COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

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

DECLARATION OF KAREN FURBISH
ON BEHALF OF WORLDCOM, INC.

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DECLARATION OF KAREN FURBISH

I. INTRODUCTION AND SUMMARY OF TESTIMONY

1. My name is Karen Furbish. I am Principal Analyst – Access Services, for WorldCom, Inc. My business address is 22001 Loudoun County Parkway, G2-3-572, Ashburn, Virginia 20147. Since September 2000, I have been responsible for development and implementation of access-related policies in WorldCom's National Carrier Management organization. I have participated in various state and federal proceedings on Special Access issues.
2. I began my career in telecommunications at the Connecticut Department of Public Utility Control, where I was employed from 1984-1993 in various supervisory and managerial positions in telecommunications and utility regulation, the last four years of which I served as Director of Utility Regulation and Research. I left the Connecticut DPUC to serve as Executive Director of the Connecticut General Assembly's 1993-94 Telecommunications Task Force. My responsibility was to facilitate a

negotiated agreement amongst rival parties on exact language for new state laws opening all of Connecticut's intrastate telecommunications markets to competition.

3. I subsequently worked as an independent telecommunications regulatory consultant from 1994 to 1997 for consumer organizations, law firms, other consulting firms, and new market entrants. In that capacity, I appeared before numerous state commissions and the FCC on matters pertaining to local market entry policies, quality of service, alternative regulation of ILECs, consumer issues, competition rules, and numbering issues.
4. From 1997-1999, I was director of research and consulting for Telecommunications Reports International, Inc., where I authored or edited numerous books and reports on telecommunications business and regulatory issues, and conducted research on a contract basis for numerous companies and state regulatory agencies on telecommunications market and policy issues. Prior to Joining WorldCom in 2000, I served as a free-lance author and analyst to the telecommunications trade press, and advised new market entrants on regulatory and business strategies.
5. In this Declaration, I will explain why Special Access is so important to the development of competition in the Commonwealth of Virginia, as Verizon-Virginia's President Robert W. Woltz has acknowledged. I also explain why Verizon-Virginia's continued dominance as a provider of "last-mile" Special Access circuits makes it necessary for the Commission to adopt performance measurements and standards applicable to Verizon-

Virginia's provision of Special Access services to its non-affiliated competitive carrier-customers, to its own affiliates, and directly to its retail customers. Only by monitoring Verizon's Special Access performance can the Commission ensure that competing carrier-customers of Verizon receive good service for their customers on a non-discriminatory basis.

II. SPECIAL ACCESS IS CRITICAL FOR SUCCESSFUL LOCAL MARKET ENTRY AND COMPETITION IN GENERAL

6. Competing carrier-customers of Verizon are and will remain overwhelmingly dependent on Verizon's interstate and intrastate "last-mile" Special Access services for competitive market entry. As Verizon acknowledges,[1] CLECs and IXCs like WorldCom with CLEC operations, use Special Access as a means to compete to serve business and institutional customers. As such, I urge the Virginia State Corporation Commission (Commission) to put in place a system by which it can monitor the provisioning and maintenance of intrastate and interstate Special Access services on a wholesale basis to affiliated and non-affiliated carrier customers, and "special services" on a retail basis to Verizon's end-user customers. The Commission can include Special Access performance measurements and standards as part of Verizon-Virginia's Sec. 271-related performance plan, or as a separate plan similar to the New York Public Service Commission's (NY PSC) "Special

[1] Declaration of Robert W. Woltz, Jr., President of Verizon-Virginia (Woltz Declaration) page 3 at paragraph 5.

Services Guidelines," which predate the Telecommunications Act of 1996. I recommend the Commission take such steps in order to ensure that Verizon's competing carrier-customers receive good quality, non-discriminatory performance from Verizon in the provision and maintenance of Special Access Services.

III. BACKGROUND ON ILEC SPECIAL ACCESS SERVICES

7. The Federal Communications Commission (FCC) has established two basic categories of access services: Special Access services and switched access services. "Special Access services do not use local switches; instead they employ dedicated facilities that run directly between the end user and the IXC's [interexchange carrier] point of presence (POP). Switched access services, on the other hand, use local exchange switches to route originating and terminating interstate toll calls."[2] Special Access services, which are functionally equivalent to certain unbundled network elements (UNEs), ,as implied in the Woltz Declaration,[3] are offered at a number of connection speeds, from analog voice-grade services to digital services – DS0, DS1, DS3, as well as up to very large capacity SONET services. I have attached a diagram (Attachment A) in which it can be seen how Special Access is equivalent to UNE loops and transport.

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[2] *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 14 FCC Rcd 14221, at para. 8 and n. 9 (1999) (*Pricing Flexibility Order*), aff'd sub nom. WorldCom, Inc. v. FCC, 238 F.3d 449 (D.C.Cir.2001). FCC, 238 F.3d 449 (D.C. Cir. 2001).

[3] Id.

8. It should be noted, however, that the FCC's definition does not capture all the means by which Special Access is used or provided. For example, Special Access is also used to connect end users to CLEC collocation facilities. Nor does the FCC's definition take into account the fact that incumbent LECs like Verizon can provide to a retail end user a dedicated circuit from the end user's premises to an IXC Point of Presence.

IV. THE USE OF INTRASTATE SPECIAL ACCESS AND UNBUNDLED NETWORK ELEMENTS VERSUS INTERSTATE SPECIAL ACCESS.

9. Intrastate Special Access operates in the same manner as interstate Special Access. However, intrastate Special Access is predominantly used to provide local or intraLATA private line-type service to carrier-customers and end users. Intrastate Special Access use is limited because the FCC's "mixed use" rule[4] requires that any circuits carrying 10% or more interstate traffic must be purchased out of an incumbent LEC's interstate access tariff. Where possible, competing carriers will attempt to take advantage of functionally equivalent loop and transport UNEs, which are priced based on TELRIC or some other forward-looking cost method, unlike inter- or intrastate Special Access, which are not. However, as discussed below, there are regulatory and practical limitations to the ordering of UNEs.

V. THE FACTORS THAT REQUIRE OR "STEER" CARRIERS TO ORDER SPECIAL ACCESS

[4] 47 C.F.R. 36.154

10. First, the ability of competing carrier-customers to use a combination of loop and transport UNEs (referred to as "enhanced extended links" or EELs) to connect customers to their own or other carriers' long distance networks is circumscribed by another set of FCC rules. Under the FCC's "interim" EELs rules, the conversion of Special Access circuits to EELs is not allowed unless the EEL for a particular customer will carry a "significant amount of local exchange service" [voice] for that customer.[5] The FCC's local usage requirements are very restrictive: For example, competing carriers seeking to serve customers with bundled local, long distance and data services, cannot convert to or order EELs in most situations.

11. Second, incumbent LECs have been known to engage in anti-competitive tactics, such as claiming no capacity exists to provision a loop or transport circuit as a UNE, but then having facilities available when the carrier-customer orders the same circuit under the incumbent's more expensive interstate special access tariff. For example, the Michigan Court of Appeals recently upheld a $3.75 million fine imposed by the Michigan Public Service Commission against Ameritech for refusing to provide unbundled local transport to a WorldCom subsidiary. Ameritech claimed it lacked facilities necessary to fulfill WorldCom's orders, and that there was no requirement under the Telecommunications Act of 1996 to add facilities. The evidence showed that while Ameritech refused to install

[5] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, rel. June 2, 2000 (FCC 00-183).

additional equipment to fulfill WorldCom's orders, it readily did so to serve its own customers or to fill WorldCom's orders for higher cost Special Access service.[6]

12. Third, there are separate ordering systems and processes in place for carrier-customers to order incumbent LEC facilities: The older, more well-established Access Service Request (ASR) system is much easier for competing carrier-customers like WorldCom to use than the newer, separate, less well-developed Local Service Request (LSR) system for the ordering of UNEs. As a result, CLECs have been steered to order Special Access via ASRs because efficient LSR ordering processes are not available.

13. Moreover, Verizon and other large ILECs have company-specific account teams to facilitate the sale of their Special Access services, whereas in order to obtain these same last-mile links as UNEs, competing carrier customers must confront several obstacles in addition to the LSR ordering system, e.g., protracted negotiations, arbitrations, lawsuits.

VI. VERIZON AND OTHER INCUMBENT LECS ARE STILL THE DOMINANT PROVIDERS OF "LAST-MILE" FACILITIES LIKE SPECIAL ACCESS

14. Clearly incumbents like Verizon are and will –for the foreseeable future— remain dominant in the provision of all last-mile facilities, whether a

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[6] Michigan Bell Telephone Company, d/b/a Ameritech Michigan, v. Michigan Public Service Commission, and WorldCom Technologies, Inc., unpublished, January 22, 2002.

competing carrier must order Verizon's facilities as UNEs, or EELs, or intrastate Special Access, or -- most often -- as interstate Special Access.

15. Competitive LECs and IXCs are dependent on the ubiquitous "last mile" facilities of incumbent LECs like Verizon to compete for larger-volume business and government customers. CLECs and IXCs compete both against each other and against Verizon to serve higher-volume customers in Virginia. While large carriers like WorldCom have built some facilities, it simply has not been economically efficient for any competitor to duplicate incumbent LEC networks. And, given the current state of the economy in general and the telecommunications sector in particular, capital funding has either become so scarce or so costly that the ability of companies to continue to build out their networks to compete with incumbent LECs is seriously constrained. Even larger companies like WorldCom have been forced to reduce capital expenditures and, therefore, construction of new facilities.

16. In addition, it is often difficult for competitors to access multi-tenant buildings to put in facilities to serve tenants, where incumbent LECs already have such access. Competitors are often subject to barriers to entry, additional costs and time necessary to serve some buildings, making it more likely that a competitor will resort to ubiquitous facilities of the incumbent LECs to serve a customer.

17. WorldCom looks first to its own facilities to serve a customer. If no WorldCom "on-net" facilities are available, then an attempt is made to

find another carrier with available facilities. The first choice is another competitive access provider (CAP) or CLEC, simply because CAP/CLEC services are usually priced lower than incumbent LECs' Special Access services. If there are no other competing providers available, then service must be ordered from the incumbent LECs, whose facilities are the most ubiquitous. In fact, WorldCom must depend on incumbent LECs to meet 90% of its "off-net" facilities needs. Despite a company policy favoring aggressive use of CAPs and other CLECs, in reality only about 10% of WorldCom's "off-net" requirements are met by other CAPs or CLECs.

VII. NON-DISCRIMINATORY PROVISIONING OF SPECIAL ACCESS IS IMPORTANT TO COMPETITION AND ECONOMIC DEVELOPMENT IN THE COMMONWEALTH

18. As the NY PSC stated:

> Because Verizon's facilities are used by carriers as they are entering the market, including the local market, on a facilities basis, Verizon's Special Services offerings are crucial for the development of facilities-based competition in the local market, and for the New York economy.[7]

19. Even in New York, arguably the most competitive market in the U.S., the PSC found that Verizon is overwhelmingly dominant in the provision of "Special Services." The NY PSC upheld this finding on reconsideration after gathering data from all carriers operating in New York, with the results showing that "Verizon serves over 79.5% of the statewide market

[7] New York Public Service Commission, Case 00-C-2051 - *Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc.* Opinion And Order Modifying Special Services Guidelines For Verizon New York Inc., Conforming Tariff, And Requiring Additional Performance Reporting, June 15, 2001, at p. 10.

…"[8] I believe that a similar analysis conducted in Virginia would show that Verizon serves a larger percentage of the statewide market. As such, and as Verizon has acknowledged, Verizon's Special Access facilities represent a key factor in the development of competition to meet the critical telecommunications needs of business and government customers in Virginia, and are essential to the Commonwealth's economy.

VIII. THE EFFECT OF VERIZON'S DOMINANCE IN SPECIAL ACCESS ON COMPETITORS

20. As discussed above, competitive LECs and IXCs must rely on Verizon's Special Access service, particularly Verizon's interstate special access service to compete effectively for higher-volume customers in Virginia. However, even before it achieves Sec. 271 authority, Verizon can already provide some equivalent services directly to end users.

21. A key factor required to compete effectively against Verizon (and other competing carriers) is the ability to provide "last-mile" circuits in a timely manner. The generally poor level of on-time performance provided by Verizon to competitor-customers like WorldCom is an example of Verizon's ability to leverage its market dominance in an anti-competitive manner.

22. Of course, specific examples of an incumbent LEC's leveraging of its Special Access dominance in an anticompetitive manner are exceedingly difficult to document since end users are understandably unwilling to allow their names

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[8] New York Public Service Commission, Case 00-C-2051 - *Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc.* Order Denying Petitions For Rehearing And Clarifying Applicability Of Special Services Guidelines, December 20, 2001, at p. 10.

to be used in regulatory proceedings for fear of service degradation, service disruption, or other reprisals by the incumbent LEC. Notwithstanding these difficulties, WorldCom did receive permission from one of its customers—Bloomberg Financial Services—to use its name in connection with the NY PSC's recent investigation of Verizon's Special Services. The affidavit is appended to my testimony as Attachment B, which was submitted to the New York PSC, details the ease with which Verizon was able to provision retail circuits directly to Bloomberg, even though (a) Verizon took months to provision identical circuits to Bloomberg on behalf of WorldCom, and (b) each of the Verizon retail orders in question was placed *after* the corresponding orders by WorldCom.

IX. A GRANT OF SEC. 271 APPROVAL WILL PROVIDE AN ADDITIONAL INCENTIVE TO VERIZON TO LEVERAGE ITS SPECIAL ACCESS DOMINANCE

23. Verizon and other BOCs have always had the ability to discriminate against competitor-customers in favor of their own retail customers. However, that incentive increases once the FCC grants to a BOC Sec. 271 authority to provide in-region interLATA services. This has been demonstrated by the degradation of Verizon's Special Services to competitors in the wake of its Sec. 271 approval, as found by the NY PSC. While the NY PSC did not explicitly tie its investigation into Verizon's Special Services performance to

Verizon's Sec. 271 authority, the fact is that Verizon's Special Services performance worsened following 271 approval.[9]

24. In addition, the Texas PUC became the first state commission to require a BOC (SBC) to add the measurement of interstate Special Access when used in lieu of UNEs to its local Performance Plan after reviewing evidence indicating SBC's Special Access performance in Texas declined after receiving 271 approval. The Colorado and Washington commissions recently confirmed their intentions to condition any support for Qwest's 271 application on a Performance Plan that includes measurement of interstate Special Access when ordered in lieu of UNEs.

X. MEASUREMENTS AND STANDARDS ARE REQUIRED TO ENSURE THAT VERIZON DELIVERS GOOD PERFORMANCE IN THE PROVISION OF SPECIAL ACCESS AND DOES NOT ENGAGE IN DISCRIMINATORY ACTIVITY TO THE DETRIMENT OF COMPETITION IN VIRGINIA

25. I recommend the Department join the increasing number of states which are recognizing the critical importance of the Special Access services provided by incumbent LECs like Verizon to the economy and competition in their states, and to monitor Verizon's performance in its provision of Special Access service to retail customers, affiliates, and non-affiliated carrier-customers.

26. To date, in addition to New York, Texas and Colorado, other states have determined it is appropriate to monitor ILEC Special Access performance, including Minnesota and Tennessee. The precise parameters of this expressed intention are currently under review in those states. Also, several other states

[9] Id.

are actively considering requiring BOCs to report on Special Access performance, including Massachusetts, Indiana, Illinois, and Georgia. In addition, the Rhode Island PUC has stated its intent to open an investigation of Verizon's Special Services.

27. The Commssion should act as quickly as possible to require Verizon to report its performance based on the set of eleven core metrics developed by the Joint Competitive Industry Group (JCIG), a national coalition of CLECs and IXCs, including the two principal competitive industry associations, CompTel and ALTs, as well as a leading association of large business users known as eTUG-- the e-commerce and Telecommunications Users Group. These metrics properly measure, for the first time ever, the most important performance-related components of the incumbent LECs' Special Access services. The JCIG proposal was submitted by the aforementioned coalition to the FCC on January 22, 2002 as part of the competitors' response to the FCC's Notice of Proposed Rulemaking (NPRM), and is included here as Attachment C.

28. Further, I also recommend that the Commission select a third-party auditor to investigate Verizon's current ordering, provisioning and maintenance policies, procedures and processes used to provide Special Access services to wholesale carrier customers and "specials" to retail end user customers.

29. Finally, to the extent the Commission may ultimately conclude that Verizon is favoring its own retail customers over its competing carrier-customers with respect to the provision of interstate Special Access services, it can request the

FCC to fully investigate Verizon's performance, or delegate to the Commission full authority to devise appropriate enforcement mechanisms. This was the ultimate result of the NY PSC's investigation.

XI. THE FCC'S NOTICE ON ILEC SPECIAL ACCESS PERFORMANCE

30. The FCC's recently issued NPRM does not prevent or preclude the Commission's ability to monitor Verizon's interstate Special Access and "specials" performance. First, there is no timeline for the FCC to act, nor is there any guarantee that the FCC will ultimately adopt effective performance measurements and standards for incumbent LECs' Special Access services. Second, and more important, the FCC has explicitly asked for comments on the extent to which state commissions could play a role regarding special access services, noting that under its "mixed use" rule, special access services taken under federal tariff may carry intrastate traffic (up to 90% of the traffic traversing a circuit purchased from an incumbent LEC's interstate tariff can be intrastate).[10]

31. Based on the findings made in other states like New York, Massachusetts, Minnesota, Washington, Colorado, Tennessee and Texas to date, there is no impediment to a state's ability to require performance *reporting* on circuits provisioned out of an interstate tariff. Special Access circuits, which are functionally equivalent to UNEs, are purchased from Verizon's facilities in Virginia by competitors certified in Virginia seeking to serve customers in

[10] *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, FCC CC Docket No. 01-321, Notice of Proposed Rulemaking, rel. November 19, 2001, at para. 11.

Virginia. Monitoring of Verizon's interstate and intrastate Special Access services would provide the Commission with a complete picture of competing carriers' ability to competitively service Virginia customers' "last-mile" needs.

32. This concludes my Declaration.