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

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

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2002 **Released: July 17, 2002**

By the Chief, Wireline Competition Bureau:

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I. INTRODUCTION

1. In this order, we issue the first of two decisions that resolve questions presented by three petitions for arbitration of the terms and conditions of interconnection agreements with Verizon Virginia, Inc. (Verizon). Following the enactment of the Telecommunications Act of 1996 (1996 Act),[1] the Commission adopted various rules to implement the legislatively mandated, market-opening measures that Congress put in place.[2] Under the 1996 Act's design, it has been largely the job of the state commissions to interpret and apply those rules through arbitration proceedings. In this proceeding, the Wireline Competition Bureau, acting through authority expressly delegated from the Commission, stands in the stead of the Virginia State Corporation Commission. We expect that this order, and the second order to follow, will provide a workable framework to guide the commercial relationships between the interconnecting carriers before us in Virginia.

2. The three requesting carriers in this proceeding, AT&T Communications of Virginia, Inc. (AT&T), WorldCom, Inc. (WorldCom) and Cox Virginia Telcom, Inc. (Cox) (collectively "petitioners"), have presented a wide range of issues for decision. They include issues involving network architecture, the availability of unbundled network elements (UNEs), and inter-carrier compensation, as well as issues regarding the more general terms and conditions that will govern the interconnecting carriers' rights and responsibilities. As we discuss more fully below, after the filing of the initial pleadings in this matter, the parties conducted extensive

[1] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). We refer to the Communications Act of 1934, as amended by the 1996 Act and other statutes, as the Communications Act, or the Act. *See* 47 U.S.C. §§ 151 *et seq.*

[2] *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

discovery while they participated in lengthy staff-supervised mediation, which resulted in the settlement of a substantial portion of the issues that the parties initially presented. After the mediation, we conducted over a month of hearings at which both the petitioners and Verizon had full opportunity to present evidence and make argument in support of their position on the remaining issues. We base our decisions in this order on the analysis of the record of these hearings, the evidence presented therein, and the subsequent briefing materials filed by the parties.

3. Many of the issues that the parties have presented raise significant questions of communications policy that are also currently pending before the Commission in other proceedings. For example, certain of the network architecture issues implicate questions that the Commission is addressing through its ongoing rulemaking relating to inter-carrier compensation.[3] The Commission's pending triennial review of UNEs also touches on many of the issues presented here.[4] While we act, in this proceeding, under authority delegated by the Commission,[5] the arbitration provisions of the 1996 Act require that we decide all issues fairly presented.[6] Accordingly, in addressing the issues that the parties have presented for arbitration – the only issues that we decide in this order – we apply current Commission rules and precedents, with the goal of providing the parties, to the fullest extent possible, with answers to the questions that they have raised.

4. In our review of each issue before us, we have been mindful of recent court decisions relating to the Commission's applicable rules and precedent. Most significantly, we recognize that the United States Court of Appeals for the District of Columbia Circuit recently issued an order reviewing two Commission decisions that set forth rules governing unbundled network elements (UNEs) and line sharing.[7] The court's order remanded the *UNE Remand*

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[3] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[4] *See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*Triennial UNE Review NPRM*).

[5] *See* 47 U.S.C. § 155(c)(1); *see also Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, 16 FCC Rcd 6231, 6233, paras. 8-10 (2001) (*Arbitration Procedures Order*) (delegating authority to the Bureau to conduct and decide these arbitration proceedings).

[6] *See* 47 U.S.C. § 252(b)(4)(C) (state commission shall resolve each issue in petition and response); *id.* § 252(c) (state commission shall resolve by arbitration any open issue).

[7] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA v. FCC*"). The court reviewed two Commission decisions: the *UNE Remand Order* and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

Order for further action by the Commission, and it vacated and remanded the *Line Sharing Order*. Because the court remanded the *UNE Remand Order* without vacating or otherwise modifying it, its rules governing the availability of UNEs remain in effect pending further action by the Commission in response to the court's order. Similarly, because the Commission has sought rehearing of the court's order, the effect of that order has been stayed, even with respect to the line sharing rules, until further action by the court.[8] Accordingly, to the extent they are implicated in issues presented by the parties, we apply the Commission's existing UNE and line sharing rules. To the extent that these rules are modified in the future, the parties may rely on the change of law provisions in their respective agreements.

5. This order is the first of two that will decide the questions presented for arbitration. Below, we decide the "non-cost" issues that the parties have raised. Specifically, we resolve those issues that do not relate to the rates that Verizon may charge for the services and network elements that it will provide to the requesting carriers under this agreement. We have determined that it will best serve the interests of efficiency and prompt resolution of the parties' disputes to issue our decision on these non-cost issues in advance of the pricing decision, which will follow.

6. The requesting carriers in this proceeding, AT&T, WorldCom and Cox, originally brought their interconnection disputes with Verizon to the Virginia State Corporation Commission (Virginia Commission), as envisioned in section 252(b).[9] In the case of each requesting carrier, the Virginia Commission declined to arbitrate the terms and conditions of an interconnection agreement under federal standards, as required by section 252(c) of the Act.[10]

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[8] *See* Petition of FCC and United States for Rehearing or Rehearing *En Banc*, D.C. Circuit Nos. 00-1012, *et al.* & 00-1015, *et al*., filed July 8, 2002.

[9] 47 U.S.C. § 252(b). WorldCom filed an arbitration petition with the Virginia Commission. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc. for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.,* Case No. PUC000225 (filed with Virginia Commission Aug. 10, 2000). Cox requested a declaratory ruling reconsidering the Virginia Commission's prior refusals to apply federal law in arbitrating interconnection disputes and, in the event the Virginia Commission granted that request, sought the arbitration of its interconnection dispute. *See Petition of Cox Virginia Telcom, Inc., for Declaratory Judgment and Conditional Petition for Arbitration*, Case No. PUC000212 (filed with Virginia Commission July 27, 2000). AT&T also requested a declaratory ruling that the Virginia Commission would arbitrate its interconnection dispute. *See Petition of AT&T Communications of Virginia, Inc., et al., for Declaratory Judgment*, Case No. PUC000261 (filed with Virginia Commission Sept. 25, 2000); AT&T subsequently sought arbitration of its interconnection dispute with Verizon. *See Application of AT&T Communications of Virginia, Inc., et al., for Arbitration*, Case No. PUC000282 (filed with Virginia Commission Oct. 20, 2000).

[10] 47 U.S.C. § 252(c). Section 252(c) requires that, in arbitrating an interconnection agreement, a state commission apply the "requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251" and apply the pricing standards of section 252(d). 47 U.S.C. § 252(c)(1) – (2). The Virginia Commission declined to follow section 252(c), offering instead to apply Virginia state law in its disposition of the three requesting carriers' disputes with Verizon. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc., for Arbitration of an Interconnection* (continued….)

The Virginia Commission explained that it had concluded it could not apply federal standards in interconnection arbitrations without potentially waiving its Eleventh Amendment sovereign immunity, which it did not have the authority to do.[11] The three requesting carriers then petitioned the Commission to preempt the Virginia Commission pursuant to section 252(e)(5).[12] The Commission granted those petitions in January of 2001 and assumed jurisdiction to resolve the requests for arbitration.[13]

7. On January 19, 2001, the same date on which it granted WorldCom's preemption petition, the Commission issued an order governing the conduct of section 252(e)(5) proceedings in which it has preempted the arbitration authority of state commissions. The order delegates to the Chief of the Bureau the authority to serve as the Arbitrator.[14] As discussed at greater length below, the Commission also revised the interim rule that it had previously adopted and established a hybrid scheme of "final offer" arbitration for interconnection arbitrations. The

(Continued from previous page)
Agreement with Bell Atlantic-Virginia, Inc., Case No. PUC000225, Order, at 3 (issued by Virginia Comm'n Sept. 13, 2000) (*WorldCom Virginia Order*); *Petition of Cox Virginia Telcom, Inc.,* Case No. PUC000212, Order of Dismissal, at 5 (issued by Virginia Comm'n Nov. 1, 2000); *Petition for Declaratory Judgment and Application for Arbitration of AT&T Communications of Virginia, Inc., et al.*, Case Nos. PUC000261 and PUC000282, Order, at 3 (issued by Virginia Comm'n Nov. 22, 2000).

[11] *See, e.g., WorldCom Virginia Order* at 2. *Cf. Petition of Cavalier Telephone, LLC,* Case No. PUC990191, Order, at 3-4 (issued by Virginia Comm'n June 15, 2000) ("We have concluded that there is substantial doubt whether we can take action in this matter solely pursuant to the Act, given that we have been advised by the United States District Court for the Eastern District of Virginia that our participation in the federal regulatory scheme constructed by the Act, with regard to the arbitration of interconnection agreements, effects a waiver of the sovereign immunity of the Commonwealth.").

[12] *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, (filed Oct. 26, 2000); *Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-249 (filed Dec. 12, 2000); *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-251 (filed Dec. 15, 2000).

[13] *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001) (*WorldCom Preemption Order*); *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, Memorandum Opinion and Order, 16 FCC Rcd 2321 (2001); *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, 16 FCC Rcd. 2326 (2001).

[14] *Arbitration Procedures Order*, 16 FCC Rcd 6233. The Commission's rules governing review of action taken on delegated authority are found at 47 C.F.R. § 1.115. At the time of the *Arbitration Procedures Order*, the Commission delegated its authority to the Chief of the Common Carrier Bureau. Since then, the Bureau has been renamed the Wireline Competition Bureau. *See In the Matter of Establishment of the Media Bureau, Wireline Competition Bureau and Consumer and Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002).

revised standard grants the Arbitrator the "discretion to require the parties to submit new final offers, or adopt a result not submitted by any party, in circumstances where a final offer submitted by one or more of the parties fails to comply with the Act or the Commission's rules."[15]

II. PROCEDURAL HISTORY

8. In March, 2001, as required by the *Procedural Public Notice*, the parties contacted the Arbitrator to schedule a pre-filing conference.[16] On March 22, 2001, the parties met with the Arbitrator and Bureau staff to discuss a list of issues identified in the *Procedural Public Notice*, including the status of negotiations, procedures to be followed in the arbitration proceeding, potential consolidation of the proceedings, and a procedural schedule. On March 27, we issued a letter ruling on several issues raised during the pre-filing conference. Among other rulings, we set a procedural schedule, under which the parties were to conduct discovery and file testimony throughout the summer. The evidentiary hearing was scheduled for September, 2001 and post-hearing briefs were to be due in October, 2001. At the request of the parties, we postponed until July 2, 2001, the due date for cost studies, which originally were to be filed with the petitions for arbitration. The parties preferred that they be permitted to file separate petitions, with the option of later seeking consolidation of the proceedings; however, we instructed them each to assign shared issues the same number, to facilitate staff's review.

9. On April 23, AT&T, Cox and WorldCom filed separate petitions for arbitration. Consistent with the *Procedural Public Notice*, each petition contained a Request for Arbitration, listing with specificity both the resolved and unresolved issues, along with the relevant contract language, and a Statement of Relevant Authority for each issue. On May 31, 2001, Verizon filed its Answer, responding to each issue raised by petitioners, and raising additional issues. On June 18, petitioners filed their responses to Verizon's additional issues. In all, petitioners identified approximately 180 issues in their initial petitions, some of them raised jointly, and Verizon raised an additional 68 issues in its Answer.

10. *Supervised Negotiations*. On July 10, 2001, the Arbitrator convened a status conference to discuss, among other things, parties' efforts to simplify or settle issues and the schedule for the remainder of the proceeding. At this meeting, the parties jointly requested that Bureau staff assist with the settlement of certain issues, through supervised negotiations or mediation, and agreed to identify a list of "mediation issues." The parties also requested a delay of several weeks in all aspects of the procedural schedule, to allow them to focus on settlement

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[15] *See* 47 C.F.R. § 51.807(f)(3).

[16] Procedures Established For Arbitration Of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-270 (rel. Feb. 1, 2001) (*Procedural Public Notice*) (setting forth additional procedures, including requirements regarding contents of arbitration petition and response, discovery process and conduct of the evidentiary hearing).

negotiations, and to accommodate their request for an additional "surrebuttal" round of written testimony on cost issues.

11. We convened ten days of supervised negotiations, pursuant to a schedule set by the parties and staff, on July 25 through August 9. With the help of questions and other input from staff and, in particular, all sides' willingness to work toward compromise, the parties were able to reach agreement on new language for many issues, and agreed to continue unsupervised discussions on many others.

12. *Written, Pre-Filed Testimony*. The procedural schedule that we set in March, 2001 originally envisioned the submission of pre-filed direct and rebuttal testimony on all issues according to the same schedule. In light of the parties' request for supervised negotiations, and for additional time to prepare their cost-related arguments, we extended the filing deadlines and split the schedule into several tracks. Accordingly, for the bulk of issues, the parties filed direct testimony on July 31, and rebuttal testimony on August 17; and for "mediated" issues, the parties filed direct testimony on August 17, and rebuttal testimony on September 5.[17]

13. *Discovery*. Our February 1, 2001 *Procedural Public Notice* established general guidelines governing the discovery process. Pursuant to the schedule set by the Arbitrator, discovery began on May 31, 2001 and, after various extension requests from the parties, concluded for non-cost issues on August 31, and for cost issues on September 26. The parties were permitted to obtain discovery through document requests, interrogatories, oral depositions, and requests for admissions.

14. *Evidentiary Hearing.* The non-cost evidentiary hearing, at which the parties submitted documentary evidence and examined witnesses, began on October 3 and concluded on October 18, 2001. Before the hearing, the parties had developed a detailed schedule with Bureau staff, under which the non-pricing issues would be addressed first, followed by the consideration of pricing-related issues. The hearing was transcribed, and a copy of the transcript was filed with the Secretary of the Commission for inclusion in the record.

15. *Joint Decision Point Lists and Revised Contract Language.* At three points in the proceeding, the staff requested that the parties submit a "Joint Decision Point List" (JDPL) – a list and summary of the disputed issues, positions and relevant contract language, intended as a tool to assist Bureau staff in navigating the considerable record. The first JDPL was submitted jointly by the parties on June 18, 2001. The parties submitted revised JDPLs separately in September, before the evidentiary hearing, with final JDPLs submitted in early November. Importantly, in addition to listing their proposed language on an issue-by-issue basis in the JDPL

[17] The parties marked their pre-filed direct and rebuttal testimony as exhibits and moved them into evidence at the hearing. Below, we refer to the pre-filed testimony by its exhibit number.

after the evidentiary hearing, parties also submitted their full, proposed contracts on November 13, 2001.[18]

16. *Post-Hearing Briefs*. The parties filed post-hearing briefs and reply briefs. As with many other aspects of this proceeding, the schedule was divided and postponed at the joint request of all parties to allow additional time to address certain issues. Briefs for the non-pricing issues were submitted on November 16, 2001, with replies on December 11, 2001.

III. OUTSTANDING PROCEDURAL MOTIONS

A. Verizon's Renewed Motion to Dismiss Consideration of Performance Measures and Assurance Plan Issues

17. On November 9, 2001, Verizon submitted its renewed motion to dismiss several unresolved issues relating to performance measurements and remedies.[19] Verizon argues that the Virginia Commission has not failed to act in this context, pursuant to section 252 of the Act, because it has agreed to act on and determine exactly the same performance-related issues raised by the petitioners.[20] Verizon also contends that, as a matter of comity, the Commission should defer to the Virginia Commission, which has the expertise and is expending significant resources to resolve these performance-related issues.[21] According to Verizon, the Act does not impose a specific requirement that remedies be incorporated into an interconnection agreement and it argues that including a performance assurance plan (PAP) in a contract is unnecessary and administratively problematic.[22] AT&T and WorldCom argue that, despite having established a collaborative on performance measures, the Virginia Commission failed to act on the parties' petitions, which included performance-related issues.[23] Consequently, the petitioners' contend that these issues are appropriate for consideration and decision by the Arbitrator.

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[18] Our review of these documents revealed that, in certain instances, the JDPLs and the proposed contracts did not match, and each contained certain inaccuracies. Reviewing the full contracts, the November JDPL, and the parties' briefs, we determined that there were fewer inaccuracies in the parties' complete contracts than in the earlier-filed November JDPLs. Consequently, unless expressly noted otherwise, the contract proposals that we refer to below are from the parties' full contracts; our citations to a party's "November Proposed Agreement" are to the full contracts.

[19] The issues that are the subject of this Verizon motion are: Issues III-14, IV-120, IV-121, and IV-30.

[20] Verizon's Renewed Motion to Dismiss Consideration of Issues Related to Performance Measures and Assurance Plans at 1-2 (Verizon Renewed Motion).

[21] Verizon Renewed Motion at 6.

[22] Verizon Reply 5, 6.

[23] WorldCom Response to Verizon Renewed Motion at 2 (arguing that it is "wholly irrelevant" that the Virginia Commission is addressing performance measures and remedies in generic proceedings); AT&T Opposition to Verizon Renewed Motion at 4-5 (asserting that the Commission's finding that the Virginia Commission failed to carry out its section 252 responsibilities encompassed all of the issues AT&T designated in its petition).

18. We grant Verizon's renewed motion to dismiss consideration of issues related to performance measures and assurance plans.[24] While we disagree with Verizon that we lack jurisdiction to decide the issues set forth in AT&T's and WorldCom's petitions, we agree that, as a practical matter and a matter of comity, we should defer to the Virginia Commission on performance issues. Subsequent to the parties' filings on this motion, the Virginia Commission issued an order adopting performance measurements and standards applicable to Verizon.[25] Moreover, the parties to a collaborative proceeding in Virginia have reached agreement on a remedy plan for Verizon.[26] Since the Virginia Commission appears close to issuing an order approving a remedy plan, which will include an effective date, we determine that it is appropriate for us to defer to the state commission on all performance matters, including remedies. As noted by AT&T in its opposition to Verizon's renewed motion, we find that there is no present need for us to "retrace the steps" of the Virginia Collaborative and Virginia Commission.[27] However, in recognition of the possibility that the Virginia Commission may decide that the effective date for Verizon's PAP should be some date after the interconnection agreements go into effect, we direct Verizon to make retroactive, if necessary, any payments due to AT&T or WorldCom under the Virginia Commission-approved remedy plan. Should any dispute arise about whether payment is due and for what amount, we expect the parties to follow the dispute resolution processes set forth in their respective contracts.

B. Miscellaneous Motions

19. Before discussing each remaining motion individually, we determine that it would be helpful to explain several guiding principles we will follow in deciding these motions. First, we recognize the importance of a full and robust record to decide the unresolved issues presented by the parties. To that end, we will generally rule on the side of allowing information presented by any party into the record and then according that material the appropriate evidentiary weight. Next we will consider whether the petitioning party was afforded a meaningful opportunity to examine and respond to the other party's submission (*e.g.,* revised contract language). In making that determination, we will look at whether the parties agreed to waive cross examination on a particular issue that is now the subject of one of these motions. Finally, we note that this is not a static process and we will not rule in a manner that deters parties from revising their proposals

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[24] Specifically, we dismiss Issues III-14, IV-120, IV-121, and IV-130.

[25] *See Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change Metrics (issued by Virginia Comm'n on Jan. 4, 2002) (*Virginia Commission Performance Metrics and Standards Order*).

[26] The remaining dispute among the parties to this collaborative, which includes AT&T and WorldCom, is the effective date of the remedy plan. *See Establishment of a Performance Assurance Plan for Verizon Virginia, Inc.*, Case No. PUC-2001-00226, Fourth Preliminary Order (Virginia Commission, April 17, 2002).

[27] AT&T Opposition at 6-7.

either to reflect agreement reached during the proceeding or to acknowledge and address the other party's stated concerns.

1. Verizon's Objection to AT&T Response to Record Requests

20. On December 10, 2001, Verizon filed an objection to AT&T's Response to Record Requests, which the Bureau received on November 8, 2001. According to Verizon, AT&T's filing is nothing more than an inappropriate attempt to supplement the record testimony of its witness on Issues V-3, V-4, and V-4-a.[28] Specifically, Verizon argues that Commission staff did not request AT&T to supplement the record at a later date and that it would be inappropriate to admit AT&T's information to the record and unfair to Verizon. Consequently, Verizon urges us to strike AT&T's response to the "fictitious" "Record Request 1."[29] AT&T argues that the record is best served by the inclusion of complete information on the issues and, to that end, AT&T states that it understood that, as a consequence of its witness's statements made at the hearing, it owed the Commission the complete answer that its witness was unable to provide at the hearing.[30]

21. We deny Verizon's objection but admit its filing, and AT&T's response to "Record Request 1," as exhibits.[31] In this particular instance we do not rely on either party's response as a basis for our decision in Issues V-3, V-4, and V-4-a.[32] However, as stated above, we determine that our record would benefit by the inclusion of such additional information.[33]

2. WorldCom's Objection and Response to Verizon's Corrections to WorldCom Responses to Record Requests

22. On December 4, 2001, WorldCom filed its objection to Verizon's corrections to WorldCom's record request responses.[34] WorldCom argues that Verizon has no procedural right

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[28] Verizon's Objection to AT&T Response to Record Requests at 1.

[29] *Id.* at 2. As an alternative, Verizon suggests that we accept its objection into the record as Verizon exhibit 84. *Id.* at 5.

[30] AT&T Reply at 2, 3. AT&T also states that it has no objection to admitting Verizon's December 10 filing as Verizon exhibit 84. *Id.* at 3.

[31] We mark and admit into the record AT&T's response as AT&T exhibit 40 and Verizon's objection as Verizon exhibit 84.

[32] *See* Issues V-3/V-4-A and V-4 *infra,* for our discussion of these unresolved issues.

[33] We also note that since AT&T filed its response on November 8, Verizon had the opportunity to respond to AT&T's information in both its brief and reply.

[34] Verizon filed its corrections on November 28, 2001, arguing that since WorldCom's responses were submitted after the hearing, Verizon should be given the opportunity to correct the record and asks the Commission to admit its response as Verizon exhibit 83. Verizon's Corrections to WorldCom's Responses to Record Requests

to "correct" WorldCom's responses to record requests, set forth in its exhibit 52.[35] Moreover, WorldCom contends that its responses are accurate and Verizon's "corrections" contained in its exhibit 83 are inaccurate.[36] Although WorldCom asks us to exclude Verizon exhibit 83 from the record, in the alternative, it requests that we include its objection and response as WorldCom exhibit 53.[37]

23. Consistent with our holding above, we deny WorldCom's objection and, instead, mark as exhibits and admit both carriers' responses into the record.[38] Also, as is the case above, we do not rely on either party's newly-admitted exhibit as a basis for our decisions in Issues I-1 and IV-1.[39] Consequently, we find that neither party is prejudiced by supplementing the record in this fashion.

3. Cox's Objection and Request for Sanctions

24. On November 7, 2001, Cox filed an objection to new language proposed by Verizon and a request for sanctions. Cox argues that, in its November JDPL, Verizon filed new language that significantly changes its previous position on Issues I-1, I-2 and I-9.[40] Cox asserts that none of these proposals was made to Cox during negotiations or in any previous contract language filings made with the Commission.[41] Consequently, Cox contends that it has been deprived of the opportunity to prepare direct and rebuttal testimony on these proposals and of a fair opportunity to cross examine Verizon witnesses on this new language.[42] For these reasons, Cox argues that the Commission should reject Verizon's new language and require Verizon to return to its earlier positions stated in September. Additionally, Cox states that Verizon should be sanctioned for its ongoing disregard for the Commission's requirements in this proceeding.[43] On November 20, 2001, Verizon submitted its opposition to Cox's objection and request for sanctions.

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[35] WorldCom's Objection and Response to Verizon's Corrections to WorldCom's Responses to Record Requests at 1-2.

[36] *Id.* at 2.

[37] *Id.* at 8.

[38] Verizon's November 28 filing will become Verizon exhibit 83 and WorldCom's objection and response will become WorldCom exhibit 53.

[39] *See* Issues I-1 and IV-1 *infra* for our discussion of these issues.

[40] Cox Objection and Request for Sanctions at 1.

[41] *Id.* at 2. For Cox's discussion of the three issues in dispute, *see id.* at 4-8, 10-11 for Issue I-1; *id.* at 11 for Issue I-2; and *id.* at 12 for Issue 1-9.

[42] *Id.* at 3.

[43] *Id.*

25. As we discuss further below, we rule for Cox, and against Verizon, on the three issues for which Cox challenges Verizon's language as belatedly revised. Accordingly, we deny as moot Cox's objection and request for sanctions.

4. WorldCom Motion to Strike

a. Positions of the Parties

26. On November 27, 2001, WorldCom filed a motion to strike contract language proposed by Verizon in the November JDPL that was not contained in the September JDPL. WorldCom asserts that Verizon submitted new contract provisions on over 30 issues in this November filing.[44] According to WorldCom, the Due Process Clause of the Fifth Amendment and the APA require that each party has the opportunity to respond to other parties' submissions.[45] WorldCom contends that permitting Verizon to introduce new proposals at such a late stage in the proceeding denies WorldCom the opportunity to present evidence refuting Verizon's positions and would be arbitrary and capricious.[46] WorldCom also asserts that the Commission's procedural orders make clear that the parties' proposals should have come to rest by the time the hearings began.[47]

27. Verizon filed its opposition to WorldCom's motion on December 14, 2001. Verizon argues that the nature of Verizon's edits to the November JDPL are consistent with the Commission's purpose in requesting a corrected and updated JDPL, which was to ensure that the JDPL included all contract language pertinent to an issue that was updated to reflect Verizon's most current substantive proposal on an issue.[48] Moreover, Verizon contends that the majority of what WorldCom terms "new contract provisions" are, in fact, edits derived from Verizon's previous JDPLs or its originally filed proposed contract with WorldCom.[49] The few remaining edits, Verizon argues, reflect Verizon's efforts to update its proposal based on testimony or to ensure consistency or correct mistakes.[50] Verizon asserts that updating its proposal to conform to testimony does not make the resulting contract language a "new proposal" when WorldCom was "fully informed of, and presented with a full and fair opportunity to explore" Verizon's position as set forth in testimony on the open issues.[51] Verizon also argues that due process requires the

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[44] WorldCom Motion to Strike at 5.

[45] *Id.* at 5-6, citing 5 U.S.C. § 706(2)(A), (E).

[46] *Id.* at 7.

[47] *Id.* at 7-8.

[48] Verizon Opposition to WorldCom Motion to Strike at 3.

[49] *Id.* at 3, citing Ex. B.

[50] *Id.* at 4, citing Ex. C.

[51] *Id.* at 4.

opportunity to be heard at a meaningful time in a meaningful manner and WorldCom had such an opportunity to rebut Verizon's substantive positions.[52]

b. Discussion

28. We deny, in whole, WorldCom's motion to strike. With respect to the substantial majority of the issues for which WorldCom alleges that Verizon submitted new language, WorldCom's motion is moot, either because we reject Verizon's proffered language, or because the parties had settled the issue by the end of the hearing.[53] For other issues that WorldCom identifies, the language Verizon proposed in November was more favorable to WorldCom than Verizon's previous proposals, and we therefore perceive no prejudice that WorldCom could have suffered arising from any inability to respond to the new proposals.[54] Additionally, we conclude that WorldCom had ample opportunity, during the initial and reply briefs, to respond to any changes in Verizon's November language.[55] Lastly, on one issue, Verizon's November language, while not identical to its earlier proposal, does not differ in any legally or operationally significant respect.[56]

IV. UNRESOLVED ISSUES

A. Standard of Review

29. Section 252(c) of the Act sets forth the standard of review to be used in arbitrations by the Commission and state commissions in resolving any open issue and imposing conditions upon the parties in the interconnection agreement.[57] This section states that any decision or condition must meet the requirements of section 251 and accompanying Commission regulations, establish rates in accordance with section 252(d), and provide an implementation

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[52] *Id.* at 6.

[53] *See, e.g.*, Network Architecture Issues I-1, III-2, III-4, IV-1, IV-8, IV-11; Intercarrier Compensation Issues I-6, III-5, IV-35; UNE Issues III-6, III-7, III-8, III-9, III-10, III-11/IV-19, IV-23, IV-24, IV-25, VI-3-B; Business Process Issue IV-56 (settled); Rights of Way Issue III-13-H (settled); General Terms and Conditions Issues I-11, IV-101, IV-110 (settled).

[54] *See, e.g.*, Intercarrier Compensation Issue I-5 (language regarding calling party number percentage requirement changes from 95 to 90); General Terms and Conditions Issue III-15 (Verizon agrees to provide WorldCom additional information regarding Verizon's inability to obtain intellectual property rights).

[55] *See, e.g.*, Intercarrier Compensation Issue I-5 (WorldCom fully briefed issues relating to compensation for ISP-bound traffic); UNE Issues III-12 (WorldCom counsel cross examined Verizon witness on language WorldCom now challenges as late-proposed), IV-18 (despite opportunity in two briefs, WorldCom failed to identify how Verizon's language conflicted with statute or regulations).

[56] *See infra*, Issue IV-45, n.2300.

[57] 47 U.S.C. § 252(c).

schedule.[58] As mentioned earlier, section 252(e)(5) requires the Commission to issue an order preempting a state commission that fails to act to carry out is responsibilities under section 252, and to assume the responsibility of the state commission. In its *Local Competition First Report and Order*, the Commission promulgated rule 51.807 implementing section 252(e)(5).[59] Rule 51.807 provides, among other things, that (a) the Commission is not bound to apply state laws or standards that would have otherwise applied if the state commission were arbitrating the section 252 proceeding; (b) except as otherwise provided, the Commission's arbitrator shall use final offer arbitration; and (c) absent mutual consent of the parties, the Arbitrator's decision shall be binding on the parties.[60]

30. Based on the states' experience arbitrating interconnection disputes since 1996, the Commission modified rule 51.807 last year to provide the Arbitrator additional flexibility to resolve interconnection issues.[61] Specifically, rule 51.807(f)(3) was amended so that, if a final offer submitted by one or more parties fails to comply with the other requirements of this rule, or if the Arbitrator determines in unique circumstances that another result would better implement the Act, the Arbitrator has discretion to direct the parties to submit new final offers or to adopt a result not submitted by any party that is consistent with section 252 of the Act and the Commission's rules adopted pursuant to that section.[62] In its order approving this modification, the Commission explained that it would not identify those unique circumstances under which the Arbitrator could conclude that another result is appropriate. Below, we attempt to summarize two main categories of those instances in which we have found it necessary to depart from the proposals of the parties.

31. *Modifying to Achieve Consistency with the Act and Commission Rules*. In certain instances, we have modified one party's proposal, rather than either adopt one party's proposal or reject both and direct the parties to submit new final offers.[63] In these instances, where modification of the language can bring the agreement into conformity with the Act and Commission rules, we find that it conserves administrative resources to direct the parties simply to submit a compliance filing containing the corrected language that we provide.[64] Furthermore,

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[58] 47 U.S.C. § 252(c)(1)-(3).

[59] *Local Competition First Report and Order*, 11 FCC Rcd at 16127-32, paras. 1283-95.

[60] *See* 47 C.F.R. § 51.807(b), (d), (h).

[61] *See Arbitration Procedures Order*, 16 FCC Rcd at 6232, paras. 4-6

[62] *See* 47 C.F.R. § 51.807(f)(3); *Arbitration Procedures Order*, 16 FCC Rcd at 6232, para. 5.

[63] *See, e.g.,* Issues III-3/III-3-A, III-11, and III-12.

[64] We note that, on a few occasions, we have directed a petitioner and Verizon to incorporate corrected language provided by a second petitioner or by Verizon to that second petitioner (after determining that neither the first petitioner's proposal nor Verizon's proposal to that first petitioner was consistent with our rules or the Act). *See* Issues III-1/III-2/IV-1 and III-3/III-3-A. Similarly, we have determined that, in at least one issue, the proposals (continued….)

just as the Commission recognized that the Arbitrator may conduct issue-by-issue final offer arbitration (as opposed to selecting one entire proposed contract over another), so too we find that, for certain issues, it is appropriate *within* an issue to select language from both parties to resolve the dispute (*i.e.*, to choose one subsection from one party and another subsection from the other party) or to adopt some but not all of a party's proposal.[65] We reiterate that we base our decisions on current Commission rules and precedent, and therefore reject or modify parties' proposals that extend beyond existing law.

32. *Modifying to Reflect Concessions Made at Hearing or on Other Issues*. During the course of the hearings, the parties made numerous concessions or compromises, some of which were incorporated into their most recent contract proposals[66] and several of which were not.[67] In those instances where one party clearly indicated that it supported or no longer opposed the other party's conceptual proposal or contract language[68] or indicated that it was willing to modify its own proposal to reflect the other party's concerns,[69] we determine that it is appropriate to direct the parties to submit language conforming to such statements.[70]

33. We also feel it necessary to comment on a theme running through many of the issues in this proceeding. In response to a petitioner's proposal that simply paraphrases or quotes a particular Commission rule, Verizon often indicates that its proposed language requires it to comply with the requirements of "applicable law," and argues that the petitioner's language is therefore unnecessary. We generally determine that Verizon should prevail on such issues. If there is no disagreement between the parties about what is the "applicable law" (*e.g.*, the relevant

(Continued from previous page)
offered by the parties are unnecessary and language adopted elsewhere in the contract addresses their concerns. *See, e.g.,* Issue III-8.

[65] *See, e.g.,* Issues IV-74 (finding that both parties had legitimate concerns that could be addressed harmoniously by adopting language from each proposal), V-12, and IV-45. In this regard, we note that the parties defined the content of each numbered issue without our involvement. *See also*, *e.g.,* Issues IV-4, III-9, and IV-32 (adopting part, but not all, of a carrier's proposal).

[66] *See, e.g.,* Issue III-10 (AT&T modifying its proposal by eliminating many "operational details" to address Verizon's concern about the level of detail in AT&T's earlier proposal).

[67] *See, e.g.,* Issues III-4-B (directing parties to file compliance language incorporating AT&T's agreement, expressed during hearing and in post-hearing briefs, to return a firm order confirmation within a certain number of days).

[68] *See, e.g,* Issues I-7/III-4 (Verizon's witness testifying that WorldCom's 15 percent overhead proposal "sounds fine to us"). *See also* Tr. at 1501.

[69] *See, e.g,* Issue VI-3-B (WorldCom indicating that it is willing to delete one section of its proposal).

[70] *See, e.g.,* Issue IV-5. Also, in resolving one issue related to assurance of payment, we determine that it is appropriate to apply a compromise offered in another issue, concerning insurance. For these two issues (Issues VI-1-N and VI-1-P), we find that our rationale for adopting the compromise in one issue is equally applicable to the second.

section of the Act, Commission rule or order) and the petitioner's proposed language is a mere recitation of that Commission rule or order, we typically conclude that the petitioner's proposal adds little to no value to the contract. Simply memorializing a Commission requirement in an interconnection agreement is unnecessary to ensure a carrier's rights or make clear a carrier's obligations with respect to that requirement. Indeed, we find it unlikely that quoting or paraphrasing a Commission rule in the parties' contract would reduce the likelihood of disputes over interpretation of that rule.

34. Including language that requires Verizon to comply with all applicable law affords a petitioner the same contractual remedies that would be available if the contract paraphrased the relevant Commission rule. Moreover, for those issues that we arbitrate, quoting a Commission rule will not "grandfather" or insulate it from the contract's change of law clause. To be clear, pursuant to section 252(a), and subject to the disclosure requirements of section 252(h), parties are permitted to negotiate terms and conditions without regard to subsections (b) and (c) of section 251. [71] In other words, if they so choose, the parties may memorialize in the contract a Commission rule or directive and exempt it from the agreement's change of law language. Similarly, they may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act. However, if the parties have not reached such an understanding and have asked the Commission to arbitrate their dispute, we will do so based on existing law and expect that any change in that law will be reflected in the contract. Notwithstanding this general approach towards use of the term "applicable law," we find that language clarifying a particular rule, or adding details of how the rule should operate in a commercial environment, may well be appropriate for adoption, if the proposed language is consistent with the Commission's rules and the Act.[72]

35. Finally, we note briefly that, in addressing the parties' disputes, we attempt to dispose fully of the substantive issue that the parties have presented and to provide adequate direction on how the parties should memorialize our decision in their respective interconnection agreements. As discussed above, our decision may take the form of adopting or rejecting proffered language, or adopting one side's language in modified form. We emphasize, however, that we have largely restricted ourselves to addressing the issues and the contract language that the parties have directly placed at issue through their presentations during the hearings we conducted and, most importantly, through their post-hearing briefs. There may be instances in which we have not specifically spoken to particular contract language because neither party addressed it in their advocacy, although it may have appeared in the contracts that the parties submitted after the hearings or even have appeared under a particular issue number in the JDPL. In those cases, we expect that the parties will generally be able to apply the analysis of the relevant portion of this order and the Commission precedents discussed therein to resolve any remaining disputes that they may have relating to contract language that the parties – and therefore the Bureau – left unaddressed.

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[71] *See* 47 U.S.C. § 252(a), (h).

[72] *See, e.g.,* Issue VI-3-B, *infra*.

B. Network Architecture

1. Issues I-1/VII-1/VII-3/VII-4 (Single Point of Interconnection and Related Matters)[73]

a. Introduction

36. The parties disagree about language governing interconnection between the parties, and associated operational and cost issues. In general, petitioners argue that the Commission's rules clearly establish their right to interconnect at a single point in each Local Access and Transport Area (LATA), and that this chosen point of interconnection (POI) represents the financial demarcation point between the parties. Verizon, on the other hand, argues that it should not have to bear the cost of inefficient network design choices made by competing LECs, and proposes contract language which, it argues, represents the most reasonable solution to the operational and cost issues caused by the CLECs' chosen interconnection choices.

37. Specifically, Verizon proposes language requiring AT&T, Cox and WorldCom to establish "geographically relevant interconnection points" (GRIPs) or "virtually geographically relevant interconnection points" (VGRIPs) with Verizon at designated or agreed upon points on the carriers' networks. While the GRIPs and VGRIPs interconnection proposals differ in various respects, under both plans the petitioners would be required to designate one or more "interconnection points" (IPs) within each LATA. Each carrier's IP, which may be different from the physical POI, would function as a point of demarcation of financial responsibility for the further transport of traffic delivered to its network. Under Verizon's GRIPs proposal to Cox, geographically relevant competitive LEC IPs would be located within the Verizon local calling area of equivalent Verizon end users, but would be positioned no more than 25 miles from the Verizon rate center of the Verizon NXX serving equivalent Verizon end users. Under the VGRIPs proposal, geographically relevant competitive LEC IPs would be located at a collocation site at each tandem office in a multiple-tandem LATA, at each Verizon end office in a single-tandem LATA, or at other Verizon-designated wire centers in LATAs with no tandem offices.

38. The petitioners oppose the inclusion of this language, arguing that it undermines their right to select a single technically-feasible POI in each LATA. They further argue that Verizon's proposed language is inconsistent with the Commission's rules, which prevent

[73] Because these issues present interrelated sets of contract language and disputed matters, we address them together. Issue I-1 concerns the financial implications of establishing a "single point of interconnection" in a LATA, and the parties' proposals defining their respective obligations to compensate each other for delivering traffic. Issue VII-4 addresses Verizon's proposed terms to AT&T for lowering reciprocal compensation payments under its "VGRIPs" compensation proposal. Issues VII-1 and VII-3 both address Verizon's objection to AT&T not using the term "interconnection point" in its interconnection proposal presented for arbitration. Issue VII-1 also addresses additional Verizon objections to AT&T's proposed Schedule 4, containing AT&T's interconnection proposal.

Verizon from assessing charges for traffic subject to reciprocal compensation that originates on Verizon's network. In lieu of Verizon's language, petitioners propose language implementing their own view of the Commission's rules.[74] Verizon raises additional specific objections to AT&T's proposed language, designated as Issues VII-1, VII-3 and VII-4, which we address at the end of this section.

39. As set forth below, we adopt petitioners' language and reject Verizon's. In making our determination on this issue, we look to the Commission's orders and rules governing interconnection and reciprocal compensation, particularly the Commission's *Local Competition First Report and Order* and Commission Rules 51.305 and 51.703.[75]

b. Point of Interconnection (Issues I-1 and VII-4)

(i) Positions of the Parties

40. AT&T contends that Verizon's VGRIPs proposal would enable Verizon to select the locations where each parties' traffic is delivered to the other's network for termination, and would transfer a substantial amount of the costs for Verizon's originating traffic, such as Verizon's originating transport costs, to AT&T.[76] AT&T argues that these features of VGRIPs render it inconsistent with the Act and the Commission's rules. AT&T also objects to Verizon's language lowering its reciprocal compensation payments to AT&T if AT&T does not allow Verizon to deliver traffic to AT&T at a Verizon-designated end office (the AT&T IP).[77] According to AT&T, this is another way of transferring Verizon's costs of delivering traffic onto AT&T, by circumventing Verizon's obligations to pay reciprocal compensation to AT&T.[78]

41. AT&T states that both the Act and the Commission's rules provide that new entrants may interconnect at any technically feasible point.[79] AT&T relies in part on the Commission's *SWBT Texas 271 Order*, citing it for the proposition that section 251 and the Commission's implementing rules "require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point," including "the option to interconnect at only one

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[74] *See* AT&T's November Proposed Agreement, Sch. 4; WorldCom's November Proposed Agreement, Attach. IV, §§ 1.1 through 1.1.3.3, and 1.3 through 1.3.2; and Cox's November Proposed Agreement, Sec. 4.2.2.

[75] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*); 47 C.F.R. § 51.305; 47 C.F.R. § 51.703.

[76] *See* AT&T Brief at 12. AT&T's objections are directed at Verizon's VGRIPs proposal only, which AT&T states was the only Verizon interconnection proposal put at issue with respect to AT&T. *See id* at 12 and n.24.

[77] *See* AT&T Brief at 71.

[78] *See id* at 72.

[79] *See id.* at 6.

technically feasible point in each LATA."[80] AT&T further states that under the Commission's rules each carrier is responsible for its costs to deliver originating local traffic to the point of interconnection.[81] Specifically, AT&T states that the Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.[82]

42. AT&T contends that, as provided in its proposal, each party should be financially responsible for (1) transporting its own originating traffic to the point of interconnection on the terminating party's network; and (2) paying for any transport and termination of the traffic to the end user on the terminating party's network.[83] Accordingly, AT&T rejects Verizon's claims that the petitioners' interconnection proposals require Verizon to subsidize virtually all of the costs of interconnection. AT&T argues that Verizon has presented no evidence of the extent of the additional costs (such as the cost of transporting originating traffic to a competitive LEC's POI) that Verizon claims it must bear as a result of the petitioners' interconnection proposals. AT&T further argues that, while Verizon may in fact pay incrementally more to transport its traffic in a competitive market than it would if it were the sole service provider, the Act does not insulate Verizon from all costs that result from opening local telecommunications markets to competition.[84]

43. AT&T also disputes the claim that its proposed language implicitly endorses the concept of an IP. According to AT&T, the AT&T language Verizon cites is simply a reflection of the Commission's rules defining transport for purposes of reciprocal compensation. AT&T states that its language, consistent with these rules, reflects the fact that the POI is the location where the transport portion of reciprocal compensation begins.[85] Finally, AT&T also disputes Verizon's claim that AT&T's arguments regarding points of interconnection represents, somehow, an impermissible change of position.[86]

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[80] *See id.* at 7, citing *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, para. 78 (2000) (*SWBT Texas Order*).

[81] *See* AT&T Brief at 5.

[82] *See id.* at 9, citing 47 C.F.R. § 51.703(b) (for traffic subject to reciprocal compensation, prohibiting any LEC from charging other telecommunications carriers for traffic originating on the LEC's network). *See also* 47 U.S.C. § 252(d)(2)(A).

[83] *See* AT&T Reply at 2.

[84] *See id.* at 3.

[85] *See id.* at 34-35, citing 47 C.F.R. § 51.701(c).

[86] *See* AT&T Brief at 66-67.

44. Cox also disagrees with Verizon's proposals, offering objections similar to those of AT&T.[87] According to Cox, section 251(c)(2) of the Act and Commission Rule 51.305(a)(2) require that competitive LECs be allowed to select any technically feasible point of interconnection within an incumbent LEC's network.[88] As did AT&T, Cox argues that Commission Rule 51.703(b) prevents an incumbent LEC from evading this requirement by imposing on a competitive LEC charges for transporting the incumbent LEC's traffic to the competitive LEC.[89] Cox argues that, as the Commission's *TSR Wireless Order* demonstrates, Verizon's GRIPs and VGRIPs proposals violate these provisions of the Act and the Commission's rules. Cox states that, in the *TSR Wireless Order*, the Commission held that a LEC cannot avoid its obligations to deliver traffic to another carrier's point of interconnection by charging the carrier for delivering traffic to the point of interconnection, regardless of how the LEC characterizes those charges.[90] According to Cox, Verizon's GRIPs and VGRIPs proposals violate the Commission's holding in the *TSR Wireless Order*, because Verizon's proposals would make Cox, rather than Verizon, responsible for the costs of delivering Verizon-originated traffic to Cox.[91]

45. Additionally, Cox argues that Verizon's proposals would limit Cox to collecting the end office rate for reciprocal compensation, rather than the tandem rate, for traffic Verizon delivers to Cox for termination.[92] According to Cox, these provisions violate the Commission's rules governing the treatment of competitive LEC switches for the purposes of calculating reciprocal compensation.[93] Cox also argues that Verizon has not clarified its proposed offset of transport and other costs against competitive LEC charges for delivery of Verizon's originating traffic. Cox asserts it is unclear precisely what would offset the competitive LEC charges under Verizon's proposal.[94] In addition, Cox argues that some elements of Verizon's proposals are

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[87] Cox believes that Verizon has formally offered only its GRIPs proposal to Cox, and not its VGRIPs proposal. *See* Cox Objection and Request for Sanctions at 1-3. Nonetheless, while preserving its procedural objection to Verizon's VGRIPs language, Cox's post-hearing briefs address substantive concerns with both proposals. *See* Cox Brief at n.3.

[88] *See* Cox Brief at 7; 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2).

[89] *See* Cox Brief at 7; 47 C.F.R. § 51.703(b).

[90] *See* Cox Brief at 7-8, citing *TSR Wireless, LLC v. US West Communications, Inc.,* 15 FCC Rcd 11166 (2000) (holding that LECs may not charge for either transport or facilities for traffic they deliver to paging companies), *aff'd sub nom. Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[91] *See* Cox Brief at 7.

[92] *See id.* at 9.

[93] *See id.* at 9, citing 47 C.F.R. § 51.711(a)(3). Both AT&T and WorldCom raise similar objections to proposed Verizon language under Issue III-5, *infra*.

[94] *See* Cox Brief at 12-13, citing Tr. at 1361-63.

arbitrary and unreasonable.[95] For example, Cox states that Verizon's own witness admitted that, under its GRIPs proposal, the 25-mile threshold triggering Verizon's selection of IPs is a number without basis in any engineering principle.[96] Cox also states that, while Verizon's VGRIPs proposal provides for competitive LEC compensation of Verizon's originating transport costs in a single-tandem LATA, Verizon regularly bears the costs of transport within its own network to a distant tandem in a single-tandem LATA.[97]

46. WorldCom objects to Verizon's GRIPs and VGRIPs proposals for similar reasons to those offered by AT&T and Cox. Specifically, WorldCom also believes Verizon's proposals contravene WorldCom's right under the Commission's rules to select any technically feasible point of interconnection and not to be charged for delivery of Verizon's traffic to the point of interconnection.[98] WorldCom states that, although Verizon purports to recognize the competitive LEC's right to select the point or points of interconnection, Verizon's proposals ignore one critical aspect of that principle: the carrier that originates traffic is financially responsible for transporting the traffic to the point of interconnection with the other carrier's network. Instead, according to WorldCom, Verizon's proposal relieves Verizon of its obligation to deliver its originating traffic to the network of a co-carrier, and shifts to the co-carrier Verizon's cost of facilities used to deliver its originating calls.[99] WorldCom also objects that Verizon's proposals are non-mutual, shifting financial responsibility only when WorldCom receives Verizon's originating traffic, without any corresponding shift when WorldCom delivers traffic to Verizon.[100]

47. In addition, WorldCom objects to provisions in Verizon's GRIPs and VGRIPs proposals which it argues would allow Verizon to transform WorldCom collocation arrangements into physical points of interconnection. WorldCom argues that collocation arrangements, which are quite expensive to establish, are typically not established by WorldCom for interconnection but for access to unbundled network elements (UNEs).[101] WorldCom also objects to provisions in Verizon's proposals allowing Verizon to reduce its reciprocal compensation payments in those instances where WorldCom does not agree to a Verizon-designated IP.[102] WorldCom objects that this language effectively permits Verizon to charge

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95 *See* Cox Brief at 13-16.

96 *See id.* at 13.

97 *See id.* at 13.

98 *See* WorldCom Brief at 6.

99 *See id.* at 10.

100 *See id.* at 14; WorldCom Reply at 12-13.

101 *See* WorldCom Brief at 11-12.

102 Specifically, Verizon's proposal would reduce reciprocal compensation by the amount of its end office rate less transport and tandem switching rates. *See* WorldCom Brief at 12-13.

transport and tandem switching to WorldCom for Verizon's originating traffic,[103] and contravenes WorldCom's right to receive symmetrical reciprocal compensation.[104]

48. Verizon objects to the petitioners' interconnection proposals on the grounds that they require Verizon to bear the entire cost of transporting traffic to competitive LEC points of interconnection, even though these transport costs are the result of the competitive LECs' interconnection and network architecture choices.[105] Verizon states that its local traffic bound for a competitive LEC's customer often must leave the Verizon legacy local calling area before reaching the competitive LEC's customer. Verizon states that it must incur the cost to transport the call to the competitive LEC's chosen point of interconnection, which may be outside the originating local calling area. Verizon claims that this problem is exacerbated when competitive LECs offer "virtual FX" or virtual foreign exchange service, by assigning NPA-NXX codes associated with a particular rate center or local calling area to customers physically located outside of that rate center or local calling area. This allows these customers to receive calls rated as local rather than toll even though the FX customer is located in a different local calling area than the caller.[106] According to Verizon, it incurs costs to transport traffic bound for a competitive LEC's virtual FX customer in another local calling area, yet it would not receive toll revenues from its own end user, nor would it receive compensation for originating access service from the competitive LEC. Instead, Verizon would be required to pay reciprocal compensation to the competitive LEC, for what it regards as toll traffic.[107]

49. Verizon contends that its VGRIPs proposal, which it maintains it has offered to all three petitioners, represents the most reasonable solution to the operational and cost issues raised by the competitive LECs' interconnection choices.[108] Verizon argues that the contract should explicitly differentiate between the terms "POI" (referring to a physical point of interconnection) and "IP" (referring to the demarcation point for financial responsibility). Verizon suggests that, notwithstanding AT&T's objections to Verizon's use of these two terms, AT&T's proposed language implicitly contains the same distinction. Specifically, Verizon states that AT&T's language would allow it to designate an AT&T collocation at a Verizon tandem as

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[103] *See id.* at 12-13.

[104] *See id.* at 15.

[105] *See* Verizon Network Architecture Brief at 2.

[106] Verizon states that many of the competitive LECs' virtual FX customers are internet service providers (ISPs). *See* Verizon Network Architecture Brief at 2. The parties deal more fully with the issues of virtual FX service and assignment of NPA-NXX codes in Issue I-6, *infra*.

[107] *See* Verizon Network Architecture Brief at 2-3.

[108] *See id.* at 2.

Verizon's POI, but financially obligate Verizon to transport its traffic to the terminating AT&T switch.[109]

50. Verizon does not dispute that competitive LECs can determine where they will physically interconnect with Verizon's network. Accordingly, it explains that its VGRIPs proposal provides each party with a menu of interconnection options, and would allow petitioners to select one technically feasible point of interconnection in a LATA, if they chose to configure their network in that manner.[110] Verizon states that the competitive LEC IPs are the points beyond which the competitive LEC would be *financially* responsible for the further transport of traffic to its network. According to Verizon, its VGRIPs proposal, by establishing competitive LEC IPs, merely shifts onto competitive LECs some of the costs Verizon incurs to transport traffic to the point of interconnection.[111] Verizon adds that, under the terms of its VGRIPs proposal, a competitive LEC's IP may very well be outside the Verizon local calling area in which traffic originates; in such circumstances, Verizon would absorb the transport costs it incurs to carry traffic to the IP. According to Verizon, this aspect of VGRIPs represents a significant compromise for Verizon.[112] Verizon maintains that its proposal is consistent with the Commission's *Local Competition First Report and Order*, which stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection."[113] Verizon cites interconnection arbitration orders by the South Carolina Public Service Commission (South Carolina Commission) and the North Carolina Utilities Commission (North Carolina Commission) approving incumbent LEC interconnection proposals similar to Verizon's VGRIPs proposal.[114] Verizon also states that the U.S. Court of Appeals for the Third Circuit has recognized that state commissions may consider shifting onto a competitive LEC the costs that a competitive LEC's choice of points of interconnection would otherwise impose on the incumbent LEC.[115]

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[109] *See id.* at 20-21, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part A, § 1.5.

[110] *See* Verizon Network Architecture Brief at 5-6 and 21.

[111] *See id.* at 5-8.

[112] *See id.* at 6.

[113] *See id.* at 8, quoting *Local Competition First Report and Order*, 11 FCC Rcd at 15603, para. 199.

[114] *See* Verizon Network Architecture Brief at 12-16, citing South Carolina Commission, *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079 (2001); North Carolina Commission, *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73, P-646, Sub 7 (2001).

[115] *See* Verizon Network Architecture Brief at 16, citing *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania*, 271 F.3d 491, 518 (3rd. Cir. 2001).

(ii) Discussion

51. We adopt the petitioners' proposed interconnection language, rather than Verizon's proposed language implementing its "GRIPS" and "VGRIPS" proposals.[116] We find that petitioners' language more closely conforms to the Commission's current rules governing points of interconnection and reciprocal compensation than do Verizon's proposals. Because we adopt the petitioners' proposals, rather than Verizon's, we also determine that WorldCom's motion and Cox's objection are moot with respect to Issue I-1.

52. Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point.[117] This includes the right to request a single point of interconnection in a LATA.[118] The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network.[119] Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic. The interplay of these rules has raised questions about whether they lead to the deployment of inefficient or duplicative networks.[120] The Commission is currently examining the interplay of these rules in a pending rulemaking proceeding.[121] As the Commission recognized in that proceeding, incumbent LECs and competitive LECs have taken opposing views regarding application of the rules governing interconnection and reciprocal compensation.[122]

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[116] With respect to AT&T, we adopt AT&T's November Proposed Agreement, §§ 4.1 *et seq.* and 4.2 *et seq.*, and Schedule 4 (except for certain provisions modified or rejected elsewhere in this Order, such as in Issue III-3/III-3-a and Issue V-1/V-8); and reject Verizon's November Proposed Agreement, §§ 1.45(a), 1.63, 4.1 *et seq.*, 4.2 *et seq.*, 5.7.3 and 5.7.6 *et seq.* With respect to Cox, we adopt Cox's November Proposed Agreement, § 4.2 *et seq.*; and reject Verizon's November Proposed Agreement, § 4.2.2 *et seq.* With respect to WorldCom, we adopt WorldCom's November Proposed Attachment IV, §§ 1.1 through 1.1.3.3, and 1.3 through 1.3.2; and reject Verizon's November Proposed Agreement, Part B, §§ 2.49 and 2.71, and Interconnection Attachment, §§ 2.1 *et seq.*, 2.5, 7.1 *et seq.* and 7.5 *et seq*.

[117] *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2).

[118] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650, paras. 72, 112 (2001) (*Intercarrier Compensation NPRM)*; *SWBT Texas 271 Order*, 16 FCC Rcd at 18390, para. 78 n.174.

[119] *See* 47 C.F.R. § 51.703(b).

[120] *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9617, para. 14.

[121] *See id.*, 16 FCC Rcd at 9650-52, paras. 112-14.

[122] *See id.*, 16 FCC Rcd at 9650, para. 112.

53. We find that the petitioners' proposed language more closely conforms to our existing rules and precedent than do Verizon's proposals.[123] Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection.[124] By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.[125] Accordingly, we adopt the petitioners' proposals.

54. Verizon raises serious concerns about the apportionment of costs caused by a competitive LEC's choice of points of interconnection, such as, for example, the apportionment of costs for virtual FX traffic transported to distant points of interconnection.[126] As we have noted, the Commission is currently examining similar concerns on an industry-wide basis in a pending rulemaking proceeding.[127] Should the Commission's rules governing interconnection and reciprocal compensation change during that proceeding, we expect the agreements' change of law provisions to apply. As we indicate above, however, in this proceeding, we will decide the issues presented based on the Commission's existing rules, and the petitioners' interconnection proposals more closely conform to those rules than do Verizon's proposals.

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[123] We note that the Commission declined to find that policies similar to GRIPs and VGRIPs violated the Act in the *Verizon Pennsylvania 271 Order*. *See Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17474-75, para. 100 (2001) (*Verizon Pennsylvania 271 Order*). The Commission has not, however, required that all "new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations" be resolved in a Bell Operating Company's (BOC) favor in order for the BOC's section 271 application to be granted. *See Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6246-47, para. 19 (2001) (*SWBT Kansas/Oklahoma 271 Order*). Thus, the *Verizon Pennsylvania 271 Order* is not determinative of the question we address here, which is whether Verizon's or petitioners' language is more consistent with the Act and our rules.

[124] *See* Verizon Network Architecture Brief at 6. Verizon states that a competitive LEC could discharge that financial responsibility, for example, by purchasing UNE transport from Verizon. *See id.* at 6.

[125] 47 C.F.R. § 51.703(b).

[126] For a more extensive discussion of Verizon's concerns regarding virtual FX traffic, *see infra,* Issue I-6.

[127] *See Intercarrier Compensation NPRM* at 9634-38, 9650-52, paras. 69-77, 112-15.

c. Additional Interconnection Language (Issues VII-1 and VII-3)

(i) Positions of the Parties

55. The arguments raised by Verizon under Issues VII-1 and VII-3 overlap considerably with the questions addressed above under Issue I-1, and relate to the same sections of proposed language. While we thus discuss most of these arguments above, we discuss in this section a number of other specific criticisms raised by Verizon relating to AT&T's proposed Section 4. Specifically, Verizon contends:

- AT&T has wasted time and resources by unilaterally changing provisions that the parties agreed upon during negotiations.[128]
- AT&T's proposed language allowing it to interconnect "at any technically feasible point" is too broad and vague, as the New York Commission recently held.[129]
- AT&T's proposal does not provide Verizon with many interconnection options, defaulting to providing Verizon's POI at the AT&T end office switch in the absence of mutual agreement.[130]
- AT&T uses the term "ESIT" in its proposed language, referring to intraLATA toll and local traffic, which would lead to treating intraLATA toll traffic subject to the Virginia Commission's tariffing authority in the same manner as section 251(b)(5) traffic.[131]
- AT&T's proposals contain timelines that are unnecessarily rigid, yet overly broad and vague.[132]
- AT&T's proposed language governing transition and trunk conversion costs unfairly holds Verizon responsible for half of AT&T's costs whenever AT&T decides

[128] *See* Verizon Network Architecture Brief at 21-22. For example, with respect to the parties' trunk group proposals, Verizon asserts that AT&T should have merely offered a redline comparison of AT&T's and Verizon's proposals if it wanted to point out any differences in the proposals, instead of putting already agreed upon language in dispute. *See, id.* at 23-24.

[129] *See* Verizon Network Architecture Brief at 22, citing Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues, at 28 (issued July 30, 2001) (*New York Commission AT&T Arbitration Order*) (in which, according to Verizon, the NY Commission adopted the same "POI" options offered here by Verizon).

[130] *See* Verizon Network Architecture Brief at 22-23.

[131] *See id.* at 23.

[132] *See id.* at 24, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part B, § 3 (timelines for transitioning to new interconnection arrangements).

to alter its existing network and interconnection arrangements with Verizon.[133] Verizon suggests that its own proposal is consistent with the New York Commission's recent determination that AT&T should pay for all relevant, incremental costs triggered by its actions during a network transition.[134]

- AT&T's proposal to interconnect with Verizon at a point of presence (POP) hotel or customer premise would be discriminatory because AT&T is uniquely advantaged, as a result of conditions dating back to the AT&T divestiture, by sometimes having wire centers in the same building as Verizon.[135]

56. AT&T responds to Verizon's objections to its proposed Schedule 4. Specifically, AT&T argues that any "reorganization" of its language prior to the hearing was almost entirely non-substantive, and was intended to make its language conform more closely to the structure of Verizon's model contract.[136] AT&T also contends that its use of the term "ESIT" to refer to local and toll traffic does not cause problems. AT&T states that the parties have agreed to carry both local and toll traffic on the same trunks, and apply a percent local usage factor to determine the relative amounts of reciprocal compensation and access charges owed to terminating carriers. AT&T argues that its treatment of toll traffic is thus consistent with section 251(b)(5) of the Act as well as Virginia's treatment of intrastate toll traffic.[137] To address Verizon's concerns regarding payment for network transitions, AT&T states that it has modified its language to make clear that each party bears its own non-recurring charges for network transitions.[138] The proposed language for intra-building interconnection is consistent with AT&T's right to interconnection at any technically feasible point, and would not allow the parties to grandfather existing interconnection arrangements indefinitely.[139]

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[133] *See* Verizon Network Architecture Brief at 24, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part B, § 3 *et seq*.

[134] *See* Verizon Network Architecture Brief at 24, citing *New York Commission AT&T Arbitration Order* at 29.

[135] *See* Verizon Network Architecture Reply at 12.

[136] *See* AT&T Brief at 70, citing AT&T's November Proposed Agreement to Verizon, Sch. 4, Part C.

[137] *See* AT&T Reply at 33-34. AT&T also disputes Verizon's concerns that AT&T's use of the term ESIT carries any slamming implications. *See id* at 34. According to AT&T, both parties have agreed that intrastate toll traffic will be carried to the end user's chosen intraLATA toll provider, over the exchange access trunks corresponding to that particular provider.

[138] *See* AT&T Brief at 69.

[139] *See id.* at 67. AT&T explains that its language merely allows the parties to *agree mutually* to grandfather existing interconnection arrangements while they transition to new ones.

(ii) Discussion

57. We reject Verizon's several arguments opposing inclusion of AT&T's Schedule 4 for the following reasons, and find that this proposed language is consistent with applicable law and precedent.

- Verizon's objection to AT&T's restructuring of its proposed language on trunk groups is without merit: there is simply no requirement that a petitioner for arbitration under section 252(b) must present the Arbitrator with the same language discussed during previous voluntary negotiations.

- We disagree with Verizon's contention that AT&T's language allowing it to interconnect at any technically feasible point is too broad and vague.[140] AT&T's proposed language restates its rights under the Act and the Commission's implementing rules, and lists several examples ("tandems, end offices, outside plant and customer premises") of what might constitute technically feasible points.[141]

- We reject Verizon's objection that AT&T's proposed language offers Verizon fewer interconnection options than for itself. The standards governing incumbent LEC interconnection under section 251(c)(2) of the Act simply do not apply to competitive entrants like AT&T.

- We find Verizon's objection to AT&T's use of the term ESIT to be lacking. As AT&T explains, the use of this term merely recognizes the parties' agreement to exchange 251(b)(5) traffic and toll traffic on the same trunk groups, applying a percentage of use factor to determine the portion of traffic subject to reciprocal compensation and the portion subject to access charges. Verizon fails to explain how this does violence to Virginia's regime governing intrastate access.

- We reject Verizon's claim that AT&T's proposes an unnecessarily rigid and unworkable plan for implementing network reconfigurations consistent with the contract language adopted herein. Verizon offers no support for its claim – for example, it does not explain why AT&T's proposed 45-day timeline for developing an implementation plan is unworkable. AT&T's proposed timetable appears reasonable and, even if the target dates to be impractical, the proposal envisions using the contract's dispute resolution process in the event any deadlines are missed.

- With respect to AT&T's language governing trunk conversion costs, we find that AT&T's modified language adequately addresses Verizon's stated concern that AT&T would require Verizon to pay AT&T's costs for trunk conversion.

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[140] *See* AT&T's November Proposed Agreement to Verizon, Sch. 4, Part A, § 1.1.

[141] *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305.

- We reject Verizon's arguments that AT&T's language allowing it to interconnect at any technically feasible point, including a customer premises (*i.e.,* intra-building interconnection), discriminates against other carriers. Technically feasible interconnection is the right of every competitive entrant. The fact that AT&T in some instances, by the development of historical events, maintains wire centers on the same premises as Verizon hardly renders its proposed language discriminatory against other carriers.

2. Issues I-2/VII-5 (Distance-Sensitive Rates and Transport of Verizon Traffic from the IP to the POI)

a. Introduction

58. Verizon proposes language that would preclude petitioners from charging it distance-sensitive rates for "entrance facilities," in order to limit its transport costs in the event that it does not prevail on Issue I-1. These "entrance facilities" are interconnection facilities petitioners provide to Verizon that are used to transport Verizon-originated traffic to the petitioners' networks.[142] Verizon argues its proposed language would limit its transport costs in LATAs where a petitioner establishes only one, or few, points of interconnection (POIs). With respect to WorldCom, and as discussed in Issue I-1, Verizon seeks to include language requiring WorldCom to establish an interconnection point (IP) with Verizon, separate from the physical POI. The IP, rather than the POI, would serve as the demarcation of Verizon's financial responsibility for further transport of traffic.[143] Petitioners oppose Verizon's proposed language.[144] We reject Verizon's proposed language.

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[142] The following sections of Verizon's proposed contracts raise the distance-sensitive rate issue. With respect to AT&T, under Issue VII-5: Verizon's November Proposed Agreement to AT&T, § 4.2.7; *see* Verizon Network Architecture (NA) Brief at 17, n.32. At the hearing, counsel for Verizon stated that Issue VII-5 is the same as Issue I-2. *See* Tr. at 2708-09. With respect to Cox for Issue I-2: Verizon's November Proposed Agreement to Cox, §§ 4.3.8, 4.5.3; *see* Verizon NA Brief at 17, n.32; *see also* Cox Objection and Request for Sanctions at Exhibit 3. Verizon's November Proposed Contract to Cox, § 4.2.4, which Cox also identifies as at issue (*see* Second Revised Joint Decision Point List, Network Architecture (Nov. 2, 2001), at 26), was withdrawn by Verizon in its November contract filing. *See* Verizon November Proposed Agreement to Cox, at 17-18. With respect to WorldCom: Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.1.3.5.1; *see* Verizon NA Brief at 17, n.32. WorldCom explains, however, that the "distance-sensitive rate" aspect of Issue I-2 is inapplicable to it because Verizon brings traffic on its own facilities to the point of interconnection with WorldCom. *See* n.165, *infra*. WorldCom also contests Verizon's proposed § 2.1.3.5.1 as part of the general language contested under Issue I-1. *See* Second Revised Joint Decision Point List, Network Architecture, Issue I-1, at 17.

[143] As discussed below, WorldCom frames its Issue I-2 differently than AT&T and Cox and, accordingly, challenges under Issue I-2 a different portion of Verizon's proposed contract, which it also challenges under Issue I-1. *See* Second Revised Joint Decision Point List, Network Architecture, Issue I-1, at 18-19 (challenging Verizon proposed §§ 7.1.1.2, 7.1.1.3, 7.1.1.3.1, 7.1.3), Issue I-2, at 24-25 (same).

[144] In November, Verizon modified its proposed language to Cox. *See* Verizon's November Proposed Agreement to Cox, § 4.5.3; *see also* Cox Objection and Request for Sanctions at Exhibit 3 (comparing Issue I-2 language in (continued….)

b. Positions of the Parties

59. AT&T opposes Verizon's language; it proposes no language of its own. AT&T believes that Issue I-2 presents the question of price caps for competitive LEC services, which, it argues under Issue I-9, are inconsistent with law.[145] Thus, AT&T argues that it should be able to recover its distance-sensitive charges for any transport it provides from Verizon's network to its own.[146] As in Issue I-1, AT&T argues that each party has the financial obligation to deliver its originating traffic to the POI. This means that Verizon must fully compensate AT&T for costs that AT&T incurs to deliver Verizon-originated traffic to that point (*i.e.*, if Verizon uses AT&T entrance facilities for this purpose).[147] Accordingly, AT&T objects to Verizon's proposed language that precludes distance-sensitive rates.[148] Verizon's complaint that it is hostage to paying AT&T transport ignores the reality that Verizon is the incumbent with the ubiquitous network and rarely needs to lease facilities from any carrier, a point which Verizon conceded at the hearing.[149]

60. Cox argues that Verizon's proposal would create an asymmetrical relationship. Verizon would bar Cox from charging distance-sensitive rates for the transport of Verizon-originated traffic over Cox facilities,[150] but would still charge Cox distance-sensitive rates for carrying Cox-originated traffic over Verizon's transport facilities.[151] Cox argues that asymmetrical rates are not justified in this matter for three reasons. First, Cox notes that it has proposed language under which Verizon could self-provision transport up to the "entrance facility point" for Cox's switching offices (*i.e.*, up to the Verizon wire center closest to the Cox

(Continued from previous page)
Revised Joint Decision Point List with Issue I-2 language in Second Revised Joint Decision Point List). Cox filed an Objection and Request for Sanctions, arguing that this language introduces a new approval requirement. *See* Cox Objection and Request for Sanctions at 2, 11-12.

[145] With respect to Issue I-2, AT&T consistently has cross-referenced its Issue I-9 argument. *See, e.g.*, AT&T Ex. 4 (Direct Testimony of R. Kirchberger), at 3; AT&T Statement of Unresolved Issues at 280-81. Neither AT&T nor Verizon identified in any of the Joint Decision Point Lists any language from either party's proposed contract as at issue under Issue I-2. As noted, at the hearing, counsel for Verizon stated that Issue VII-5, which is a Verizon-designated AT&T issue, is the same as Issue I-2. *See* Tr. at 2708-09.

[146] *See* Tr. at 2707.

[147] *See* AT&T Brief at 73.

[148] *See* Verizon's November Proposed Agreement to AT&T, § 4.2.7.

[149] AT&T Brief at 73 n.247, citing Tr. at 1237-38. Moreover, as discussed with respect to Issue V-2, AT&T claims that, when the situation is reversed and AT&T purchases transport from Verizon for the same purpose, Verizon wants to charge AT&T distance-sensitive, market-based exchange access rates – Verizon's highest tariffed rate. *Id*. This, AT&T argues, is clearly inequitable. *Id*.

[150] *See* Cox Brief at 17.

[151] *See* Cox Brief at 17, citing Tr. at 1255-56; Verizon Ex. 18 (Rebuttal Testimony of D. Albert and P. D'Amico), at 12.

switch).[152] Cox estimates that in Virginia the distance between its switch and the nearest Verizon serving wire center does not exceed four miles.[153] Thus, if Verizon chooses this alternative, it would pay Cox no more than a four-mile entrance facility charge. Verizon's witness acknowledged that this is a reasonable distance for which to pay transport charges.[154] Second, Cox argues, the fact that the current and proposed agreements both allow for mid-span meets largely eliminates Verizon's concerns because Verizon can control when and if it will pay distance-sensitive rates to Cox.[155] Third, although Verizon argues that elimination of mileage-sensitive rates is essential to protect it from the situation in which a competitive LEC chooses a single POI in a LATA and places it far distant from the Verizon end-office, Cox has already agreed to multiple IPs in Virginia. Accordingly, Cox asserts, the problem of the single POI does not exist with respect to Cox.[156] Allowing Verizon to charge Cox distance-sensitive rates, while denying Cox the same opportunity, forces Cox to subsidize Verizon's services.[157]

61. Moreover, Cox argues, several regulatory control mechanisms already ensure that Cox's rates are reasonable. These include common carrier rules requiring nondiscriminatory rates and state and federal regulatory oversight of Cox's rates and practices.[158] Verizon has admitted that it does not deem any of Cox's rates to be unreasonable and has never challenged them before a regulatory body.[159]

62. Finally, Cox argues, Verizon's November VGRIPs language, which also would give Verizon the sole right to designate IPs (while continuing to limit Cox to non-distance-sensitive charges),[160] violates two settled Commission policies.[161] First, it is contrary to the Commission's determination that competitive LECs are permitted to choose their POIs.[162]

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[152] *See* Tr. at 1021-23; Cox Ex. 1 (Direct Testimony of F. Collins), at 11-12; *see also* Cox November Proposed Agreement to Verizon, § 4.3.4.

[153] Cox Brief at 17, citing Cox Ex. 2 (Rebuttal Testimony of F. Collins), at 13; Tr. at 1028-29.

[154] Cox Brief at 17-18, citing Tr. at 1259.

[155] Cox Brief at 18, citing Tr. at 1022-24.

[156] Cox. Brief at 18, citing Tr. at 1252-53.

[157] Cox Brief at 19.

[158] Cox Reply at 11-12.

[159] Cox Reply at 12, citing Cox Exhibits 22-24 (the only Cox rate Verizon deems unreasonable is a late fee; Verizon has not filed a complaint against Cox but would do so if it deemed Cox rates unreasonable).

[160] *See* Cox Objection and Request for Sanctions at Exhibit 3 (comparing Issue I-2 language in Revised Joint Decision Point List with Issue I-2 language in Second Revised Joint Decision Point List).

[161] Cox Reply at 11.

[162] *See* Cox Brief at 19, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15608-09; 47 C.F.R. § 51.305(a); Cox Reply at 11.

Second, it would require the Commission to revise its policy of treating Cox and Verizon as co-carriers and treat Cox as a subservient carrier.[163] Cox contends the Commission has stated that each carrier derives a benefit from interconnection and each should be required to bear the reasonable cost of it.[164]

63. According to WorldCom, Issue I-2 is different from Cox's Issue I-2 and does not concern distance-sensitive charges.[165] WorldCom states that, in a co-carrier environment, Verizon is responsible for delivering its traffic to the physical POI.[166] Under Verizon's proposed section 7.2 to WorldCom, however, WorldCom would be obligated to receive Verizon-originated traffic at points that Verizon designates as "WorldCom IPs" and then would be required to provide transport and termination of Verizon's traffic from that point.[167] Under Verizon's proposal, typically, a "WorldCom IP" would be at a point on Verizon's network before the POI, and WorldCom would not be able to assess charges other than reciprocal compensation for terminating traffic from the WorldCom IP.[168] Accordingly, WorldCom would have to provide "free transport" to Verizon between the WorldCom IP and the POI.[169] Reciprocal compensation does not reimburse WorldCom for the cost of this transport between the WorldCom IP and the POI, [170] because reciprocal compensation only recovers the cost of

[163] Cox Reply at 11, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15981[sic. 15781, para. 553].

[164] Cox Brief at 17, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15981[sic. 15781, para. 553].

[165] WorldCom Brief at 18 n.12. WorldCom explains that under the parties' current arrangement, Verizon is "able to self-provision facilities for the delivery of its traffic to WorldCom, and there is no factual basis for its proposal to limit WorldCom's transport charges to a non-distance-sensitive charge." WorldCom Reply at 19. Accordingly, Verizon's proposal to limit transport charges to a non-distance-sensitive charge is inapplicable to WorldCom.

[166] WorldCom Brief at 19 n.13.

[167] *See* WorldCom Brief at 18 & n.12; Verizon's November Proposed Agreement to WorldCom, Interconnection Attach., § 7.2 (compensation for transport and termination of § 251(b)(5) traffic shall be at the rates stated in the Pricing Attachment which "are to be applied at the MCIm-IP for traffic delivered by Verizon for termination by MCIm …. Except as expressly specified in this Agreement, no additional charges shall apply for the termination from the IP to the customer" of such traffic). Section 7.2 was not identified by either party in the Joint Decision Point Lists as at issue under either Issue I-1 or I-2.

[168] *See* WorldCom Brief at 18, citing WorldCom Ex. 3 (Direct Testimony of D. Grieco and G. Ball) at 28. The IP is either a Verizon end office or multiple Verizon tandems. These are not the POI in a multi-tandem LATA. WorldCom Brief at 18-19, citing WorldCom Ex. 3, at 29.

[169] WorldCom Brief at 18, citing WorldCom Ex. 3, at 28.

[170] *Id*.

tandem switching by the terminating carrier, transport from that carrier's tandem to the terminating office, and end-office switching.[171]

64. Verizon argues that if the Commission does not accept the VGRIPs proposal, it should permit Verizon to address its legitimate transport concerns by preventing the petitioners from charging it distance-sensitive rates for transport.[172] It claims that its proposal protects it from being penalized if a competitive LEC locates only one or a limited number of POIs in the LATA.[173] Through its proposal, Verizon seeks options, just as the competitive LECs have options, to limit the costs of interconnection. If the competitive LECs can unilaterally dictate the location of the POI without assuming any financial responsibility for that choice, refuse to provide collocation,[174] and unilaterally dictate how to establish the mid-span meet, [175] Verizon has no options other than to purchase transport from the competitive LECs.[176] Verizon's proposal would preclude petitioners from charging excessive rates when Verizon delivers its traffic to a distant competitive LEC POI. [177]

65. In response to Cox's claim that it should be treated as a co-carrier, Verizon argues that Cox only wants such treatment when it is to Cox's benefit.[178] Verizon should be given the same choices as competitive LECs.[179] Consistent with petitioners' desire to be treated as "co-carriers," they should be willing to offer Verizon the same opportunities they have to limit

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[171] *Id.* at 19. Moreover, WorldCom argues, if it were, for example, to provide transport of Verizon traffic between a Verizon end-office (one potential manifestation of the WorldCom IP) and the POI at the Verizon tandem -- an average distance of ten miles in Virginia -- WorldCom should be able to charge for this transport service. WorldCom Brief at 19, citing WorldCom Ex. 3, at 28-29; WorldCom Reply at 20, citing WorldCom Ex. 15 (Rebuttal Testimony of D. Grieco and G. Ball), at 30-31. Further, any restriction on such a charge, such as limiting it to a non-distance-sensitive charge, would be unreasonable. *See* WorldCom Reply at 20. WorldCom would be providing transport over some distance, and limiting WorldCom's ability to levy a reasonable charge would force WorldCom to provide transport at below cost rates. *See id*.

[172] Verizon NA Brief at 16.

[173] Verizon NA Brief at 16-17, citing Tr. at 1255, 18; *see also* Tr. at 2708-05.

[174] *See infra*, Issue I-3.

[175] Verizon says if it were able to establish mid-span meets with competitive LECs on terms and conditions agreeable to Verizon, then the mid-span meet would obviate the need for Verizon to collocate, but argues that the competitive LECs also want the unilateral ability to dictate how to accomplish the mid-span meet. Verizon NA Reply at 11, citing Issue III-3.

[176] Verizon NA Brief at 17; Verizon NA Reply at 11 n.32.

[177] *See* Verizon NA Brief at 17.

[178] Verizon NA Reply at 10, citing Cox Brief at 17.

[179] Verizon NA Reply at 11.

interconnection costs.[180] Otherwise, petitioners should not be permitted to charge Verizon distance-sensitive rates for transport because Verizon's choice as to where it may deliver traffic is limited.[181] Verizon's lack of interconnection choices, combined with the competitive LECs' option to choose whatever interconnection method they desire, could operate to maximize Verizon's costs.[182]

c. Discussion

66. Consistent with our decisions on Issues I-1 and I-9, we rule for petitioners on this issue. In Issue I-1, we rejected Verizon's GRIPs and VGRIPs proposals. Accordingly, and for the reasons we articulate under Issue I-1, we reject Verizon's proposal to WorldCom to establish an IP that is distinct from the POI.[183] We also will not prohibit distance-sensitive rates when Verizon uses petitioners' facilities to transport traffic originating on its network to petitioners' networks. Accordingly, we reject Verizon's proposed language.[184]

67. Verizon's contract proposals on Issue I-2 arise out of its complaints about the rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier. Specifically these rules establish that: (1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network[185]; (2) competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA[186]; (3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting

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[180] *Id.* at 12.

[181] *Id.* at 11.

[182] *Id.* at 18.

[183] Thus, we reject section 4.5.3 of Verizon's November Proposed Agreement to Cox, which requires Cox to provide additional IPs in a LATA upon request. Because we reject Verizon's VGRIPs proposal, and find in favor of petitioners on Issue I-2, we deny as moot Cox's Objection and Request for Sanctions with respect to this issue. Further, because we reject Verizon's VGRIPs proposal, we also reject Verizon's proposed language to WorldCom in section 7.2. *See* Verizon's November Proposed Agreement to WorldCom, Interconnection Attach., § 7.2.

[184] Thus, in addition to the VGRIPs language we reject above, we reject Verizon's November Proposed Agreement to AT&T, § 4.2.7; Verizon's November Proposed Agreement to Cox, §§ 4.3.8 and 4.5.3; and Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.1.3.5.1 and 7.2. Because we reject Verizon's VGRIPs proposal, and find in favor of petitioners on Issue I-2, we deny as moot Cox's Objection and Request for Sanctions with respect to this issue.

[185] 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a); *Local Competition First Report and Order*, 11 FCC Rcd at 15608, para. 209.

[186] *See Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650-51, paras. 72, 112 (2001) (*Intercarrier Compensation Rulemaking*); *SWBT Texas 271 Order*, 15 FCC Rcd 18354, 18390 at para. 78 & n.170.

LECs' networks for termination[187]; and (4) competitive LECs may refuse to permit other LECs to collocate at their facilities.[188]

68. One result of these rules, which Verizon addresses in Issue I-2, is that sometimes Verizon must pay petitioners for transporting Verizon-originated traffic from the place where petitioners interconnect with Verizon's network to the petitioners' networks.[189] Thus, using Cox as an example, because Cox has statutory rights to choose the point where it interconnects with Verizon, and to collocate at a Verizon facility, the interconnection facility between Verizon's network and Cox's network may be owned by Cox. But, Verizon complains, because it does not have reciprocal statutory rights, if Cox is unwilling to let it collocate, Verizon cannot build its own interconnection facility to deliver its traffic to Cox's network.[190] In that case, in order to deliver its traffic to Cox, Verizon may have to purchase transport from Cox and pay a distance-sensitive rate component. Verizon complains about the distance-sensitive pricing of these transport facilities in Issue I-2. Because Cox chooses the interconnection point between the two networks, Verizon cannot control the distance over which it may be required to purchase transport.

69. Although we recognize, as we did in Issue I-1, that Verizon raises serious concerns about the apportionment of costs caused by competitive LECs' choice of points of interconnection,[191] we do not believe that limiting competitive LECs' transport charges for carrying Verizon-originated traffic is the appropriate way to address these concerns. Rather, we

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[187] This precept stems from rules 51.703(b) and 51.709(b), which on the one hand preclude all LECs from charging other carriers for local traffic that the LEC originates, 47 CFR § 51.703(b), and on the other hand permit carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will *terminate* on the providing carrier's network." 47 CFR § 51.709(b)(emphasis added); *see also Local Competition First Report and Order*, 11 FCC Rcd at 16027-28, para. 1062.

[188] *See infra,* Issue III-3.

[189] As discussed in Issue I-1, Verizon argues that the place where the competitive LECs interconnect with Verizon's network is not necessarily the location where Verizon would choose to route its traffic, particularly if that location is distant from the place where the traffic originates on Verizon's network. Thus, in Issue I-1, Verizon argues that it could be inconvenient and expensive for Verizon to route, across its own facilities, all traffic destined for the place where the competitive LEC chooses to interconnect with Verizon (which could also be, at the competitive LECs' option, the only point of interconnection in that LATA). In Issue I-1, Verizon seeks to limit transport over its own facilities. Specifically, in Issue I-1, and with respect to WorldCom in Issue I-2, Verizon seeks to require the competitive LECs either to physically pick up the Verizon traffic at an earlier point on Verizon's network or to pay Verizon for carrying the Verizon traffic across its own network to the competitive LEC network. In Issue I-1, we rejected this aspect of Verizon's proposal.

[190] *See* Tr. at 1134-36; Verizon NA Brief at 17-18; Verizon NA Reply at 9-10. We note that the Verizon witness testified that it need not always collocate to interconnect at the CLEC switch. *See* Tr. at 1143-44; *see generally id*. at 1137-44.

[191] *See supra*, Issue I-1.

agree with AT&T that, by limiting the rates that petitioners charge for facilities that are used by Verizon to transport Verizon-originated traffic, Verizon's proposal would effectively constitute a price cap for competitive LEC services. As we discuss with respect to Issue I-9, however, the Bureau, acting as the Virginia Commission in this proceeding, is authorized by section 252 to determine just and reasonable rates to be charged by Verizon, not petitioners.[192] Accordingly, here, we cannot limit petitioners' rates for these transport facilities. To the extent that it believes that petitioners' rates for these facilities, including the distance-sensitive rate component, are unjust and unreasonable, Verizon may challenge them in proceedings before the Virginia Commission.[193] Also, Verizon may advocate alternative payment regimes before the Commission in the pending *Intercarrier Compensation Rulemaking* docket.[194]

70. Moreover, although Verizon complains that it should not be forced to buy transport from petitioners, we note that this is not the only method that Verizon uses to deliver its traffic to them. Cox presented evidence showing that, under its current agreement with Verizon, the parties interconnect and exchange a substantial amount of traffic through a mid-span meet, under which each party transports its own traffic up to the meet point.[195] Cox also states that it has agreed with Verizon to include mid-span meet interconnection provisions in the parties' new agreement, which will permit Verizon to continue to control its costs and engineer and provision its own facilities.[196] The Verizon witness did not dispute this testimony.[197] In Issue III-3, we decide the terms under which AT&T and WorldCom may establish mid-span meets with Verizon.[198]

71. Finally, although it is true that the statute permits competitive LECs to choose where they may deliver their traffic to the incumbent,[199] carriers do not always deliver originating traffic and receive terminating traffic at the same place.[200] The "single point of interconnection"

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[192] *See infra,* Issue I-9.

[193] *See id.* As we note in our discussion of Issue I-9, Verizon has presented no evidence that any of the petitioners are charging it unreasonable rates and, with respect to Cox, has admitted it would challenge any unreasonable rates.

[194] *Intercarrier Compensation Rulemaking*, 16 FCC Rcd 9610.

[195] *See* Tr. at 1022; 1260; Cox Ex. 2, at 13.

[196] *See* Cox Ex. 1, at 12, citing Cox Proposed Agreement to Verizon at § 4.4. Cox also demonstrated that it currently offers two interconnection points in the Norfolk LATA, which is one of two LATAs in Virginia where these carriers currently interconnect. *See* Tr. at 1252-53; *see also* Cox's November Proposed Agreement to Verizon at § 4.2.3.

[197] *See* Tr. at 1260.

[198] *See infra*, Issue III-3.

[199] 47 U.S.C. § 251(c)(2).

[200] The Commission's rules define "interconnection" as the "linking of two networks for the mutual exchange of traffic." 47 C.F.R. § 51.5. The parties' respective obligations to interconnect with each other, however, arise from (continued….)

rule benefits the competitive LEC by permitting it to interconnect for delivery of *its* traffic to the incumbent LEC network at a single point. It does not preclude the parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it. It appears from the record that AT&T and Cox have offered to negotiate such additional points with Verizon.[201] WorldCom already permits Verizon to self-provision transport to WorldCom's facility.[202] To the extent that Verizon seeks prophylactically to "address future situations as well as other CLECs adopting this agreement,"[203] we do not think that is appropriate in this proceeding, particularly given the evidence presented, and thus decline to do so.

3. Issue I-3 (Reciprocal Collocation)

a. Introduction

72. Section 251(c)(6) of the Act requires incumbent LECs to permit the collocation of equipment at the incumbent's premises.[204] Verizon seeks the reciprocal right to collocate equipment at the premises of AT&T, Cox, and WorldCom, so that it can reduce its costs of transporting traffic to their networks.[205] The petitioners oppose this request. We reject Verizon's proposal.

(Continued from previous page)
different provisions of the Act. Incumbent LECs are required by section 251(c)(2) to permit any requesting telecommunications carrier to interconnect "for the transmission and routing of telephone exchange service and exchange access" with the incumbent's network "at any technically feasible point within the [incumbent] carrier's network." Non-incumbent carriers, on the other hand, are required by section 251(a)(1) "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

[201] For example, AT&T's contract permits the parties to mutually agree to points where Verizon may interconnect with AT&T for delivery of its traffic, in addition to AT&T's switch. *See* AT&T's November Proposed Agreement to Verizon, Sch. 4, Part A, § 1.3, Part B § 2; *see also* AT&T Ex. 3 (Direct Testimony of D. Talbott & J. Schell, Jr.), at 139. Cox's witness testified that, in Virginia, Cox is willing to accept Verizon traffic from Verizon facilities within four miles from the Cox switch. *See* Tr. at 1021-23; *see also* Cox's November Proposed Agreement to Verizon at § 4.3.4. Verizon's witness agreed that was a reasonable distance. Tr. at 1259. In this regard we note that both parties have a duty to negotiate in good faith the terms and conditions of interconnection agreements. 47 U.S.C. § 251(c)(1).

[202] *See* WorldCom Reply at 19.

[203] *See* Tr. at 1261-62.

[204] 47 U.S.C. § 251(c)(6).

[205] Verizon's November Proposed Agreement to AT&T, §§ 4.2.2.3, 13.5; Verizon's November Proposed Agreement to Cox, §§ 4.3.4 (to the extent it addresses collocation), 4.3.5, 13.10; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.1.3.3-2.1.3.4. *See also* Tr. at 1265-66 (testimony of Verizon witness Albert).

b. Positions of the Parties

73. The petitioners assert that the Commission lacks authority to compel them to offer collocation to Verizon.[206] They argue that the Commission's rules forbid state commissions from imposing incumbent LEC obligations on competitive LECs,[207] and that several state commissions have held that competitive LECs cannot be required to offer collocation.[208] They claim that Congress distinguished between incumbent LECs and competitive LECs in enacting the Telecommunications Act of 1996 based on the incumbents' market power, and that the Commission should not redraw Congress's blueprint for promoting competition.[209] The petitioners state that, although they cannot be compelled to do so, they will allow Verizon to collocate at their premises in certain circumstances.[210]

74. Verizon recognizes that section 251(c)(6) applies to incumbent LECs, not competitive LECs, and that the Act does not require the petitioners to offer collocation at their premises.[211] Verizon maintains, however, that nothing in the Act prohibits the Commission from allowing Verizon to interconnect with the petitioners at their premises.[212] According to Verizon, fairness dictates that it have interconnection choices comparable to those available to the competitive LECs.[213] Verizon states that the collocation rights it requests would reduce its costs of delivering its originating traffic to the petitioners' networks.[214] Verizon argues that the petitioners should allow Verizon to collocate at their premises and otherwise help minimize Verizon's transport costs.[215]

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206 AT&T Brief at 31; Cox Brief at 20; WorldCom Brief at 20.

207 Cox Brief at 20-21, citing 47 C.F.R. § 51.223(a).

208 *See, e.g.*, AT&T Brief at 33; Cox Brief at 21.

209 AT&T Brief at 31-33; Cox Brief at 21; WorldCom Brief at 20 n.15; WorldCom Reply at 22.

210 AT&T Brief at 33-34; Cox Brief at 21; WorldCom Brief at 20 n.15.

211 Verizon NA Brief at 19; Verizon Ex. 4 (Direct Testimony of D. Albert & P. D'Amico), at 29; Tr. at 1263-65 (testimony of Verizon witness Albert).

212 Verizon NA Brief at 19; Tr. at 1263-65 (testimony of Verizon witness Albert).

213 Verizon NA Brief at 19.

214 *Id.* at 19-20; Verizon NA Reply at 11-12.

215 Verizon NA Reply at 11-12.

c. Discussion

75. We reject Verizon's position and proposed contract language on this issue.[216] Verizon has not suggested any provision in the Act or the Commission's rules that requires petitioners to provide collocation to Verizon. Instead, Verizon argues that fairness dictates that it have collocation choices comparable to those available to competitive LECs.[217] Verizon's collocation obligations, however, arise primarily under section 251(c)(6) of the Act, which requires incumbent LECs, but not competitive LECs, to provide collocation to other carriers.[218] Indeed, in the *Local Competition First Report and Order*, the Commission decided not to impose reciprocal section 251(c)(2) interconnection obligations on non-incumbents.[219] It also determined that a state commission's imposition of section 251(c) obligations on non-incumbents would be inconsistent with the Act.[220] Thus Commission precedent explicitly forecloses our imposition of collocation obligations on petitioners pursuant to section 251(c)(6).

76. We recognize that the Commission has required certain LECs, including Verizon, to provide virtual collocation pursuant to other provisions of the Act, including section 201.[221] In requiring virtual collocation, however, the Commission specifically declined to impose reciprocal obligations on other carriers.[222] Finally, we recognize that petitioners voluntarily offer to allow Verizon to collocate equipment in some circumstances;[223] Verizon is thus not without options in this respect.

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[216] *See* Verizon's November Proposed Agreement to AT&T, §§ 4.2.2.3, 13.5; Verizon's November Proposed Agreement to Cox, §§ 4.3.4 (to the extent it addresses collocation), 4.3.5, 13.10; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.1.3.3-2.1.3.4.

[217] Verizon NA Brief at 19.

[218] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17475, para. 102 (stating that the 1996 Act does not impose a collocation obligation on non-incumbents); Verizon NA Brief at 19.

[219] *Local Competition First Report and Order*, 11 FCC Rcd at 15613, para. 220.

[220] *Id.*, 11 FCC Rcd at 16109-10, paras. 1247-48; 47 C.F.R. § 51.223(a) (prohibiting state commissions from imposing incumbent LEC obligations, including collocation, on competitive LECs); *cf. New York Commission AT&T Arbitration Order* (rejecting Verizon request for right to collocate in AT&T premises).

[221] *Expanded Interconnection with Local Telephone Facilities*, 9 FCC Rcd 5154, 5161-62, paras. 16-20 (1994) (*Virtual Collocation Order*), *remanded for consideration of 1996 Act sub nom. Pacific Bell v. FCC*, 81 F.3d 1147 (D.C. Cir. 1996).

[222] *Virtual Collocation Order*, 9 FCC Rcd at 5184, para. 105.

[223] AT&T Brief at 31-34; Cox Brief at 21; WorldCom Reply at 22.

4. Issue I-4 (End Office Trunking)

a. Introduction

77. Asserting the need to avoid tandem exhaustion, Verizon seeks to include language requiring AT&T and Cox to establish direct trunks to a Verizon end office when either petitioner exchanges traffic volumes corresponding to a DS-1 level of traffic with a particular end office.[224] AT&T and Cox oppose the inclusion of this language, arguing that they may establish any technically feasible point of interconnection with Verizon, including at Verizon tandem switches, and that Verizon's language essentially would require them to establish additional points of interconnection. Verizon also seeks to include language capping at 240 the total number of interconnection trunks WorldCom may establish with any Verizon tandem switch. WorldCom opposes the inclusion of this language on the grounds that it is arbitrary and, as acknowledged by Verizon's own witness, superfluous in light of WorldCom's agreement to establish end office trunking when the DS-1 threshold is reached. WorldCom and Verizon also disagree about how to implement the direct trunking agreement to which they have agreed in principle. We reject the language Verizon proposes to AT&T and Cox and the 240 trunks per-tandem limitation that it proposes to WorldCom. However, we adopt Verizon's language implementing its agreement with WorldCom regarding the DS-1 threshold.

b. Positions of the Parties

78. AT&T argues that Verizon's proposed end office trunking requirement violates AT&T's section 251(c)(2) right to select a point of interconnection at any technically feasible point.[225] According to AT&T, technical feasibility is the sole limitation that section 251(c)(2) places on its selection of points of interconnection. Furthermore, AT&T states that the Commission's rules expressly acknowledge that interconnection at a tandem switch meets the standard of technical feasibility.[226] AT&T argues that Verizon has not provided the "clear and convincing evidence" of "specific and adverse impacts" that the *Local Competition First Report and Order* requires for Verizon to refuse AT&T's requested interconnection.[227] AT&T states that, even if Verizon incurs costs to remedy the exhaustion of tandem switches as a result of

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[224] DS-x is a hierarchy of digital data rates used to classify the capacities of digital lines and trunks, as well as a designation of standard electrical interfaces corresponding to those digital data rates. A DS-0 is equivalent to 64 Kbps, the data rate generally used to digitally encode a single two-way voice conversation. In North America, a DS-1 data rate corresponds to approximately 1.5 Mbps, or 24 DS-0 channels. A DS-3 corresponds to approximately 45 Mbps, equivalent to 28 DS-1s or 672 DS-0 channels. *See* Harry Newton, *Newton's Telecom Dictionary, 16th Ed.* at 292-93 (2000).

[225] *See* AT&T Brief at 25-26, citing 47 U.S.C. § 251(c)(2).

[226] *See* AT&T Brief at 26, citing 47 C.F.R. § 51.305(a)(2)(iii) (designating tandem switch trunk ports as technically feasible points of interconnection).

[227] *See* AT&T Brief at 26-27, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15605-06, para. 203.

interconnecting with competitive LECs, such costs do not, in and of themselves, constitute the "significant adverse impact" that the Commission requires for an incumbent to refuse a requested means of interconnection.[228]

79. AT&T also argues that Verizon's proposal is unnecessary to alleviate tandem exhaustion. AT&T states that approximately 50 percent of its local interconnection trunk groups are already direct end office trunks, and cooperative trunk rearrangements and forecasting should allow Verizon to provision sufficient trunking and tandem switching to meet future demand.[229] AT&T further argues that Verizon could address its tandem exhaustion concerns by employing direct one-way trunks to send its traffic to AT&T's switch.[230] AT&T adds that Verizon provides insufficient evidence that competitive LEC interconnection at tandem switches is causing tandem exhaustion; it further notes that Verizon presents no evidence of its efforts to minimize tandem exhaustion.[231]

80. AT&T states that, even if some direct-trunking threshold were permissible, Verizon provides no documentation or engineering study to support setting a threshold at the DS-1 level, or to demonstrate its own use of this threshold as an engineering guideline.[232] AT&T argues that Verizon's witness acknowledged that Verizon itself uses a different internal threshold for direct end office trunking.[233] In any case, AT&T argues, there is no requirement that competitive LECs follow the same engineering guidelines as Verizon for interconnection.[234] Furthermore, AT&T states that Verizon does not apply its proposed end office trunking threshold uniformly. For example, Verizon does not subject exchange access customers to such a limitation on tandem interconnection.[235] In addition, AT&T argues that, unlike incumbents with more mature networks, competitive LECs experience traffic patterns that are "spiky" in nature, making it unreasonable to apply a threshold of one DS-1 level of traffic reached at any time.[236] In fact, according to AT&T, the building blocks of competitive LECs' networks are not DS-1s; rather they are higher capacity facilities, such as DS-3 or in some cases even SONET

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228 *See* AT&T Brief at 27-28.

229 *See* AT&T Reply at 11.

230 *See id.* at 10.

231 *See* AT&T Brief at 27-28, AT&T Reply at 9.

232 *See* AT&T Brief at 28.

233 *See id.* at 28-29, citing Tr. at 2366-67 (Verizon looks at trunk group performance over a three-month period to determine whether trunking capacity is insufficient).

234 *See* AT&T Reply at 10-11.

235 *See* AT&T Brief at 30.

236 *See id.* at 28-29.

OC-48. Accordingly, AT&T argues that requiring it to implement end office trunking at a DS-1 threshold would be inefficient and inconsistent with AT&T's network design.[237]

81. Cox makes similar arguments to those advanced by AT&T. It argues that Verizon is required to provide interconnection at any technically feasible point and that the Commission has specifically included tandem switches among those points.[238] Cox also argues that the Commission has specifically held that a competitive LEC may have a single point of interconnection in a LATA if it so chooses.[239] Cox argues that, far from showing that interconnection at tandem switches is technically infeasible, Verizon's testimony shows the opposite, demonstrating that Verizon augments existing tandems and adds new tandem switches to address concerns of tandem exhaustion.[240] Cox notes that Verizon can defray its costs for remedying tandem exhaustion with the substantial revenues it receives from competitive LECs for the use of Verizon's tandem switching capabilities.[241] Like AT&T, Cox argues that Verizon's testimony shows that it does not intend to apply this threshold uniformly to all carriers interconnecting at Verizon's tandem switches, but only to competitive LECs, even though commercial mobile radio service (CMRS) providers, other incumbent LECs, and IXCs collectively account for nearly twice as many tandem trunks as do competitive LECs.[242] Cox further argues that Verizon has offered no basis for the DS-1 threshold at which it seeks to require direct end office trunking.[243] Cox adds that Verizon's "hair-trigger" threshold would require direct end office trunking even if the level of traffic increased as a result of a single, one-time event or "spike."[244]

82. Although Cox states that it cannot be required to establish direct end office trunking, as a compromise Cox has agreed to language that would require it to establish direct end office trunks when its traffic exceeds the level of three DS-1s, measured over a three month period.[245] Cox states that it normally constructs its facilities in increments of one DS-3, and that

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[237] *See* AT&T Brief at 29.

[238] *See* Cox Brief at 23.

[239] *See id*.

[240] *See id.* at 23-24, citing Tr. at 1102-03, 1283-86 (describing Verizon's process of addressing tandem exhaustion, and indicating that Verizon East has installed 24 tandems over the last 5 years).

[241] *See* Cox Brief at 23-24.

[242] *See id.* at 25-26.

[243] *See id.* at 25-26.

[244] *See id.* at 26.

[245] *See id.* at 25-26. Cox proposes a threshold of "the CCS busy hour equivalent of three DS-1s for any three (3) months in any consecutive six (6) month period or for any consecutive three (3) months." Cox's November Proposed Agreement to Verizon, § 5.2.4.

the breakeven point for the construction of a new DS-3 would normally be at the level of ten DS-1s or more -- significantly more than the "three DS-1" level it is prepared to accept.[246] In light of these economies of scale, Cox believes that its proposal represents a fair compromise between the standards used to engineer Cox's network and the traffic level Verizon proposes.[247]

83. WorldCom argues that the Commission should reject Verizon's proposal to cap at 240 trunks (the equivalent of ten DS-1s) the number of tandem interconnection trunks WorldCom may order to any tandem switch.[248] Verizon seeks to place this restriction solely on WorldCom.[249] WorldCom states that Verizon's own testimony makes clear that implementation of direct end office trunks at the DS-1 threshold, to which WorldCom has agreed, along with competitive LEC forecasting of tandem usage, are adequate to address Verizon's tandem exhaustion concerns.[250] WorldCom adds that, in addition to being unnecessary, Verizon's proposal is arbitrary in that it would apply to all tandem switches, rather than simply to those in danger of exhaustion.[251] WorldCom further argues that the proposal is arbitrary because 240 trunks represents an insignificant amount of traffic for a tandem switch.[252] WorldCom adds that the proposal is discriminatory, in that Verizon only proposes to apply it to competitive LECs, and not to other users of tandem switch interconnection, such as IXCs and wireless carriers.[253]

84. In addition, WorldCom argues that Verizon's proposal could lead to call blockage. According to WorldCom, tandem interconnection trunks can serve as the primary route, the only route, or the final route for traffic exchanged with Verizon, depending on interconnecting carriers' points of interconnection.[254] WorldCom argues that an arbitrary limit on the number of tandem interconnection trunks could impede WorldCom's ability to complete calls. WorldCom states that this problem is exacerbated in the case of large customers migrating to WorldCom's service, who could easily send more than ten DS-1s worth of traffic through a single Verizon tandem.[255]

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246 *See* Cox Brief at 26.

247 *See id.* at 26.

248 *See* WorldCom Brief at 21.

249 *See id.* at 21.

250 *See id.* at 21-22, citing Tr. at 1436, 1439.

251 *See* WorldCom Brief at 22-23.

252 *See id.* at 22.

253 *See id.* at 23.

254 *See id.* at 23-24.

255 *See id.* at 24. According to WorldCom, at the time it migrates a customer to its network, it has not yet developed calling statistics for that customer to identify its traffic patterns by end office. Thus, it states it has no (continued….)

85. WorldCom rejects Verizon's assertions that a competitive LEC's choice to interconnect at a single tandem switch in a LATA impairs Verizon's ability to manage capacity, and aggravates its problems with tandem exhaustion. WorldCom states that interconnecting with a single tandem switch in a LATA actually conserves tandem switching resources by minimizing the need for trunk ports across multiple tandems.[256] WorldCom adds that, contrary to Verizon's suggestion, interconnection at a single tandem in a LATA would not evade WorldCom's contractual commitment to establish direct end office trunks upon reaching the DS-1 threshold. WorldCom adds that, even today, it has 7,944 end office trunks in Virginia.[257]

86. Verizon argues that adoption of the AT&T and Cox proposals would accelerate the exhaustion of Verizon's tandem switches in Virginia because trunk growth between competitive LECs and Verizon is driving Verizon's tandem exhaustion problem.[258] Tandem exhaustion, in turn, increases the likelihood of both call blockage at the tandem switch and Verizon's resultant liability for performance penalties.[259] Verizon argues that its proposed language would subject competitive LECs to the same engineering guidelines that Verizon applies to itself for the establishment of direct end office trunks.[260] Verizon argues that its proposal thus satisfies its obligation to provide interconnection "at least equal in quality" to the interconnection it provides to itself.[261] Verizon further argues that AT&T and Cox misconstrue Verizon's proposal as altering the competitive LEC's selection of a point of interconnection.[262] According to Verizon, its proposal is not an attempt to force competitive LECs to establish points of interconnection at Verizon end offices.[263] Verizon's proposal would merely require the establishment of trunk groups to an end office, which would not necessarily change the location of the point of interconnection – a point Verizon states was recognized by WorldCom's witness.[264]

(Continued from previous page)
reasonable basis upon which to engineer end office trunks pursuant to the DS-1 threshold to which WorldCom has agreed. *See id.* at 24-25.

256 *See* WorldCom Reply at 25-27.

257 *See id.* at 26.

258 *See* Verizon NA Brief at 26.

259 *See id.* at 26-27.

260 *See id.* at 27.

261 *See id.* at 28, citing *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 758 (8th Cir. 1997).

262 *See* Verizon NA Reply at 13.

263 *See* Verizon NA Brief at 28.

264 *See id.* at 28, citing Tr. at 1633.

87. Verizon states that, although WorldCom appears to agree in principle that direct end office trunks should be established when traffic to an end office reaches a DS-1 level, WorldCom's proposed language is too permissive and only applies to two-way trunks. Verizon argues that its own language is more comprehensive, requiring the establishment of end office trunks when a DS-1 level threshold is reached and encompassing both one- and two-way trunks.[265] Verizon objects to WorldCom's proposed language allowing it to deliver traffic to a single Verizon tandem in a LATA. Verizon contends that this language would "play havoc" with Verizon's ability to manage capacity on its interoffice facilities, in part because it could require Verizon to switch all the traffic it exchanges with WorldCom in that LATA at one tandem.[266] Verizon also contends that WorldCom's proposed language is inconsistent with WorldCom's agreement to route traffic in accordance with the Local Exchange Routing Guide (LERG) and to implement direct end office trunks once a DS-1 level of traffic is reached.[267] Finally, Verizon argues that we should adopt its language limiting to 240 the number of interconnection trunks at a tandem switch because it would allow Verizon to manage the usage and design of trunks at the tandem, assisting Verizon in maintaining network reliability.[268]

c. Discussion

88. We reject Verizon's proposed language to AT&T and Cox requiring the establishment of direct end office trunks when traffic to a particular Verizon end office exceeds a DS-1 level.[269] It appears that competitive LECs already have an incentive to move traffic off of tandem interconnection trunks onto direct end office trunks, as their traffic to a particular end office increases. By such direct trunking, a competitive LEC may avoid charges associated with Verizon's tandem switching. Indeed, it would appear that, just like Verizon does, competitive LECs have the incentive to move their traffic onto direct end office trunks when it will be more cost-effective than routing traffic through the Verizon tandems.[270] The record indicates that competitive LECs already move their traffic onto direct end office trunks as their traffic volumes

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[265] *See id.* at 29-30.

[266] *See id.* at 31-32.

[267] *See id.* at 32. According to Verizon, WorldCom's proposed language allowing it to drop off all of its traffic in a LATA at one designated tandem seems to allow WorldCom to evade its commitment to establish direct end office trunks at a DS-1 level of traffic. *See id.*

[268] *See id.* at 33.

[269] *See* Verizon's November Proposed Agreement to AT&T, § 4.2.8; Verizon's November Proposed Agreement to Cox, § 5.2.4.

[270] For instance, Verizon does not appear to argue that defects in the pricing for tandem switching or transport insulate competitive LECs from the incentives to minimize costs that Verizon operates under. Even if Verizon did raise such an argument, however, the appropriate course likely would be to adjust these prices so that the competitive LECs receive the correct economic signals, not to impose the end office trunking requirement that Verizon requests.

increase.[271] Verizon has neither alleged nor established that this incentive is insufficient to alleviate its tandem exhaustion concerns.

89. Additionally, we conclude that Verizon has not shown that competitive LECs are responsible for the exhaustion of its tandems in Virginia. The record indicates that multiple Verizon switches in Virginia have been exhausted or will face exhaustion in the near future.[272] In response to AT&T and Cox's objections that Verizon's end office trunking requirement would only apply to competitive LECs, Verizon indicates that competitive LEC interconnection trunks have grown at a significant rate, experiencing a 100% growth rate in the year 2000 alone.[273] The record also indicates, however, that other carriers interconnected with Verizon's tandem switches contribute substantially to tandem exhaustion.[274] Specifically, according to Cox, CMRS providers, other incumbent LECs, and IXCs collectively account for nearly twice as many tandem trunks as do competitive LECs, yet the record does not indicate that Verizon has sought to limit the ability of any of those carriers to use Verizon's tandem switches.[275] In the absence of further evidence that competitive LEC traffic is responsible for the exhaustion of Verizon's tandem switches – "clear and convincing evidence" that "specific and adverse impacts" would result from a competitive LEC's requested interconnection[276] – we decline to impose a direct end office trunking requirement on AT&T and Cox. While we reject Verizon's language proposed to Cox, we find that Cox's language proposed in return is reasonable, and thus adopt it.[277] We also note that AT&T has proposed no language of its own in this issue, and thus requires no additional action on our part.

90. Unlike AT&T and Cox, WorldCom has agreed to Verizon's DS-1 threshold. We adopt Verizon's language proposed to WorldCom implementing end office interconnection at the DS-1 threshold, rather than WorldCom's proposed language implementing the same requirement.[278] We share Verizon's concern that WorldCom's proposed language only applies to

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[271] WorldCom has agreed to establish direct trunks when its traffic to a particular Verizon end office reaches the DS-1 level. *See* WorldCom Brief at 21. AT&T points out that approximately 50 percent of its interconnection trunks are already direct end office trunk groups. *See* AT&T Reply at 11. Similarly, Cox states that it would agree to a direct trunking requirement at the level of three DS-1s. *See* Cox Brief at 26.

[272] *See* Tr. at 1101-02 (four Verizon tandem switches in Virginia have already exhausted and three more face exhaustion in the following three to five years).

[273] *See* Verizon Network Architecture Brief at 26. *See also* Tr. at 1277; Verizon Ex. 4 (Direct Testimony of D. Albert and P. D'Amico), at 37-39.

[274] *See* Cox Ex. 12 (proportion of tandem trunks from each category of carrier).

[275] *See* Cox Brief at 25-26, citing Cox Exs. 12 and 14 (direct trunking requirements of IXCs).

[276] *Local Competition First Report and Order*, 11 FCC Rcd at 15605-06, para. 203.

[277] *See* Cox's November Proposed Agreement to Verizon, § 5.2.4.

[278] *See* WorldCom's November Proposed Agreement to Verizon, Attach. IV, § 4.2.2 (we note that this same section was identified as section "2.4.2" in WorldCom's November JDPL).

two-way trunks. Because Verizon's proposed language measures the relevant traffic in a manner consistent with WorldCom's proposed language, but encompasses both one-way and two-way trunks, we adopt Verizon's proposed language implementing end office trunking at a DS-1 threshold.[279] We reject Verizon's language proposed to WorldCom that would limit the number of interconnection trunks to any tandem switch to 240 trunks.[280] Verizon's witness conceded that end office interconnection at the DS-1 threshold would get Verizon "95 percent of the way" to solving the tandem exhaustion problems in Virginia,[281] rendering the 240 tandem trunk cap superfluous.[282] We decline to impose this restriction on WorldCom for such a marginal and speculative benefit to Verizon when, as WorldCom contends, it appears to be over inclusive in its application and may create the risk of traffic blockage.

91. Finally, we note that Verizon's concerns regarding a single point of interconnection at one tandem office in a LATA are the subject of a pending industry-wide rulemaking proceeding.[283] For the reasons previously stated, we decline to address the issues raised in that proceeding here; instead, we decide the present petitions under the Commission's current rules. Under those rules, new entrants may request any technically feasible point of interconnection,[284] including a single point of interconnection in a LATA.[285] Moreover, interconnection at a single tandem office location would not contravene WorldCom's commitments in this proceeding to route traffic according to the LERG or to implement direct end office trunking at a DS-1 level of traffic. As Verizon itself argues, implementing direct end office trunks does not entail changing the location of a tandem office point of interconnection.[286]

5. Issues I-7/III-4 (Trunk Forecasting Issues)

a. Introduction

92. Verizon seeks to include language requiring AT&T and Cox to forecast both inbound traffic to, and outbound traffic from, Verizon's network. Verizon states that this forecasting information enables it to manage its network more efficiently and that it requires the assistance of competitive LECs to maintain the availability of Verizon's network for all

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279 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.2.4.

280 *See* Verizon's November Proposed Agreement to WorldCom, Interconnection Attach., § 2.2.5.

281 Tr. at 1439.

282 Tr. at 1436 (the DS-1 threshold and the 240 tandem trunk cap would serve as "belts and suspenders").

283 *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9634, 9650, paras. 72, 112.

284 *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2).

285 *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9634, 9650, paras. 72, 112; *SWBT Texas Order* at 18390, para. 78 n.174.

286 *See* Verizon NA Brief at 28, citing Tr. at 1633.

Verizon's customers, including competitive LECs. AT&T and Cox argue that each carrier is in a better position to forecast the flow of traffic originating on its own network. We adopt Cox's proposal and, with certain modifications, we also adopt AT&T's language. Finally, while we adopt WorldCom's language, we disagree with WorldCom's argument concerning receiving its forecasted number of trunks.

b. Positions of the Parties

93. AT&T argues that each party is in the best position to manage traffic originating on its own network and, to that end, both AT&T and Verizon have agreed to deploy interconnection facilities that use one-way trunks.[287] According to AT&T, since each party will be designing its own network, the originating party is better positioned to forecast the volume of traffic expected on the routes it has included in the design of its interconnection network. Indeed, AT&T argues that Verizon's witness conceded this point at the hearing.[288] To address Verizon's concern that competing LEC customers with high inbound traffic requirements would skew its forecasting assumptions, AT&T offers to provide Verizon with trunk forecasts in both directions if the traffic exchanged between them is out of balance.[289] According to AT&T, the New York Commission adopted its proposal, which defines traffic that is "out of balance" as traffic originating on one party's network that is greater than three times the volume of traffic originated on the other party's network. AT&T urges the Commission to adopt the same standard.[290]

94. Cox also disagrees with Verizon's proposal, arguing that Cox's language, which requires each carrier to be responsible for its own outbound forecast, is consistent with the language in every other interconnection agreement that Cox has negotiated with other incumbent LECs, including Verizon South in Virginia.[291] According to Cox, Verizon has not offered to provide any of the data Cox would need to prepare Verizon's outbound forecasts and, in the absence of such data, all Cox could do is to provide Verizon with a forecast based on trends.[292]

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[287] AT&T Brief at 47.

[288] *Id.* at 47-48, citing Tr. at 1472.

[289] *Id.* at 48-49; AT&T Reply at 22.

[290] AT&T Brief at 48-49, citing Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues, at 42 (issued July 30, 2001) (*New York Commission AT&T Arbitration Order*).

[291] Cox Brief at 27. Cox also argues that Verizon's proposal is inconsistent with the way in which it treats other carriers, including incumbent LECs, start-up competitive LECs, and interexchange carriers (IXCs). *Id.*, citing Tr. at 1477-79.

[292] According to Cox, "trends" are based entirely on previous traffic patterns. Cox Reply at 19.

Cox argues that Verizon can easily create such trending forecasts for itself.[293] Moreover, Cox also contends that in addition to the historical traffic data that Cox would use to make a trend-based forecast, Verizon has crucial information regarding its outbound traffic not available to Cox (*e.g.*, "overflow" measurements).[294]

95. According to Cox, Verizon's proposal would impose its substantial engineering costs on Cox.[295] In addition, Cox argues that, since Verizon has indicated that it will review and modify any forecasts provided to it, there is no reason to believe that Cox's forecast of Verizon's outbound traffic would be anything more than busy work.[296] In response to Verizon's assertion that Cox alone has access to its business plans, Cox contends that it has already agreed to provide Verizon with information concerning expected changes in Cox's traffic patterns so that Verizon will have all the data necessary to perform forecasts of its outbound traffic.[297]

96. As an initial matter, WorldCom argues that Verizon's proposal does not accurately reflect the parties' agreement on forecasting and, therefore, we should adopt WorldCom's proposal.[298] In addition, WorldCom contends that Verizon must make enough ports available to WorldCom to provision the number of trunks it forecasts and not provide ports instead to carriers that do not submit forecasts.[299] WorldCom asserts that inadequate provisioning of trunks poses a threat to the public switched telephone network and has a disproportionately adverse impact on competing carriers because the majority of blocked traffic is inbound from incumbent LECs.[300]

97. According to Verizon, the forecasts of Verizon-originating traffic that it seeks from both Cox and AT&T are necessary for Verizon to manage its network effectively, because

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[293] Cox Brief at 28; Cox Reply at 20. Cox also argues that although Verizon indicated at the hearing that it might provide data interexchange carrier (DIXC) traffic information to Cox, Verizon has not modified its proposal to Cox to include that information. Cox Brief at 28 n.107.

[294] Cox Brief at 29 (explaining that overflow measurements capture outbound traffic that exceeds the capacity of Verizon's trunk groups).

[295] *Id.* at 27, 28 (arguing that forecasting Verizon's outbound traffic would require diversion of Cox's engineering resources that could better be used to plan and operate Cox's network).

[296] Cox Reply at 19.

[297] Cox Brief at 29 & n.115, citing section 10.3.2 of its proposed agreement with Verizon; Cox Reply at 19.

[298] WorldCom Reply at 38-39 (arguing that Verizon's proposal fails to address one-way trunks and WorldCom's proposed 15 percent overhead concept, and contains several concepts on which the parties have not agreed and for which Verizon failed to introduce any evidence). WorldCom also disputes Verizon's assertion that statements made by WorldCom's witness during the hearing constitute concessions to Verizon's proposal. *Id.* at 38.

[299] WorldCom Brief at 42-43.

[300] *Id.* at 43.

the growth in these trunks is "explosive and volatile."[301] Verizon contends that it would be difficult for it to attempt to predict how many calls will originate from Verizon's customers destined for AT&T and Cox, and this is information the competitive LECs have based on their own marketing and business plans.[302] Verizon argues that this volatile growth can occur within AT&T's proposed three-to-one ratio and AT&T's compromise is therefore inadequate in assisting Verizon to manage its network.[303] Additionally, Verizon asserts that AT&T has not identified any reason why Verizon should provide it with a forecast, pursuant to its compromise proposal, when Verizon sends three times as much traffic to AT&T as AT&T sends to Verizon.[304]

98. Verizon argues that if Cox can do "trending" based on past performance, it can make reasonable estimates of future performance and this is the type of information Verizon expects to receive from the competing carriers when they forecast their inbound traffic.[305] Contrary to Cox's suggestion that Verizon disregards the data that competing carriers provide to it, Verizon states that it combines this information with other data to ensure that Verizon has adequate facilities in place.[306] Verizon also disagrees with Cox's statement that, since Verizon does not seek forecasts from start-up competing carriers, it should not receive such forecasts from established carriers.[307] According to Verizon, whenever it enters into an interconnection agreement with any competing carrier, the competing carrier "should provide" Verizon with an initial forecast at the first joint implementation meeting.[308]

99. Verizon contends that a forecast is not a reservation procedure but, rather, is information that Verizon uses to make adequate supplies available to satisfy orders for all trunks.[309] It therefore rejects WorldCom's argument that if WorldCom forecasts 100 trunks, it should receive a guarantee of 100 trunks. Verizon also notes that WorldCom's apparent assumption regarding utilization levels is inconsistent with the parties' already agreed-upon language. For example, Verizon states that under its proposed section 2.4.8, if WorldCom had

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[301] Verizon Network Architecture (NA) Brief at 48-49, citing Tr. at 1537, 1549. Verizon contends that in 2000, the competing carriers' network grew 106 percent over the previous year in Virginia. *Id.* at 49.

[302] Verizon NA Brief at 49 (arguing that these competitive LEC plans often target Internet or telemarketing traffic originating on Verizon's network and terminating on the competitor's network).

[303] *Id.* at 50.

[304] *Id*. Verizon also argues that, unlike it, AT&T is not responsible for ensuring that it has enough facilities in place to meet the demand on its network for all carriers. *Id.*

[305] *Id.* at 49-50, citing Tr. at 1055-56.

[306] Verizon NA Reply at 25.

[307] *Id.*, citing Cox Brief at 27.

[308] Verizon NA Reply at 25.

[309] *Id.* at 26, citing Tr. at 1503-05, 1512-13.

100 trunks, and all 100 trunks were being utilized, Verizon would augment this trunk group to reach a utilization level of 70 percent.[310]

c. Discussion

100. We adopt, with some modification described below, the language proposed by AT&T, Cox and WorldCom.[311] Except as set forth below, we determine that the petitioners' language generally is reasonable and that Verizon fails to establish why competitive LECs are better positioned to forecast Verizon's originating traffic or why its competitors alone should shoulder the costs of such forecasting.[312] However, we caution AT&T and Cox not to interpret our decision as excusing a lack of close cooperation with Verizon. Rather, we expect that these carriers will benefit by providing prompt and full information to Verizon about expected changes in traffic patterns, including anticipating when those changes might disproportionately affect Verizon's outbound traffic.[313]

(i) AT&T's Proposed Language

101. We recognize Verizon's concern regarding unforecasted spikes in growth, generated by the number and nature of a competing carrier's customers. Verizon has not persuaded us, however, that AT&T's proposal, to forecast Verizon's outbound traffic that exceeds a three-to-one traffic ratio, would fail to address satisfactorily Verizon's concerns. According to Verizon, forecasts identify growth, and spikes in this growth affect when and where Verizon must add capacity in its network.[314] While Verizon argues that the change or

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[310] *Id.* at 27.

[311] Specifically, we adopt AT&T's proposed sections 10.3.1 and 10.3.3.1, and reject Verizon's proposed sections 10.3.1 and 10.3.2.1. We adopt Cox's proposed sections 10.3.1 through 10.3.5, and reject Verizon's proposed section 10.3.2. Finally, we adopt WorldCom's proposed Attachment IV, sections 4.1.1 through 4.1.9, and 4.3 through 4.3.4, and reject Verizon's proposed sections 2.4.8 and 13.3 through 13.3.1.2. Verizon's proposed language responsive to this issue was the subject of WorldCom's motion to strike. *See* WorldCom Motion to Strike, Ex. A at 43-48. Since we adopt WorldCom's proposal in lieu of Verizon's language, its motion with respect to Issue III-4 is moot.

[312] Although there appears to be a dispute between the parties about the meaning and effect of certain trunking-related documents generated in a New York collaborative (*see, e.g.,* AT&T Reply at 22-23 & n.81, citing Tr. at 1488; Cox Brief at 30; Verizon Network Architecture Brief at 48), we determine that we do not need to resolve this matter. Similarly, we find it unnecessary to address the disagreement about which class of carriers provide Verizon with forecasts. Even if we were to find in Verizon's favor on both of these issues (*i.e.,* that forecasting Verizon's outbound traffic is consistent with New York collaborative guidelines and that other classes of carriers provide Verizon with such forecasts), based on the record before us, we would still be persuaded that AT&T and Cox should prevail. It is undisputed, for example, that the New York collaborative document cited to by the parties expressly states that the trunking forecast guidelines in no way supersede any future interconnection agreement between Verizon and individual competitive LECs. *See* Cox Ex. 18, at 18-8.

[313] Indeed, should Verizon share its DIXC data with AT&T and Cox, we encourage both carriers to consider providing more detailed information to Verizon similar to the arrangement Verizon and WorldCom have reached.

[314] Tr. at 1533.

growth in traffic is independent of whether the traffic exchanged between the carriers is balanced, Verizon acknowledges that the biggest growth spikes occur because of Internet traffic, which tends to flow one way from Verizon's end users to a competitor's ISP customer.[315] We expect that Verizon's concern of growth spikes resulting from AT&T signing up "a lot of customers" would be addressed by triggering AT&T's requirement to provide Verizon with a forecast on an "as-needed basis."[316]

102. Although we adopt AT&T's proposal, we direct the parties to make the following changes to AT&T's proposed section 10.3.3.1. First, we note that this section suggests that AT&T would forecast Verizon's outbound traffic only after the three-to-one traffic imbalance occurs. We are concerned that, as currently drafted, AT&T's proposal may afford Verizon inadequate notice within which to augment its capacity, if necessary.[317] Although the "as-needed basis" language would arguably apply in this instance, we find that greater certainty is appropriate. Second, we agree with Verizon that AT&T has not demonstrated the need for Verizon to submit a forecast of AT&T's outbound traffic where Verizon originates three times as much traffic as AT&T.[318] Therefore, we direct the parties to include in their compliance filing language that (1) provides that AT&T will forecast Verizon's outbound traffic as soon as AT&T *reasonably expects* traffic volumes in excess of the three-to-one ratio and that this obligation to provide forecasts of another carrier's outbound traffic lies only with AT&T and not Verizon; and (2) reflects our conclusion above about the need for Verizon to submit forecasts.

(ii) Cox's Proposed Language

103. Cox has persuaded us that it should not be required to forecast Verizon's outbound traffic. Although Verizon states that "trending" information from Cox is all that it is

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[315] *Id.* at 1534 (stating that the "big bangers" in spikey growth are due to Internet traffic).

[316] *Id.*; AT&T's November Proposed Agreement to Verizon, § 10.3.1. We also note that when the traffic between AT&T and Verizon is balanced (or falling within the three-to-one ratio), AT&T's outbound trunk forecast, provided either semi-annually or on an "as needed basis," would permit Verizon to forecast what its outbound traffic will be. We understand that on trunking matters, there is a large amount of informal coordination and communication between the carriers so that we would expect the parties to reach agreement on what an "as-needed basis" means, rather than trying to quantify this term in this Order based upon the record before us.

[317] In a recent New York decision, the New York Commission directed AT&T to "provide Verizon its best estimates of inbound traffic in all instances when it can *reasonably expect* volumes in excess of a three to one ratio of inbound traffic to outbound traffic." *New York AT&T Arbitration Order* at 42 (emphasis added). And although AT&T's witness stated that such a solution "makes good sense," AT&T's proposed section 10.3.3.1 contains no such forward-looking language. *See* AT&T Ex. 15 (Rebuttal Testimony of R. Kirchberger), at 2.

[318] *See* Verizon NA Reply at 50. Also, to the knowledge of Verizon's witness, Verizon has never signed up a customer that caused an imbalance in traffic exchanged between Verizon and a competitive carrier and that resulted in a blockage. *See* Tr. at 1539 (Verizon witness stating that he has never seen "a spike in actual trunk operation causing blockage that was due to a sign of something big on [Verizon's] end that was driving boatloads of calls to an individual CLEC"). Although afforded the opportunity, AT&T has not challenged this statement.

seeking, Verizon fails to explain why it could not simply perform this function for itself.[319] Moreover, Cox's assertions about its costs to forecast Verizon's outbound traffic have gone unchallenged as have its statements about requiring certain information from Verizon in order to prepare such a forecast.[320] Verizon concedes that not all of the information requested by Cox is contained in DIXC data but fails to explain why Cox does not need all the information that it claims to need in order to create a forecast of Verizon's outbound traffic.[321] Verizon also does not explain the failings of Cox's proposal to inform Verizon of expected changes in Cox's traffic patterns.[322]

(iii) WorldCom's Proposed Language

104. While we adopt WorldCom's proposed sections 4.1 and 4.3 as providing a fair representation of the parties' agreement as expressed during the hearing and in filings, we note that it is unclear to us where, if at all, WorldCom's 15 percent overhead concept is incorporated in this language.[323] Because WorldCom criticizes Verizon's proposal for not reflecting the parties' agreement on the 15 percent overhead reached at the hearing,[324] we can only assume that WorldCom continues to support this overhead provision but failed to update its contract proposal accordingly. Therefore, we direct the parties to file conforming language making clear their agreement to leave a 15 percent overhead when trunks are removed.

105. In addition, it appears that Verizon proposed language in Issues I-7/III-4 that corresponds to language proposed by WorldCom in Issue IV-2, which concerns whether mutual agreement is required for two-way trunking and what compensation is appropriate for two-way trunk facilities.[325] Accordingly, we consider Verizon's non-forecasting proposals in Issue IV-2,

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[319] Cox indicates that it performs trending by extrapolating from traffic history and that trending is just the first step in the forecasting process. Tr. at 1550, 1574.

[320] *See, e.g.*, Cox Ex. 2 (Rebuttal Testimony of F. Collins), at 39-40.

[321] *See* Tr. at 1540.

[322] *See* Cox's November Proposed Agreement to Verizon, § 10.3.2 (stating that Cox shall notify Verizon promptly of changes greater than ten percent to current forecasts that generate a shift in the demand curve for the following forecasting period). In addition, and presumably as an example of how section 10.3.2 would operate, Cox's witness explains that if Cox were to add an ISP as a customer, it would share that information with Verizon. Tr. at 1573.

[323] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 4.1. At the hearing, the parties agreed on the following example of how WorldCom's proposed 15 percent overhead would operate: if WorldCom had a trunk group of 100 trunks and the utilization rate for that group was at 60 percent, the parties agree to reduce the number of trunks in that group to 75, leaving a growth margin of 15 percent. *See* Tr. at 1500-02, 1546.

[324] *See* WorldCom Reply at 39.

[325] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.4.2, 2.4.3, 2.4.9, and 2.4.10; WorldCom's November Proposed Agreement to Verizon, Attach. IV, §§ 1.8.1, 1.8.2, 1.8.7, and 1.8.8.

below.[326] Verizon also includes language for Issues I-7/III-4 in its November JDPL related to "joint network implementation and grooming process" and "installation, maintenance, testing and repair."[327] We reject this language for several reasons. We have no record upon which to determine the reasonableness of these proposals. Verizon has offered no argument why we should adopt this language and WorldCom argues in its reply that it did not agree to these Verizon proposals.[328] Moreover, we note that it appears that several of the concepts set forth in section 13.1 are addressed elsewhere in the contract.[329]

106. Finally, we reject WorldCom's assertion that Verizon should automatically make available whatever number of trunks WorldCom has forecasted.[330] In essence, WorldCom is asking us to make its forecast binding on Verizon; however, the record is noticeably silent on WorldCom's willingness to make its forecast binding on itself and incur the consequences (*e.g.*, financial penalties) for inaccurate forecasts. As noted by Verizon, a forecast is not a reservation policy.[331] Verizon's witness indicated that the critical factor in deciding whether to augment trunk groups is to determine if the current operational performance is consistent with the agreed-upon engineering design standards.[332] In other words, the key issue is not that WorldCom receives all of its forecasted trunks but, rather, is that Verizon augments trunk groups in sufficient numbers so that there is adequate capacity to provide the level of service to which the parties have agreed.[333] We further note that Verizon is held to certain performance standards with respect to trunking. If Verizon does not meet these standards, at a minimum, provisions set forth in the *Bell Atlantic-GTE Merger Order* may apply in the near term.[334] Therefore, Verizon has adequate incentive to ensure that its network is functioning appropriately.

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326 *See* Issue IV-2 *infra*.

327 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 13.1 *et seq.*, 13.2.

328 *See* WorldCom Reply at 39 (also arguing that Verizon failed to introduce any evidence concerning these proposals).

329 *See, e.g.,* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.4.5; WorldCom's November Proposed Agreement to Verizon, Attach. IV, § 1.8.4 (providing the agreed-upon blocking standard).

330 *See* WorldCom Brief at 42.

331 Tr. at 1513.

332 Tr. at 1528-29.

333 Tr. at 1528.

334 *See Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, 14334-38, Appendix D, Attach. A, paras. 8-16 (2000) (*Bell Atlantic-GTE Merger Order*). We also note that the question of applicable remedies for failure to meet specified (continued….)

6. Issues III-1/III-2/IV-1 (Tandem Transit Service)[335]

a. Introduction

107. AT&T and WorldCom seek to protect and solidify the transit service that they have been receiving from Verizon to ensure that they will be able to continue exchanging traffic with third-party carriers without having to interconnect directly with them. AT&T and WorldCom seek to include language requiring Verizon to provide transit over its network at TELRIC-based rates for traffic they exchange with third-party LECs.[336] WorldCom also proposes language requiring Verizon to bill and compensate WorldCom for transit traffic as though the traffic were exchanged between WorldCom and Verizon.[337] Verizon opposes inclusion of this language, arguing that it is not under any obligation to provide transit service. Verizon does, however, propose language voluntarily offering tandem transit service as an accommodation to competitive LECs.[338] Under Verizon's proposed terms, the petitioners would be allowed to purchase tandem transit from Verizon at TELRIC rates up to the level of one DS-1 of traffic exchanged with another carrier. With respect to WorldCom, once transit traffic volumes reached the DS-1 threshold, Verizon's terms would allow Verizon to terminate its tandem transit service. With respect to AT&T, once transit traffic volumes reached the DS-1 threshold, Verizon's terms would require AT&T to pay additional charges for Verizon's tandem transit service during a transition period, and would allow Verizon subsequently to terminate its tandem transit service. For both petitioners, we adopt, with slight modifications, the language that Verizon proposed to AT&T.

(Continued from previous page)
performance standards is pending before the Virginia Commission. Earlier this year, the Virginia Commission issued an order establishing performance measurements and standards for Verizon, which includes the "percent final trunk group blockage" metric. *See Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change Metrics, issued Jan. 4, 2002 (*Virginia Commission Performance Metrics and Standards Order*). *See also*, *Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Staff Motion to Establish Carrier Performance Standards for Verizon Virginia Inc. and for Order Prescribing Notice and Providing for Comment or Request Hearing, issued Oct. 10, 2001, Attach. A at 89-90 (*Virginia Commission Staff Motion on Metrics and Standards*).

[335] Because these three issues present interrelated sets of contract language and disputes, we address them together. Issue III-1 concerns whether Verizon has a duty to provide transit service without regard to the level of traffic exchanged, and whether transit should be priced at TELRIC rates. Issue III-2 also concerns whether Verizon has a duty to provide transit service at TELRIC rates. Issue IV-1 concerns whether Verizon has a duty to bill and compensate WorldCom for transit traffic as though the traffic were exchanged between WorldCom and Verizon.

[336] *See* AT&T's November Proposed Agreement to Verizon, § 7.2; WorldCom's November Proposed Agreement to Verizon, Attach. IV, § 10.

[337] *See* WorldCom's November Proposed Agreement to Verizon, Attach. I, § 4.8.

[338] *See* Verizon's November Proposed Agreement to AT&T, §§ 7.2.1-7.2.3; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 11.

b. Positions of the Parties

108. AT&T states that tandem transit service consists of tandem switching and common transport that AT&T would use to send local and intraLATA toll traffic between itself and LECs other than Verizon.[339] AT&T argues that Verizon has a legal obligation to provide transit service to AT&T, regardless of the level of traffic. AT&T argues that Verizon's restrictions on tandem transit service above a DS-1 level of traffic unlawfully interfere with AT&T's right, pursuant to section 251(a)(1), to interconnect directly or indirectly with the facilities and equipment of other carriers.[340] In addition, according to AT&T, Verizon's duty to interconnect pursuant to section 251(c)(2)(A) is not limited solely to interconnection for the exchange of traffic between AT&T and Verizon.[341] AT&T argues that Verizon's proposed language also restricts AT&T's ability to interconnect at the trunk interconnection ports on a tandem switch, in violation of Verizon's obligation under section 251(c)(2)(B) to provide interconnection at any technically feasible point.[342] Finally, AT&T contends that Verizon's proposal discriminates in violation of section 251(c)(2)(D), because it would move competitive LEC local traffic off of tandem switches, but leave interexchange carriers' (IXCs) access traffic in place.[343]

109. In addition to being contrary to law, AT&T argues that Verizon's restrictions on tandem transit service would be highly inefficient and harmful to AT&T. AT&T reiterates its argument made with respect to Issue I-4 that the DS-1 threshold used by Verizon to determine whether to implement direct trunking is inappropriate to apply to competitive LECs.[344] AT&T further argues that any direct trunking arrangement displacing a tandem transit arrangement would require AT&T to negotiate and possibly arbitrate an interconnection agreement with any third-party carrier with which it seeks to exchange traffic. According to AT&T, the time and expense required to create such arrangements would be an impediment to efficient interconnection and unnecessary, given that Verizon already has such arrangements with third-party carriers.[345] AT&T questions the validity of Verizon's concerns about competitive LEC traffic causing tandem exhaustion, given Verizon's testimony that it does not know how much competitive LEC tandem-routed traffic is transit traffic.[346] Finally, AT&T contends that,

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339 *See* AT&T Brief at 34.

340 *See* AT&T Reply at 13; 47 U.S.C. § 251(a)(1).

341 *See* AT&T Brief at 35.

342 *See id.* at 35.

343 *See id.* at 37.

344 *See id.* at 35-36. Under Issue I-4, AT&T argues that competitive carriers typically install new facilities operating at a higher capacity than DS-1, such as DS-3. *See id.* at 28-29; *supra,* Issue I-4.

345 *See* AT&T Brief at 36.

346 *See id.* at 37, citing Tr. at 2224.

contrary to Verizon's characterization, AT&T's witness did not testify that AT&T seeks to evade its responsibility to establish reciprocal compensation arrangements with other carriers. Rather, AT&T states that its testimony reflects the common practice among indirectly interconnected carriers of agreeing to exchange traffic on a bill and keep basis.[347]

110. Like AT&T, WorldCom argues that Verizon's restrictions on transit service would frustrate the Act's requirement in section 251(a)(1) that carriers be allowed to use indirect interconnection, which WorldCom states necessarily involves the use of a third carrier's facilities.[348] WorldCom also echoes AT&T's arguments that Verizon's proposal discriminates between competitive LECs and other carriers, such as interexchange and wireless carriers, that interconnect at Verizon's tandem switches.[349] WorldCom states that Verizon has not demonstrated that transit traffic contributes in any meaningful way to tandem exhaustion.[350] WorldCom adds that Verizon's restrictions on transit service conflict with Verizon's obligation to provide UNE tandem switching, as required under section 251(c)(3) of the Act and section 51.319(c) of the Commission's rules.[351] WorldCom characterizes the provision of transit service as nothing more than the provision of tandem switching for the routing of traffic between carriers.[352]

111. WorldCom also argues that transit service is the most efficient form of interconnection for carriers that exchange only minimal amounts of traffic. Transit service, according to WorldCom, allows such carriers to avoid the fixed costs of an interconnection facility that would be used only minimally and the unnecessary expense of negotiating multiple interconnection arrangements.[353] WorldCom adds that the issue of direct interconnection between carriers exchanging transit traffic is markedly different from the issue of implementing direct trunks to Verizon end offices upon reaching a DS-1 level of traffic, to which WorldCom has agreed. According to WorldCom, direct interconnection between carriers in lieu of transiting arrangements would require the construction of new physical interconnection facilities, whereas direct trunks to Verizon end offices are established over existing transport facilities.[354] WorldCom states that, when it does choose to install new carrier class transport facilities, they operate at a transmission rate of OC-48, or sometimes OC-3 and OC-12, far greater than the DS-

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347 *See* AT&T Reply at 16. *See also* Tr. at 2191.

348 *See* WorldCom Brief at 27.

349 *See id.* at 30.

350 *See id.* at 30.

351 *See id.* at 27-28. *See also* 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.319(c).

352 *See* WorldCom Brief at 28, citing Tr. at 2282.

353 *See id.* at 28.

354 *See id.* at 29.

1 threshold that would apply under Verizon's proposed terms for transit traffic.[355] WorldCom states that there is simply no carrier class transmission equipment to transport a DS-1 level of traffic any significant distance between two points.[356] Furthermore, WorldCom states that Verizon's proposal would result in inefficiencies for the entire network, due to the number of additional trunks required of each carrier in order for it to be interconnected directly with other carriers.[357] WorldCom argues that its proposal, by contrast, would allow all subscribers of one carrier to call all subscribers of other carriers over an efficiently constructed network via transit arrangements.[358]

112. WorldCom also argues that its language requiring Verizon to act as a billing intermediary for WorldCom's transit traffic makes efficient use of Verizon's existing billing arrangements, and is consistent with industry billing guidelines.[359] WorldCom adds that Verizon has used such an approach for several years.[360] WorldCom states that its proposal reduces the number of records exchanged and the number of bills to render and to audit for all carriers. WorldCom argues that its proposal requires less effort of Verizon than would be required if Verizon excluded charges for transit traffic on its bills to third-party carriers.[361] According to WorldCom, its approach also ensures that all carriers along the route are compensated for the portion of the call that they carry.[362] According to WorldCom, under its proposal the originating carrier ultimately would be liable for any compensation owed for transit traffic.[363] WorldCom adds that Verizon included language in the November Decision Point List (DPL) making WorldCom a guarantor of Verizon's compensation for transit traffic from WorldCom. According WorldCom, this language belies any objections Verizon has to WorldCom's proposal.[364]

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355 *See id.* at 29.

356 *See id.* at 30.

357 In WorldCom's example, ten carriers interconnected via Verizon's network would require a total of ten trunks to interconnect. According to WorldCom, for the same carriers to interconnect directly with each other, 50 trunks would be required. *See* WorldCom Brief at 29-30.

358 *See id.* at 28.

359 *See id.* at 44.

360 *See id.* at 44.

361 *See id.* at 45.

362 *See id.* at 44.

363 *See id.* at 41-42.

364 *See id.* at 42.

113. Verizon states that AT&T and WorldCom, like all telecommunications carriers, individually have the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[365] Verizon argues that both AT&T and WorldCom attempt to turn this *duty* into a *right* against Verizon as an incumbent LEC. According to Verizon, there is no requirement that incumbent LECs help competitive LECs satisfy their own interconnection obligations, including the obligation to interconnect "indirectly" with other carriers.[366] Instead, Verizon states that its tandem transit service is purely voluntary, and thus that its DS-1 traffic level limitation does not violate any part of section 251.[367] Under Verizon's proposal to AT&T, once AT&T's exchange of transit traffic with any carrier exceeds a DS-1 level, Verizon would be permitted to charge for that traffic non-usage sensitive charges for trunk ports and a billing fee reflecting the charges assessed by Verizon's billing vendor.[368] Verizon's trunking charge is a non-usage-sensitive port charge from Verizon's access tariff.[369] Verizon's billing charge is a pass-through of the charges Verizon pays its billing vendor to bill for Verizon's transit services.[370] Verizon's proposal to AT&T also allows Verizon to stop providing transit service for such traffic after a transition period of 60 days.[371] Under Verizon's proposal to WorldCom, Verizon would be permitted to stop providing WorldCom's transit service once it exchanges transit traffic with any carrier exceeding a DS-1 level.[372] Consistent with its position under Issue I-4, for direct end office trunking of tandem traffic exchanged between the petitioners and Verizon, Verizon contends that a DS-1 level of traffic is an appropriate threshold at which AT&T and WorldCom should implement direct trunks for traffic they exchange with third-party carriers. Verizon states that it needs to limit the amount of traffic at its tandems resulting from such transit traffic.[373] Furthermore, Verizon suggests that the petitioners merely seek to avoid the burdens of negotiating and implementing direct interconnection with third-party carriers. Verizon states that requiring the petitioners to interconnect directly with third-party carriers at the DS-1 level provides an appropriate incentive to begin interconnection negotiations with third-party carriers.[374]

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365 *See* Verizon NA Brief at 34, quoting 47 U.S.C. §251(a)(1).

366 *See id.* at 34.

367 *See id.* at 34.

368 *See id.* at 37.

369 *See id.* at 37; Tr. at 2265.

370 Tr. at 2288-90.

371 *See* Verizon's November Proposed Agreement to AT&T, § 7.2.4.

372 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 11.4.

373 *See* Verizon NA Brief at 35.

374 *See id.* at 36-37.

114. Verizon also objects to WorldCom's proposed language requiring Verizon to act as billing intermediary for transit traffic WorldCom exchanges with third-party carriers.[375] According to Verizon, although AT&T did not propose similar language, its testimony indicates that it expects Verizon to perform similar billing functions for AT&T's transit traffic.[376] Verizon argues that nothing in the Act requires it to provide such a service.[377] Furthermore, Verizon argues that requiring it to provide such a billing function contravenes the petitioners' own duties to establish reciprocal compensation arrangements with other carriers.[378] Verizon adds that nothing in WorldCom's proposed contract language protects Verizon in the event a third-party carrier charges Verizon a reciprocal compensation rate that differs from the rate Verizon and WorldCom charge each other.[379] Verizon contends that, because no Verizon customer is involved when Verizon transits traffic, it is manifestly unfair for Verizon to become involved in disputes over compensation between WorldCom and third-party carriers, or for Verizon to bear any losses as a result of such disputes.[380] Verizon contends that its proposed contract language to both petitioners provides them with appropriate incentives to establish suitable business relationships with third-party carriers, and protects Verizon from acting as a billing and collection agent on their behalf.[381]

c. Discussion

115. We adopt Verizon's proposal to AT&T, with the following modifications.[382] For traffic above the DS-1 threshold, AT&T has not demonstrated that the additional charges Verizon may apply to this transit traffic are impermissible. Given the absence of Commission rules specifically governing transit service rates, we decline to find that Verizon's additional charges are unreasonable. We also find that Verizon's proposed 60-day transition period is reasonable, providing AT&T adequate time to arrange to remove its transit traffic from Verizon's tandem switch once the traffic meets the DS-1 threshold. We determine, however, that Verizon's language allowing it to terminate tandem transit service after this transition period at its "sole discretion" is not reasonable.[383] This provision creates too great a risk of service

[375] *See id.* at 38.

