

**SETTLEMENT AGREEMENT GOVERNING  
COLLOCATION RATES, TERMS AND CONDITIONS IN THE  
COMMONWEALTH OF VIRGINIA**

This Settlement Agreement (“Agreement”) is made this 30th day of January 2002, by and between WorldCom, Inc., a corporation organized under the laws of the State of Georgia with its principal place of business at 500 Clinton Center Drive, Clinton, Mississippi 39056 and its affiliates operating in the jurisdictions covered by this Agreement (“WorldCom”); AT&T Communications of Virginia, Inc., a corporation organized under the laws of the Commonwealth of Virginia, with its principal office at 295 North Maple Avenue, Basking Ridge, New Jersey 07920, and its affiliates operating in the Commonwealth of Virginia (“AT&T”); Sprint Communications Company of Virginia, Inc., a Virginia corporation headquartered at 8140 Ward Parkway, Kansas City, Missouri 64114 (“Sprint”); 360 Communications Co. of Charlottesville, d/b/a ALLTEL, a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at One Allied Drive B4F4N, Little Rock, Arkansas 72202 (“ALLTEL”); Broadslate Networks of Virginia, Inc., a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at 630 Peter Jefferson Parkway, Suite 300, Charlottesville, Virginia 22911 (“Broadslate”); NTELOS Network, Inc. and R&B Network, Inc. (formerly CFW Network and R&B Network), corporations organized under the laws of the Commonwealth of Virginia, having their principal place of business at 401 Spring Lane, Suite 300, Waynesboro, Virginia 22980 (“NTELOS”); and Verizon Virginia Inc., a Virginia corporation with principal place of business at 600 East Main Street, Richmond, Virginia, 23219 (“Verizon”). All of the

above parties to this Agreement will hereafter be referred to collectively as the “Settlement Parties.”

An initial Settlement Agreement binding Verizon, WorldCom and AT&T was signed on November 8, 2000. An amended agreement binding those parties and Sprint superseded that initial agreement on December 8, 2000. This amended Agreement, which binds all of the additional parties listed above, supersedes in all respects the November 8, 2000 and December 8, 2000 agreements. This Agreement is made as a compromise among the Settlement Parties for the complete and final settlement of their claims, differences, and any causes of action with respect to the disputes described below.

## **I. SUMMARY OF SETTLEMENT**

The Settlement Parties have agreed to the proposed settlement terms and conditions set forth in this document as a means of fulfilling the State Corporation Commission’s (the “Commission’s”) order to “include all interested parties in negotiations . . . toward settlement of the disputed collocation pricing issues” and to “identify all non-pricing issues and . . . file with the Commission a stipulation containing those non-pricing issues which have been resolved and those issues which remain outstanding.”<sup>1</sup> The terms of this Agreement apply only in those areas of the Commonwealth of Virginia served by the former Bell Atlantic. The terms set forth in this Agreement shall remain in effect for three (3) years from the date of the execution of this Agreement, subject to the following conditions.

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<sup>1</sup> Order, *Application of Verizon Virginia Inc. f/k/a/ Bell Atlantic – Virginia, Inc., For Approval of its Network Services Interconnection Tariff*, SCC-Va. No. 218, Case No. PUC990101 at 13 (October 12, 2001) (the “Order”).

## II. RATES, TERMS AND CONDITIONS

### A. Collocation Rates Generally

A.1 The Settlement Parties agree to file, and affirmatively to support, a Joint Petition to the Commission for approval of this Agreement and tariff language reflecting the rates, terms and conditions set forth in Exhibit 1 within thirty (30) days of the execution of this Agreement.

