submitted jointly by AT&T and Verizon, as modified herein, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau