COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts.	)	D.T.E. 01-20 (Part A)

MOTION OF WORLDCOM, INC. FOR PARTIAL RECONSIDERATION OF JULY 11, 2002 ORDER

*****REDACTED VERSION*****

Christopher J. McDonald
WorldCom, Inc.
200 Park Avenue, 6th Floor
New York, NY 10166
(212) 519 4164
Fax (212) 519 4569
Christopher.McDonald@wcom.com

Dated: August 14, 2002

TABLE OF CONTENTS

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts.	)	D.T.E. 01-20 (Part A)

MOTION OF WORLDCOM, INC. FOR PARTIAL RECONSIDERATION OF JULY 11, 2002 ORDER

*****REDACTED VERSION*****

I. INTRODUCTION

With its comprehensive Order ("*Order*") of July 11, 2002, the Department has made great strides toward achieving one of the core goals of the Telecommunications Act of 1996 and the rules promulgated thereunder – ensuring that competitive local exchange carriers have access to Verizon's unbundled network elements at rates based on their forward-looking economic cost. There are, however, a number of individual decisions in the *Order* that fail to reflect the faithful application of the FCC's TELRIC rules. The *Order* therefore denies competitive LECs the opportunity to achieve the full measure of the "pro-competition" pricing envisioned by the FCC when it implemented the TELRIC standard in the *Local Competition Order*.[1] WorldCom , Inc. ("WorldCom") hereby moves for reconsideration with respect to two

[1] *In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, First Report and Order in CC Docket No. 96-98, 11 F.C.C.R. 15499 (1996) ("*Local Competition Order*").

issues addressed in the Department's *Order* – cost of capital and the technology mix for feeder cable in the outside plant.

First, WorldCom moves for reconsideration of the Department's decision with respect to cost of capital. The Department selected a return on equity that assumes Verizon faces a level of risk going forward that is far greater than warranted by the evidence. The overstated return on equity increases Verizon's overall cost of capital, which in turn increases the rates competitors pay to Verizon for leasing unbundled network elements. Verizon's return on equity should therefore be adjusted downward with respect to all unbundled network elements. With respect to the unbundled loop network element in particular, Verizon's forward-looking risk is so low as to warrant a cost of capital at or near the level appropriate for a monopoly provider. As such, *all* the component inputs for cost of capital, not simply return on equity, should be adjusted to arrive at a cost of capital for UNE loops that is significantly lower than that approved by the Department in the *Order.*

Second, WorldCom seeks reconsideration of the Department's decision to permit the forward-looking network to contain universal digital loop carrier ("UDLC"). The Department's rejection of WorldCom's and other parties' arguments in favor of recognizing integrated digital loop carrier ("IDLC") as the "most efficient" telecommunications technology is based on the Department's misreading of the applicable standard as set forth in the *Local Competition Order*. It also seems to be based on a misunderstanding of the capabilities of IDLC. On reconsideration, the Department should apply the correct legal standard, recognize IDLC as the "most efficient technology" for the forward-looking fiber-fed network, and order Verizon to omit UDLC entirely from its forward-looking network model.

WorldCom respectfully requests the Department to reconsider these decisions and (1) adjust its cost of capital to more accurately reflect Verizon's low forward-looking risk, and (2) reverse its decision to include UDLC in the fiber-fed portion of the loop plant in the forward-looking network.[2]

II. THE STANDARD OF REVIEW

The Department's policy on reconsideration is well settled. A motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. *Massachusetts Electric Company*, D.P.U. 90-261-B, at 7 (1991); *New England Telephone and Telegraph Company*, D.P.U. 86-33-J, at 2 (1989); *Boston Edison Company*, D.P.U. 1350-A, at 5 (1983). Motions for reconsideration are also appropriate when "previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered" are brought to light. *Boston Edison Company*, D.P.U. 90-270-A, at 2-3 (1991); *Western Massachusetts Electric Company*, D.P.U. 85-270-C, at 12-13 (1987). A motion for reconsideration should not attempt to reargue issues considered and decided in the main case. *Commonwealth Electric Company*, D.P.U. 92-3C-1A, at 3-6 (1995); *Boston Edison Company*, D.P.U. 90-270-A, at 3 (1991). Rather, reconsideration of previously decided issues is granted when "extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision made after review and deliberation." *North Attleboro Gas Company*, D.P.U. 94-130-B at 2 (1995); *Boston Edison*

[2] Although WorldCom seeks reconsideration on only these issues, WorldCom will consider which issues to appeal, if any, based on the Department's decisions on reconsideration and any issues that surface as a result of Verizon's compliance filing.

Company, D.P.U. 90-270-A at 2-3 (1991); *Western Massachusetts Electric Company*, D.P.U. 558-A at 2 (1987). Alternatively, a motion for reconsideration may also be brought where parties have not been "given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument" on an issue decided by the Department. *Re: Petition of CTC Communications Corp.*, D.T.E. 98-18-A, at 2, 9 (1998).

III. ARGUMENT

A. The Department's Chosen Cost of Capital is Too High

1. The Department Erred in Selecting a 12.75 Percent Return on Equity

In approving a weighted cost of capital of 11.45 percent, the Department concluded that a return on equity ("ROE") of 12.75 percent was "reasonable" based on "the results of the DCF [*i.e.*, discounted cash flow] analyses and [the Department's] assessment of the level of risk anticipated by investors compared to other investments in the marketplace". *Order* at 78. In reaching this conclusion, the Department found fault with both the Verizon DCF model and the AT&T/WorldCom DCF model. *Order* at 74-78. Noting that "the range of equity returns" produced by the parties' models only provided "some guidance" for the Department's judgment in setting an appropriate ROE (*Order* at 78), the parties' DCF analyses served as little more than the upper and lower limits for what the Department would consider a reasonable ROE. The specific selection of a ROE of 12.75 percent is, therefore, based almost entirely on the Department's "assessment of network-based competition in Massachusetts." *Id.* It is that assessment that WorldCom moves the Department to reconsider.

The Department's belief that its chosen cost of capital "accurately reflects the forward-looking risk of investment in Verizon in Massachusetts in 2002 for TELRIC purposes" hinges on its assessment of "the competitive conditions created by the 1996 Act." *Order* at 79. One of the critical "competitive conditions" on which the Department based its decision was its assessment that the level of facilities-based competition in Massachusetts "will intensify in the future." *Order* at 80. Not only did the Department decide that competition "will likely increase" (*Order* at 73), the Department further perceived the risk of Verizon having stranded network investment to be significant enough to warrant a high return on equity of 12.75 percent to offset that risk. The Department relied exclusively on four exhibits – an excerpt from the direct testimony of Verizon's cost of capital witness and Verizon's responses to three record requests – in making the following predictive judgments:

?? "The record indicates that six years after the Phase 4 Order, there is significant network-based competition in the market for local exchange services in Massachusetts, *and there is a stable trend of increases in this competition* (Exh. VZ-3, at 27-35; RR-DTE-1; RR-DTE-2; RR-DTE-3)." *Order* at 71 (emphasis added).

?? "In this proceeding, Verizon has provided sufficient evidence that it faces significant actual *and potential* competition from facilities-based CLECs and from alternative-technologies providers, including data providers, cable operators, and wireless carriers, *and that this competition is likely to increase in the next few years* (Exh.VZ-3, at 27-34; RR-DTE-1; RR-DTE-2; RR-DTE-3)." *Order* at 72-73 (emphasis added).

?? "These companies offer alternative methods of providing voice and data services that are being used to bypass the local loop and *will continue to on a going forward basis and could leave Verizon with stranded investment* (Exh.VZ-3, at 27-34; RR-DTE-1; RR-DTE-2; RR-DTE-3). The wholesale business risk, therefore, is real *and will likely increase over time.*" *Order* at 73 (emphasis added).

WorldCom submits that the Department's conclusion is the result of mistake or inadvertence because the record evidence, and in particular the evidence relied on by the Department, does not support the Department's predictions as to the future levels of competition in Massachusetts. A return on equity significantly lower than 12.75 percent is thus warranted.

First, the Department drew a critical but erroneous inference from the facts on which it relied to make its assessment of the competitive landscape – that there is a "trend" of competition that is likely to increase over the next several years. In making its assessment regarding the future competitive landscape in Massachusetts, the four exhibits cited by the Department are as follows:

- *Exh. VZ-3, the direct testimony of Verizon's cost of capital witness.* In the excerpt relied on by the Department, the testimony (i) repeats a number of statistics that Verizon first cited in its §271 application regarding the state of competition in Massachusetts, (ii) identifies Verizon's "major" local exchange competitors in Massachusetts, (iii) speculates about the "current strategies" of AT&T and WorldCom and the purported advantages AT&T and WorldCom have over Verizon as competitors in the local exchange market, and (iv) speculates that SBC, the incumbent LEC that owns Connecticut's Southern New England Telephone, "could easily expand its local service from Connecticut to Massachusetts." *Id.* at 34.

- *RR-DTE-1*. This response updates the statistics cited in Exh. VZ-3, above, and offers more detailed information concerning collocation for the years 1996 through 2001.

- *RR-DTE-2*. This response provides the quantities of retail lines and wholesale lines (via UNE-loops, UNE-P or resale) provided by Verizon, as well as the quantity of Verizon-served telephone numbers ported to competitors, broken out by year from 1996 to 2001.

- *RR-DTE-3*. This response provides an estimated number of CLEC-switched lines, broken out by year from 1996 to 2001.