[376] *See id.* at 41, citing Tr. at 2191.

[377] *See id.* at 39.

[378] *See id.* at 39.

[379] *See id.* at 40.

[380] *See id.* at 40.

[381] *See id.* at 41.

[382] Specifically, we adopt, without modification, Verizon's November Proposed Agreement to AT&T, §§ 5.7.5.5 and 7.2.1, 7.2.2, 7.2.3, 7.2.6, 7.2.8. We adopt § 7.2 4 with the modifications described herein. We do not address § 7.2.7 here, which is the subject of Issue V-16 below.

[383] *See* Verizon's November Proposed Agreement to AT&T, § 7.2.4.

disruption to AT&T's end users. Moreover, we are concerned that Verizon's proposal creates uncertainty and would be unworkable, because it puts Verizon in the position of determining whether AT&T has used "best efforts" and whether it has been unable to reach an agreement "through no fault of its own." We are thus concerned that Verizon's proposed language could lead to further disputes between the parties. Furthermore, we decline to adopt Verizon's proposal to the extent it envisions the Commission essentially arbitrating a competitive LEC-to-competitive LEC interconnection agreement.

116. We thus reject the sentence in section 7.2.4 beginning with "At the end of the Transition Period, Verizon may, in its sole discretion" and ending with "then Verizon will not terminate the Transit Traffic Service until the Commission has ruled on such petition." Instead, we direct the parties to insert language directing AT&T, as soon as it receives notice from Verizon that its traffic has exceeded the DS-1 cut-off (i.e., as soon as what Verizon calls the transition period begins),[384] to exercise its best efforts to enter into a reciprocal telephone exchange service traffic arrangement with the relevant carrier, for the purpose of seeking direct interconnection. This language should make clear that Verizon may use the dispute resolution process if it feels that AT&T has not exercised good faith efforts promptly to obtain such an agreement. We find that these modifications are not burdensome to Verizon. Verizon will be adequately compensated because it may levy its trunk and billing charges for the tandem transit service it provides during the time that AT&T negotiates with the other carrier. Moreover, any extension of Verizon's tandem transit offering would be limited, as Verizon would be able to terminate this offering if AT&T is ultimately found through the dispute resolution process not to be exercising its best efforts to obtain an agreement.

117. We reject AT&T's proposal because it would require Verizon to provide transit service at TELRIC rates without limitation.[385] While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's rules implementing section 251(c)(2),[386] the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty. In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a

[384] To remove ambiguity in this language and to remain consistent with our determination for Issue I-4, we modify Verizon's language specifying the measurement of the DS-1 threshold of traffic. We amend Verizon's proposed threshold from "one (1) DS-1 and/or 200,000 combined minutes of use … for any three (3) months in any consecutive six (6) month period or for any consecutive three (3) months" to "200,000 combined minutes of use … for any consecutive three (3) months." *See* Verizon's November Proposed Agreement to AT&T, § 7.2.4. *See also supra,* Issue I-4.

[385] *See* AT&T's November Proposed Agreement to Verizon, § 7.2.1-7.2.3.

[386] *See Local Competition First Report and Order*, 11 FCC Rcd at 15844, para. 672; 47 C.F.R. §§ 51.501, 51.503(b)(1).

section 251(c)(2) duty to provide transit service at TELRIC rates.[387] Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.

118. For the reasons provided below, we reject Verizon's proposal to WorldCom.[388] Verizon's proposal to WorldCom allows Verizon to terminate transit service for transit traffic exceeding the level of 200,000 minutes of use in one month. Unlike Verizon's proposal to AT&T, its proposal to WorldCom does not provide a transition period during which WorldCom would be able to form an alternative interconnection arrangement before Verizon stopped providing transit service. Furthermore, Verizon's proposal to WorldCom does not suspend Verizon's ability to terminate transit service if WorldCom is unable, through no fault of its own, to form an alternative interconnection arrangement. We find that Verizon's proposal, which gives it unilateral authority to cease providing transit services to WorldCom, creates too great a risk that WorldCom's end users might be rendered unable to communicate through the public switched network. The Commission has held, in another context, that a "fundamental purpose" of section 251 is to "promote the interconnection of all telecommunications networks by ensuring that incumbent LECs are not the only carriers that are able to interconnect efficiently with other carriers."[389] In this instance, allowing Verizon to "terminate" transit service abruptly, with no transition period or consideration of whether WorldCom has an available alternative, would undermine WorldCom's ability to interconnect indirectly with other carriers in a manner that is inconsistent with the "fundamental purpose" identified above. Moreover, such a result would put new entrants at a severe competitive disadvantage in Virginia, and would undermine the interests of all end users in connectivity to the public switched network.[390] Thus, we decline to adopt Verizon's proposal to WorldCom.

119. We also reject WorldCom's proposal to Verizon.[391] Like AT&T's proposed language, WorldCom's proposal would require Verizon to provide transit service at TELRIC rates without limitation. WorldCom's proposal would also require Verizon to serve as a billing intermediary between WorldCom and third-party carriers with which it exchanges traffic transiting Verizon's network. We cannot find any clear precedent or Commission rule requiring

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[387] *See supra,* Introduction (discussing the Commission's delegation of authority to the Bureau to conduct this arbitration).

[388] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 11 *et seq*.

[389] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, Fourth Report and Order, 16 FCC Rcd 15435, 15478, para. 84 (2001) (*Collocation Remand Order*), *aff'd sub nom. Verizon Telephone Cos. v. FCC*, Nos. 01-1371 *et al.* (D.C. Cir., decided June 18, 2002) (*Verizon v. FCC*).

[390] As the Commission has recognized, "increasing the number of people connected to the telecommunications network makes the network more valuable to all of its users." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, 8783 para. 8 (1997).

[391] *See* WorldCom's November Proposed Agreement to Verizon, Attach. I, § 4.8 *et seq*., and Attach. IV, § 10 *et seq*.

Verizon to perform such a function. Although WorldCom states that Verizon has provided such a function in the past, this alone cannot create a continuing duty for Verizon to serve as a billing intermediary for the petitioners' transit traffic. We are not persuaded by WorldCom's arguments that Verizon should incur the burdens of negotiating interconnection and compensation arrangements with third-party carriers. Instead, we agree with Verizon that interconnection and reciprocal compensation are the duties of all local exchange carriers, including competitive entrants.[392] Accordingly, we decline to adopt WorldCom's proposal for this issue.

120. Having rejected both the Verizon and WorldCom proposals to each other for this issue, we exercise our discretion under the Commission's rules to adopt language submitted by neither party.[393] We find that the language Verizon has proposed to AT&T, with the modifications discussed above, represents a reasonable approach for WorldCom's transit traffic as well. Indeed, during the hearing, Verizon's witness indicated that Verizon would be willing to offer its AT&T proposal to WorldCom as well.[394] For the reasons explained above, we find that this proposal allows WorldCom to exchange transit traffic with third-party carriers with some measure of protection against the service disruption that could result from Verizon's termination of its transit service. Verizon's proposed language is the most consistent with the Commission's rules and the Act. Accordingly, we adopt the modified Verizon proposal to AT&T with respect to WorldCom.[395]

121. Although we adopt Verizon's language, we emphasize that Verizon's proposed terms for transit service should not be interpreted or applied to restrict the petitioners' rights to access UNEs. (These network elements could include, for example, tandem switching and interoffice transport.[396]) Verizon's testimony indicates that there is currently no tandem switching UNE in service in Virginia, or for that matter in any of the 14 Verizon East states.[397] We note, however, that Verizon has not argued that competitive LECs should be prevented from using UNEs to exchange transit traffic with third-party carriers. To avoid such a result, we remind the parties of the petitioners' rights to access UNEs independent of Verizon's terms for transit service. Furthermore, we caution Verizon not to apply its terms for transit service as a restriction on the petitioners' rights to access UNEs for the provision of telecommunications services, including local exchange service involving the exchange of traffic with third-party carriers.

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[392] *See* Verizon NA Brief at 34, 39-40.

[393] *See* 47 C.F.R. § 51.807(f)(3).

[394] *See* Tr. at 2256.

[395] *See* Verizon's November Proposed Agreement to AT&T, § 7.2.

[396] *See* AT&T Brief at 34. *See also* 47 C.F.R. § 51.319(c) and (d).

[397] *See* Tr. at 2237, 2274. The Verizon East states include the 14 states served by Bell Atlantic prior to the merger of Bell Atlantic and GTE. *See id.* at 2274.

7. Issues III-3, III-3-A (Mid-Span Fiber Meet-Point Interconnection)

a. Introduction

122. Verizon seeks language that would subject the implementation of fiber meet-point interconnection to the mutual agreement of the parties. AT&T and WorldCom oppose inclusion of this language, arguing that Verizon's consent should not be a precondition to the implementation of fiber meet-point interconnection. They propose language that would give them the sole right to determine whether and where to use fiber meet-point interconnection, subject to the limitations of technical feasibility. Verizon objects to the petitioners' proposals on the grounds that meet-point interconnection raises issues requiring joint coordination, including cost apportionment for the mid-span meet. Verizon also objects to AT&T's proposed language subjecting the implementation of a mid-span fiber meet to a 120 day timeline. We adopt, with slight modification, AT&T's proposed language – for both AT&T and WorldCom.

b. Positions of the Parties

123. AT&T proposes language that would require the establishment of a mid-span fiber meet at AT&T's election without Verizon's consent.[398] AT&T argues that it has the right to interconnect with Verizon using any technically feasible method, including fiber meet-point arrangements.[399] AT&T adds that interconnection via a meet-point arrangement is unarguably a technically feasible method of interconnection, explicitly having been endorsed by the Commission.[400] Furthermore, AT&T states that its right to choose the point of interconnection gives it the right to choose the location of a fiber mid-span meet, including the fiber splice and terminating facility points.[401] AT&T agrees that joint coordination is important in establishing a meet-point arrangement, but argues that its proposed contract language adequately resolves concerns regarding such coordination.[402] Specifically, AT&T states that its proposed language identifies a process for the parties to reach agreement on implementation issues such as routing, facility size and equipment to be used, and invokes the agreement's dispute resolution provisions where they cannot reach agreement.[403]

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398 *See* AT&T's November Proposed Agreement to Verizon, Sch. 4, Part B, § 1.6.2.

399 *See* AT&T Brief at 40.

400 *See id.* at 41, citing 47 C.F.R. § 51.321(b)(2) (listing meet-point arrangements as a technically feasible form of interconnection).

401 *See id.* at 40. *See also* 47 U.S.C. § 251(c)(2)(B) (requiring incumbent LECs to provide interconnection at any technically feasible point).

402 *See* AT&T Brief at 42.

403 *See id.* at 42.

124. AT&T states that Verizon's language by contrast would give Verizon the right to determine not simply how a meet-point interconnection should be established, but whether it would be established at all.[404] AT&T disputes Verizon's contention that mutual agreement is required to protect Verizon from extremely expensive build-outs of its facilities, noting that, under its proposal, each party would bear half the construction costs of the meet-point facilities, giving AT&T an incentive to choose a facility span that is not prohibitively expensive.[405] Accordingly, AT&T argues that Verizon should not be allowed to precondition the implementation of fiber meet-point interconnection on the mutual agreement of the parties or on the availability of facilities in its network.[406] AT&T adds that the Massachusetts Department of Telecommunications and Energy (Massachusetts Department) rejected a similar Verizon proposal in an interconnection arbitration between Verizon and MediaOne, adopting MediaOne's proposal instead.[407]

125. AT&T also proposes language requiring mid-span meets to be activated within 120 days of an initial implementation meeting between the parties, to be held no later than 10 days of Verizon's receipt of AT&T's responses to Verizon's mid-span fiber meet interconnection questionnaire.[408] AT&T states that, because Verizon has no incentives to implement meet-point arrangements for its competitors, the agreement needs to include firm interconnection activation dates for meet-point interconnection.[409] According to AT&T, Verizon's proposal would require the parties to agree to all aspects of meet-point interconnection before any time frames began to run, and would therefore place no timing restrictions on Verizon. AT&T argues that this open-ended process is an unreasonable condition of interconnection under section 251(c)(2)(D) of the Act, and should be rejected.[410] AT&T adds that the imposition of time frames for other forms of interconnection, such as collocation, is commonplace, and recognizes a competitive carrier's need for certainty when expanding its network.[411] AT&T argues that its proposed 120-day completion timeline is a reasonable one, and

404 *See id.* at 41-42.

405 *See id.* at 43.

406 *See id.* at 43-44.

407 *See id.* at 43-44, citing *MediaOne/Greater Media Arbitration Order*, D.T.E. 99-42/43, 99-52 (1999) (*Massachusetts Department MediaOne Arbitration Order*).

408 *See* AT&T's November Proposed Agreement to Verizon, Sch. 4, Part B, § 1.6.4.

409 *See* AT&T Brief at 44.

410 *See id.* at 44-45.

411 *See id.* at 45.

notes that its proposal allows Verizon to seek a waiver of the timeline from the Virginia Commission, should exceptional circumstances arise.[412]

126. WorldCom similarly argues that Verizon should not be allowed the power to veto a mid-span meet-point arrangement or unreasonably restrict the conditions under which it may occur.[413] WorldCom adds that it is not difficult to imagine Verizon simply withholding agreement, given its testimony that a reasonable build-out should not extend more than a few hundred feet.[414] WorldCom states that its proposed language provides for the joint engineering and operation of the mid-span meet and provides for agreement on technical interface specifications.[415] WorldCom further states that its proposed interconnection architecture establishes a 50/50 sharing of the cost of interconnection, in conformance with the Commission's orders. Specifically, WorldCom states that its proposal provides for each party providing one fiber strand in a diverse, dual-fiber SONET ring interconnection, as well as all of the electronics on its own end of the interconnection.[416] WorldCom states that this arrangement addresses Verizon's concerns about excessively long mid-span meets and excessive costs, by giving WorldCom an incentive to limit the total costs of the mid-span meet.[417] WorldCom adds that its proposed architecture will benefit the customers of both carriers by providing route diversity and redundancy.[418] WorldCom disputes the assertion that it seeks a unilateral right to dictate the details of the mid-span meet. WorldCom states that its language envisions a cooperative process, and would impose WorldCom's specifications only in the absence of agreement.[419] WorldCom further contends that Verizon's proposed language, by contrast, provides simply for open-ended negotiation of interconnection terms outside the context of the interconnection agreement.[420]

127. Verizon argues that the Commission should adopt its proposed language, which requires the parties to reach mutual agreement through a memorandum of understanding prior to deploying a mid-span meet.[421] Verizon objects to both AT&T's and WorldCom's proposals, on

412 *See id.* at 46.

413 *See* WorldCom Brief at 34-36.

414 *See* WorldCom Reply at 36, citing Tr. at 1446-47.

415 *See* WorldCom Brief at 35-36.

416 *See id.* at 38-39.

417 *See id.* at 39; WorldCom Reply at 35.

418 *See* WorldCom Brief at 39-40.

419 *See* WorldCom Reply at 34.

420 *See id.* at 37.

421 *See* Verizon NA Brief at 47.

the grounds that they give the petitioners the ability to dictate to Verizon the technical specifications associated with the mid-span meet.[422] According to Verizon, the parties need to mutually agree on these technical specifications so that both parties to the fiber interconnection, rather than solely the petitioners, can derive the benefits of this architecture.[423] Verizon argues that if one party has the ability to dictate the particulars of the mid-span meet, then that party has the incentive and ability to impose an arrangement that may not be mutually beneficial.[424] Verizon cites WorldCom's proposed diverse, dual-fiber ring architecture as an example of an interconnection architecture replete with pitfalls for Verizon. According to Verizon, WorldCom's proposed architecture is not a classic mid-span meet architecture at all, since it would require Verizon to take fiber all the way to the location of WorldCom's fiber optic terminating equipment, potentially doubling Verizon's costs.[425]

128. In addition, Verizon objects to both petitioners' proposals on the grounds that they only account for a sharing of the construction costs associated with the fiber meet, rather than including maintenance costs and Verizon's embedded costs.[426] Verizon argues that the only way to ensure that the costs of the mid-span meet are apportioned equally is to have the parties mutually agree on the details of the particular mid-span meet.[427]

129. In addition, Verizon objects to AT&T's proposed 120 day timeline for the implementation of a mid-span meet. Although Verizon acknowledges that mid-span meet interconnections can usually be implemented within 120 days, Verizon argues that this implementation schedule is appropriate only once the technical and operational details of the mid-span meet have been worked out.[428] Verizon states that AT&T's proposal, by contrast, initiates the 120 day timeline from the moment AT&T informs Verizon it would like mid-span meet interconnection.[429] Verizon argues that mid-span meets are special arrangements with technical details that need to be agreed upon prior to implementation and that the Commission should therefore adopt its proposal, which requires the parties to reach mutual agreement before deploying a mid-span meet.[430]

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422 *See id.* at 42.

423 *See id.* at 46.

424 *See* Verizon NA Brief at 42-43.

425 *See* Verizon NA Reply at 22-23.

426 *See id.* at 24.

427 *See id.* at 24.

428 *See* Verizon NA Brief at 45.

429 *See id.* at 45.

430 *See id.* at 47.

c. Discussion

130. We adopt AT&T's proposed language for mid-span meet interconnection, with one modification, as set out below.[431] We find that this language adequately addresses the need for joint coordination between the parties in designing and implementing the mid-span meet. Specifically, AT&T's proposal provides for joint engineering planning sessions and cooperative development of technical interface specifications for the meet-point interconnection. We thus reject Verizon's claim that AT&T's proposal would enable it to dictate the particulars of the mid-span meet.[432] Indeed, AT&T's proposal establishes a mechanism for resolving disagreements in event the parties cannot agree on material terms relating to the implementation of the mid-span meet.[433] In this manner, AT&T's proposal envisions joint planning and mutual agreement (as urged by Verizon), but also provides for the resolution of disagreements.

131. We reject Verizon's proposed language with respect to both petitioners.[434] Like AT&T's proposal, Verizon's envisions that the parties will seek mutual agreement on all technical, compensation and other issues necessary to implement the interconnection. Unlike AT&T's, however, Verizon's proposal contains no process for resolving implementation disagreements between the parties. We thus find that AT&T's proposal will better serve the parties in the future by allowing for the prompt resolution of disagreements, if any are to arise, in the process of mutually planning and implementing these interconnection arrangements.

132. We also adopt AT&T's proposed language specifying a timeline for the activation of mid-span meet interconnection between the parties.[435] As Verizon acknowledges, 120 days is ordinarily a suitable timeframe for the implementation of a mid-span meet once the technical and operation details of the interconnection have been determined. AT&T's proposal provides for an implementation meeting to allow the parties to work out such details prior to triggering the 120 day timeline, and provides a process under which Verizon may seek a waiver if the 120 day interval is unattainable. Verizon does not demonstrate that AT&T's approach, particularly in light of this waiver process, would be unreasonable or burdensome. Furthermore, we agree with AT&T that a wholly open-ended process amounts to having no timeline at all; we thus reject Verizon's proposed approach.

133. While as a whole AT&T's proposal for mid-span meet-point interconnection is more consistent with the Act and the Commission's implementing rules than Verizon's, Verizon

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[431] *See* AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, §§ 1.6 *et seq.*, 2.6 *et seq*.

[432] *See* Verizon's NA Brief at 42-43.

[433] *See* AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, § 1.6.4.

[434] Verizon's November Proposed Agreement to AT&T, § 4.3 *et seq.*; Verizon's November Proposed Agreement to WorldCom, § 3 *et seq.*

[435] *See* AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, § 1.6.4.

raises valid concerns regarding AT&T's language allocating the costs of interconnection between the parties. In the *Local Competition First Report and Order*, the Commission stated, "In a meet point arrangement, each party pays its portion of the costs to build out the facilities to the meet point."[436] The Commission stated further that, in a meet point interconnection established pursuant to section 251(c)(2), the incumbent and the new entrant are "co-carriers and each gains value from the interconnection arrangement"; under these circumstances, the Commission reasoned, "it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement."[437] AT&T's proposal splits the costs of construction between the parties equally, but does not split any of the costs of maintenance of the mid-span meet. Instead, AT&T's proposal leaves each party responsible for maintaining its side of the fiber splice. Depending upon the location AT&T chooses for the fiber splice, this could leave Verizon bearing an inequitable share of the costs of maintaining the mid-span meet. AT&T's proposal also does not account for situations where embedded plant is used to reach the meet point instead of newly constructed facilities. Excluding the economic cost of embedded plant from the costs to be shared equally by the parties does not result in each party bearing "a reasonable portion of the economic costs of the arrangement."[438] Accordingly, we modify the sentence in AT&T's proposed language governing the allocation of mid-span meet costs to include the costs of maintenance, and the forward-looking economic cost of embedded facilities used to construct the mid-span meet.[439]

134. We reject the language proposed by WorldCom,[440] and agree with Verizon that WorldCom's proposed interconnection architecture is not a proposal for the type of meet-point interconnection envisioned by the *Local Competition First Report and Order*. As the Commission stated in the *Local Competition First Report and Order*, for meet-point interconnection pursuant to section 251(c)(2) of the Act, it "makes sense" that "each party pays its portion of the costs to build out facilities to the meet point."[441] WorldCom's proposed interconnection architecture, however, raises entirely different issues regarding cost allocation between the parties than those raised by a meet-point arrangement. Under WorldCom's proposed interconnection architecture, Verizon potentially bears the cost of building new

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[436] *Local Competition First Report and Order*, 11 FCC Rcd at 15780-81, para. 553.

[437] *Id.* at 15780-81, para. 553.

[438] *Id.* at 15780-81, para. 553.

[439] Specifically, we modify AT&T's proposed Schedule 4, Part B, section 1.6.2 as follows. The sentence that reads "The reasonably incurred construction costs for a Mid-Span Fiber Meet established pursuant to this Section will be shared equally...."is modified to read: "The reasonably incurred construction and maintenance costs for a Mid-Span Fiber Meet established pursuant to this Section, including the forward-looking economic cost of embedded facilities (*i.e.,* pre-existing facilities) used to construct the Mid-Span Fiber Meet, will be shared equally...."

[440] WorldCom's November Proposed Agreement to Verizon, Attach. IV, § 1.1.5, *et seq.*

[441] *See Local Competition First Report and Order*, 11 FCC Rcd at 15780-81, para. 553.

facilities all the way to a WorldCom central office location designated by WorldCom, rather than only to a meet-point between the two carriers' networks. Accordingly, we reject the language in section 1.1.5 of WorldCom's proposed Attachment IV.

135. Having rejected both the Verizon and WorldCom proposals to each other for this issue, we exercise our discretion under the Commission's rules to adopt language submitted by neither party.[442] For the reasons set forth above, we find that AT&T's proposed language, as modified herein, represents a reasonable approach for WorldCom's mid-span meet-point interconnection as well. Accordingly, we direct Verizon and WorldCom to include language consistent with AT&T's proposed language, as modified herein, in their final agreement.

8. Issue III-4-B (Disconnection of Underutilized Trunks)

a. Introduction

136. Verizon proposes language permitting it unilaterally to terminate its underutilized, one-way trunk groups, which it defines as groups with a utilization level of less than 60 percent during a 90-day period. Verizon claims to need this ability in order to manage its network efficiently. AT&T opposes Verizon's proposal, arguing that it is contrary to industry standards and could result in stranded costs and maintenance problems for AT&T. With certain modifications, we adopt AT&T's proposal.

b. Positions of the Parties

137. AT&T argues that Verizon's proposal would allow unilateral action contrary to industry standards and that, instead, the parties should follow the Ordering and Billing Forum (OBF) procedures that interconnected carriers typically use to add, modify, and discontinue interconnection trunks.[443] Specifically, AT&T contends that these procedures provide that the party with "control" over the trunk group would issue an access service request (ASR) to the other party to establish, increase or decrease the trunk group's size, at which point the other party either would agree or request a meeting to resolve any differences.[444] According to AT&T, if one party alters a trunk group without the other party making a corresponding change, plant becomes stranded, creating unanticipated maintenance problems.[445] Moreover, AT&T argues that it too has the incentive to agree to disconnect underutilized trunks because underutilized

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442 *See* 47 C.F.R. § 51.807(f)(3).

443 AT&T Brief at 50.

444 *Id.* at 50. AT&T also argues that, despite the potential to affect service quality through unilateral action, Verizon does not want the contract to specify a trunk disconnection process. *Id.* at 50 n.173, citing Tr. at 1524.

445 AT&T Brief at 50. Additionally, AT&T contends that trunk traffic is "spiky" by nature and it is not unusual to see substantial increases of traffic after a period of relative stability. *Id.* at 51.

trunks also tie up space on AT&T's facilities, preventing the efficient use of its network.[446] Finally, AT&T states that it will commit to issuing a firm order confirmation (FOC) within ten days of receipt of Verizon's ASR; it asserts that, if Verizon agrees to wait for AT&T's FOC before disconnecting trunks, the issue is resolved.[447]

138. According to Verizon, it has "legitimate problems" in its network because of trunk underutilization.[448] To address this problem, Verizon proposes contract language that would permit it to disconnect underutilized trunks. Verizon contends that it follows a series of steps before disconnecting trunks, including reviewing actual trunk group traffic data and history to determine if there is a particular pattern associated with this trunk group, as well as reviewing the most current forecasts provided by AT&T.[449] Additionally, Verizon states that it contacts AT&T to determine whether there is any reason why it should not disconnect the trunk group.[450] Verizon asserts that these internal procedures should satisfy AT&T's concerns about "spiky" traffic.[451]

139. Despite this process, however, Verizon contends that AT&T would have it wait for a FOC before disconnecting the trunk group even though AT&T has no incentive to agree to the disconnection.[452] Also, Verizon argues that AT&T overstates the relevance of certain OBF procedures for disconnecting trunk groups.[453] For example, Verizon argues that the OBF does not mandate that a FOC is needed before a LEC can disconnect an underutilized trunk. Instead, Verizon contends that the procedures that AT&T discusses in its brief relate to orders for trunk groups that a competitive LEC usually places with an incumbent, which is not the issue before the Commission.[454]

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[446] AT&T Reply at 24, citing Verizon NA at 52. Moreover, AT&T argues that Verizon has offered no evidence that AT&T has acted unreasonably and refused to agree to disconnect underutilized trunk groups. *Id.*

[447] AT&T Brief at 52, citing Tr. at 1572.

[448] Verizon NA at 53, citing Tr. at 1531.

[449] Verizon NA at 52.

[450] *Id.* at 52.

[451] Verizon NA at 27, citing Verizon Ex. 18 (Rebuttal Testimony of D. Albert and P. D'Amico), at 13-14. *See also*, AT&T Brief at 51 (arguing that it is not unusual to see substantial increases of traffic after a period of relative stability).

[452] Verizon Network Architecture Brief at 52 (noting that, unlike interexchange carriers, AT&T is not paying for these trunks for Verizon-originated traffic).

[453] Verizon NA Reply at 27.

[454] *Id.* at 27. We note that while much was made by both parties about the applicability of OBF standards to underutilized trunks, neither party provided any cite to these standards. Given the disagreement about the (continued….)

c. Discussion

140. While we are sympathetic to Verizon's arguments about network management, we decline to give it the unilateral discontinuance authority that it seeks. Consequently, we reject Verizon's proposal in favor of AT&T's language.[455] Nevertheless, we also see shortcomings with AT&T's proposal.[456] We therefore direct the parties to include in their compliance filing a requirement that, before disconnecting trunk groups, Verizon shall obtain a FOC from AT&T, which AT&T will provide within ten calendar days of receipt of Verizon's ASR.. Should the parties be unable to agree about a particular group, they may use the agreement's dispute resolution process.

141. Although Verizon explains the internal procedures it follows before disconnecting a trunk group, which include contacting AT&T, it has not proposed that these steps be included in the contract. The pertinent section of its proposal to AT&T provides that it "may disconnect trunks that are not warranted by the actual traffic volumes in accordance with the trunk utilization percentages" contained elsewhere in the agreement.[457] Absent the assurance that Verizon is contractually bound to follow the procedures described in its testimony, we cannot rely on them because Verizon can, of course, modify its internal guidelines at any time.

142. Verizon's witness was clear in his explanation of how underutilized trunks create inefficiencies in Verizon's network (*e.g.*, by tying up capacity that could be used by other carriers) and we note that his statements were uncontested.[458] Moreover, it is undisputed that Verizon owns the trunks in question and that, as we mentioned earlier, it may be held financially accountable if it fails to meet certain performance standards.[459] Verizon is incorrect, however, to suggest that AT&T's concerns about sharp fluctuations or "spikes" in traffic are addressed by Verizon's internal procedures, which may be changed unilaterally and without notice to AT&T.

143. Our record is also clear that having to provision trunks that have been disconnected is a drain on the resources of both parties.[460] Verizon's proposed language could

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circumstances under which these standards apply, we cannot place any weight on either party's arguments with respect to this subject.

[455] *See* Verizon's November Proposed Agreement to AT&T, § 10.3.2.2.

[456] *See* AT&T's November Proposed Agreement to Verizon, § 10.3.2.1. We note that the language contained in AT&T's contract proposals differ between that found in the proposed contract and the November DPL. We direct the parties to include the latter, which it numbered as section 10.3.2.

[457] *See* Verizon's November Proposed Agreement to AT&T, § 10.3.2.2.

[458] *See* Tr. at 1526-27.

[459] *See* AT&T Brief at 49 (stating that Verizon seeks to disconnect Verizon's outbound trunks); *see also supra*, Issue I-7/III-4 (footnote discussing performance standards for trunking).

[460] *See* Tr. at 1566-67.

result in this unnecessary step.[461] Although we reject Verizon's proposal, we recognize that absent AT&T's commitment to return FOCs within ten days, Verizon's ability to manage its network in an efficient manner may be impeded.[462] For those occasions where the parties simply cannot agree on whether to disconnect a trunk group, either party may use the dispute resolution process set forth in the agreement.[463] We direct the parties to incorporate our findings on this issue in their compliance filing.

9. Issue IV-2 (Mutual Agreement on Two-Way Trunks)

a. Introduction

144. Verizon and WorldCom both propose nearly identical sections entitled "Two-Way Interconnection Trunks," which govern most aspects of implementing two-way trunks between their networks.[464] There are, however, two areas of dispute: whether mutual agreement is required for two-way trunking,[465] and compensation for two-way trunk facilities.[466] Specifically, WorldCom proposes language requiring that trunks will be provisioned as one-way or two-way trunks according to WorldCom's election.[467] In addition, WorldCom's proposed language requires the parties to divide equally the non-recurring charges for two-way trunking facilities.[468] Verizon proposes corresponding language subjecting the implementation of one-way and two-way trunks to mutual agreement,[469] and allocating differently WorldCom's share of the recurring and non-recurring charges for two-way trunks.[470] While Verizon's proposed

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[461] Tr. at 1567 (noting that resources not used reconnecting trunk groups can be more profitably spent elsewhere in the parties' networks).

[462] For this reason, we interpret AT&T's agreement to return a FOC within ten days to mean ten calendar, and not business, days.

[463] Both parties recognize that this process is the appropriate one to resolve such disputes. *See* Tr. at 1532, 1569-70.

[464] *Compare* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.4 *with* WorldCom's November Proposed Agreement, Attach. IV, § 1.8 *et seq*. Except as otherwise discussed in this section, and under Issues I-7/III-4, these provisions are uncontested and we are not asked to accept or reject either set of language.

[465] *See* Verizon Network Architecture (NA) Brief at 60.

[466] *See* Tr. at 2482-84; WorldCom Brief at 46. During the hearing, Verizon stated that its proposed trunking language included its proposal to cap the number of WorldCom tandem interconnection trunks. That proposal is the subject of Issue I-4, where it is more appropriately addressed. *See supra*, Issue I-4; Tr. at 2388-89, 2482-84.

[467] *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.2.7.2.

[468] *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.8.11.

[469] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.2.3.

[470] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.5.

language for this issue includes a provision governing traffic forecasting and facilities augmentation for two-way interconnection trunks, we address this language elsewhere in the order.[471] We adopt WorldCom's proposed language with certain modifications, as discussed below.

b. Positions of the Parties

145. WorldCom argues that it has a right to require Verizon to provide two-way trunking upon request, subject only to the limitations of technical feasibility.[472] WorldCom states that, during the hearing, Verizon conceded that WorldCom has the right to choose whether or not the parties use one- or two-way trunks and agreed to its proposed section 1.2.7.2.[473] WorldCom also argues that Verizon's proposed language governing compensation for two-way trunks is unfair, unfounded in law, and anticompetitive. WorldCom states that Verizon's proposal would have WorldCom always pay for two-way trunk facilities, but would not require Verizon to pay anything for those facilities, even though they carry both parties' traffic.[474]

146. According to Verizon, its need for mutual agreement over two-way trunks is analogous to the need for mutual agreement over mid-span fiber meet-point interconnection.[475] In its reply brief, Verizon disputes WorldCom's assertion that Verizon's witness agreed to WorldCom's proposed section 1.2.7.2 during the hearing. Verizon states that its witness merely agreed that WorldCom had the right to choose whether to use one- or two-way trunking.[476] Verizon argues that two-way trunks present operational issues for Verizon's network in addition to WorldCom's network, and that Verizon should have some say in how that impact is assessed and handled.[477] In support of its language governing compensation for two-way trunks, Verizon states that, when it connects trunks into its switches, Verizon incurs non-recurring trunk installation charges that are not recovered in its reciprocal compensation rates.[478] Verizon states that its proposed language provides that non-recurring charges for activating two-way trunks will be divided equally for the work done on Verizon's side of the WorldCom IP.[479] Verizon argues

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471 *See supra,* Issue I-7/III-4 (discussing and rejecting Verizon's proposed section 2.4.8).

472 *See* WorldCom Brief at 46, citing 47 C.F.R. § 51.305(f) (requiring incumbent LECs to provide two-way trunking upon request).

473 *See* WorldCom Brief at 46, citing Tr. at 2388.

474 *See id.* at 46.

475 *See* Verizon NA at 60; Verizon NA at 31-32.

476 *See id.* at 32.

477 *See* Verizon NA at 60.

478 *See id.* at 65.

479 *See id.* at 66.

that its proposed language will ensure that it is compensated for the work it performs in connecting two-way trunks.[480]

c. Discussion

147. We adopt WorldCom's language regarding the choice of one- or two-way trunking.[481] We find this language to be consistent with the Commission's rules governing the provision of interconnection trunks to competing LECs.[482] Regardless of whether Verizon's witness may have agreed to WorldCom's proposed section 1.2.7.2 during the hearing,[483] we note that Verizon concedes in any case that WorldCom has the right to choose whether to use one-way or two-way trunking,[484] and does not suggest that WorldCom's proposed language is inconsistent with the Commission's rules. Furthermore, we reject Verizon's proposed section 2.2.3 subjecting the implementation of one- or two-way trunks to the mutual agreement of the parties. As we stated with respect to mid-span meet interconnection, WorldCom has the right to require Verizon to provide any technically feasible method of interconnection.[485] Consequently, we do not believe that Verizon's consent should be a prerequisite for the implementation of interconnection trunks. Furthermore, we note that the parties apparently have agreed to language providing for joint consultation and coordination in the development of two-way trunk interconnection arrangements.[486] Thus, Verizon's proposed section 2.2.3 appears unnecessary and, to the extent it suggests that Verizon may refuse a request for technically feasible interconnection, violates the Act and the Commission's implementing rules. We accordingly reject it.[487]

148. We adopt WorldCom's language apportioning recurring charges for two-way trunks based on proportion of use,[488] finding the proposal to be efficient and equitable, and

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480 *See id.* at 66.

481 *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.2.7.2.

482 *See* 47 C.F.R. § 51.305.

483 *See* Tr. at 2388 (agreeing to WorldCom's proposed section 1.2.7.2).

484 *See* Verizon NA Reply at 32.

485 *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.321(a).

486 *Compare, e.g.,* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.4.1 *with* WorldCom's November Proposed Agreement, Attach. IV, § 1.8 (both of which envision joint planning meetings and mutual agreement on certain issues).

487 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.2.3.

488 Except with respect to the final sentence of the proposed paragraph, we thus adopt WorldCom proposed section 1.8.11. We note that the adopted language applies generally to interconnecting trunk groups between Verizon and WorldCom, and includes "trunking that carries Transit Traffic." We emphasize that neither party mentioned this language in their briefs, and that the meaning of this language was not an issue presented to us for arbitration. We (continued….)

consistent with the Commission's rules.[489] We find it necessary to modify the final sentence of WorldCom's proposed provision, which addresses the apportionment of non-recurring charges, in order to avoid ambiguity and to tie the adopted language more closely to the parties' arguments in the record. Specifically, we find that that WorldCom did not explain what it means by "nonrecurring charges for initial facilities," focusing instead on how to apportion the nonrecurring charge involved with connecting two-way interconnecting trunks to a switch.[490] While we agree with WorldCom's position with respect to these particular non-recurring charges, we are not prepared to adopt its proposed language, which appears to be far broader and could even be interpreted as encompassing initial construction costs. We also find that it would be simpler for the parties to cover their own nonrecurring costs of connecting interconnection trunks to their switches, rather than pooling these charges and dividing by two, as WorldCom's proposal seems to require. We thus modify the final sentence to read as follows: "Neither party shall charge the other nonrecurring charges for connecting these interconnecting trunks into their switches."

149. We reject Verizon's language governing compensation for two-way trunk facilities because it appears to allocate costs disproportionately between the parties.[491] Verizon's language leaves WorldCom wholly responsible for any recurring charges for two-way trunk usage on WorldCom's side of what Verizon describes as the WorldCom IP. Furthermore, Verizon's proposed language requires WorldCom to bear half of the non-recurring charges on Verizon's side of the WorldCom IP, as well as all of the non-recurring charges on WorldCom's side of the WorldCom IP. Finally, Verizon's proposed language leaves WorldCom wholly responsible for all of the non-recurring and recurring charges for two-way trunks if it fails to establish IPs in accordance with Verizon's VGRIPs proposal. These provisions appear to be an implementation of Verizon's VGRIPs proposal to WorldCom. As discussed earlier, we reject that proposal, and reject this language accordingly.[492] Even leaving the VGRIPs proposal aside, Verizon provides no explanation for why WorldCom should bear a greater share of non-recurring charges for two-way trunks on its side of the trunks than Verizon bears for non-recurring charges on its own side of the trunks, given that the trunks are shared by both parties. During the hearing, Verizon conceded that, like Verizon, WorldCom incurs costs to connect two-way trunks on its network.[493] Thus, in addition to improperly allocating recurring and non-

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note, however, that the parties did raise issues relating to transit traffic, including compensation for such traffic, tied to other proposed language, which we address elsewhere in the order under Issues III-1/III-2/IV-1 and Issues V-3/V-4-A. Moreover, WorldCom's proposed language requires each party to pay a share of the recurring charges for transport facilities proportional to the share of the traffic "originated by that Party." In some instances, transport traffic is not originated by either party (and thus does not appear to fall within the scope of the proposed language).

489 *See* 47 C.F.R. § 51.709(b).

490 *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.8.11; WorldCom Brief at 46, 55-56.

491 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.5.

492 *See supra*, Issue I-1.

493 *See* Tr. at 2412, 2488-89, 2505-06.

recurring charges for two-way trunks based on its VGRIPs proposal, Verizon's proposed terms appear disproportionately to allocate non-recurring charges for two-way trunk facilities between the parties.

10. Issue IV-3 (Trunk and Facilities Augmentation)

a. Introduction

150. WorldCom proposes language that would require WorldCom and Verizon to augment their facilities when the overall system facility is at 50 percent of capacity, ensure adequate facility capacity for at least two years of forecasted traffic, and complete construction of relief facilities within two months. Verizon opposes WorldCom's proposal, arguing, among other things, that WorldCom is seeking a grade of service that is significantly superior to how Verizon currently engineers and operates its network. The parties disagree over which Commission precedent applies to this issue. Verizon contends that, in the *UNE Remand Order*, the Commission declined to require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements when the incumbent LEC has not deployed such facilities for its own use.[494] By contrast, WorldCom relies on the ruling, in the *Local Competition First Report and Order*, that sections 251(c)(2) and (3) require modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.[495] We reject WorldCom's proposal and adopt one provision, section 5.2.4, of Verizon's language.

b. Positions of the Parties

151. According to WorldCom, including its proposal in the agreement is important because, if facilities are inadequately sized or structured, Verizon will refuse to provision trunks, claiming that no facilities are available.[496] Although WorldCom contends that its proposal reflects the current practice between WorldCom and Verizon, it indicates its willingness to increase the trigger point at which the parties must augment the capacity of their facilities from 50 percent to 75-85 percent.[497] WorldCom also argues that its proposed two-month relief language is consistent with the Act and regulations requiring Verizon to interconnect with

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494 *See UNE Remand Order*, 15 FCC Rcd 3696, 3843, para. 324.

495 *See Local Competition First Report and Order*, 11 FCC Rcd 15499, 15602-03, para. 198. WorldCom also cites to Rule 51.305, which sets forth an incumbent LEC's interconnection obligations, in support of its proposal. 47 C.F.R. § 51.305.

496 WorldCom Brief at 48. Moreover, WorldCom argues that, if sufficient facilities are unavailable, WorldCom's switch installation can be delayed by months. *Id.* at 51.

497 *Id.* at 48-49 & n.31 (noting that this higher trigger was agreed to by BellSouth but that Verizon refuses to include any trigger in the agreement).

WorldCom at any technically feasible point, and to modify its facilities to the extent necessary to accommodate such interconnection.[498]

152. WorldCom disagrees with Verizon's assertion that, since it is impossible to build trunks without adequate underlying facilities, Verizon's trunking augmentation process is sufficient.[499] WorldCom asserts that installing additional facilities requires considerably more work than installing trunks and, thus, it is important to establish terms and conditions in this agreement regarding facilities.[500] According to WorldCom, until sufficient facilities are in place, no additional trunks can be provisioned, which would result in trunk blockages.[501] Finally, WorldCom argues that the agreement's terms that address trunk augmentations do not apply to facilities and, therefore, the language that Verizon proposed for this issue should be rejected even if we also reject WorldCom's language.[502]

153. Verizon argues that, since trunks ride facilities, Verizon cannot augment trunks without having enough facilities in place.[503] Thus, according to Verizon, it regularly augments its facilities rendering WorldCom's contract language overly broad and unnecessary.[504] In contrast, Verizon argues that its proposal directs the parties to conduct joint planning meetings to reach agreement on various network implementation issues, and other sections of its proposed contract address augmentation.[505] Verizon resists giving WorldCom such a direct voice in how Verizon's network should be designed and it asserts that facilities are not dedicated to a particular carrier but rather are commonly shared among different carriers.[506] Because of this fact, Verizon argues that it is virtually impossible for Verizon to augment a singular item specifically for WorldCom.[507]

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[498] *Id.* at 49, citing 47 U.S.C. § 251(c)(2)-(3); 47 C.F.R. § 51.305; *Local Competition First Report and Order*, 11 FCC Rcd at 15602-03, para. 198. According to WorldCom, Verizon's reluctance to include WorldCom's proposal in the agreement impedes competition. WorldCom Brief at 51.

[499] WorldCom Brief at 48; WorldCom Reply at 46, citing Verizon Network Architecture (NA) Brief at 60.

[500] WorldCom Reply at 46.

[501] *Id.* at 46, citing Tr. at 2363.

[502] *Id.* at 47.

[503] Verizon NA Brief at 60-61.

[504] *Id.* at 61, citing Tr. at 2337.

[505] *Id.* at 62 (noting, for example, its commitment to monitor trunk groups under its control and augment accordingly).

[506] *Id.* at 61-62.

[507] *Id.* at 62.

154. Verizon disagrees with WorldCom's suggestion that its facility augmentation proposal reflects the current practice between the parties.[508] It points out that WorldCom's proposal would require Verizon to build up its facilities when they are at 50 percent of capacity at no cost to WorldCom.[509] Verizon argues that it is not required to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that it has not deployed for its own use.[510] Verizon also argues that WorldCom's use of "facilities" is vague and that there is no way to define what is to be examined to measure utilization.[511] For these reasons, Verizon concludes that augmentation should be addressed in the context of trunk utilization, which Verizon advocates.[512]

c. Discussion

155. We agree with Verizon and reject WorldCom's facilities augmentation language.[513] WorldCom's proposal, specifically sections 1.1.6.4 and 1.1.6.5, does not reflect the parties' current practice. We share Verizon's concerns about requiring it to modify its network to provide WorldCom with a level of service that is superior to what Verizon provides to itself. Verizon argues persuasively that its network consists of numerous shared facilities, making it "virtually impossible" to augment a single item specifically for WorldCom.[514] Although afforded several opportunities, WorldCom did not address this criticism of its proposal. Without opposition, Verizon's argument about the practical inability to implement WorldCom's proposed process is a compelling one.[515] We also agree with Verizon that its trunk augmentation process will adequately address WorldCom's concerns. Although WorldCom states the obvious

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[508] Verizon NA Reply at 32, citing Tr. at 2361-62 to establish WorldCom's admission that its proposal does not reflect current practice.

[509] *Id.* at 33.

[510] *Id.* at 33, citing *UNE Remand Order*, 15 FCC Rcd at 3843, para. 324.

[511] Verizon NA Reply at 33, citing Tr. at 2335.

[512] *Id.* at 33.

[513] Although we decline to adopt WorldCom's proposal, we note that Verizon's criticism of this proposal centered on two of the five subsections of WorldCom's language: 1.1.6.4 and 1.1.6.5. While we do not compel the parties to do so, we have no objection to the parties including sections 1.1.6.1, 1.1.6.2, and 1.1.6.3 in their contract. We also note that we are directing the parties to include WorldCom's proposed section 4 of Attachment IV in the contract. *See supra*, Issue I-7/III-4.

[514] *See* Verizon NA Brief at 62, citing Tr. at 2354.

[515] In reviewing WorldCom's proposal, Verizon's witness stated repeatedly, "this is something I can't deliver on." Tr. at 2338; *see also* Tr. at 2340, 2351. Additionally, Verizon testified that limiting WorldCom's proposal to facilities between the parties would not solve this problem because these facilities could still encompass transport facilities that are provided using a significant amount of common, shared transport equipment in Verizon's network. *See* Tr. at 2348-49.

proposition that if facilities exhaust, no additional trunk groups can be provisioned,[516] it ignores the intervening steps that Verizon can take to prevent such an occurrence along with Verizon's incentive to do so.[517] Namely, the parties reached agreement on the appropriate design standard by which each would engineer its network, with the intent to minimize efficiently the amount of call blocking.[518] WorldCom has failed to demonstrate that Verizon's engineers lack the ability or incentive to determine when trunk groups or facilities should be added so as to continue to meet these agreed-upon blocking standards. Moreover, as mentioned above, Verizon reports its trunk blockage performance, and if it does not meet a certain level of performance, payments may ensue.[519]

156. WorldCom argues that a particular paragraph of the Commission's *Local Competition First Report and Order* supports its proposed language.[520] We disagree: the language WorldCom relies on concerns technical feasibility, an issue that is unrelated to the instant dispute. Verizon has not argued that it is technically infeasible for it to augment its facilities in accordance with WorldCom's proposal. Instead, it argues that WorldCom's proposal would require it to construct facilities that it has not deployed for its own use.[521] The issue before us is, once a facility is subject to unbundling, what steps must Verizon take to augment network capacity and we find that Verizon's approach addresses this issue in a reasonable manner.

157. Finally, contrary to WorldCom's suggestion, we adopt Verizon's proposed section 5.2.4 of its Interconnection Attachment. This section provides that each party will use commercially reasonable efforts to monitor trunk groups under its control and augment those groups using generally accepted trunk engineering standards so as not to exceed blocking objectives.[522] Such a proposal is eminently reasonable on this record and, since WorldCom

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[516] WorldCom Brief at 49, citing WorldCom Ex. 14 (Direct Testimony of D. Grieco), at 8.

[517] WorldCom also states that installing additional facilities requires considerably more work than installing trunks. WorldCom Reply at 46. This statement is, no doubt, also true; however, it too ignores the reality that Verizon's engineers would notice when trunks and facilities would need to be augmented and would plan accordingly.

[518] *See, e.g.,* WorldCom's November Proposed Agreement to Verizon, Attach. IV, §§ 1.8.4, 1.8.5; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.4.5, 2.4.6 (both providing, among other things, that WorldCom shall determine and order the number of two-way local interconnection trunks that are required to meet the applicable design blocking objective for all traffic carried on each two-way local interconnection trunk group).

[519] *See supra*, Issue I-7/III-4. *See also* Tr. at 2367 (Verizon's witness stating that Verizon pays money if it misses a particular trunking standard).

[520] *See* WorldCom Brief at 49, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15602-03, para. 198.

[521] *See* Verizon NA Reply at 33.

[522] Additionally, this section provides that each party will use modular trunk engineering techniques for trunks subject to [the Interconnection] Attachment. *See* Verizon's November Proposed Agreement to WorldCom, Part C, (continued….)

offers no substantive objection to this section, we adopt it. As noted earlier, however, we do not adopt Verizon's proposed sections 2.4 and 13.[523]

11. Issue IV-4 (Interconnection Interval)

a. Introduction

158. Recognizing the importance of well-defined procedures for new interconnections, both WorldCom and Verizon propose language governing the initiation of interconnection arrangements between the parties.[524] The parties have agreed to WorldCom's proposed language requiring Verizon to confirm a request for interconnection within ten days.[525] The sole remaining dispute concerns Verizon's provision of environmental information to WorldCom.[526] For reasons provided below, we adopt only part of WorldCom's proposal.

b. Positions of the Parties

159. WorldCom's proposed language would require Verizon to provide any information available to Verizon regarding environmental hazards at the point of interconnection, at an interconnection location, or along an interconnection route.[527] WorldCom's proposal would also allow WorldCom to conduct site investigations as it deemed necessary if Verizon provided information regarding environmental hazards,[528] and would require Verizon to provide available alternative interconnection routes in the event interconnection is complicated by an environmental hazard.[529] WorldCom argues that its proposed language serves important safety interests and protects the health and safety of both carriers' employees.[530] According to WorldCom, its proposal ensures that it will possess the same environmental information available to Verizon, and will have the same ability to survey a proposed interconnection site or to decide, for environmental or safety reasons, to use alternative

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Interconnection Attach., § 5.2.4. Since WorldCom expresses no specific concerns with using "modular trunk engineering techniques," we have no record upon which to reject this part of Verizon's proposal.

523 *See supra*, Issues I-7/III-4 (adopting WorldCom's proposal on forecasting) and Issue IV-2.

524 *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 4.

525 *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4.

526 *See* WorldCom Brief at 52; Tr. at 2404.

527 *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4.2.

528 *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4.3.

529 *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4.4.

530 *See* WorldCom Brief at 52.

routes.[531] WorldCom argues that its proposal is consistent with Verizon's section 251(c)(2) obligations to provide interconnection equal in quality to what Verizon provides itself, and with Verizon's obligations under rule 51.305(g) to provide information about Verizon's facilities sufficient to allow WorldCom to achieve interconnection.[532] WorldCom adds that Verizon previously provided such information pursuant to the 1997 interconnection agreement between MCIm and Bell Atlantic.[533]

160. WorldCom disputes Verizon's suggestion that the issue of environmental information is adequately addressed in Verizon's collocation tariffs. According to WorldCom, Verizon has not explained how its collocation tariffs address situations where WorldCom uses Verizon's poles, ducts, conduits, and rights of way.[534] WorldCom also objects to Verizon being able to determine, in a collocation tariff completely controlled by Verizon, how, when and what information will be given to WorldCom.[535] WorldCom disputes Verizon's contention that WorldCom's proposal would allow it to conduct site investigations for any purpose. WorldCom explains that it modified its proposed language based on negotiations between the parties, making clear that inspections would only be conducted in response to a Verizon report of environmental hazard.[536] In response to Verizon's contention that WorldCom's proposal could leave Verizon liable for information in the possession of a former employee, WorldCom responds that its testimony makes clear that it only seeks information in Verizon's control.[537]

161. Verizon opposes WorldCom's proposed language on the grounds that it is overbroad, vague and unnecessary. Verizon notes that, during the hearing, even WorldCom's witness acknowledged that its proposed language was ambiguous and too broad.[538] Specifically, Verizon objects to WorldCom's language because it imposes obligations on Verizon regarding any property at which Verizon has facilities, and deems information "available" to Verizon if it is in the possession of former employees, contractors, agents, and tenants, or other unrelated individuals.[539] Verizon further objects that WorldCom does not define what it means by the "adverse environmental or other conditions" of which WorldCom seeks notification.[540] Verizon

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[531] *See id.* at 52.

[532] *See id.* at 52, citing 47 U.S.C. § 251(c)(2), 47 C.F.R. § 51.305(g).

[533] *See id.* at 52-53.

[534] *See id.* at 53.

[535] *See* WorldCom Reply at 48.

[536] *See* WorldCom Brief at 53.

[537] *See id.* at 53, citing WorldCom Ex. 29 (Rebuttal Testimony of D. Grieco), at 13.

[538] *See* Verizon NA Brief at 63, citing Tr. at 2498-99 (testimony of WorldCom's witness Grieco).

[539] *See* Verizon NA Brief at 63.

[540] *See* Verizon NA Brief at 63, quoting WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4.2.

also objects to WorldCom's proposed language because it would give WorldCom the power to perform site surveys if WorldCom deems it necessary.[541]

162. Verizon further argues that WorldCom's proposal is unnecessary, given that Verizon provides the relevant information pursuant to its collocation tariffs.[542] Verizon adds that WorldCom had difficulty identifying situations other than collocation where WorldCom would require the type of information sought, and has not identified one instance in which WorldCom was confronted with "adverse environmental or other conditions" in its interconnection arrangements with Verizon.[543]

c. Discussion

163. We adopt, in part, WorldCom's proposed language under this issue rather than Verizon's proposed language,[544] but we reject WorldCom's proposed language governing the provision of environmental information and site inspections.[545] Furthermore, Verizon's proposed language includes language implementing its VGRIPs proposal, which, as discussed earlier, we reject.[546]

164. WorldCom's proposal regarding environmental information goes far beyond the scope of Verizon's obligation under section 251(c)(2) to provide information necessary to facilitate interconnection.[547] WorldCom would broadly require Verizon to deliver information regarding any "adverse environmental or other conditions . . . involving a POI or the Interconnection route or location."[548] This language fails to provide sufficient guidance for Verizon to know what kinds of information it must provide and about what locations. Furthermore, despite WorldCom's testimony that it only seeks information in Verizon's control, its language requires Verizon to provide information in the possession of any "current or former

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[541] *See* Verizon NA Brief at 63.

[542] *See* Verizon NA Brief at 64.

[543] *See* Verizon NA Brief at 64.

[544] *See* WorldCom's November Proposed Agreement, Attach. IV, §§ 1.1.4-1.1.4.1, 1.1.4.4. The parties have agreed to the ten-day interconnection interval WorldCom proposes.

[545] *See* WorldCom's November Proposed Agreement, Attach. IV, §§ 1.1.4.2, 1.1.4.3. Verizon's objections to WorldCom's proposal appear limited to these provisions, and therefore we do not include WorldCom's proposed section 1.1.4.4 among the provisions we reject.

[546] *See* Verizon's November Proposed Agreement, Part C, Interconnection Attach., §§ 4.2, 4.3. We note that Verizon's proposed contract contains two section 4.2s. For clarification, we have assigned section 4.3 to the contract provision beginning with, "The interconnection activation date…." *See also supra*, Issue I-1.

[547] *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(g).

[548] WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4.2.

agent, contractor, employee, Affiliate, lessor, or tenant,"[549] a far greater universe than merely those under Verizon's control. As Verizon notes, much of the information that WorldCom seeks is available through Verizon's collocation tariffs. Nevertheless, in light of the important safety ramifications surrounding this issue, we urge the parties to attempt to reach a further accommodation on it to the extent that WorldCom continues to seek environmental information not available through Verizon's tariffs.

165. We also agree with Verizon that WorldCom's proposed language too broadly permits WorldCom to perform site investigations, without specifying the locations to which this right applies, and without regard to whether those locations must be under Verizon's control. Indeed we note that WorldCom's own witness acknowledged that its proposed language is "ambiguous" and "could be cleaned up."[550] Although WorldCom states that it has modified its language to address one of Verizon's concerns (limiting any inspections solely to locations about which Verizon informs WorldCom of environmental hazards), we find that WorldCom's language governing the provision of that environmental information is overbroad and ambiguous. Accordingly, we reject WorldCom's proposed language providing for site inspections as well.

12. Issue IV-5 (Compensation for the Lease of Interconnection Facilities)

a. Introduction

166. WorldCom and Verizon disagree on how they will compensate each other for the use of the interconnection facilities over which they will exchange traffic. WorldCom proposes language specifying that neither party may charge the other for the use of mid-span meet interconnection facilities.[551] Verizon objects to the inclusion of WorldCom's language, and proposes alternative language governing the compensation arrangements between the parties.[552] We adopt WorldCom's proposed language for the reasons set forth below.

b. Positions of the Parties

167. WorldCom's proposed section 1.1.6.6 specifies that, apart from charges for the lease of interconnection facilities, neither party may charge the other for the use of interconnection facilities. WorldCom suggests that Verizon initially objected to this language because it was not originally limited to mid-span meet interconnection facilities. To address this

[549] *See* WorldCom's November Proposed Agreement, Attach. IV, § 1.1.4.2.

[550] Tr. at 2498 (testimony of WorldCom's witness, Grieco).

[551] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, §§ 1.1.6.6, 1.2.5.

[552] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.5, 3.2.1-3.2.1.5, 7.2.

concern, WorldCom states that it has limited its proposed section 1.1.6.6 to mid-span meets.[553] WorldCom argues that, since Verizon indicated that it would agree to such limited language, the Commission should adopt WorldCom's proposed section 1.1.6.6.[554] According to WorldCom, Verizon's continuing objections to this modified language constitute an improper attempt to retract its agreement to WorldCom's modified language.[555]

168. WorldCom also argues that we should order inclusion of WorldCom's proposed section 1.2.5, which specifies that, apart from reciprocal compensation, neither party may charge the other for the use of interconnection facilities. WorldCom argues that each party is financially responsible for the network on its side of the point of interconnection.[556] WorldCom accordingly argues that we should reject Verizon's proposal to assess a non-recurring trunk charge for connecting trunks into its switch. WorldCom states that Verizon agrees that the trunk connection is always on its side of the point of interconnection.[557] WorldCom argues that Verizon thus has no right to charge it for this trunk connection. Instead, according to WorldCom, any costs for trunk connections should be recovered in reciprocal compensation rates.[558] WorldCom argues that Verizon's proposed language on this point is inappropriately non-mutual, obligating WorldCom but not Verizon to pay non-recurring charges for trunk connections. WorldCom argues that it makes no sense to allow one party to charge for connecting trunks into its switch, without allowing the other party to impose a similar charge.[559] WorldCom also objects that Verizon's proposal would require WorldCom to pay for half of the trunks in a two-way trunk group, without regard to the actual proportion of the two-way trunks that WorldCom uses to originate traffic. According to WorldCom, Verizon's proposal violates the cost allocation principles established in the *Local Competition First Report and Order*.[560] WorldCom also objects to Verizon's proposed section 2.5 on the grounds that it incorporates Verizon's GRIPs proposal (which is the subject of Issue I-1).[561]

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553 *See* WorldCom Brief at 55.

554 *See id.* at 55.

555 *See* WorldCom Reply at 50, Tr. at 2406.

556 *See* WorldCom Brief at 55, citing Tr. at 2408-10.

557 *See id*.

558 *See* WorldCom Brief at 55-56.

559 *See id.* at 56.

560 *See id.* at 56, citing 47 C.F.R. § 51.507(c).

561 *See* WorldCom Reply at 51.

169. Verizon proposes its own language governing the compensation arrangements between the parties for two-way trunks, mid-span fiber meets, and reciprocal compensation.[562] Verizon objects to WorldCom's proposed section 1.1.6.6 on the grounds that, in spite of WorldCom's assertions, its proposed language is not limited to mid-span meets.[563] Verizon argues that, if WorldCom meant only to allocate costs for mid-span meet interconnection, then WorldCom should accept Verizon's proposed language stating that each party is financially responsible for its facilities up to the mid-span meet-point.[564] Verizon also objects to WorldCom's proposed section 1.2.5 on the ground that, when Verizon connects trunks into its switches, it incurs non-recurring trunk installation charges that are not recovered through reciprocal compensation.[565] Consistent with its argument under Issue IV-2, Verizon argues that its proposed section 2.5 allows it to recover for the work it performs in connecting trunks into its switches.[566]

c. Discussion

170. We agree with WorldCom that, by revising its proposed section 1.1.6.6 to apply only to mid-span meet facilities, it has addressed the one and only objection voiced by Verizon to this language.[567] Indeed, at the hearing, Verizon indicated that WorldCom's revision would suffice to address its objections to this proposed language.[568] Furthermore, WorldCom's proposed section 1.1.6.6 appears consistent with the Commission's treatment of mid-span meet interconnection facilities in the *Local Competition First Report and Order*. Specifically, the Commission stated that in a meet point interconnection established pursuant to section 251(c)(2), "it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement."[569] Accordingly, we adopt WorldCom's proposed section 1.1.6.6, as modified.[570] As addressed more fully under Issues III-3/III-3-A, we also adopt Verizon's proposed sections 3.2.1 – 3.2.1.5, governing the allocation of mid-span meet interconnection costs.[571]

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[562] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.5 (two-way trunks); 3.2.1-3.2.1.5 (mid-span fiber meets); 7.2 (reciprocal compensation).

[563] *See* Verizon NA Brief at 65.

[564] *See id.* at 65.

[565] *See id.* at 66.

[566] *See id.* at 66.

[567] *See* WorldCom Brief at 55 (inserting "For mid-span meets" at the start of section 1.1.6.6).

[568] *See* Tr. at 2406-07.

[569] *Local Competition First Report and Order*, 11 FCC Rcd at 15781, para. 553.

[570] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 1.1.6.6.

[571] *See supra*, Issue III-3/III-3-A (adopting Verizon's proposed section 3).

171. As explained in our discussion of Issue IV-2, we reject Verizon's proposed section 2.5, governing compensation for two-way trunk facilities, because it incorporates elements of Verizon's VGRIPs proposal and appears to allocate costs disproportionately between the parties for two-way trunks.[572] Verizon's proposed section 7.2, requiring the parties to pay each other reciprocal compensation, is addressed elsewhere in this order.[573] Finally, we also reject WorldCom's proposed section 1.2.5,[574] on grounds that it is ambiguous, and appears to be inconsistent with our rules and with WorldCom's own advocacy. While WorldCom suggests generally that its language proposed under this issue does not address compensation due for lease of interconnection facilities, its proposed language does not reflect this position: "neither Party may charge the other Party installation charges or monthly recurring charges for the use of Local Interconnection Trunk Groups." The Commission's rules clearly envision the payment of nonrecurring and recurring charges for facilities such as these.[575] Moreover, WorldCom's own proposed section 1.8.11 (which we adopt in Issue IV-2) envisions the payment of recurring charges, and also addresses non-recurring charges.

13. Issue IV-6 (Meet Point Trunking Arrangements)

a. Introduction

172. WorldCom proposes language for the implementation of meet point trunking arrangements between the parties for the joint provision of switched exchange access services to IXCs.[576] Verizon objects to this language, proposing its own language under which WorldCom would purchase access toll connecting trunks from Verizon in order to provide switched exchange access services.[577] We adopt WorldCom's proposed language.

b. Positions of the Parties

173. WorldCom proposes detailed terms addressing meet point trunking between the parties for their joint provision of switched access services. WorldCom argues that, when Verizon and WorldCom jointly provide exchange access services to an IXC, Verizon should charge that IXC, not WorldCom, for the services Verizon provides. WorldCom states that Verizon has no right to charge WorldCom for access services Verizon provides to that IXC.[578]

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572 *See supra,* Issue IV-2 (rejecting Verizon's proposed section 2.5).

573 *See supra*, Issues I-5 and I-6.

574 *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 1.2.5.

575 *See, e.g.,* 47 C.F.R. § 51.709(b).

576 *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 1.4.

577 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 8.

578 *See* WorldCom Reply at 52.

WorldCom also claims Verizon's position – that WorldCom must purchase toll trunks out of Verizon's access tariff to provide switched exchange access through Verizon's tandems – is an inappropriate attempt to dictate what services IXCs may purchase or where they may purchase them.[579] WorldCom argues that if an IXC chooses to reach WorldCom's network through Verizon's tandem, then WorldCom is in no position to dictate to the IXC that it must instead purchase dedicated switched access services directly to WorldCom's switch. According to WorldCom, that choice is solely in the discretion of the IXC.[580]

174. WorldCom also argues that Verizon's proposal would unlawfully restrict WorldCom's freedom to use UNEs, such as dedicated transport, to provide any telecommunications service, including exchange access service.[581] According to WorldCom, Verizon appears to take the position that WorldCom may not purchase unbundled dedicated transport from Verizon in order to provide access services to IXCs.[582] WorldCom argues that Commission Rule 51.309(a) clearly prohibits Verizon from denying WorldCom UNE dedicated transport for use in this manner.[583]

175. Verizon argues that, when WorldCom asks Verizon for trunks that will connect WorldCom's customers to IXCs through Verizon's tandems, WorldCom is ordering access toll connecting trunks from Verizon.[584] According to Verizon, reciprocal compensation traffic subject to section 251(b)(5) does not route over these trunks at all; the traffic routed over these trunks is exchange access traffic.[585] Verizon states that because it is providing an exchange access service it is entitled to charge access rates.[586] Verizon also disputes WorldCom's characterization of its proposal as being tied into its VGRIPs proposal. According to Verizon, the trunks at issue are unrelated to the VGRIPs proposal because they carry exchange access traffic, rather than reciprocal compensation traffic.[587] Verizon also objects to WorldCom's proposal because it does not explain how Verizon is being compensated for the service it

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579 *See* WorldCom Brief at 57.

580 *See id.* at 57.

581 *See id.* at 58, citing 47 U.S.C. § 251(c)(3).

582 *See id.* at 58, citing Tr. at 2417.

583 *See id.* at 58, quoting 47 C.F.R. § 51.309(a) (prohibiting incumbent LECs from imposing "limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends").

584 *See* Verizon NA Brief at 57.

585 *See id.* at 58.

586 *See id.* at 58, citing 47 U.S.C. § 251(g).

587 *See id.* at 58.

provides to WorldCom when WorldCom orders access toll connecting trunks from Verizon.[588] Verizon objects that WorldCom's proposal is inconsistent with the manner in which such trunks are ordered from Verizon on a daily basis.[589]

176. Verizon argues that WorldCom is attempting to receive access toll connecting trunks, which are used in the provision of access services, at UNE rates in order to increase WorldCom's profit margin at Verizon's expense. Verizon objects that, as the Act, the Commission, and the Eighth Circuit Court of Appeals have made clear, access services, including the receipt of compensation for access services, have been "carved out" of the Act.[590] Verizon also contends that WorldCom's proposal conflicts with agreed upon language for Issue IV-31. Specifically, Verizon states that the parties agreed that switched exchange access services and interLATA or intraLATA toll traffic would be governed by the parties' applicable tariffs. Verizon argues that, because the trunks at issue here are used to provide switched exchange access services, WorldCom's proposal would interfere with Verizon's tariff for access toll connecting trunks and conflict with the parties' agreed upon language for Issue IV-31.[591]

c. Discussion

177. We agree with WorldCom that the services in question constitute the joint provision of switched exchange access services to IXCs by WorldCom and Verizon, both operating as LECs. Therefore, we agree with WorldCom that, when the parties jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom. We further agree with WorldCom that it has the right to purchase unbundled dedicated transport from Verizon to provide IXCs with access to WorldCom's local exchange network. Therefore, Verizon may not require WorldCom to purchase trunks out of Verizon's access tariffs in order for WorldCom to provide such exchange access. Accordingly, we reject Verizon's proposed language,[592] and we adopt WorldCom's proposed language.[593]

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588 *See id.* at 59.

589 *See id.* at 59.

590 *See* Verizon NA Reply at 31, citing 47 U.S.C. § 251(g); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9169-70, para. 39 (2001); *CompTel v. Federal Communications Comm'n*., 117 F.3d 1068, 1072 (8th Cir. 1997), *aff'd in part, rev'd in part, AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366 (1999).

591 *See* Verizon NA Reply at 31.

592 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 8 *et seq*.

593 *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 1.4 *et seq*.

14. Issue IV-8 (Trunking Arrangements for Operator Services and Directory Assistance)

a. Introduction

178. Verizon and WorldCom disagree with respect to how WorldCom should route calls from its operators to Verizon's operators for two specific types of operator services – busy line verification and emergency interrupt calls – on behalf of customers that do not use Verizon as their primary operator services provider.[594] WorldCom wants the option of routing these calls over the local interconnection trunk, using the appropriate codes in the local exchange routing guide.[595] Verizon proposes that these calls be routed over separate trunks terminating in Verizon's operator services/directory assistance switches.[596] Routing these calls over separate trunks would be more costly for WorldCom, but would make it easier for Verizon to bill WorldCom appropriately. We adopt WorldCom's proposal, subject to certain modifications. In the *Local Competition Second Report and Order*, the Commission determined that busy line verification and emergency interrupt are forms of "operator services" within the meaning of section 251(b)(3) and that, if a LEC provides these functions, the LEC must offer them on a nondiscriminatory basis to all providers of telephone exchange or telephone toll service.[597] With modifications explained below, we adopt WorldCom's proposal.

b. Positions of the Parties

179. WorldCom characterizes as unreasonable and anticompetitive Verizon's objection to routing busy line verification and emergency interrupt calls over local interconnection trunks

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[594] Busy line verification (also called line status verification) occurs when a LEC's operator, on behalf of another carrier or an end user, determines whether a particular access line is busy, as opposed to out-of-service. Emergency interrupt (also called verification and call interrupt) occurs when a LEC's operator, on behalf of another carrier or an end user, interrupts a call on a particular access line. *See*, *e.g.*, WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, §§ 6.1-6.2. When the calling party and the called party obtain their operator services (other than busy line verification and emergency interrupt) from different operator services providers, one of the originating carrier's operators must call one of the terminating carrier's operators to request busy line verification or emergency interrupt. *See* Tr. at 2313; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, §§ 6.3.

[595] *See, e.g.,* WorldCom Brief at 60-61; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 1.6.2. The local exchange routing guide is a database maintained by Telcordia Technologies that carriers use to identify NPA-NXX routing, among other purposes. *See* Letter from Jodie L. Kelley, Counsel, WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 00-218, at Attach. at 17 (filed June 14, 2002) (*June 14, 2002, Joint Definitional Submission*). We note that Verizon and WorldCom prepared this submission jointly.

[596] Verizon NA Brief at 66-68.

[597] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19449, para. 111 (1996) (*Local Competition Second Report and Order*), *vacated in part*, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *overruled in part*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

when WorldCom does not obtain other operator services from Verizon.[598] WorldCom points out that Verizon makes no claim that WorldCom's proposal is technically infeasible.[599] WorldCom asserts that Verizon has failed to show that it would be unable to bill WorldCom for busy line verification and emergency interrupt calls that are not routed over trunks that terminate in Verizon's operator services/directory assistance switches.[600] WorldCom maintains that, because WorldCom operators identify themselves when requesting busy line verification or emergency interrupt from Verizon operators, routing those calls over local interconnection trunks would not preclude Verizon from billing WorldCom for those calls.[601]

180. Verizon argues that it can identify, track, and bill for busy line verification and emergency interrupt calls only if they are routed over dedicated trunks that terminate in Verizon's operator services/directory assistance switches.[602] Verizon states that routing busy line verification and emergency interrupt calls over local interconnection trunks using local exchange routing guide codes, as WorldCom proposes, would result in these calls being routed to Verizon's tandem switches. Then, according to Verizon, the calls would be directed to Verizon's operator services/directory assistance switches without any identification of the originating carrier or call detail. Verizon states that routing over dedicated trunks would ensure that the calls are routed to the appropriate switch with the information needed to bill and process the request.[603]

c. Discussion

181. We adopt WorldCom's contract language on this issue, subject to the modifications discussed below.[604] In adopting WorldCom's approach, we note that neither party claims that the other's proposal is inconsistent with section 251 of the Act or the Commission's rules implementing section 251.[605] Because we find no such inconsistency, we are required to select the approach that we find more reasonable.[606]

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[598] WorldCom Brief at 61; WorldCom Reply at 54.

[599] WorldCom Brief at 61.

[600] WorldCom Reply at 54-55.

[601] *Id.* at 55.

[602] Verizon NA Brief at 66-67, citing Verizon Ex. 9 (Direct Testimony of D. Albert & P. D'Amico), at 22.

[603] Verizon NA Brief at 66-67; Verizon NA Reply at 34-35.