A.2 The rates in Exhibit 1 will apply upon the Commission-approved effective date of the new tariff associated with this agreement. The Settlement Parties will be entitled to true-ups and collocation account credits pursuant to the following schedule:

(1) **Space and Facilities Charge:** CLECs will be entitled to account credits only for collocation orders submitted between the period from May 28, 1999 and the effective date of this new tariff. Credits will be made of any amounts billed by any CLECs in excess of the following:

Physical collocation (per 100 square feet ordered) -- \$29,000 non-recurring charge (“NRC”);

SCOPE (per bay) -- \$3,800 NRC;

With respect to CCOE arrangements, Verizon will bill a \$3,800 (per bay) NRC. This amount will be offset by previously billed rates of \$45.15 (per bay) monthly-recurring charge (“MRC”) (for Building Space and Conditioning) and \$60.15 (per bay) MRC (for Cageless Security), less the Building Space rate of \$20.05 (per bay) MRC. The CCOE charge of \$3,800 will be credited \$85.25 (per bay) for each month billed for Building Space and Conditioning and Cageless Security rates.

(2) **Cross-Connects:** Verizon will bill CLECs both recurring and non-recurring charges for any cross connects that were installed but not used (and not, therefore, previously billed for) as of September 30, 2001, and that were not returned to Verizon as of the closing of the window in which non-utilized units may be returned to Verizon, as discussed in Section B below,<sup>2</sup> according to the rates specified in the tariff at Section 2.J of Exhibit 1.

A.3. Subject to the terms and conditions specified below, any net amounts owed to Verizon by the CLECs after these true-ups may, at the CLEC's option, be amortized on an installment basis over a 24-month period. The following terms and conditions apply.

(1) A CLEC will be eligible for this payment option only if that CLEC and its affiliates (as affiliates are defined in the Telecommunications Act of 1996 (the "Act")), if any, have gross revenue of less than \$2 billion per year arising from the provision of telecommunications services or facilities at the time the order is placed. Verizon may require the CLEC to establish its eligibility under this section to Verizon's reasonable satisfaction.

(2) The monthly installment charge shall consist of twenty-four equal payments representing recovery of the total amount to be amortized as well as interest charged at a rate of 10.12 percent per annum of the unpaid principal.

(3) If the service is terminated before all installment payments have been made, the remaining unpaid amount of the installment charges shall be due and payable.

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<sup>2</sup> See *infra* B.5-B.9.

(4) Service provided under this installment payment option is subject to all other terms and conditions of this Agreement or applicable tariffs, including those relating to deposits, billing, form of payment, late payment charges, and dispute resolution, if any. Each amortizing CLEC hereby grants to Verizon a continuing security interest in and to all of that CLEC's personal property including the CLEC's now-owned and hereafter acquired accounts, goods, general intangibles, equipment, inventory, and contract rights and in the proceeds and products thereof. The security interest granted hereby is to secure payment and performance of the obligations of each amortizing CLEC hereunder. The CLEC hereby agrees to execute all documents, including financing statements, required by Verizon to evidence, perfect and enforce the security interest granted hereunder. In the event of default, Verizon shall have all rights and remedies available to it under the Uniform Commercial Code in addition to any rights and remedies available under law or equity.

**B. Applicability of Cross Connect Rates.**

B.1. The Settlement Parties have agreed to the cross connect rates and rate structure set forth in Section 2.J. of Exhibit 1.

B.2 The Settlement Parties intend for the agreed-upon cross connect rates and rate structure to become effective in those areas of Virginia that were part of the former Bell Atlantic service area upon the Commission-approved effective date of the new tariff associated with this agreement.

B.3. The Settlement Parties agree to use their best efforts to achieve regulatory approval by the Commission of the cross connect rates and rate structure set forth in Section 2.J. of Exhibit 1.

B.4. The Settlement Parties agree not to assert that Verizon's agreement to propose and support these rates constitutes a concession that collocation for the purpose of expanded interconnection, governed by FCC tariffs, should be priced the same as collocation used to access unbundled network elements. The Settlement Parties further agree not to cite this Settlement Agreement against any other Settlement Parties except in a proceeding before the Commission to enforce the rates, terms and conditions contained in this Agreement.

B.5. No NRC will be billed for cross connects in use by a CLEC on or before September 30, 2001.

B.6. CLECs will be billed the NRCs set forth in Exhibit 1 for all cross connects installed but not used by the CLEC on September 30, 2001, subject to B.7., B.8., and B.10. following. For all cross connects ordered after September 30, 2001, the non-recurring and recurring rates set forth in Exhibit 1 will apply, regardless of whether the CLEC utilizes the cross connects.

B.7. No later than three months after Commission approval of this Agreement, Verizon will inform each CLEC in writing of the number of cross connects both used and installed but unused by the CLEC, by central office, by cross connect type, on September 30, 2001.<sup>3</sup> No later than thirty (30) days after Verizon notifies the CLEC under this

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<sup>3</sup> The utilization of cross connects for determining NRCs owed to Verizon will be determined by the number of cross connects in place in all of the collocation arrangements in the state, less the total of the number of cross connects in service and the number of cross connects returned to Verizon pursuant to B.5 and B.6.

Section, each CLEC must notify Verizon in writing of the number of cross connects installed but not used (as of September 30, 2001), if any, that it intends to give back to Verizon.<sup>4</sup> The Voice Grade cross connects the CLECs elect to give back must be returned in consecutive 100 pair complements (e.g., PORT – XXX – 50-01-001 to PORT – XXX – 50 – 01 – 100) with no working circuits. DS1 cross connects must be returned in consecutive increments of 28 DS1 complements with no working circuits.<sup>5</sup> A CLEC will not be assessed the MRCs or NRCs set forth in Sections 2.J. of Exhibit 1 for the cross connects it elects to return to Verizon. The CLECs will not be assessed any charges to return the cross connects in accordance with this section.

B.8. CLECs will not be billed any additional NRCs for CCOE cross connects for which NRCs have already been billed at the time of settlement.

B.9. The CLECs will be billed the MRCs set forth in Sections 2.J. of Exhibit 1 for all cross connects (used or unused) in place at each central office on September 30, 2001, except for those cross connects identified to be returned to Verizon in Section B.7, above.

B.10. A CLEC's first bill for the NRCs set forth in Exhibit 1 for cross connects not utilized by September 30, 2001 will be sent from Verizon no sooner than March 31, 2002, but no later than September 30, 2002, or six months from the date the Commission approves this Agreement, whichever is later; provided, however, that the CLEC and

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<sup>4</sup> CLECs will identify cross connects to be returned on the *Notice of Termination Reduction Form* available by request from [collocation.applications@verizon.com](mailto:collocation.applications@verizon.com)

<sup>5</sup> CLECs will be billed MRCs for DS1 cross connects in increments of 28, with any portion of an increment being billed as a complete increment (e.g., 48 DS1s will be billed as two units; 24 DS1s as one unit). If a CLEC holds a non-standard number of DS1 cross connects (e.g., 48 DS1s), the CLEC may return cross connects to reduce inventory to achieve a standard number of cross connects (i.e., a multiple of 28 DS1s).

Verizon agree on the cross connect utilization within four weeks after Verizon notifies the CLEC of its utilization rate under this Section. The CLECs will have the option to pay these NRCs according to the amortization schedule described in A.2, above. Interest will begin to accrue according to that schedule as of the billing date.

B.11. The Settlement Parties agree to work in good faith to determine the number of cross connects ordered and used by the CLEC, measured as of the Commission-approved effective date of the new tariff associated with this agreement. The Settlement Parties agree that any disputes over the number of cross connects ordered or used shall be brought to the Commission by a Joint Petition of the affected parties. The affected parties agree to ask the Commission to resolve the dispute on an expedited basis. Upon Commission resolution of the dispute, CLECs will have 30 days to return any of the disputed cross connects to Verizon. Verizon will have four months from this date to bill the CLEC.

**C. Augment Rates**

C.1. The collocation cable augment application/engineering and implementation fee set forth in Section 2.J. of Exhibit 1 shall also apply to line sharing augment requests.

**D. Power Rates**

The Settlement Parties have agreed to the power rates set forth in Section 2.J. of Exhibit 1. These rates will be applied on a per load amp basis, and in a manner otherwise described in Sections 2.B. and 2.F. Verizon will accept CLEC power reduction requests at no charge for 30 days after the settlement date of this Agreement; except that: fusing changes will be subject to the 4-hour labor rate; and cable reconfigurations will be subject



to an augment fee. Verizon has added, in Exhibit 1, tariff language permitting audits and penalties in the event a CLEC is found to be using more power than it stated on its application. Verizon will further permit CLECs to designate the load amps they require and the fused capacity of each power feed to be up to 2.5 times the load per feed, subject to industry-standard fuse sizes or circuit breaker sizes, whichever is applicable to the specific collocation arrangement.