None of these exhibits is or purports to be a forecast of *future* CLEC capital investment, *future* CLEC equipment deployment, *future* CLEC marketing strategies or *future* CLEC customer gains or market share. At best, they provide current and historical data only. As Verizon's own witness has stressed, the *current* state of competition is *not* what investors focus on in assessing forward-looking risk:

> Investors are primarily interested in expected future competition when they assess the current investment risk of Verizon MA because expected future competition is a primary determinant of volatility in the expected returns on their investment.

Exh. VZ-3 (Vander Weide Dir.) at 34. Moreover, none of the cited exhibits provide any data at all concerning whether Verizon has abandoned or anticipates abandoning any of its network facilities as a result of wireless, fixed wireless or cable competition.[3] Based on the record evidence relied on by the Department it is impossible to rationally conclude (let alone rule with any meaningful degree of confidence), that there is a "trend" on which a high level of forward-looking risk can reasonably be based.

Second, even assuming the exhibits did reveal a "trend" that might otherwise have been of value in predicting future levels of competition, there are significant intervening factors undercutting the use of these exhibits in projecting that any such trend will continue over the next several years. The expansion of CLEC facilities and the growth of CLEC market share since the passage of the Telecommunications Act occurred during a period in which (1) CLECs

[3] The only evidence in the record concerning the actual state of fixed wireless competition is that in October of 2001, AT&T Wireless Services announced that it was exiting the fixed wireless business and taking a $1.3 billion charge. Tr. 86-87; Exh. ATT-10.

had access to capital, and (2) Verizon *did not* have authority to the market interLATA long distance services. Times have changed.

To its credit, the Department does acknowledge that the life-blood of continued investment in new competitive facilities – CLEC access to capital – will be harder to come by over the next several years:

> the investment climate for telecommunications companies today *and into the future* suggests that network-based competition may be held back somewhat by constraints on the availability of capital, which most likely will be easier to obtain by incumbent telephone companies than it will be by CLECs.

Order at 78 (emphasis added). But the *Order* did not discuss the combined effect of that fact *coupled with* the fact that Verizon is now a much more potent competitor in the local market because it can offer bundled local and long distance services previously available only from CLECs. Although the Department sought to explain why its decision on cost of capital adequately responded to the concerns expressed by the FCC in the *Massachusetts §271 Order* (*see Order* at 79), the Department never discusses the impact of the *Massachusetts §271 Order* itself on the "competitive conditions created by the 1996 Act." To say the impact of Verizon's §271 approval is significant is gross understatement. Verizon's and the other incumbent LECs' entry into the long distance markets in the states in which they provide local service (including Verizon's successful §271 applications in Massachusetts and elsewhere in its footprint) are collectively the biggest market-shaping developments since the passage of the 1996 Act itself.

By opening up local markets to competition, the 1996 Act created, at least temporarily, a void that could only be filled by CLECs. Until the incumbent LECs obtained §271 authority, CLECs were the only carriers that could provide customers with all their

telecommunications needs.[4] In Massachusetts and elsewhere in Verizon's service territory, that void no longer exists because Verizon has obtained §271 authority and can now offer long distance services to residential and business customers.[5] It would therefore be wholly inappropriate to assume that past CLEC growth, and past CLEC successes in capturing market share, are valid indicators of what the future holds.

Third, putting aside future trends, the facts on which the Department relied in making its assessment with respect to the *current* state of competition are not as supportive of the Department's conclusions as they are portrayed in the *Order.* For instance, to the extent that RR-DTE-1 displays a trend, it is not one that bodes well for a robustly competitive market in Massachusetts in the coming years. In 1999, the number of applications to collocate on Verizon premises peaked at 913. Since then, the number of new applications dropped to 686 in 2000, and to a mere 38 in 2001. Moreover, not only is growth slowing – it is reversing outright. The year 2000 saw the first requests by CLECs to *terminate* collocation arrangements. There were 110 such requests in 2000; in 2001, the number of requests to terminate collocation arrangements ballooned to 714. Thus, of the 1,796 collocation applications fulfilled by Verizon between 1996

---

[4] Unfortunately, the ability of competitive LECs to provide all the flavors of telecommunications services permitted by the 1996 Act has often been more theoretical than real. Incumbent LECs such as Verizon have over the years done a remarkably effective job at thwarting the efforts of competitors to penetrate local markets, whether through regulatory or legal challenges (*e.g.*, opposing UNE-P, opposing the TELRIC standard itself), artificially inflated UNE rates (*e.g.*, basing switch rates on growth purchases rather than new switches) or anticompetitive proposals (*e.g.*, GRIPs, "glue" charges). With its §271 entry, Verizon now has an even stronger incentive to block competitive LEC entry into the local market because each local customer now presents Verizon with an opportunity to increase its revenues by offering the customer long distance services. Thus, the legal, regulatory and other efforts to drive competitors from the market will only continue.

[5] *See, e.g., Verizon's Long-Distance Coverage Hits 44 States with New Jersey Launch; 80 Percent of Company's Local Customers Can Now Get Service, Single Bill* (recent announcement concerning Verizon's successful bid for §271 authority in New Jersey). Available at http://www.verizonld.com/news/index.cfm?Article=122.

and 2001, over 40 percent – more than 800 collocation arrangements – have been terminated, all within the last two years, with the vast majority of those occurring in 2001.[6] Thus, the more recent – and for "forward-looking" purposes the more relevant – trend is that CLEC collocation of equipment at Verizon facilities is *collapsing*, not expanding.

The information in RR-DTE 1 also renders incorrect one of the several statistics the Department lists on page 71 of the *Order* in support of its conclusion that "there is significant network-based competition in the market for local exchange service in Massachusetts." The Department states that CLECs have obtained at least 1,600 collocation arrangements throughout the state. The basis for that statement was the testimony in of Dr. Vander Weide in Exh. VZ-3, which relies on testimony submitted over a year earlier in Verizon's §271 application for Massachusetts. RR-DTE-1 was the Department's attempt to verify that statement and others. Instead, the Department learned that the number of collocation arrangements has nearly been halved, and has since learned collocation terminations continue today. The response also confirmed that all competitors combined have less than one quarter of the route miles of fiber that Verizon has deployed, that only a fraction of competitive LECs authorized to provide local service have interconnection agreements with Verizon, and of those, only a fraction are actually active in the marketplace.

---

[6] And that trend has continued into 2002. As a Verizon witness acknowledged at last month's hearing on collocation security, "I have termination notices that come in quite frequently." D.T.E. 02-8, Tr. 154 (July 10, 2002) (Reney). WorldCom hereby requests the Department to take administrative notice of Verizon's more recent statements in connection with its assessment of the state of competition in Massachusetts.

2. The Department Erred in Applying its High Cost of Capital Uniformly to All UNEs; Verizon's Cost of Capital for Loops Should Be Much Lower to Reflect Verizon's Low Risk

Even if the Department's perceived trend for facilities-based competition were supported by the record, and it is not, such a trend would not still not justify the uniformly high level of risk that the Department has assigned to all UNEs. With respect to unbundled loops in particular, Verizon's forward-looking risks are extremely low. That low risk should be reflected in *all* components of Verizon's cost of capital, including but not limited to the return on equity.

First, Verizon is already insulated from the very risk the Department identifies as the reason for its high ROE, namely the possible abandonment of facilities. Later in the *Order*, the Department permits Verizon to shave 3 percent off its distribution fill factor specifically to account for the loss of customers to competitors that bypass Verizon's loop facilities. *Order* at 185. As such, Verizon's loop related risks are zero because its costs already compensate Verizon for the possibility of abandoned loops. Verizon cannot have it both ways. Either Verizon's cost of capital with respect to loops should assume no risk, or Verizon must eliminate the fill factor adjustment it makes to account for loss to competitors.[7]

---

[7] If, in fact, Verizon faces the risk that some percentage of its customers will migrate to other facilities-based providers and bypass Verizon's facilities entirely, the Department must also eliminate growth reservations for loop and switches that lower achieved fill factors. But the Department seems to have selected a most unlikely combination of high risk of abandonment coupled with expected customer *growth* over the life cycle of the cost study. If Verizon faces a significant risk of stranded plant, then it also faces negative growth for both loops and switches. Yet the Department has permitted Verizon's switch costs to be calculated based on an allocation of 10 percent at the "growth" discount, which assumes increased demand for Verizon's switch-based services. The Department also sets low feeder plant fill factors with the expectation that growth over the next several years will result in feeder fills approaching the relief point. Here too, Verizon cannot have it both ways. If Verizon believes that customers will leave and its plant is at risk of abandonment, then the Department cannot simultaneously compensate Verizon for that risk AND permit the network to be sized to accommodate an increase in customer activity. If the Department permits Verizon to assume a high growth factor, then the risk of stranded plant is nil and the cost of equity must drop and the debt ratio rise. If the Department chooses a negative growth rate (consistent

Second, the evidence the Department identifies as the basis for its high ROE actually confirms that Verizon's loop plant has little risk of abandonment. As shown in Verizon's response to RR-DTE-2, from 1996 to 1998 the number of retail loops Verizon served in Massachusetts continued to rise notwithstanding the passage of the Telecommunications Act in 1996. After peaking in 1998, the number of Verizon *retail* loops was reduced by one percent in 1999 and an additional one percent in 2000. However, by measuring the *total* of retail, UNE-loop, UNE-P, and resale, the Verizon loop plant in service actually increased each year, three percent in total, because the cumulative impact of Verizon's wholesale business, *i.e.*, the increases in UNE-L, UNE-P and resale lines, more than offset the modest decreases in the number of Verizon retail lines. Indeed, the Department itself recognized this in connection with its discussion of fill factors:

> As many of Verizon's competitors would still use Verizon's loop facilities and generate revenue for Verizon, only competitive loss not associated with Verizon's loop facilities should be taken into account.

Order at 185.

Moreover, none of the cited figures in any way account for special access circuits, which (as the Department knows from the extensive discovery conducted in docket D.T.E. 01-34) account for tens of thousands of non-switched circuits ordered by CLECs annually. Verizon's forward-looking risk turns on the "bypass [that] occurs when CLECs serve customers primarily using the CLECs' own facilities." *Order* at 70. Verizon's data does not prove that loop bypass has resulted or will result in stranded loop plant.

---

with stranded plant) or a low growth rate (consistent with the record), then the loop fill factors must increase and the

One can also infer that Verizon's loop plant is heavily used by competitors from the "numbers ported" row in RR-DTE-2. The Department may have relied on this data with respect to the level of competition for switch-based services in Massachusetts. But it is a virtual certainty that most if not all of the end-user customers utilizing those ported numbers are being served over "last mile" facilities provided by Verizon. If an end-user customer (a) already has retail service from Verizon, and (b) already has LNP-capable numbers, in virtually every instance in which the customer seeks to migrate to a competitive LEC, the quickest and most economical way for the new carrier to connect to the customer is via Verizon's existing circuit pathways. Purchasing existing loops to the customer as special access circuits, or having existing circuit pathways augmented with new special access circuits, is a more economically efficient alternative for the CLEC than building its own redundant connectivity to the customer's premises. Thus, the "loss" of a customer to a CLEC by virtue of having a number ported to the CLEC (as reflected by the "numbers ported" figures in RR-DTE-2) should not be equated with "the loss of a customer [that] could leave Verizon with stranded network investment" (*Order* at 70) in its loop plant.

The Department already has indirect confirmation of the correlation between "numbers ported" and special access. Per RR-DTE-2, the quantity of numbers ported increased dramatically from 1998 to 2001 (19,600 numbers ported to 487,200 numbers ported). This increase coincides with the "surge in demand for special access services that began in the latter

---

portion of "growth" switching investment must decrease.

half of 1999 and continued through early 2001," which Verizon reported in D.T.E. 01-34 after the close of hearings in this matter.[8]

When setting Verizon's retail rates in 1995, the Department chose a cost of capital of 9.73 percent, which "reflected the risk of investment in a telephone company with a retail monopoly in 1995." *Order* at 79. Because competitors rely on Verizon's loop plant to an overwhelming degree (and will continue to do so for the foreseeable future), adjustments should be made so that the unbundled loop network element has a cost of capital at or near the 9.73 percent level the Department selected in 1995 to reflect Verizon's near monopoly in the provision of unbundled loops.

* * * *

In sum, the four exhibits cited in the *Order* cannot and should not reasonably be used for the purpose of assessing future levels of network-based competition in Massachusetts. Verizon has presented no evidence to suggest that any discernable trend revealed by these exhibits will continue, and in fact the evidence suggests that CLECs seeking to make inroads into the local market face competitive challenges not previously present – capital markets that effectively prevent or severely limit expansion, and a formidable new competitor for bundled services in Verizon. While an across-the-board reduction in ROE is warranted for all UNEs, a recalculation of all cost of capital components is particularly warranted in the case of UNE loops given the fact that competitors remain largely dependent on Verizon's outside plant even as switch-based competition has increased.

---

[8] *See* Verizon's Corrected Panel Testimony dated March 19, 2002 in D.T.E. 01-34, at 36. WorldCom respectfully requests that the Department take administrative notice of Verizon's more recent statement in connection with its assessment of the state of competition in Massachusetts.

B. The Department Erred in Concluding that UDLC is a Required Component of an "Efficient" Network Under TELRIC Principles

1. TELRIC does not require only the use of technology "currently being deployed" in the incumbent's wire centers

The Department rejected the arguments of WorldCom and other CLECs to the effect that the forward-looking network's fiber-fed loop plant should consist entirely of integrated digital loop carrier ("IDLC") with a GR-303 interface. While IDLC via GR-303 is included in the Department's modeling assumptions, the Department also ruled that "some level" of universal digital loop carrier ("UDLC") should be present in the forward-looking network. *Order* at 155. This conclusion rests, in part, on the Department's erroneous interpretation of a critical passage of the FCC's *Local Competition Order*, which changed the legal standard the Department applied in determining whether IDLC/GR-303, and specifically IDLC/GR-303 with unbundling capability at the DS0 level, is a "TELRIC-compliant" technology. The Department concluded, incorrectly, that the technology assumptions for developing costs pursuant to the FCC's TELRIC approach to costing (*i.e.*, the "third approach" described in ¶685 of the *Local Competition Order*) required the Department to model the forward-looking network based solely on technologies that are "currently being deployed" in incumbent LEC networks. As discussed below, IDLC/GR-303 with unbundling capacity is a TELRIC-compliant technology whether or not it is "currently being deployed" by incumbent LECs. On reconsideration, the Department should correct its erroneous interpretation of the applicable standard and order Verizon to

determine its loop costs based on the use of 100 percent GR-303 compatible DLC in the fiber-fed portion of the outside loop plant.

The Department begins its Analysis and Findings of this issue with a review of "what constitutes a TELRIC-compliant technology" based on the guidance provided in the *Local Competition Order*. *Order* at 152. The Department then briefly reviews the three approaches to developing a forward-looking cost methodology discussed in paragraphs 683 through 685 of the *Local Competition Order*:

> Under the first approach [discussed in ¶683], prices would be based on the most efficient network architecture, sizing, technology, and operating decisions that are operationally feasible and currently available to the industry. . . . Under the second approach [discussed in ¶684], prices would be based on existing network design and technology that are currently in operation. . . . Under the third approach [discussed in ¶685], prices would be based on "***the most efficient technology deployed in the ILEC's current wire center locations***" for reasonably foreseeable capacity requirements.

Order at 152 (emphasis added). The Department and all parties agree that the FCC's "third approach" described in ¶685 forms the basis for the FCC's TELRIC methodology. It is the Department's interpretation of the highlighted excerpt, quoting ¶685 of the *Local Competition Order*, with which WorldCom takes issue.

> The full sentence from ¶685 reads as follows:
>
> Under the third approach, prices for interconnection and access to unbundled elements would be developed from a forward-looking economic cost methodology based on the most efficient technology deployed in the incumbent LEC's current wire center locations.

Local Competition Order ¶685. The Department's interpretation of this sentence, and of the clause "deployed in the incumbent LEC's current wire center locations" in particular, is critical

because the Department relied on this language to conclude that the technology assumptions in the FCC's third approach are different than the technology assumptions in the FCC's first approach:

> In rejecting the first approach, the FCC clearly distinguished between the most efficient technology ***currently being*** deployed in the ILEC's wire centers and hypothetically the most efficient network based on a technology currently available in the industry. TELRIC principles require that forward-looking costs be calculated based on a ***currently deployed*** technology, rather than technology that is potentially deployable in the future.

Order at 154 (emphasis added). *See also id.* at 154 ("UNE rates should be based on the most efficient technology that is currently being deployed.").

But the Department's reading of the *Local Competition Order* is wrong. There is, in fact, no difference between the technology assumptions of the first and third approaches. Rather, as the language of the *Local Competition Order* makes clear, the difference between the first and third approach is in their network design assumptions.

In deciding on which approach to take, the FCC focuses on two major questions concerning what the forward-looking telecommunications network would look like: (1) what is the forward-looking technology (*i.e.*, what equipment will be used)? and (2) what is the forward-looking network design (*i.e.*, where should the equipment be placed)? This is reflected in the FCC's discussion of all three approaches. With the "first approach" in ¶683, the FCC refers to "the least-cost, most efficient network design and technology". The first approach was deemed to be too advantageous for CLECs because the combination of the most efficient technology and the most efficient network design may have resulted in UNE rates so low that investment in facilities-based competition might have been discouraged. *Local Competition Order* at ¶683.

With the "second approach" in ¶684, the FCC refers to "existing network design and technology that are currently in operation". The second approach, referred to as an "embedded cost methodology," was rejected because UNE rates would have reflected "inefficient or obsolete network design and technology." *Id.* at ¶684.

With the "third approach" described in ¶685, the FCC combines the efficient *technology* assumptions of the first approach with a particular *network design* limitation from the second approach. As with the first approach, the FCC again uses the phrase "most efficient" to describe the technology to be assumed in the third approach. What distinguishes the third approach from the first is that the third approach borrows an embedded network design assumption from the second approach, namely that the incumbent LEC's current wire center locations be used in determining where the "most efficient technology" should be placed. The FCC goes on to make the point explicitly clear in the sentence immediately following the one quoted by the Department in the *Order*:

> This [third] approach mitigates incumbent LECs' concerns that a forward-looking pricing methodology ignores existing network design, while basing prices on efficient, new technology that is compatible with the existing infrastructure.

Local Competition Order at ¶685. Recognizing that it was combining the technology of the "efficient" methodology in ¶683 with an "existing" network design assumption of the "embedded" methodology in ¶684, the FCC concludes:

> We, therefore, conclude that the forward-looking pricing methodology for interconnection and unbundled network elements should be based on the costs that assume that wire centers will be placed at the incumbent LEC's current wire center locations, but that for the reconstructed local network *will employ the most*

> *efficient technology for reasonably foreseeable capacity requirements.*

Local Competition Order at ¶685 (emphasis added). There is thus no basis on which the Department can conclude that the FCC "clearly distinguished" between the technology assumptions in the first approach and those of the third approach because, in fact, they are one and the same.