[604] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, §§ 1.6.2 (second sentence), & 1.6.4. We note that Verizon has accepted the following language from WorldCom's proposal: sections 1.6.1 (first sentence), 1.7-1.7.2, and 6.1-6.6.

[605] *See* 47 U.S.C. § 252(c)(1). Under the Communications Act and the Commission's rules, Verizon must offer busy line verification and emergency interrupt on a nondiscriminatory basis to all providers of telephone exchange (continued….)

182. As an initial matter, we find, consistent with WorldCom's uncontradicted testimony, that there will be only "minimal volumes" of busy line verification or emergency interrupt calls between Verizon and WorldCom.[607] We also find that establishing separate trunks for these calls, as Verizon proposes, would impose costs on WorldCom that are disproportionate to the problem sought to be solved.[608] Carriers typically establish separate trunks when traffic levels are sufficient to make separate trunks cost-effective. Establishing separate trunks to carry only minimal volumes of calls would impose disproportionate costs on WorldCom compared to the benefits of Verizon's proposed solution.[609]

183. We recognize that Verizon is entitled to obtain payment from WorldCom for the busy line verification and emergency interrupt services that its operators perform for WorldCom, and that Verizon's existing systems do not automatically track and bill for these calls. We believe, however, that measures less costly than establishing separate trunking may be available to ensure that Verizon receives appropriate payment. For instance, WorldCom could pay Verizon a predetermined amount monthly for each of its customers that do not receive other operator services from Verizon, based on studies of other customers' busy line verification and emergency interrupt calling patterns. Alternatively, WorldCom might be able to establish procedures to identify and track busy line verification or emergency interrupt calls to Verizon that are not routed to a Verizon operator services/directory assistance switch, and to pay Verizon for those calls without being billed.[610]

184. We urge Verizon and WorldCom to explore these and other potential solutions to this problem. In the event the parties are unable to agree on a solution and on appropriate contract language, we will select the most reasonable proposal in connection with our review of these parties' final contract language. Consistent with our holding here, we direct the parties to file conforming language specifying that, when WorldCom does not purchase operator services

(Continued from previous page)
or telephone toll service. *See* 47 U.S.C. § 251(b)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19499, para. 111.

606 *See* 47 U.S.C. § 252(c)(2); 47 C.F.R. § 51.807; *Local Competition First Report and Order*, 11 FCC Rcd at 16130-31, para. 1292.

607 WorldCom Ex. 26 (Rebuttal Testimony of E. Caputo), at 5.

608 *See* WorldCom Ex. 26, at 5.

609 *See id.*; *see also* Verizon Ex. 4 (Direct Testimony of D. Albert & P. D'Amico), at 21 (claiming that without the right to disconnect excess trunk groups when they are significantly underutilized, Verizon will not be able to manage its network in an efficient manner). We note that Verizon and WorldCom agree that, when WorldCom purchases Verizon's overall operator services package, all operator services calls will be routed over separate trunks established between the parties' respective operator bureaus. *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, §§ 6.1 & 6.4.

610 We note that WorldCom states that its operator platform generates sufficient information for it to bill the WorldCom customer for these calls. This information might assist WorldCom in identifying and tracking these calls. WorldCom Ex. 52 (Response to FCC Record Request No. 2), at 2.

other than busy line verification and emergency interrupt from Verizon, WorldCom shall have the option of routing its busy line verification and emergency interrupt traffic over the local interconnection trunk, using the appropriate codes in the local exchange routing guide. Furthermore, we agree with Verizon that the terms relating to trunking arrangements for operator services and directory assistance should be included in the portion of the interconnection agreement that deals with those services.[611]

185. Verizon and WorldCom agree that the interconnection agreement should define operator services as "(1) operator handling for call completion (*e.g.*, collect calls); (2) operator or automated assistance for billing after the subscriber has dialed the called number (*e.g.*, credit card calls); and (3) special services (*e.g.*, [busy line verification, emergency interrupt], Emergency Agency Call)."[612] In finalizing their interconnection agreement terms relating to trunking arrangements for operator service, Verizon and WorldCom shall make clear that WorldCom need not establish a separate trunk for routing busy line verification or emergency interrupt when WorldCom does not purchase operator services other than special services from Verizon.[613]

15. Issue IV-11 (Usage Measurement)

a. Introduction

186. WorldCom and Verizon disagree on how to determine the jurisdiction of traffic that lacks calling party number (CPN) information. Carriers use this information to ascertain whether calls are subject to access charges or reciprocal compensation. According to Verizon, certain older private branch exchanges (PBXs) do not have the capability to record and exchange CPN.[614] The carriers agree that they will exchange this data for at least 90 percent of the calls but disagree on what assumptions should be made when a party passes CPN information on less than 90 percent of its originating calls. We adopt WorldCom's proposal.

b. Positions of the Parties

187. WorldCom argues that its proposal of using percent local usage (PLU) information is consistent with the general industry practice of using estimates when carriers are

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611 Verizon NA Brief at 68 n.80; Verizon Ex. 26 (Rebuttal Testimony of D. Albert & P. D'Amico), at 18-19.

612 *See June 14, 2002 Joint Definitional Submission*, Attach. at 24.

613 *See, e.g.*, Verizon NA Brief at 67 (pointing out inconsistencies within WorldCom's proposed contract language). We note that WorldCom has moved to strike the contract language Verizon most recently proposed regarding trunking arrangements for operator services and directory assistance. WorldCom Motion to Strike, Ex. B at 50-52. Because we do not adopt that language, we deny as moot the portion of WorldCom's motion relating to this issue.

614 *See* Tr. at 2718-19.

unable to record traffic.[615] According to WorldCom, for example, Verizon admits to using PLU factors provided by WorldCom, rather than CPN, to determine how much traffic originated by WorldCom is subject to reciprocal compensation.[616] Thus, WorldCom argues, it has simply proposed that the parties use the same factors that Verizon already uses to determine call jurisdiction.[617]

188. WorldCom asserts that Verizon seeks a financial windfall by proposing to charge access rates for all traffic below the 90 percent CPN threshold, regardless of the jurisdiction of the call.[618] WorldCom contends that Verizon's proposal punishes it for circumstances beyond its control because, as Verizon's witness admitted, WorldCom has no control over the lack of CPN when business customers use older customer premise equipment (CPE) that prevents CPN passage.[619] Moreover, WorldCom argues that Verizon's true concern is that, unlike WorldCom, an unscrupulous competitive LEC opting into this agreement might provide fictitious PLU information to avoid paying access charges.[620] WorldCom argues that it should not be penalized for the actions that other competitive LECs might take.[621]

189. Verizon argues that its proposal -- to assess access charges for that WorldCom traffic falling below the 90 percent CPN threshold -- provides reciprocal rights, has been agreed to by multiple carriers in Virginia, and is consistent with several recent state commission proceedings.[622] According to Verizon, since WorldCom agreed to the 90 percent threshold, WorldCom's substitute billing information should be unnecessary since it presumably would not have agreed to a threshold it cannot meet.[623]

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615 WorldCom Brief at 62, citing WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 10.

616 WorldCom Brief at 62, citing Tr. at 2714.

617 WorldCom Brief at 62. Moreover, WorldCom argues that since Verizon does not use CPN to determine jurisdiction, it should be indifferent to whether CPN is passed. *Id.* at 63.

618 WorldCom Brief at 62-63, citing Tr. at 2717; WorldCom Ex. 8, at 10. WorldCom also argues that Verizon's proposal is a thinly veiled attempt to impose the highest possible rates for traffic to which reciprocal compensation rates should apply. WorldCom Reply at 56.

619 WorldCom Brief at 63, citing Tr. at 2718-19.

620 WorldCom Brief at 63, citing Tr. at 2725-26.

621 WorldCom Brief at 63-64.

622 Verizon NA Brief at 68-69, citing Verizon Ex. 78 (response to record request); Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues (issued July 30, 2001) (*New York Commission AT&T Arbitration Order*); and *Sprint Order*, D.T.E. 00-54 (2000) (*Massachusetts DTE Sprint Arbitration Order*).

623 Verizon NA Brief at 69, citing Tr. at 2737-38.

c. Discussion

190. We adopt WorldCom's proposal because it offers a reasonable solution to address those situations in which the parties are unable to pass CPN on 90 percent of their exchanged traffic.[624] Other than indicating concern about unnamed competitive LECs "stripping off" CPN to receive reciprocal compensation for a call subject to access charges,[625] Verizon offers no real criticism of WorldCom's proposal. However sympathetic we may be to Verizon's concerns, we note that less drastic measures are available to it (*e.g.*, filing a complaint with the Virginia Commission). We decline to burden WorldCom merely because of the potential for unlawful behavior by other competitive LECs.[626]

191. Verizon argues in essence that it is preferable to ignore the jurisdiction of calls exchanged by the parties, calls that have been recorded and are subject to audit and, instead, to assume that all unrecorded traffic is subject to access charges. We disagree. Our record is clear that certain older, multi-line business CPE is unable to record CPN mechanically,[627] WorldCom has no residential customers in Virginia[628] and, therefore, may be disproportionately affected, or punished, by Verizon's proposal through no fault of its own.[629] For these reasons, we adopt WorldCom's proposed language.

16. Issue IV-37 (Meet-Point Billing Arrangements)

a. Introduction

192. Both Verizon and WorldCom propose language governing meet-point billing. Meet-point billing dictates how the carriers will apportion access charges when a call to or from an interexchange carrier (IXC) is originated or terminated by a WorldCom end user and WorldCom's switch subtends the Verizon access tandem.[630] The parties have agreed to the multiple-bill, single tariff method, under which each party bills the IXC according to its own

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[624] Specifically, we adopt WorldCom's November Proposed Agreement, Part C, Attach. IV, §§ 7.1 through 7.6; and reject Verizon's November Proposed Agreement to WorldCom, Part C, Attach. IV, §§ 6.1 through 6.4.. We therefore find that WorldCom's motion to strike Verizon's revised contract language for this issue is moot. *See* WorldCom Motion to Strike, Ex. A at 52-54.

[625] *See* Tr. at 2721.

[626] *See* Tr. at 2725-26 (Verizon's witness stating that WorldCom would never manipulate or provide a false number to Verizon but that Verizon is worried that some other carrier might).

[627] *See* Tr. at 2718.

[628] *See* Tr. at 2719.

[629] *See* Tr. at 2719-20, 2726-27.

[630] *See* Verizon Ex. 9 (Direct Testimony of D. Albert, P. D'Amico), at 27.

access tariff.[631] The parties differ as to whose language should serve as the template on this subject. The parties also continue to have substantive differences as to: (1) whether either party should be liable if billing records are lost and cannot be recreated to the customer's satisfaction, (2) the form in which the carriers must exchange data, and (3) whether the contract should contain a special audit provision governing meet-point billing.

b. Positions of the Parties

193. WorldCom argues that Verizon does not hold the "trump card" as to which party's language should serve as a template.[632] WorldCom argues that the party responsible for supplying the records should be liable for their loss since that party has complete control over the creation and transmittal of the record.[633] With respect to the form in which data must be exchanged, WorldCom argues that we should adopt its language requiring data production by cartridge or electronic data transfer (EDT), because Verizon has not claimed these methods are infeasible or unduly burdensome.[634] Finally, with respect to a special audit provision to govern meet-point billing, WorldCom points out that the proposed agreements already contain a general audit provision, which would adequately cover meet-point billing.[635]

194. Like WorldCom, Verizon argues that its meet-point language should serve as the template for meet-point billing arrangements.[636] On the subject of liability for lost records, Verizon is concerned that, if an IXC learns that the interconnection agreement provides for either WorldCom or Verizon (depending upon which carrier lost the data) to be responsible for associated lost revenue, the IXC will simply refuse to pay the bill.[637] Next, Verizon argues that its proposed sections 9.8 and 9.9 give the parties the flexibility to use electronic media for the transmission of data.[638] The Verizon witness agreed that if the contract already contains an audit provision, a special meet-point audit provision might not be necessary.[639]

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631 *See* Tr. at 2742-43, 2747-48, 2753-54; Verizon Ex. 9, at 27; WorldCom Brief at 66.

632 *See* Tr. at 2732.

633 WorldCom Brief at 66-67.

634 *Id.* at 66.

635 *Id.* at 67.

636 *See* Tr. at 2727-29; Verizon Network Architecture (NA) Brief at 72.

637 *See* Tr. at 2730-31.

638 Verizon NA Brief at 71-72.

639 *See* Tr. at 2752-53.

c. Discussion

195. With the clarifications discussed below, we adopt WorldCom's proposed language. In addition to the specific provisions we discuss below, we adopt WorldCom's template.[640] Notwithstanding each party's reluctance to deviate from its own form language regarding meet-point billing, the parties ultimately differed on only a few substantive issues. In light of this, and our decision on the three matters specifically contested, we believe that WorldCom's language provides a better starting point because it requires less adjustment to comply with our holdings.

196. With respect to liability for lost records, we agree with WorldCom that the party responsible for the data loss should bear responsibility if the data cannot be recreated to the satisfaction of the IXC, which is the bill-paying customer of these two parties.[641] In addition, although neither party's witness was able to testify as to the existing contract provision on this subject,[642] WorldCom's language appears to be consistent with the current agreement.[643] We note that, although Verizon argues that IXCs may refuse to pay if they learn of this provision, it offered no evidence that the existing language has led to any difficulties in practice.

197. With respect to the form of data exchange, we will not order at this time that meet-point-billing data be exchanged on cartridge or via EDT.[644] Although WorldCom correctly asserts that Verizon has claimed neither infeasibility nor undue burden from these methods, WorldCom itself presented no compelling argument as to why magnetic tape, the method currently in use, is unacceptable or why EDT or some other method should be mandatory. Under the existing agreement, the parties are required to provide "switched access detail usage data (category 1101XX records) on magnetic tape *or via such other media as the Parties may agree to*."[645] In the absence of support for altering the status quo, we find it reasonable for the carriers to continue to exchange information in the format they currently do so, until such time as they may agree on a new format. However, because WorldCom's proposed language anticipates mutual agreement before the parties migrate to EDT, and does not set any time certain for the parties to begin exchanging records via EDT, its language is acceptable if the parties insert the

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[640] Specifically, with the modifications discussed, we adopt WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.9, and we reject Verizon's November Proposed Agreement to WorldCom, Interconnection Attach., § 9.

[641] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach I, §§ 4.9.14, 4.9.15.

[642] *See* Tr. at 2748.

[643] *See* WorldCom Petition, Ex. D, Part C, Attach. VIII, § 3.1.3.11.

[644] "Cartridge" does not appear to be a defined term. The contract language referenced below suggests that providing information on cartridge is *not* a form of EDT.

[645] *See* WorldCom Petition, Ex. D (Interconnection Agreement Governing Current Relations), Part C, Attach. VIII, §§ 3.1.3.8, 3.1.3.9 (emphasis added).

term "magnetic tape" where the word "cartridge" appears in sections 4.9.5, 4.9.11 and 4.9.12. We direct the parties to do so.

198. On the subject of audits, Verizon's witness conceded that the meet-point audit provision might be cumulative to the general audit section,[646] and Verizon did not address the subject of audits in either of its post-hearing briefs.[647] Each party's proposed agreement contains a general audit provision.[648] Accordingly, we find that a separate meet-point audit provision is unnecessary, could be cumulative, and, if inconsistent with the general audit section, provides a potential source of future dispute.

17. Issues V-1/V-8 (Competitive Access Service)[649]

a. Introduction

199. AT&T and Verizon disagree about whether AT&T may obtain interconnection, pursuant to section 251(c)(2) of the Act, in order to provide competitive access service. As a related matter, the parties disagree about whether AT&T may provide this service using UNEs, obtained at cost-based UNE rates, pursuant to section 251(c)(3) of the Act. AT&T argues it may purchase UNEs to provide its proposed access service, but Verizon would have AT&T purchase Verizon's access service out of its tariffs. As set forth below, we reject AT&T's proposal.[650]

b. Positions of the Parties

200. AT&T proposes contract language that would permit it to interconnect with Verizon, pursuant to section 251(c)(2) of the Act, in order to provide competitive access service that would allow interexchange carriers (IXCs) to reach end users who do not receive their local exchange service from AT&T.[651] AT&T argues that section 251(c)(2) permits interconnection

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646 *See* Tr. at 2752-53.

647 *See* Verizon NA Brief at 70-72; Verizon NA Reply at 36.

648 *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 4; Verizon's November Proposed Agreement to WorldCom, Part A, § 7.

649 While Issues V-1 and V-8 are distinct, the parties brief them in tandem; they raise interrelated issues and pertain to the same section 6 of the agreement, proposed by AT&T. Thus, we will treat them as one, for purposes of this Order.

650 AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, §§ 4, 6.0, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6.

651 *See* AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, §§ 6.0, 6.1, 6.2, 6.3, 6.4, 6.5. AT&T's proposal reads in part, "Upon request from AT&T, the Parties will establish two-way competitive-tandem trunk groups separate from ESIT trunk groups, to carry traffic between AT&T's switched access customer connected to AT&T's switch and Verizon's local customers. Such trunks will be established in GR-394-CORE format. The Parties agree that the following provisions will apply to the switching and transport of competitive-tandem traffic: Verizon will provide to AT&T UNE local switching, tandem switching and transport of Feature (continued….)

for this purpose,[652] and that the Commission has explicitly found that "providers of competitive access services are eligible to receive interconnection pursuant to section 251(c)(2)."[653] AT&T also argues that the Commission has held that requesting carriers may obtain UNEs pursuant to section 251(c)(3) of the Act to provide any telecommunications service, including exchange access service,[654] and that Verizon therefore should not be permitted to place restrictions on AT&T's use of the UNEs that it purchases.[655] AT&T asserts that Commission precedent dooms Verizon's arguments that AT&T may provide IXCs with access only to AT&T's local customers, and that AT&T may not provide a service through UNE facilities that it could also provide after purchasing the same service through Verizon's access tariffs.[656] In addition, AT&T argues that the Commission interprets section 251 as barring incumbent LECs from charging switched access rates where requesting carriers seek to provide access services through UNEs: "[w]hen interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access 'services.'"[657]

201. AT&T emphasizes that it seeks, through this language, to use UNEs for the provision of competitive access service to other IXCs, and not to itself.[658] AT&T suggests that this distinction is important because, it argues, the Commission has held that that an IXC may not obtain interconnection pursuant to section 251(c)(2) solely for the purpose of originating and terminating its own interexchange traffic.[659] AT&T thus suggests that there is a key distinction between "providing" access service and "receiving" access service.[660] According to AT&T, the Commission also draws this distinction between carriers receiving access from an incumbent and

(Continued from previous page)
Group D calls from end-users who have chosen an IXC that is connected to . . . AT&T's tandem switch." AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, §§ 6.0, 6.1.

[652] AT&T Brief at 53.

[653] *Id.* at 54, citing *Local Competition First Report and Order*, 11 FCC Rcd 15499, 15598-99, para. 191, and 15595, para. 186.

[654] AT&T Reply at 25, citing *Local Competition First Report and Order,* 11 FCC Rcd at 15679, para. 356.

[655] AT&T Brief at 57-58. AT&T suggests that the Texas Commission has declined to impose use restrictions on UNEs, permitting their use to provide competitive access. *Id.* at 58.

[656] AT&T Reply at 25-26, citing *Local Competition First Report and Order,* 11 FCC Rcd at 15679-80, para. 358.

[657] *Id.* at 26, citing *Local Competition First Report and Order,* 11 FCC Rcd at 15679-80, para. 358.

[658] AT&T Brief at 54.

[659] *Id.* at 53-54. AT&T cites the *Local Competition First Report and Order* for the proposition that "an IXC that seeks to interconnect solely for the purposes of originating and terminating its own interexchange traffic is not offering access, but rather is obtaining access for its own traffic." *Local Competition First Report and Order,* 11 FCC Rcd at 15598-99, para.191.

[660] AT&T Brief at 53-54, citing *Local Competition First Report and Order,* 11 FCC Rcd at 15598-99, para.191.

carriers providing access using UNEs.[661] As a prospective provider of access service, AT&T concludes, it is fully within its rights to obtain interconnection and UNEs.[662]

202. AT&T also proposes language regarding meet point traffic which would establish meet-point trunk groups between the parties.[663] AT&T argues that when it provides tandem service to connect a Verizon local exchange customer and that customer's IXC, that call would go from Verizon's end office to AT&T's switch and then to the IXC.[664] According to AT&T, since the parties have a meet point arrangement when Verizon is providing the tandem service for AT&T's local exchange customers' calls to their chosen IXCs, the same arrangement should govern when Verizon's and AT&T's roles are reversed.[665] AT&T asserts that its proposed language recognizes that AT&T and Verizon are co-carriers in the provision of competitive tandem service, even though AT&T has agreed that the terms for its provision of competitive tandem service need not be governed by terms applicable to meet point billing trunks.[666]

203. AT&T disagrees with Verizon's argument that the interconnection agreement should be limited to the interconnection and exchange of local traffic, and urges that its proposed exchange access service belongs in the interconnection agreement.[667] According to AT&T, because the law requires Verizon to permit interconnection for the provision of exchange access service, Verizon has no basis for excluding AT&T's proposed language from the interconnection agreement.[668] AT&T also disputes Verizon's interpretation that section 251(g) carves out "interexchange access traffic" from the Act.[669] AT&T interprets section 251(g) as preserving existing access tariffs so that, should they wish to, carriers may receive the same equal access and nondiscrimination pursuant to tariffs as they did before passage of the Act.[670] That is, an eligible requesting carrier could interconnect and obtain UNEs pursuant to section 251, or it could purchase services from the incumbent pursuant to the preserved tariff.[671] According to

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[661] AT&T Reply at 25-26, 28, citing *Local Competition First Report and Order,* 11 FCC Rcd at 15679-81, para. 356-62.

[662] AT&T Brief at 53-54.

[663] AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, § 4.

[664] AT&T Brief at 52-53.

[665] *Id.*

[666] *Id.* at 56.

[667] *Id.* at 54.

[668] *Id.* at 55.

[669] *Id.* at 54, citing Verizon Exhibit 4, at 43.

[670] AT&T Reply at 26-27, citing *Local Competition First Report and Order,* 11 FCC Rcd at 15681-82, para. 362.

[671] *Id.*

AT&T, however, 251(g) does not limit or restrict the services that requesting carriers may provide over UNEs.[672]

204. Verizon opposes adoption of AT&T's language on several grounds. Verizon argues that, because AT&T does not seek to provide exchange service or exchange access to AT&T's own local customers through this arrangement, it does not belong in an interconnection agreement governing local exchange service.[673] Rather, argues Verizon, AT&T plans to market its competitive access service to IXCs, which AT&T (and other competitive access providers) can currently do pursuant to Verizon's switched access tariffs.[674] According to Verizon, AT&T is entitled to obtain service only from Verizon's switched access tariffs, and the tariffed rate would apply, not a cost-based TELRIC rate.[675] Verizon accuses AT&T of attempting unlawfully to bypass Verizon's switched access tariffs by gaining interconnection pursuant to section 251.[676] In addition, Verizon points out that two state commissions, including the New York Commission, have refused to include AT&T's competitive access service in interconnection agreements with incumbent LECs.[677] Finally, as a policy matter, Verizon argues that AT&T's proposal will not advance local competition, because AT&T seeks here to provide services to IXCs, and not end users.[678]

205. Verizon also opposes AT&T's proposal on grounds that AT&T is seeking to use exchange access service that Verizon provides to Verizon customers: "[b]ecause they remain Verizon VA customers, Verizon VA remains the carrier providing both the local exchange and exchange access service to those customers."[679] Verizon argues that when "AT&T delivers long distance calls for completion over Verizon's local network to Verizon's local customers," it is

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672 AT&T Reply at 27.

673 Verizon Intercarrier Compensation (IC) Brief at 31.

674 *Id.* at 32.

675 *Id.* at 33; Verizon IC Reply at 19.

676 Verizon IC Brief at 31-32.

677 *Id.* at 34, citing *New York Commission AT&T Arbitration Order* at 39-40 (finding that the interconnection agreement properly deals with local service interconnections with Verizon, not AT&T's arrangements with other carriers), and *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Cause No. 40571-INT-03 at 30, (Indiana Commission, Nov. 20, 2000) (determining that access traffic is not local traffic and is therefore appropriately dealt with in federal and state access tariffs, not interconnection agreements).

678 Verizon IC Brief at 37.

679 Verizon IC Reply at 18.

"merely *using* Verizon's access service and is therefore subject to the payment of appropriate access charges."[680]

206. Verizon also argues that AT&T's proposal is inconsistent with section 251(g) of the Act which, Verizon contends, preserves pre-existing switched access tariffs.[681] Verizon argues that the Eighth Circuit's *CompTel* decision supports its contention that section 251(g) "*preserves* certain rate regimes already in place,"[682] and that the Eighth Circuit refused to permit IXCs to interconnect in order to obtain access at UNE rates.[683] Verizon also argues that the Commission supported this interpretation of section 251(g) when it determined that "Congress preserved the pre-Act regulatory treatment of *all* access services enumerated under section 251(g)."[684] AT&T requests access service, Verizon argues, regardless of whether AT&T plans to provide it to itself or to another IXC.[685]

207. Verizon also maintains that the meet point billing language AT&T proposes is inappropriate because the scenario AT&T describes does not involve two "peer" LECs providing a service jointly.[686] Rather, AT&T is competing with Verizon for exchange access customers.[687] Verizon suggests that peer LECs in a meet point billing arrangement do not compete with each other, but instead jointly provide transport that benefits the LECs and the IXC.[688] What AT&T describes is exactly what the IXCs have done, argues Verizon, and they should order the services

680 *Id.* at 19 (emphasis in original).

681 Verizon IC Brief at 33.

682 *Id.* at 33, citing *CompTel v. FCC* 117 F.3d 1068, 1072 (8th Cir. 1997) (*CompTel*) (emphasis added by Verizon). Verizon also argues that, while AT&T seeks to interconnect to provide "exchange access services" pursuant to section 251(c)(2), that section deals only with the "physical link" between the two networks; the rate that applies is governed by other sections (*e.g.,* section 251(g)). Verizon IC Reply at 18 (emphasis omitted), citing *CompTel*, 117 F.3d at 1072; Verizon IC Reply at 18, n.53, citing *Local Competition First Report and Order,* 11 FCC Rcd at 15599, para. 191 n.398.

683 Verizon IC Brief at 33; Verizon IC Reply at 18.

684 Verizon IC Brief at 34, citing *Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order (*ISP Intercarrier Compensation Order*), 16 FCC Rcd 9151, 9169-70, para. 39 (2001) (emphasis added by Verizon).

685 Verizon IC Brief at 35.

686 *See* Verizon Ex. 18 (Rebuttal Testimony of Pitterle, D'Amico), at 17-24.

687 *Id.*

688 *Id.*

out of the tariffs.[689] Verizon argues that AT&T's revised language addressing meet point billing is unnecessary because the parties have elsewhere agreed to meet point billing language.[690]

c. Discussion

208. We reject AT&T's proposed language.[691] We understand that AT&T, through its proposed language, seeks to use "UNE local switching, tandem switching, and transport," obtained at TELRIC rates, to provide competitive access services to IXCs, for end users that do not receive local exchange service from AT&T.[692] We find this arrangement to be inconsistent with Commission precedent establishing that, as a practical matter, a requesting carrier may not purchase UNE switching solely to provide exchange access service, without also providing local exchange service to that end user.[693] Specifically, the Commission has held that "a carrier that purchases an unbundled switching element for an end user may not use that switching element to provide interexchange service to end users for whom that requesting carrier does not also provide local exchange service."[694] Because we reject AT&T's proposed language for this reason, we need not address the other arguments raised by the parties regarding this issue.

209. While the parties addressed, in their advocacy on this issue, only AT&T's proposal on competitive access service, Verizon also lists certain other language as applicable to this issue. This other language appears to govern reciprocal compensation and routing of exchange access traffic, including meet point billing.[695] We note, however, that the parties indicate they have agreed on language that would govern meet point billing,[696] and AT&T's proposed agreement contains language that appears very similar to Verizon's proposal in this regard.[697] Moreover, Verizon does not provide any explanation of, or support for, its proposed language in its briefs or testimony. Therefore, it is not possible for us adequately to judge the

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689 *Id.*

690 Verizon IC Brief at 36-37.

691 AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, §§ 4, 6.0, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6.

692 AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, § 6.1.

693 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration (*Local Competition Order on Reconsideration*), 11 FCC Rcd 13042, 13049, at paras. 12-13.

694 *See id.* (defining the local switching element "in a manner that includes dedicated facilities, thereby effectively precluding the requesting carrier from using unbundled switching to substitute for switched access services where the loop is used to provide both exchange access to the requesting carrier and local exchange service by the incumbent LEC.")

695 *See* Verizon's November Proposed Agreement to AT&T, §§ 5.7.1, 6.1, 6.2 *et seq*, 6.3 *et seq*.

696 *See* AT&T Brief at 56; Verizon IC Brief at 36-37.

697 *See, e.g.,* AT&T's November Proposed Agreement to Verizon, §§ 5.7 *et seq*., 6.1, 6.2 *et seq*., 6.3 *et seq.*

merits of Verizon's proposal, or even to determine the nature of the parties' dispute, if any, concerning this language. Accordingly, we decline to adopt Verizon's proposed language.

18. Issue V-2 (Interconnection Transport)

a. Introduction

210. AT&T and Verizon disagree over the terms under which Verizon must provide "interconnection transport" to AT&T at UNE rates, specifically whether AT&T must be collocated in order to purchase UNE dedicated transport. Verizon contends that AT&T must purchase "entrance facilities and transport for interconnection" from its access tariffs, and that AT&T is entitled to purchase interoffice transmission facilities at UNE rates only where these facilities terminate in an AT&T collocation arrangement. AT&T, on the other hand, argues that it is entitled to interoffice transmission facilities at UNE rates, regardless of whether these facilities terminate in an AT&T collocation arrangement. We adopt AT&T's proposed language.[698]

b. Positions of the Parties

211. AT&T proposes language stating that it may purchase "UNE Dedicated Transport" at UNE rates, and argues that it may use these facilities to interconnect with Verizon's network.[699] AT&T argues that this language would enable it, for example, to purchase interoffice facilities at UNE rates to pass traffic between an AT&T building where Verizon has a fiber terminal to a Verizon wire center or switch location.[700] AT&T disputes Verizon's position that AT&T is only entitled to UNE rates for interconnection facilities that terminate at an AT&T collocation arrangement, arguing that there is no collocation requirement associated with a competitive LEC's right to obtain UNEs.[701] Specifically, AT&T disputes Verizon's characterization that without collocation, AT&T is proposing to purchase an end-to-end service, which it may not purchase at UNE rates.[702] AT&T also denies that it seeks, through its language, to create a new UNE combination.[703] Finally, AT&T contends that Verizon's position is simply an impermissible attempt to avoid its unbundling requirements by forcing AT&T to purchase access services.[704]

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698 AT&T November Proposed Agreement to Verizon, Schedule 4, Part B, proposed § 1.2.

699 AT&T Brief at 59.

700 *Id.*

701 *Id.* at 59-62; AT&T Reply at 31.

702 AT&T Brief at 61-62.

703 *Id.* at 62-63; AT&T Reply at 31.

704 AT&T Brief at 64.

212. Verizon's proposed contract language references its intrastate and interstate access tariffs as the pricing mechanisms that would govern the use of "entrance facilities and transport for interconnection."[705] Verizon maintains that, in order to purchase interoffice transport at UNE prices, AT&T "must have a collocation arrangement at that tandem or end office."[706] According to Verizon, if AT&T does not order interoffice transport in connection with a collocation arrangement, it is not entitled to UNE rates; AT&T must pay access tariff rates in that case.[707]

213. Verizon argues that it is not forcing AT&T to purchase interconnection transport out of its access tariffs.[708] According to Verizon, AT&T may purchase Verizon's UNE interoffice transmission facilities from AT&T's collocation arrangement to AT&T's switch, or AT&T may self-provision transport, purchase it from a third-party, or purchase it from Verizon through its access tariffs.[709] However, Verizon argues that AT&T is not entitled to pay UNE rates for transport it orders out of Verizon's access tariffs, which is what it maintains AT&T's proposal would effectively enable it to do.[710]

214. Verizon also contends that AT&T's proposal would create a new combination of UNEs, for which the Commission has not conducted the requisite "necessary and impair" analysis.[711] According to Verizon, this combination would consist of an entrance facility, UNE dedicated transport, a switch port, and possibly a multiplexer.[712] Verizon argues that it would be required to construct transport from AT&T's switch to Verizon's serving wire center, which is an entrance facility, and to construct transport from the serving wire center to Verizon's switch.[713] Verizon asserts that this would violate the Commission's determination that incumbent LECs need not "construct new transport facilities to meet specific competitive LEC

[705] Verizon's November Proposed Agreement to AT&T, Ex. A, § 1.A.II.

[706] Verizon NA Brief at 56-57.

[707] *Id.* at 57.

[708] *Id.* at 56.

[709] *Id.*.

[710] *Id.* at 56-57; Verizon NA Reply at 30. Verizon contends that AT&T has admitted that it wants to pay the lowest possible rate for transport, regardless of whether it is Verizon's access service or a UNE. Verizon NA Brief at 56.

[711] *Id.* at 57. In addition, Verizon argues that AT&T is not impaired simply because it must purchase a service out of Verizon's access tariffs, rather than obtaining it at the cheaper UNE rate. *Id.*

[712] *Id.* at 57.

[713] Verizon NA Reply at 30.

point-to-point demand requirements for facilities that the incumbent LEC has not employed for its own use."[714]

c. Discussion

215. We adopt AT&T's proposed language on UNE dedicated transport.[715] We find this language to be consistent with the Act and Commission rules, which entitle AT&T to obtain interoffice transmission facilities from Verizon at UNE rates.[716] We also find that the rates for these UNEs should, as AT&T suggests, be set forth in the agreement's pricing schedule.[717]

216. We note that Verizon has offered no specific objections to AT&T's proposed language. Verizon offers several general objections to what it portrays as AT&T's position, but we reject each of these objections. Specifically, we disagree that AT&T's proposed language somehow requires Verizon to construct new transport facilities. There is no indication in the record that AT&T is seeking UNE dedicated interoffice facilities that Verizon has not already deployed. We also reject Verizon's assertion that AT&T's proposed language would impermissibly entitle it to a new UNE combination. AT&T's language does not purport to expand its rights to obtain access to combinations of UNEs, including enhanced extended links (EELs).[718] In any case, we note that AT&T's language refers explicitly to "applicable law." To the extent that either party desires to clarify its rights or obligations regarding combinations of UNEs consistent with the Supreme Court's ruling in *Verizon Telephone Cos. v. FCC*,[719] it would be appropriate to do so through the contract's change of law mechanism.

217. We also reject Verizon's proposed language to the extent Verizon seeks to limit AT&T's ability to order "Entrance Facilities and Transport for Interconnection."[720] Verizon does not define "Transport for Interconnection," but statements in its briefs suggest that this may

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[714] *Id.*, citing *UNE Remand Order*, 15 FCC Rcd 3696, 3843, para. 324.

[715] AT&T's November Proposed Agreement to Verizon, Schedule 4, Part B, § 1.2.

[716] 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.319(d)(1)(i) (defining dedicated transport as those transmission facilities between wire centers owned by the incumbent LEC or requesting carriers, or between switches owned by incumbent LECs or requesting carriers).

[717] Pricing issues will be the subject of a subsequent order.

[718] The Commission has stated that the mid-span meet is a reasonable accommodation of interconnection, not a separate element. *Local Competition First Report and Order*, 11 FCC Rcd at 15780-81, para 553. Finally, AT&T is entitled to multiplexing functionality as a feature of UNE transport. 47 C.F.R. §§ 51.307(c), 51.319(d)(1)(i); *UNE Remand Order,* 15 FCC Rcd at 3842-43, para. 323. For a more extensive discussion of multiplexing as a feature of UNE dedicated transport, *see supra,* Issue IV-21.

[719] *Verizon v. FCC*, 122 S.Ct. 1646 (2002).