**E. Provisioning Intervals**

Verizon will include in its tariff collocation interval provisions, including a provision for 45-business-day augments, as defined in Section 2 of Exhibit 1.

**F. Terms and Conditions**

The Settlement Parties agree to adhere to the rates, terms and conditions set forth in Exhibit 1 to this Agreement, subject to Sections G and H.

**G. Effect of Other Rulings on Settlement Terms**

G.1. If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in applicable law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the affected party shall provide written notice to all the Settlement Parties; provided, however, that the Settlement Parties agree to the intervals set forth in Exhibit 1 regardless of any subsequent FCC decision on intervals. The Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to applicable law. In the event the parties cannot agree to new terms, any Settlement Party

may petition the Commission for resolution of the affected provision(s); provided that this Agreement shall remain in effect until such time as the issues are resolved through mutual agreement or a Commission order. In addition, in the event of extraordinary and unforeseeable technological changes that make it unreasonable for the Settlement Parties to comply with obligations imposed by this Agreement, any of the parties, individually or jointly, may seek a modification of the obligations of the Agreement from the Commission.

**H. Scope of Agreement; Effect of Agreement; Reservations of Rights**

H.1. The obligations under this Agreement shall apply for three (3) years from the date of its execution, subject to Section G above. Verizon's tariffs filed as a result of this Agreement will remain in effect until superseded by another Commission-approved tariff. The Settlement Parties may enforce this Agreement in any appropriate forum.

H.2. The Settlement Parties agree jointly to promote and affirmatively to support the rates, terms and conditions set forth in Exhibit 1, and to use best efforts to support these terms in those portions of Virginia covered by this Agreement. Each party agrees to sign a Joint Petition to the Commission seeking its approval of a revised collocation tariff incorporating the rates, terms and conditions set forth in Exhibit 1, and to use best efforts to have the Joint Petition approved.

H.3. This Agreement resolves, with prejudice, all of the issues specifically addressed herein and precludes the parties from asserting contrary positions with respect to any such issue during subsequent litigation before the Commission, including individual arbitration proceedings instituted under Section 252(a)(1) of the Act; provided, however, that this Agreement is made without admission against or prejudice to any

factual or legal positions which any of the Settlement Parties may assert (but not in derogation of this Settlement) (i) in the event that this Agreement is rejected or modified by a regulatory agency or court; or (ii) in other telecommunications proceedings before the Commission; or (iii) other proceedings before the Commission or other forums. The parties agree that they will not cite this Agreement, as controlling precedent or for any other purpose, against any Settlement Party in any other state or federal proceedings, except those in connection with the enforcement of this Agreement in Virginia.

H.4. This Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission should fail to grant such approval, or should modify adversely any material term or condition within the Agreement, any Settlement Party may elect to withdraw, in whole or in part, from this Agreement, upon written notice to the Commission and Settlement Parties within 20 days of issuance of the adverse Commission order. In that event, the Settlement Parties shall have all legal rights that they may have waived by entering into this Agreement, including the right to seek Commission approval of their original proposed rates, terms and conditions, or modifications thereof.

H.5. If a court issues a final order which prevents or precludes implementation of any material term(s) of the Agreement, then any Settlement Party may withdraw, in whole or in part, from this Agreement, upon written notice filed within 20 days of service of the Court's Order. The Settlement Parties shall have all legal rights that they may have waived by entering into this Settlement.

H.6. It is expressly understood and agreed that this Agreement constitutes a negotiated resolution of the collocation rate proceedings pending in the portions of

Virginia covered by this Agreement, with the bargained-for concessions only supporting and being consideration for the conditions contained herein. The Settlement Parties agree not to use documents produced during the course of negotiations, including position papers, memoranda, e-mails or other communications otherwise made by and between the parties, their subject matter experts, business representatives or other consultants and agree that such data shall remain confidential and not available for the purposes of litigation or otherwise presented publicly or under seal or other proprietary protection in any forum.