2. IDLC via GR-303 is the "most efficient technology" for purposes of determining TELRIC compliance

Inasmuch as the Department's interpretation of ¶685 of the *Local Competition Order* is wrong, the Department's decision to reject the use of 100 percent IDLC/GR-303 technology in the fiber fed portion of the forward-looking network also is wrong. As thoroughly explained in WorldCom's briefs as well as the briefs of other parties, IDLC loop unbundling is technically feasible and should therefore be the basis on which costs are developed for the forward-looking network.[9] Under the FCC's rules, costs should be based on "the most efficient telecommunications *technology* currently available". 47 CFR §51.505(b)(1) (emphasis added). As no less an authority than Telcordia Technologies has acknowledged, the *technology* necessary to permit IDLC loop unbundling exists. In its most recent edition of "Telcordia Notes on the Network," Telcordia dedicates a section of its chapter on "Distribution" to discussing IDLC loop unbundling. After first discussing the transfer to CLECs of loops served by copper facilities or a UDLC system, Telcordia continues:

---

[9] *See, e.g.*, WorldCom Initial Br. at 45-46; WorldCom Reply Br. at 42-47; AT&T Initial Br. at 119-20; AT&T Reply Br. at 83-84.

> However, if the customer is served by an IDLC system, the loop is digitally transmitted to the ILEC switch. ***There are a variety of 'technically feasible' options available to the ILEC to unbundled the loop.*** Each ILEC has established methods, procedures, and practices needed for implementing these options. Numerous unbundling options are possible because many of today's RDT's [remote digital terminals] support multiple kinds of interfaces such as: GR-303, TR-08, UDLC, and D4 DS1. ***Also, some RDTs are capable of supporting multiple GR-303 Interface Groups, thereby permitting a single RDT to connect to multiple switches.***

DTE RR 81 (Telcordia Notes on the Network, Section 12.13.2.1, at 12-53 (emphasis added); *see also* Exh. VZ-ATT/WC 1-38 and its accompanying attachments. One of the unbundling options discussed is "IDLC Unbundling Using Separate GR-303 Interface Groups" which includes a schematic (figure 12-35) depicting "GR-303 DS1(s)" being routed to an ILEC switch and to two CLECs *See id*. at 12-55. Moreover, there is no requirement that the *technology* be reduced to a commercial product currently in use, and in fact the FCC's rejection of an embedded technology costing methodology (*i.e.*, the "existing" technology approach described in ¶684 of the *Local Competition Order*) specifically counsels *against* limiting the field of available technologies only to those that have been implemented by an incumbent LEC in a commercial setting.

The Department also points to ¶198 of the *Local Competition Order* as support for its disagreement with "the CLECs' claim that whether the systems to operate GR-303 actually exist is irrelevant when determining the choice of technology for UNE rates." *Order* at 155. Specifically the Department notes that the FCC "clearly states that the term 'technically feasible' refers to 'operational as well as technological concerns.'" *Id.*, citing *Local Competition Order* at ¶ 198. The Department's reliance on the FCC's discussion of "technically feasible" is misplaced. First, as the FCC explains, the reference to "operational" and "technological"

concerns is solely to distinguish technical considerations on the one hand, and economic concerns on the other. *Local Competition Order* at ¶199. Second, IDLC loop unbundling easily falls within the FCC's extremely broad definition of "technically feasible":

> Several parties also attempt to draw a distinction between what is "feasible" under the terms of the statute, and what is "possible." The words "feasible" and "possible," however, are used synonymously. Feasible is defined as "capable of being accomplished or brought about; possible." The statute itself provides a more meaningful distinction. Unlike the "technically *feasible*" terminology included in sections 251(c)(2) and 251(c)(3), section 251(c)(6) uses the term "*practical* for technical reasons" in determining the scope of an incumbent LEC's obligation to provide for physical collocation. "Practical" is defined as "manifested in practice or action . . . not theoretical or ideal" or "adapted or designed for actual use; useful," and connotes similarity to ordinary usage. Thus, it is reasonable to interpret Congress's use of the term "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely "practical" or similar to what is ordinarily done. That is, use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment.

Local Competition Order at ¶203. Although not "manifested in practice" in the sense of being commercially available, the record evidence clearly shows that ILDC loop unbundling is "capable of being accomplished or brought about; possible," and therefore its "technical feasibility" is not an impediment to its TELRIC compliance.

It is also worth noting that the FCC specifically placed the burden on the incumbent LECs to "prove to the appropriate state commission that interconnection or access at a point is not technically feasible." *Id.* at ¶205. Here, there are only two pieces of evidence that are arguably in support of the "technical infeasibility" of IDLC loop unbundling. The first is the

unsupported testimony of Verizon's witnesses, who clearly have an interest in the outcome of this case. But even that evidence fails to make the case for technical infeasibility. If, under the FCC's definition, feasible is defined as "capable of being accomplished or brought about; possible," then the burden for proving that a technology is not feasible is requires the incumbent LEC to show that the technology is *in*capable of being accomplished or brought about; *im*possible. Rather than make that assertion, however, Verizon's Mr. Gansert said just the opposite when asked by Verizon's counsel about "the ability to provision stand-alone [unbundled] loops over IDLC with the GR-303 interface." Specifically, Mr. Gansert responded that "Verizon has never -- doesn't and has never contended that there hasn't been defined methodologies that could be used, that could be developed, to do that." Tr. 3526-28 (Vol. 17, Feb. 7, 2002).

