

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

IN THE MATTER OF THE INQUIRY)	
INTO VERIZON VIRGINIA INC.'S)	Case No. PUC-2002-0046
COMPLIANCE WITH THE)	
CONDITIONS SET FORTH IN)	
47 U.S.C. § 271 (c))	

DECLARATION OF ALLEN FREIFELD
ON BEHALF OF WORLDCOM, INC.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

IN THE MATTER OF THE INQUIRY)
INTO VERIZON VIRGINIA INC.'S) **Case No. PUC-2002-0046**
COMPLIANCE WITH THE)
CONDITIONS SET FORTH IN)
47 U.S.C. § 271 (c))

DECLARATION OF ALLEN FREIFELD

1. My name is Allen Freifeld. I am an attorney for WorldCom Inc.'s ("WorldCom") Law and Public Policy Group. Before joining WorldCom in 1996, I was employed by the Maryland Public Service Commission ("MD Commission") from 1976 to 1996. At the Commission, I held a variety of positions, including law clerk, Hearing Examiner and Chief Staff Counsel. I received an economics degree from the State University of New York at Binghamton and a law degree from the University of Maryland.
2. The purpose of this testimony is to demonstrate that the State Corporation Commission ("Commission" or "SCC") is not in a position to fulfill the consultative role normally played by state public utility commissions in Section 271 proceedings and for that reason the Commission should not opine on Verizon's compliance with the competitive checklist.
3. In summary, Section 271 of the Telecommunications Act gives states a consultative role in the Federal proceedings. Under normal circumstances, where states have played a major role in implementing the Federal Act in their

respective states – including issuing arbitration decisions, determining UNE rates compliant with Sections 251 and 252, approving and enforcing arbitration agreements under the Act, this consultative role makes sense. In Virginia, however, the Commission has determined that it cannot waive its sovereign immunity and therefore has determined that it will not conduct further arbitrations under the Federal Act or otherwise implement portions of the Federal Act that would subject it to suit in Federal Courts. As a result, WorldCom and other CLECs have asked the Federal Communications Commission (“FCC”) to arbitrate issues relating to the implementation of the Federal Act in Virginia.¹ These issues have been contentiously litigated at the FCC with hundreds, if not thousands, of pages of testimony and briefs. Many of the issues in the arbitration relate directly to the Checklist issues addressed in a 271 case. As of the date of this testimony, the FCC has not yet issued its decision. Until and unless those issues are resolved and a contract has been signed, Verizon cannot be said to have complied with the Checklist items that relate to the issues in the arbitration. Specifically, the Commission should not opine, positively or negatively, on Verizon’s compliance with Checklist Items 1,2,4,5,6,10,13 and 14.

4. With respect to Section 271 applications, the FCC is required to consult with the State Commission to verify the compliance of the Bell operating company with the competitive checklist. The state commission is expected to render an

¹ 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

opinion because, under the normal operation of the Act, the state commission is charged with implementing the provisions of the Federal Act pursuant to the arbitration process, and charged with enforcing compliance with the Act.

5. In Virginia, the presumption that the state commission is in a good position to render an opinion on checklist compliance does not apply. There are a large number of disputes between Verizon and WorldCom regarding Verizon's performance of its obligations under the Act. These disputes are currently pending before the FCC in the WorldCom/Verizon arbitration.² These disputes involve numerous, complex issues that have been the subject of extensive testimony, cross-examination, and briefing at the FCC. The SCC has not been directly involved in that arbitration process at the FCC. The SCC will not be issuing a decision on the arbitration issues. The SCC will not be enforcing the provisions of any contract. As a result, unlike the normal situation when a state commission conducts and enforces interconnection agreements under the Federal Act, the SCC here does not possess special knowledge concerning those issues. Nor does the SCC possess any special insight into whether Verizon's positions regarding the disputed issues comply with its obligations under the Act or the competitive checklist.
6. Checklist item (i) requires that Verizon provide CLECs with non-discriminatory interconnection. There are numerous interconnection issues that, to date, remain unresolved at the FCC. Verizon has proposed a number

Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket No. 00-218.

of interconnection terms and conditions which violate sections 251 (c)(2) and 252 (d)(1), and the FCCs regulations implementing those sections. Those terms and conditions are at issue in the Verizon/WorldCom arbitration currently pending at the FCC and will be resolved by the FCC in that proceeding, based on the substantial record created in that proceeding. While these matters are pending in the arbitration, Verizon will continue to offer interconnection on its proposed terms, terms which violate the Act and FCC regulations.

7. Specifically, Issues I-1, III-3, III-1 and IV-2 relating to interconnection remain unresolved in the WorldCom/Verizon arbitration pending an FCC decision. These issues correspond to the following topics: Verizon proposes to impose a requirement for multiple points of interconnection on WorldCom despite the FCCs rules permitting a CLEC to establish a single technically feasible point of interconnection per LATA; Verizon proposes to impose charges on WorldCom for traffic which originates on Verizon's network in violation of 47 CFR 51.703(b); Verizon refuses to provide interconnection via the technically feasible method of a Mid-Span Fiber Meet Point arrangement, despite FCC regulations which require it to do so. See 47 CFR 51.321 (a)&(b); Verizon proposes to limit WorldCom's right to indirect interconnection, despite the specific provision in the Act for this form of interconnection and the FCCs endorsement of indirect interconnection. See Act, section 251(a)(1); Local Competition Order, ¶ 997; Verizon refuses to

² Id.

interconnect via two-way trunks despite its obligation to do so upon request by a CLEC; and Verizon proposes to charge WorldCom access charges for interconnection facilities to the extent that Verizon provides the facilities, in violation of FCC requirements that the charge for such facilities be based upon the rate for unbundled transport and that the cost be shared by the carriers based upon relative usage.

8. As a result of these open issues at the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance with checklist item (i).
9. Checklist item (ii) requires that Verizon provide non-discriminatory access to network elements. To date, numerous issues relating to UNE access are unresolved at the FCC. The prices at which Verizon proposes to offer unbundled network elements and the associated non-recurring charges exceed the prices that are produced by a faithful implementation of the FCC's Total Element Long Run Incremental Cost (TELRIC) regulations. Therefore, Verizon is not providing access to unbundled network elements in accordance with the requirements of sections 251(c)(3) and 252 (d)(1).
10. Specifically, Issues II-1, II-2, III-6, III-7 and I-11 relating to access to UNEs remain unresolved pending an FCC decision. The record in the WorldCom/Verizon arbitration before the FCC contains thousands of pages of testimony describing in great detail the myriad ways in which Verizon's cost models and inputs deviate from the TELRIC standard. The embedded models used by Verizon to develop UNE costs, as well as the multitude of embedded

inputs used by Verizon in the models, all contribute to an end result, which is inconsistent with the requirements of Section 252 (d)(1). The decision regarding UNE rates will be made by the FCC in that proceeding, rather than by the SCC here. Until such time as the FCC issues its ruling in the arbitration and sets TELRIC compliant rates, Verizon will continue to propose rates that exceed the level required by section 252(d)(1) and the FCC's regulations implementing that section.

11. In addition to the fact that Verizon only offers UNEs at prices that exceed the levels mandated by Section 252 (d)(1), Verizon will not provide combined network elements that it ordinarily combines within in its own network, but that do not happen to be combined at the moment the competitive carrier orders the elements. Verizon's failure to provide combined network elements that it ordinarily combines within in its own network, which do not happen to be combined at the moment the competitive carrier orders the elements, is a violation of its obligation to provide nondiscriminatory access to network elements. This matter is also pending before the FCC in the Verizon/WorldCom arbitration.
12. Further, Verizon proposes to contractually retain the unilateral right to deny WorldCom access to OSS any time Verizon determines that an "OSS abuse" has occurred. This matter is pending before the FCC in the Verizon/WorldCom arbitration.

13. With respect to checklist item (ii), and in light of the above-unresolved issues currently before the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance at this time.
14. Checklist item (iv) requires that Verizon provide competitors with unbundled local loops in compliance with relevant regulations. Certain issues relating to loops remain open at the FCC and unresolved as of the date of this declaration. Verizon conditions its offers of access to subloops and dark fiber in a variety of ways which make the access unreasonable, costly, and illusory.
15. Specifically, Issues III-11 and III-12 remain unresolved at the FCC. Verizon's requirement that WorldCom access subloop only through an intermediate device known as a COPIC, renders the proffered access extremely difficult, if not impossible, to achieve. Similarly, the dark fiber access offered by Verizon is so full of restrictions and limitations that WorldCom is effectively denied the right to the meaningful access to dark fiber that the FCC's rules require. Verizon limits the availability of dark fiber to hard termination points and prohibits splicing altogether as a means of accessing dark fiber. Verizon also requires collocation in order to access dark fiber, and prohibits WorldCom from accessing dark fiber in manholes or vaults.
16. Like the other matters discussed herein, the issue of access to dark fiber and subloops is currently pending before the FCC in the Verizon/WorldCom arbitration. Until such time as the FCC issues its ruling, Verizon will continue

to offer access which does not satisfy the requirements of the Act or FCC regulations.

17. As a result of these open issues at the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance with checklist item (iv).
18. Checklist item (v) requires that Verizon provide non-discriminatory access to unbundled transport. To date, several issues remain unresolved at the FCC on this item.
19. Specifically, Issues IV-18 and IV-21 remain unresolved at the FCC. These issues relate to Verizon's failure to offer the full features, functions and capabilities of unbundled transport that it is required to offer. Verizon will not provide the multiplexing feature of unbundled transport upon request. Nor will Verizon provide the functionality provided by its digital cross-connect systems in the same manner that it provides such functionality to interexchange carriers. Nor will Verizon provide unbundled dedicated transport to be used in conjunction with facilities purchased out of tariffs, so as to enable WorldCom to provide physical redundancy for customers who require this level of service.
20. Verizon's failure to provide unbundled transport in accordance with its obligations under the Act and FCC regulations is one of the many issues currently pending before the FCC in the Verizon/WorldCom arbitration. Until such time as the FCC issues its order in the arbitration, Verizon will continue

to offer unbundled transport, which falls short of its obligations under the Act and FCC regulations.