H.7. This Agreement does not constitute an agreement under Section 252(a)(1) of the Telecommunications Act of 1996. The Settlement Parties further agree that Verizon is not obligated by this Agreement to provide the rates, terms and conditions set forth in Exhibit 1 in any other jurisdiction not covered by this Agreement.

**I. Other Provisions**

I.1. This Agreement constitutes the entire agreement among the Settlement Parties on the matters raised herein, and the Settlement Parties agree that it supersedes and controls any and all prior communications, correspondence, memorialization of agreement, or prior agreement between the Settlement Parties or their representatives relative to the matters contained herein.

I.2. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements, whether oral, written, expressed, or implied, that in any way affect or condition the validity of this Agreement or alter its terms.

I.3. This Agreement is a compromise and settlement of disputed issues and claims and is a product of arms-length negotiations and the drafting of all Settlement

Parties. Ambiguities in this Agreement are not to be construed by operation of law against any Settlement Party. This Agreement has no precedential value other than as to the matters within its scope and then only as among the Settlement Parties.

I.4. This Agreement may be modified only by a written document signed by all of the undersigned Settlement Parties.

I.5. No waiver of this Agreement or of any of the promises, obligations, terms, or conditions hereof shall be valid unless it is written and signed by the Settlement Party against whom the waiver is to be enforced.

I.6. Nothing in this Agreement changes Verizon's obligations to comply with the merger conditions imposed by the FCC in CC Docket No. 98-184 relating to Verizon's data affiliate.

I.7. This Agreement shall be binding upon and shall inure to the benefit of the Settlement Parties thereto, their successors, parents, subsidiaries, affiliates, assigns, agents, directors, officers, employees, and shareholders.

I.8. Each Settlement Party hereby represents and warrants to each of the Settlement Parties that: (a) it has full legal right, power and authority to enter into and perform this Agreement; and (b) the execution and delivery of this Agreement by it and the consummation by it of the transactions contemplated hereby have been duly authorized by it.

I.9. Each Settlement Party hereby represents and warrants to each other Settlement Party that the execution, delivery and performance of this Agreement and the consummation by it of the transactions contemplated hereby will not result in a violation of its certificate of incorporation, partnership agreement or by-laws, or any law, rule,

regulation, order, judgment or decree applicable to it or by which any of its properties or assets is bound or affected; or require the consent, authorization or order of, or filing or registration with, any governmental authority or any other person for the execution, delivery and performance by it of this Agreement.

I.10. Each Settlement Party warrants that it is represented by competent counsel with respect to this Agreement and all matters covered by it; that it has been fully advised by said counsel with respect to its rights and obligations with respect to the execution of this Agreement; and that it authorizes and directs its attorneys to execute such papers and to take such other action as is necessary and appropriate to effectuate the terms of this Agreement.

I.11. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute one and the same instrument and shall be effective on the latest date signed.

**J. Election of Entire Previous Agreement in Lieu of This Agreement**

J. Any CLEC may elect all of the rates, terms and conditions of the original settlement agreement executed on December 8, 2000 in lieu of all of the rates, terms and conditions contained in this Agreement. A CLEC must make its election no later than 30 calendar days after the Commission approves this Agreement. A CLEC must make a single election for the entire area covered by this agreement, and for the entire period of this agreement. Verizon agrees to offer the rates, terms and conditions contained in the December 8, 2000 settlement agreement to any electing CLEC for three (3) years from the date of Commission approval of this Agreement.

**SO AGREED:**

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For: Verizon Virginia Inc.

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For: AT&T Communications of Virginia, Inc. and its affiliates

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For: WorldCom and its affiliates

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For: Sprint Communications Company

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For: 360 Communications Co. of Charlottesville, D/B/A ALLTEL Communications, Inc.

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For: Broadslate Networks of Virginia, Inc.

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For: NTELOS Network, Inc. and R&B Network, Inc.