Similarly, the 1999 letter from Alcatel on which Verizon also relied to argue technical infeasibility does no such thing. Although the letter identifies several issues that need to be resolved before IDLC unbundling can be implemented in a multi-carrier environment, it never makes the claim that IDLC loop unbundling cannot be done. Indeed, the letter confirms that as far back as 1999, GR-303 permitted a single RT to interface simultaneously with several switches. *See* Exh. VZ 18 (NRC Panel Surreb.) at Att. 1.[10] As such, IDLC with a GR-303 interface should be recognized by the Department as the "most efficient technology" for purposes of determining Verizon's TELRIC-based costs.

---

[10] The *Order* is not entirely clear on this point, but it appears that this letter may what the Department was referring to when stating that the record "shows that IDLC with unbundling capability as the DS0 level still remains a potential, rather than a currently available technology." *Order* at 155, citing Exh. VZ-18 (Verizon NRC Panel Surreb.) (the Alcatel letter is attached to Verizon's testimony). Thus, even by the Department's description, the "feasibility" of the technology has not been foreclosed.

3. UDLC is not needed "for other purposes" in the forward-looking network

In the *Order*, the Department stated that "no party objects to Verizon's argument that provisioning unbundled stand-alone loops is not the sole function of UDLC; UDLC is needed for other purposes." *Order* at 158. As support for that proposition, the Department cited a proprietary Bell Atlantic document dated July 20, 1998, stating that "the record indicates that UDLC is used . . . for services that cannot be integrated, such as unbundled loops and non-switched services." *Order* at 158, citing Exh. ATT-VZ 3-5, at 16.

As an initial matter, non-switched services use loop plant in the same manner as unbundled loops. Verizon is describing one functionality, not two. Second, the Department is wrong in stating that no party objected to Verizon's argument. In its Reply Brief, WorldCom directly challenged Verizon's claim (on page 76 of its Verizon's Initial Brief) that "UDLC is necessary to provide services *other* than unbundled loops." Specifically, WorldCom cited to a proprietary Bell Atlantic Network Planning Guideline from April 1999 contradicting Verizon's self-serving assertions. *****BEGIN PROPRIETARY**

END PROPRIETARY***

Third, and more important, even the sole exhibit cited as record support for the Department's conclusion actually undermines it. It should first be understood that this document, Verizon's "Outside Plant Engineering Guidelines," is geared toward managing Verizon's *existing* network, not a forward-looking network as envisioned under TELRIC. In Verizon's existing network there is little or no GR-303, and therefore it is thoroughly unremarkable that Verizon would continue to rely on UDLC for unbundled loops and non-switched services. However, like the 1999 Network Planning Guideline, the Outside Plant Engineering Guidelines in Exh. ATT-VZ 3-5 discusses future planning:

*****BEGIN PROPRIETARY**

END PROPRIETARY*** Thus, Verizon's claim that UDLC is required is belied by its own documentation.

There being no impediments to the recognition of IDLC via a GR-303 interface as the "most efficient technology" pursuant to the FCC's rules, Verizon should be ordered to modify its forward-looking network model to remove UDLC and replace it with IDLC.

IV. CONCLUSION

For all the foregoing reasons, WorldCom respectfully requests the Department to reconsider its decision with respect to cost of capital. The Department should lower the return on equity for all unbundled network elements to more accurately reflect Verizon's low forward-looking risk. The Department should also significantly lower the return on equity for unbundled loops, and make other appropriate adjustments to the remaining cost of capital inputs, to reflect the exceedingly small risk Verizon faces with respect to the possibility that it will be left with abandoned loop facilities. WorldCom also respectfully requests the Department to reconsider its decision with respect to the technology mix for feeder facilities. The Department should apply the correct legal standard and recognize the capabilities of GR-303. Ultimately, the Department should reverse its decision to include UDLC in the fiber-fed portion of the loop plant in the forward-looking network.

Respectfully submitted,

WORLDCOM, INC.

_____

Christopher J. McDonald
WorldCom, Inc.
200 Park Avenue, 6th Floor
New York, NY 10166
(212) 519 4164
Fax (212) 519 4569
Christopher.McDonald@wcom.com

Dated: New York, New York
August 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing upon each person designated on the service list in this proceeding by either U.S. mail, overnight courier, facsimile or email.

Dated: New York, New York
August 14, 2002

_____