21. With respect to checklist item (v), and in light of the above-unresolved issues currently before the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance at this time.
22. Checklist item (vi) requires Verizon to provide unbundled switching in accordance with FCC regulations. To date, issues remain open and unresolved at the FCC on this issue.
23. Specifically, Issue III-9 remains unresolved pending an FCC decision. Verizon interprets the FCCs 'switching exception' such that it will not provide unbundled switching whenever there is a customer with a single line in Density Zone 1 who has three or more other locations somewhere within the same LATA. Verizon's interpretation is inconsistent with FCC regulations, which only relieve it of the obligation to provide unbundled switching when there are four or more lines going to a single customer location. This matter is currently pending in the arbitration before the FCC. Until such time as the FCC resolves this matter, Verizon will continue to unlawfully limit its offer of unbundled switching.
24. As a result of these open issues at the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance with checklist item (i).

25. Checklist item (x) requires Verizon to provide non-discriminatory access to databases. To date, issues remain unresolved at the FCC on this topic.
26. Specifically, Issue IV-23 remains unresolved. Verizon proposes to place restrictions on WorldCom's use of the Line Information Database, restricting its use to local calls only, in violation of the Act, which provides that an unbundled network element may be used to provide any telecommunications service, and in violation of FCC regulations which prohibit ILECs from placing restrictions on the use of unbundled network elements. This matter is currently pending before the FCC in the Verizon/WorldCom arbitration. Until such time as the FCC resolves this matter, Verizon will continue to unlawfully place restrictions on WorldCom's use of the database unbundled network elements.
27. With respect to checklist item (x), and in light of the above-unresolved issues currently before the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance at this time.
28. Checklist item (xiii) requires that Verizon offer reciprocal compensation arrangements in accordance with section 252(d)(2). To date this issue remains open and unresolved at the FCC.
29. Specifically, Issue III-5 remains open. Verizon proposes to pay WorldCom the end office rate for transport and termination of Verizon's originating traffic despite FCC regulations, which clearly require Verizon to pay the tandem rate for this service. This issue is pending before the FCC in the

Verizon/WorldCom arbitration. Until such time as the FCC issues its ruling in the arbitration, Verizon will continue to offer reciprocal compensation which is inconsistent with the requirements of Section 252(d)(2), and the FCC's regulations implementing that section. Given Verizon's position, and the pendency of this issue before the FCC, the Commission is not in a position to find that Verizon is providing reciprocal compensation in accordance with the requirements of Section 252 (d)(2).

30. With respect to checklist item (xiii), and in light of the above-unresolved issues currently before the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance at this time.
31. Checklist item (xiv) requires that Verizon provide competitors with services for resale in accordance with section 251(c)(4) and 252(d)(3). Currently, issues remain unresolved at the FCC on this subject.
32. Specifically, Issue IV-84 remains unresolved at the FCC. Verizon will not make telecommunications services available for resale in accordance with the requirements of Section 251(c)(4) if a requesting carrier also uses another service delivery method made available under the Act, such as unbundled network elements, to serve a portion of a customer's telecommunications needs. Verizon imposes an unreasonable limitation on the availability of telecommunications services for resale, in violation of Section 251 (c)(4), by refusing to make such services available for resale to be used in conjunction with other service delivery methods. Thus, for example, Verizon will not

make DSL service available for resale if WorldCom also provides local exchange service to an end-user customer via the use of unbundled network elements.

33. This matter is currently pending before the FCC in the Verizon/WorldCom arbitration. Until such time as the FCC rules in that proceeding, Verizon will continue to impose unreasonable limitations on the resale of telecommunications services in violation of Section 251(c)(4) of the Act.
34. With respect to checklist item (xiv), and in light of the above-unresolved issues currently before the FCC, the Commission should refrain from expressing an opinion on Verizon's compliance at this time.
35. Following issuance of the FCC's order several crucial events must occur before Verizon's compliance with the checklist can be judged. First, any appellate review of the Order must be completed because Verizon's obligations under the Act will be unsettled while appellate review is in process. For example, the Commission will not be in a position to judge Verizon's compliance with the interconnection or pricing requirements of the Act if the FCC's arbitration Order setting forth those requirements is under appeal and subject to change. Second, an Interconnection Agreement between Verizon and WorldCom, consistent with the final, non-appealable Order of the FCC, must be executed and approved. Finally, Verizon's performance of its obligations under the Interconnection Agreement must be judged. Ultimately, an evaluation of Verizon's compliance with the competitive checklist requires

a review of Verizon's actual performance of its obligations. The execution of an Agreement, absent any actual experience with Verizon's performance under the Agreement, does not in and of itself constitute proof that Verizon is providing the checklist items.

36. In conclusion, the Commission should refrain from expressing an opinion at this time regarding Verizon's compliance with the requirements of Section 271. The Commission will be in a better position to judge Verizon's compliance after an Interconnection Agreement is in place between it and WorldCom and after Verizon has had an opportunity to perform its obligations under that Agreement.
37. This concludes my declaration on behalf of WorldCom.