[720] Verizon's November Proposed Agreement to AT&T, Ex. A, § 1.A.II.

encompass facilities defined under the Commission's rules as "dedicated transport."[721] Verizon has no basis for requiring AT&T to order dedicated transport from its access tariffs.[722] Although Verizon lists several ways AT&T could obtain "interconnection transport," we reject any suggestion that the availability of such choices should therefore limit AT&T's ability to obtain dedicated interoffice facilities on an unbundled basis. The Commission has rejected similar arguments, concluding that incumbent LECs may not avoid the 1996 Act's unbundling and pricing requirements by offering tariffed services that might qualify as alternatives.[723] Moreover, we reject Verizon's suggestion that AT&T is entitled to dedicated transport at UNE rates only where it has collocated at Verizon's wire center or other facility. There is no requirement that a competitive LEC collocate at the incumbent LEC's wire center or other facility in order to purchase UNE dedicated transport, and Verizon offers no support for its contrary position.[724]

19. Issue V-16 (Reciprocal Transit Services)

a. Introduction

218. AT&T proposes that we allow it, at its sole discretion, to offer transit services to Verizon.[725] Verizon opposes this proposal, offering language that would require AT&T to provide Verizon with transit services to the same extent and on the same terms that Verizon provides transit services to AT&T.[726] These reciprocal transit services would reduce Verizon's

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[721] We infer, from the terminology Verizon uses in its briefs, that Verizon's proposed contract language relates to the circumstances under which AT&T could obtain unbundled interoffice facilities or unbundled transport from Verizon. For example, Verizon states, "AT&T may purchase UNE IOF from its collocation arrangement to its switch location. AT&T may also purchase transport from a third-party, self provision the transport, or purchase the transport from Verizon's access tariff." Verizon NA Brief at 56. Or, Verizon states, "[i]f AT&T is not ordering transport in connection with its collocation arrangement, then it is not entitled to UNE rates and must pay access." Verizon NA Brief at 57.

[722] We note in this regard that AT&T seeks to purchase UNE transport, not access services. *See Local Competition First Report and Order,* 11 FCC Rcd at 15598-99, para.191, 15679-80, para. 358.

[723] *UNE Remand Order*, 15 FCC Rcd at 3855, para. 354; *Local Competition First Report and Order*, 11 FCC Rcd at 15640-44, paras 277-88.

[724] *See generally UNE Remand Order*, 15 FCC Rcd at 3842-46, paras. 322-30, *Local Competition First Report and Order*, 11 FCC Rcd at 15717-15722, paras. 439-51. To the contrary, the Commission suggested that "an interoffice facility could be used by a competitor *to connect to the incumbent LEC's switch* or to the competitor's collocated equipment." *Local Competition First Report and Order* at 15718, para. 440 (emphasis added). *See also Net2000 Communications, Inc. v. Verizon – Washington D.C., Inc. et al.*, Memorandum Opinion and Order, 17 FCC Rcd. 1150, 1158, para. 26, (2002) (recognizing that carriers' right to convert special access circuits to EELs applies to collocated and non-collocated arrangements). We also discuss collocation in the context of Issues III-8 and IV-21, *supra*.

[725] AT&T's November Proposed Agreement to Verizon, § 7.2.7.

[726] Verizon's November Proposed Agreement to AT&T, § 7.2.7; Verizon Ex. 4 (Direct Testimony of D. Albert & P. D'Amico), at 41.

costs of exchanging traffic with carriers that directly interconnect with AT&T. Transit services enable a carrier to deliver traffic to, and receive traffic from, another carrier, using a third, intermediate carrier's network. Carriers are said to be indirectly interconnected to the extent they use transit services to exchange traffic.[727] For reasons provided below, we adopt AT&T's proposal.

b. Positions of the Parties

219. AT&T argues that the Commission lacks authority to impose transit obligations on competitive LECs.[728] AT&T argues that the duty to provide transit services is an "additional obligation" applied only to incumbent LECs under section 251(c)(2)(A) of the Act, and thus does not apply to a carrier like AT&T.[729] AT&T states that the Act does not compel non-incumbents to provide transit services,[730] and that the Commission has held that section 251(c)(2) does not impose reciprocal interconnection obligations on non-incumbent LECs.[731] AT&T also states that it is willing to provide transit services to Verizon subject to good faith negotiations.[732]

220. Verizon states that, while the Act does not require AT&T or Verizon to provide transit services, as a matter of fairness, AT&T should provide Verizon the same transit service that Verizon provides AT&T.[733] If its transit traffic goes beyond the DS-1 level, Verizon is willing to establish a direct interconnection agreement with the carrier with which it is exchanging traffic.[734]

c. Discussion

221. We decline to impose transit obligations on AT&T in this proceeding and therefore accept AT&T's contract language on this issue.[735] Verizon has not pointed to any provision of the Act or the Commission's rules that requires AT&T to provide Verizon with

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[727] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 17806, 17845, n.198 (*Collocation Reconsideration Order*) (subsequent history omitted).

[728] AT&T Brief at 65.

[729] *See* AT&T Ex. 1 (AT&T Petition), Attach. A at 38-39.

[730] AT&T Brief at 64-65.

[731] AT&T Ex. 1 at 39, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15613, para. 220.

[732] AT&T Brief at 65.

[733] Verizon NA Brief at 42.

[734] Verizon Ex. 4 at 41-42.

[735] *See* AT&T's November Proposed Agreement to Verizon, § 7.2.7.

transit services. Instead, Verizon argues that fairness dictates that it have transit choices comparable to those available to competitive LECs.[736] The Commission, however, has never imposed transit obligations on competitive LECs pursuant to any provision of the Act. In the absence of clear Commission precedent or rules declaring that competitive LECs have a duty to provide transit services to incumbents, we decline, on delegated authority, to impose that duty for the first time on AT&T. We recognize that AT&T may choose voluntarily to offer transit services to Verizon.[737] In the event AT&T actually provides those services, it shall do so in a manner consistent with the terms and conditions discussed under Issues III-1/III-2/IV-1, above, regarding transit services that Verizon provides AT&T.[738]

20. Issue VI-1-A (Trunk Types)

a. Introduction

222. Both parties propose language identifying the types of trunks the parties will use to interconnect each other's networks.[739] Some of this proposed language is substantively addressed in other issues.[740] Furthermore, one of the trunk types identified is the subject of another issue.[741] Of the remaining language in dispute under this issue, we adopt WorldCom's proposed language for the reasons set forth below.

b. Positions of the Parties

223. Verizon argues that its proposed language under this issue serves two purposes. The first purpose is to provide short-hand references to the different types of trunk groups addressed elsewhere in the parties' agreement. Verizon states that, in its responses to Issues I-1, IV-2, IV-6, IV-8 and VI-1-C, it has addressed the need for these trunking arrangements.[742] Verizon responds to WorldCom's claim that it has presented no evidence on this issue by arguing that it relied on its testimony for other issues instead of repeating itself.[743] Second,

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[736] Verizon NA Brief at 42.

[737] *See* AT&T Brief at 65.

[738] *See supra,* Issue III-1/III-2/IV-1.

[739] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.2.1-2.2.2; WorldCom's Proposed Agreement to Verizon, Part C, Attach. IV, §§ 1.2-1.3.

[740] *See supra,* Issue IV-5 (addressing WorldCom's proposed section 1.2.5); Issue IV-2 (addressing WorldCom's proposed section 1.2.7.2); and Issue I-4 (addressing WorldCom's proposed section 1.3).

[741] *See supra*, Issue IV-6 (discussing access toll connecting trunks); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 2.2.1.2.

[742] *See* Verizon NA Brief at 72.

[743] *See* Verizon NA Reply at 36 (claiming reliance on evidence from Issues I-1, IV-2, IV-5, IV-6, IV-8 and VI-1-C).

Verizon's proposed language provides that the parties reach mutual agreement over the implementation of one-way or two-way trunks.[744]

224. WorldCom argues that its language should be adopted because it has provided ample evidence in support of its proposed language.[745] WorldCom also argues that Verizon fails to provide any evidence in support of its proposed language for this issue.[746] WorldCom objects to the provisions of Verizon's proposed language requiring mutual agreement for the implementation of interconnection trunks as one- or two-way trunks.[747] Finally, WorldCom states that Verizon concedes that all trunk types included in its language are being litigated under other issues, and disputes that there is any need for "short-hand" references to the trunk types in the agreement.[748]

c. Discussion

225. We adopt WorldCom's proposed language under this issue, to the extent it is not substantively addressed under other issues.[749] We find that, to the extent the parties' proposed language under this issue is not the subject of other issues, there is very little difference between the parties' proposals. Both proposals merely identify the specific trunk types that the parties will use to interconnect, identifying the same trunk types for the most part. Verizon's proposed language includes access toll connecting trunks among the types of trunks the parties will use. As discussed above, we reject Verizon's proposed language requiring WorldCom to purchase access toll connecting trunks in order to provide switched exchange access to IXCs jointly with Verizon.[750] Because Verizon's proposed language incorporates the distinction we have rejected between the parties' local interconnection trunks and access toll connecting trunks, we reject Verizon's proposed language under this issue.[751]

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744 *See* Verizon NA Brief at 72-73.

745 *See* WorldCom Brief at 69.

746 *See id.* at 68.

747 *See id.* at 69. As explained above, this language is the subject of another issue. *See supra*, Issue IV-2 (addressing Verizon's proposed section 2.2.3).

748 *See* WorldCom Reply at 59.

749 Specifically, we adopt WorldCom's proposed sections 1.2, 1.2.1-1.2.4 and 1.2.6 of Part C, Attachment IV.

750 *See supra,* Issue IV-6.

751 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 2.2.1-2.2.2.

21. Issues VI-1-B/VII-6 (Transmission and Routing of Telephone Exchange Access Traffic, and Intermediate Hub Locations in NECA Tariff 4)

a. Introduction

226. These issues relate to the circumstances under which WorldCom and AT&T may obtain interconnection trunks and associated multiplexing from Verizon. First, Verizon proposes that its interconnection agreement with WorldCom include the following language: "Both Parties shall use either a DS-1 or DS-3 interface at the POI. Upon mutual agreement, the Parties may use other types of interfaces, such as STS-1, at the POI, when and where available."[752] WorldCom contends that this language would unlawfully limit the interfaces it may use to interconnect with Verizon, and thus would prevent WorldCom from using optical and other higher capacity interconnection interfaces that would enable it to transmit traffic more efficiently. WorldCom proposes that the interconnection agreement instead require that "Verizon shall provide Interconnection at any Technically Feasible point, by any Technically Feasible means" at locations where WorldCom interconnects with Verizon.[753] For the reasons set forth below, we adopt WorldCom's proposal on this issue.

227. In addition, Verizon proposes language that would allow AT&T and WorldCom to terminate local interconnection trunks having DS-3 interfaces only at those Verizon offices that the National Exchange Carrier Association, Inc. (NECA) lists as intermediate hubs in NECA Tariff 4, unless Verizon agrees to a different termination.[754] AT&T and WorldCom contend that they also should be able to terminate local interconnection trunks having DS-3 interfaces at non-intermediate hub locations.[755] Otherwise, they argue, they would be forced to misroute their DS-3 traffic to the intermediate hubs and then purchase relatively expensive DS-1s to transport it to the other offices. We rule for AT&T and WorldCom on this issue.

228. We note that local interconnection trunks connect Verizon's network with AT&T's and WorldCom's networks for the purpose of exchanging switched traffic.[756] Because

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[752] Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 5.2.1.

[753] WorldCom's November Proposed Agreement to Verizon, Part C, Attach IV, § 1.1.2.

[754] *See, e.g.,* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 5.2.1. NECA Tariff 4 is a database that describes the location and technical capabilities of wire centers that provide interstate access services. Carriers use this database in ordering, billing for, and provisioning those services. *See* NECA, Tariff 4 Brochure, at 1, http://www.neca.org./tariff4.htm. Verizon determines which of its offices will be classified as intermediate hubs in that tariff. *See* Tr. at 2622.

[755] *See, e.g.,* AT&T Brief at 75; WorldCom Brief at 69.

[756] *See* Tr. at 2429-30.

all of Verizon's switches have DS-1 interfaces,[757] multiplexing equipment must disaggregate traffic delivered through a DS-3 interface into DS-1s prior to switching.[758] Verizon's intermediate hubs contain electronic digital cross-connect system (DCS) equipment capable of disaggregating DS-3s into DS-1s.[759] To transport switched traffic between its offices using fiber optic facilities, Verizon takes a number of lower order digital signals and multiplexes them into higher order optical signals, such as OC-12s or OC-48s.[760] The parties agree that a DS-3 portion of these optical signals (*i.e.*, a channelized DS-3) may be dedicated to a competitive LEC.[761]

b. Types of Interfaces

(i) Positions of the Parties

229. Verizon contends that instead of limiting the methods of interconnection available to WorldCom, its proposal simply addresses how WorldCom should order switched local interconnection trunks from Verizon.[762] Verizon asserts that DS-1s and DS-3s are the only transport interfaces for switched trunks that it presently provides to competitive LECs, IXCs, or other carriers.[763] Verizon maintains that WorldCom's request for switched interconnection trunks having other interfaces is broad, vague, and not technically defined, and that WorldCom should use the Bona Fide Request (BFR) process if it wishes to interconnect at a rate higher than DS-3.[764]

230. WorldCom argues that Verizon's proposal unlawfully limits the methods of interconnection available to WorldCom at the POI.[765] WorldCom also argues that interconnection interfaces other than DS-1s and DS-3s are technically feasible, that Verizon cannot properly preclude WorldCom from using those other interfaces, and that Verizon should

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[757] Tr. at 2520 (testimony of Verizon witness Albert); *see* AT&T Brief at 74 (pointing out that Verizon witness Albert testified that the only trunk interface Verizon provides itself is a DS-1 interface).

[758] Tr. at 2519-20 (testimony of WorldCom witness Greico).

[759] Verizon NA Brief at 54, citing Tr. at 2622-23; Verizon NA Reply at 28.

[760] Tr. at 2523, 2630-31.

[761] *Id.* at 2520-21, 2629.

[762] Verizon Ex. 26 (Rebuttal Testimony of D. Albert & P. D'Amico), at 12; Verizon NA Brief at 53.

[763] Verizon Ex. 26, at 13.

[764] Tr. at 2435-37 (testimony of Verizon witness Albert); Verizon Ex. 26, at 13.

[765] WorldCom Ex. 14 (Direct Testimony of D. Greico), at 22-23; Tr. at 2517-18 (testimony of WorldCom witness Greico); WorldCom Reply at 61.

deploy those other interfaces upon request without requiring WorldCom to go through the BFR process.[766]

(ii) Discussion

231. We adopt WorldCom's proposed language,[767] which we find to be consistent with Commission precedent stating that "any requesting carrier may choose any method of technically feasible interconnection . . . at a particular point."[768] We conclude that Verizon's proposed language does not reflect this right.[769] By its terms, that language would give Verizon the discretion to decide whether to permit technically feasible interconnection interfaces other than DS-1s and DS-3s.[770] We therefore reject Verizon's language in favor of WorldCom's language.

232. We recognize that because competitive LECs, including WorldCom, typically interconnect at the DS-1 or DS-3 level,[771] the parties have not resolved all the technical and practical issues that a request for another interconnection interface might entail.[772] Indeed, WorldCom does not propose specific contract terms that would govern Verizon's provision to WorldCom of interconnection interfaces other than DS-1s and DS-3s.[773] In these circumstances, we conclude that if WorldCom requests an alternative, technically feasible interconnection interface from Verizon, the parties must negotiate in good faith the rates, terms, and conditions under which Verizon will provide it.[774] We note that the Commission has previously held that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the costs of that interconnection, including a reasonable profit."[775]

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766 WorldCom Reply at 61; WorldCom Ex. 14, at 22-23; Tr. at 2517-19 (testimony of WorldCom witness Greico).

767 WorldCom's November Proposed Agreement to Verizon, Part C, Attach IV, § 1.1.2.

768 *Local Competition First Report and Order*, 11 FCC Rcd at 15779, para. 549.

769 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 5.2.1 (first two sentences).

770 WorldCom Ex. 14, at 22-23.

771 *See* Tr. at 2518 (testimony of WorldCom witness Greico).

772 *See id.* at 2668-69.

773 *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach IV, § 1.1.2.

774 The parties may use a process similar to the BFR process to facilitate the negotiations. We note that, under Verizon's and WorldCom's proposed contract language, only requests for UNEs would trigger the BFR process. *See* Verizon's November Proposed Agreement to WorldCom, Part B, § 2.14; WorldCom's November Proposed Agreement to Verizon, Part A, § 6, & Part B (definition of BFR).

775 *See Local Competition First Report and Order*, 11 FCC Rcd at 15603, para. 199, citing 47 U.S.C. § 252(d)(1).

c. Multiplexing Only at Intermediate Hub Locations

(i) Positions of the Parties

233. Verizon proposes language that would allow it to preclude AT&T and WorldCom from terminating local interconnection trunks having DS-3 interfaces at offices other than those it designates as "intermediate hub" locations through NECA Tariff 4.[776] Verizon states that all of its intermediate hubs contain digital cross-connect equipment capable of disaggregating DS-3s into DS-1s as well as connections to transport capable of carrying the DS-1 facilities to other Verizon offices.[777] Verizon argues that restricting DS-3 to DS-1 multiplexing to intermediate hubs is consistent with the Commission's requirement that incumbent LECs "offer DCS capabilities [to requesting carriers] in the same manner that they offer such capabilities to IXCs."[778] Verizon asserts that all multiplexed DS-3 facilities that IXCs order from Verizon terminate at intermediate hubs.[779]

234. Verizon argues that it must have in place equipment able to perform DS-3 to DS-1 multiplexing in order to demultiplex a channelized DS-3 into DS-1s for termination on Verizon's switch.[780] Verizon claims that, with the exception of a few end offices,[781] only its intermediate hubs have digital cross-connect equipment capable of performing DS-3 to DS-1 multiplexing; some of its other offices have obsolete asynchronous DS-3 to DS-1 multiplexers that can serve only one customer.[782] Verizon offers to move these multiplexers to the offices where AT&T and WorldCom want DS-3 to DS-1 multiplexing, provided those parties pay all associated costs.[783] According to Verizon, this offer goes beyond what Verizon is required to do.[784] Verizon states further that, whenever it performs DS-3 to DS-1 multiplexing for itself at locations other than its hubs, it uses one of these asynchronous DS-3 to DS-1 multiplexers.[785]

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[776] Verizon's November Proposed Agreement to AT&T, § 5.2.1 (third sentence); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 5.2.1 (last three sentences).

[777] Verizon NA Brief at 54, citing Tr. at 2622-23; Verizon NA Reply at 28.

[778] Verizon NA Brief at 54-55, quoting *Local Competition First Report and Order*, 11 FCC Rcd at 15720, para. 444.

[779] *Id.* at 54.

[780] *See, e.g.,* Tr. at 2623-24; Verizon NA Brief at 54.

[781] Verizon refers to these offices as "terminus hubs." Tr. at 2428-35.

[782] Tr. at 2631-34 (testimony of Verizon witness Albert).

[783] Verizon NA Brief at 55, citing Tr. at 2635.

[784] *Id.* at 55.

[785] Tr. at 2690-91.

235. AT&T and WorldCom contend that Verizon's proposal to restrict DS-3 to DS-1 multiplexing to intermediate hubs is inconsistent with Verizon's obligations to allow requesting carriers to interconnect at any technically feasible point and choose any feasible form of interconnection.[786] These parties maintain that we should require Verizon to provide DS-3 to DS-1 multiplexing upon request at non-intermediate hub offices.[787] They argue that Verizon has equipment capable of performing DS-3 to DS-1 multiplexing in all its offices and that it is technically feasible for Verizon to use this equipment to perform DS-3 to DS-1 multiplexing for competitive LECs.[788] AT&T states that Verizon routinely provides itself interoffice transport and associated multiplexing using facilities and equipment far exceeding DS-3 capabilities,[789] and that Verizon has not identified any technical reason why it cannot use the same facilities and equipment to provide DS-3 interconnection and DS-3 to DS-1 multiplexing at non-intermediate hub locations.[790] AT&T states that even if Verizon must adapt its facilities slightly at non-hub locations to accommodate AT&T's request, it is required to do so.[791]

236. AT&T asserts that Verizon is attempting to force AT&T to choose between using DS-1 facilities in lieu of relatively inexpensive DS-3 facilities and inefficiently routing traffic to intermediate hubs to access DS-3 facilities.[792] AT&T also asserts that Verizon need not recycle asynchronous DS-3 to DS-1 multiplexers in order to provide DS-3 interfaces in non-hub offices.[793] Furthermore, according to AT&T, the Commission's requirement that incumbent LECs offer requesting carriers the same DCS capabilities they offer IXCs is a minimum obligation and not a limitation on an incumbent's interconnection obligations.[794] AT&T also points out that it is asking Verizon to provide multiplexing, not DCS system capabilities specifically, at non-hub offices.[795]

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[786] AT&T Brief at 76; AT&T Reply at 38; *see* WorldCom Brief at 69.

[787] *See* AT&T Brief at 75-76; WorldCom Brief at 69.

[788] *See, e.g.*, AT&T Brief at 75-76, citing AT&T Ex. 8 (Rebuttal Testimony of D. Talbott), at 38 & Tr. at 2640 (testimony of AT&T witness Schell); Tr. at 2521 (testimony of WorldCom witness Greico); Tr. at 2639-44 (testimony of AT&T witness Schell).

[789] AT&T Brief at 74.

[790] AT&T Reply at 38.

[791] AT&T Brief at 76-77 n.259, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15605, para. 202.

[792] *Id.* at 74-75.

[793] *Id.* at 76 n.258; *see also* WorldCom Brief at 69.

[794] AT&T Reply at 37-38.

[795] *Id.* at 38.

(ii) Discussion

237. We reject Verizon proposed contract language.[796] We find that this language is inconsistent with the Commission's requirement that an "incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector."[797] Even if we were to accept Verizon's assertion that its multiplexing equipment in non-hub offices cannot, as currently configured, accommodate interconnection at the DS-3 level by demultiplexing a channelized DS-3 into DS-1s, Verizon does not suggest that such functionality cannot be obtained through technically feasible modification to its network.[798] The record thus does not support Verizon's proposal, which would limit interconnection options available to petitioners and enable it to refuse a request for technically feasible interconnection at a non-hub office.[799] Furthermore, we note that the Commission places on the incumbent the "burden of demonstrating the technical infeasibility of a particular method of interconnection . . . at any individual point."[800] We find that Verizon's proposed language is inconsistent with this requirement because it would appear to enable Verizon to refuse a request for interconnection at the DS-3 level at a non-hub office at its sole discretion, without discharging this burden of demonstrating technical infeasibility.

238. We also reject Verizon's position that it need not offer multiplexing to AT&T and WorldCom in their capacity as competitive LECs beyond the digital cross-connect service they receive in their capacity as IXCs.[801] We agree with AT&T that Commission rule 319(d)(2)(iv) sets forth a minimum obligation and does not limit an incumbent's interconnection obligations.[802]

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[796] Verizon's November Proposed Agreement to AT&T, § 5.2.1 (third sentence); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 5.2.1 (last three sentences).

[797] *Local Competition First Report and Order*, 11 FCC Rcd at 15605, para. 202. We note that Verizon admits that its terminus hubs have digital cross-connect equipment that can perform DS-3 to DS-1 multiplexing for AT&T and WorldCom, and that Verizon has offered to allow these parties to interconnect at the DS-3 level at these offices. Tr. at 2428-35, 2621-22.

[798] We note that AT&T and WorldCom maintain that it is technically feasible for Verizon to provide this demultiplexing functionality at each of its offices. Tr. at 2620-21 (testimony of WorldCom witness Greico); Tr. at 2640-41 (testimony of AT&T witness Schell).

[799] We recognize, of course, that Verizon need not create a superior network for its competitors. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997) (subsequent history omitted). The United States Court of Appeals for the Eighth Circuit, however, has specifically "endorse[d] the Commission's statement that 'the obligations imposed by section[] 251(c)(2) . . . include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection.'" *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813, n.33, quoting *Local Competition First Report and Order*, 11 FCC Rcd at 15602-03, para. 198.

[800] *Local Competition First Report and Order*, 11 FCC Rcd at 15782, para. 554.

[801] Verizon NA Brief at 54-55.

[802] AT&T Reply at 37-38. Rule 51.319(d)(2)(iv) requires that an incumbent "permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's (continued….)

Moreover, AT&T and WorldCom request that Verizon provide multiplexing, not DCS capabilities specifically, at non-hub offices.[803]

239. We recognize that the parties disagree on the question of whether (with or without modification) the equipment in Verizon's non-hub offices can accommodate interconnection at the DS-3 level by demultiplexing a channelized DS-3 into DS-1s for termination on Verizon's switch. We decline to address on this record what modifications, if any, Verizon must make to its facilities to enable the parties to interconnect at the DS-3 level at its non-hub offices. We also decline to address whether Verizon must let AT&T and WorldCom interconnect at the DS-3 level at any particular non-hub office. We urge the parties to work together to resolve any technical problems in the event AT&T or WorldCom seeks to interconnect at the DS-3 level at a specific non-hub office. If the parties' good faith efforts fail to resolve the matter, AT&T or WorldCom may invoke the dispute resolution process set forth in their agreement. Verizon, of course, will have the burden of proving that the requested method of interconnection is not technically feasible at the specific office.[804]

22. Issue VI-1-C (Toll-Free Service Access Code Traffic)

a. Introduction

240. The parties disagree on only one issue with respect to compensation for "8YY" traffic (*i.e.,* toll-free 800/877/888 calls) passing between their networks.[805] Verizon argues that, in certain instances when a WorldCom customer originates such a call, there is a risk that Verizon will be unable to identify the toll-free service provider, and therefore unable to bill it for tandem transit. Verizon proposes language that would shift the risk of non-payment in these instances to WorldCom.[806] WorldCom proposes a modification to Verizon's proposal that would have Verizon collect the charges at issue from the toll-free service provider, rather than from WorldCom.[807] We adopt WorldCom's language.

(Continued from previous page)
digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers." 47 C.F.R. § 51.319(d)(2)(iv); *see Local Competition First Report and Order*, 11 FCC Rcd at 15719-20, para. 444.

[803] AT&T Reply at 38.

[804] 47 C.F.R. § 51.321(d).

[805] Aside from the one disputed provision, discussed herein, the parties appear to have agreed on all other aspects of Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 10 *et seq.*

[806] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 10.2.

[807] *See* WorldCom's November Proposed Agreement, Attach. IV, § 11.2.

b. Positions of the Parties

241. Under Verizon's proposal, WorldCom would remain liable to Verizon for any Verizon transit service charges and associated pass-through charges arising from the parties' exchange of 8YY traffic.[808] Verizon argues that this proposal addresses an industry-wide technical problem.[809] According to Verizon, intra-LATA toll-free service providers often do not provide carrier identification codes (CIC codes) in the service management system (SMS) database that supports 8YY traffic.[810] When WorldCom originates a toll-free call and performs the associated "database dip" to convert the toll-free number to a regular telephone number, the call looks like a normal POTS call to Verizon. Verizon states that it therefore cannot identify the toll-free service provider to which it is sending the call.[811] Accordingly, it cannot bill the toll-free service provider for the transiting services it provides. Verizon states that, because WorldCom retains the billing record and knows who the toll-free service provider is, WorldCom can bill the provider.[812] Under Verizon's proposal, it would bill WorldCom for transiting services in such circumstances, and leave WorldCom to collect from the toll-free service provider.

242. WorldCom proposes a modification to Verizon's proposed language, which would require Verizon to "assess applicable Tandem Transit Service charges and associated pass through charges *to [the] toll free service access code service provider*" rather than to WorldCom.[813] According to WorldCom, there is no justification for Verizon's attempt to charge WorldCom for access services WorldCom does not receive.[814] WorldCom adds that, as Verizon's witness conceded, WorldCom is in no better position than Verizon to know the identity of the toll-free service provider or third-party LEC.[815] Furthermore, WorldCom states

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808 *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 10.2.

809 *See* Verizon NA Brief at 73.

810 *See id.* at 74; Tr. at 2451-53. CIC codes are numeric codes assigned by the North American Numbering Plan (NANP) Administrator for the provisioning of selected switched services. The numeric code is unique to each entity and is used by the telephone company to route the call to the trunk group designated by the entity to which the code was assigned. The SMS, or 800 Service Management System (SMS/800), is the main administrative support system of 8YY toll-free service. It is used to create and update subscriber 8YY records that are then downloaded to Service Control Points (SCPs) for handling subscribers' 8YY calls and to Local Service Management Systems (LSMSs) for subsequent downloading to SCPs. The system is also used to reserve and assign 8YY numbers.

811 *See* Verizon NA Brief at 73.

812 *See id.* at 73-74.

813 *See* WorldCom's November Proposed Agreement, Attach. IV, § 11.2.

814 *See* WorldCom Brief at 71.

815 *See id.* at 71; WorldCom Reply at 63, citing Tr. at 2462-63.

that, even assuming it could ascertain the identities of the relevant third-parties, Verizon does not explain how WorldCom could recoup Verizon's access charges from them when WorldCom's tariff does not include charges for third-party access.[816] WorldCom argues that there is no justification for placing on WorldCom Verizon's problems in collecting for access services.[817]

c. Discussion

243. We find that the language WorldCom seeks to add to Verizon's proposed section 10.2 is reasonable, and direct the parties to include this language in their final agreement.[818] Verizon has not provided sufficient explanation for why WorldCom should be assessed for exchange access services Verizon provides to toll-free service providers. Furthermore, Verizon fails to explain how an originating or terminating competitive LEC is in any better position than Verizon to know the identity of a toll-free service provider that does not provide a CIC code in the SMS database.[819] In the absence of such an explanation, Verizon's proposal to bill WorldCom for exchange access services Verizon provides to toll-free service providers amounts to little more than a transfer of Verizon's collection problems onto WorldCom. Indeed, Verizon's witness conceded that the appropriate party to be assessed for these services is the toll-free service provider, not WorldCom.[820]

C. Intercarrier Compensation Issues

1. Issue I-5 (Intercarrier Compensation for ISP-Bound Traffic)

a. Introduction

244. The *ISP Intercarrier Compensation Order*, which was issued after the filing of the arbitration petitions in this proceeding, sets forth an interim regime that establishes a gradually declining rate cap on the compensation that carriers may recover for terminating ISP-bound traffic, and a cap with a limited growth factor on the amount of traffic for which any such compensation is owed.[821] Generally speaking, the petitioners propose analogous, detailed

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816 *See* WorldCom Reply at 63, citing Tr. at 2460.

817 *See* WorldCom Reply at 63.

818 We thus adopt WorldCom's November Proposed Agreement, Attach. IV, § 11.2, and reject Verizon's November Proposed Agreement to WorldCom, Intercon. Attach., § 10.2.

819 *See* Tr. at 2462-63, 2466.

820 *See* Tr. at 2514-15.

821 *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9161, 9155-56 para. 7 (2001) ("*ISP Intercarrier Compensation Order*"), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Before release of the order, the petitioners argued in their arbitration petitions that ISP-bound traffic is "local" traffic subject to reciprocal compensation. AT&T Petition, Ex. 1 at 75; WorldCom Petition at 40-41; Cox Petition at 14-15. The Commission later ruled in its *ISP Intercarrier* (continued….)

provisions to implement the Commission's order. They argue that, because the order lacks detail, the parties need a roadmap for implementation.[822] Verizon asserts that the order is largely self-executing and would be better implemented through business negotiations outside of this arbitration.[823]

245. We note that, after the parties briefed this issue, the U.S. Court of Appeals for the D.C. Circuit remanded the *ISP Intercarrier Compensation Order* to the Commission, holding that section 251(g) of the Act did not support the Commission's conclusion that ISP-bound traffic fell outside of the section 251(b)(5) reciprocal compensation obligation.[824] The court did not, however, vacate the compensation regime that the order established, nor did it reverse the Commission's conclusion that ISP-bound traffic is not subject to section 251(b)(5).[825] Consistent with the manner in which we have applied other rules affected by judicial remands, we resolve issues relating to compensation for ISP-bound traffic on the basis of existing law, which, in this instance, includes the applicable interim compensation mechanism.[826] To the extent that the Commission's rules change at a later date, the parties may implement those changes through their agreements' change of law procedures.

b. "Mirroring Rule" and Past-Due Payment

246. Under the "mirroring rule" in the *ISP Intercarrier Compensation Order*, incumbent LECs can only take advantage of the rate caps on compensation for ISP-bound traffic if they offer to exchange, at those same capped rates, all traffic subject to the reciprocal compensation provisions of section 251(b)(5).[827] The parties disagree about whether Verizon's existing offers to implement the mirroring rule must be memorialized in their agreements, and whether Verizon must pay reciprocal compensation that allegedly has accrued under existing agreements before it may take advantage of the capped rates. We reject the petitioners' proposed language on both of these points.

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Compensation Order, however, that ISP-bound traffic is not eligible for reciprocal compensation under section 251(b)(5). *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9170-71, para. 42. In the wake of that order, the Bureau directed the parties to submit "agreed statements of the issues that must still be arbitrated" if the parties could not reach agreement on implementation of the order. Letter from Jeffrey H. Dygert to Scott Randolph, Robert Quinn, Lisa B. Smith and Alexandra Wilson (July 11, 2001).

822 AT&T Brief at 79; WorldCom Brief at 79; Cox Brief at 31.

823 Verizon IC Brief at 2; Tr. at 1766-67.

824 *See WorldCom v. FCC*, 288 F.3d at 433-34.

825 *See id.* at 434.

826 *Cf. supra* para. 4.

827 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9193-94, para. 89.

(i) Positions of the Parties

247. AT&T and WorldCom propose language that would incorporate into their interconnection agreements Verizon's obligations under the mirroring rule.[828] They argue that Verizon's offer to carriers to implement the mirroring rule outside of this proceeding is insufficient. WorldCom contends that, if the offer is not memorialized in any other legally enforceable document, such as a filing with the Virginia Commission, it can be rescinded unilaterally at any time.[829] AT&T and WorldCom further argue that Verizon should not be permitted to take advantage of the rate caps until Verizon has paid them, at the rates that they claim were applicable, for their delivery of all ISP-bound traffic before the effective date of the *ISP Intercarrier Compensation Order*.[830] AT&T asserts that Verizon has unilaterally refused to pay millions of dollars in reciprocal compensation for ISP-bound traffic that accrued during the period before the *ISP Intercarrier Compensation Order* established a new compensation regime.[831] WorldCom adds that, according to the Virginia Commission, reciprocal compensation was the appropriate mechanism for ISP-bound traffic prior to the new regime.[832] Therefore, WorldCom asserts, there can be no dispute as to the amount that Verizon owes.[833] Furthermore, WorldCom argues, its proposed contract provision regarding past-due payment is an effective enforcement mechanism for future true-ups as necessary.[834]

248. In response, Verizon notes that on May 14, 2001, it sent a letter offer, pursuant to the mirroring rule, to every competitive LEC and commercial mobile radio service (CMRS)

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[828] AT&T Brief at 84; WorldCom Brief at 74. Specifically, AT&T and WorldCom propose that the capped rates for ISP-bound traffic should be available to Verizon only if: "(a) Verizon requests that ISP-bound Traffic be treated at the rates specified in the ISP Remand Order; (b) Verizon offers to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5) with LECs, CLECs, and CMRS providers, at these information access rates; and (c) Verizon has paid all past due amounts owed on WorldCom's delivery of ISP-bound Traffic prior to June 14, 2001." *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.3; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3.

[829] WorldCom Brief at 74.

[830] AT&T Brief at 79; WorldCom Brief at 74-76.

[831] AT&T Brief at 79 n.264. AT&T estimates that, throughout the entire Verizon region, the past due amount is in excess of $10 to 20 million. Tr. at 1665.

[832] WorldCom Brief at 74-75, citing *Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc.; Arbitration Award for Reciprocal Compensation for the Termination of Local Calls to Internet Service Providers*, Final Order, Case No. PUC970069 (issued by Virginia Comm'n on Oct. 24, 1997).

[833] WorldCom Brief at 75. WorldCom estimates that Verizon owes WorldCom over $100 million for termination of ISP-bound traffic. WorldCom Reply at 71, citing Tr. at 1834.

[834] WorldCom Brief at 75.

provider with which it interconnects in Virginia.[835] Verizon argues that it thereby satisfied the mirroring rule and may avail itself of the rate caps. It argues that the offer need not be included in each interconnection agreement.[836] Verizon also disagrees that it must pay disputed arrearages for ISP-bound traffic before it can avail itself of the rate caps.[837] Verizon notes that these disputes over past-due payments arise under Verizon's existing interconnection agreements with AT&T and WorldCom, and thus do not belong in this arbitration.[838] In any case, Verizon argues, there is no support for such a true-up in the *ISP Intercarrier Compensation Order*.[839] Furthermore, Verizon denies that it owes any past due reciprocal compensation to AT&T or WorldCom under their existing contracts.[840] In this regard, Verizon asserts that neither AT&T nor WorldCom has taken any action to collect past-due amounts under their existing interconnection agreements with Verizon.[841]

(ii) Discussion

249. We agree with Verizon that it has satisfied the mirroring rule through its letter offers, sent to interconnecting carriers in Virginia, to exchange all traffic subject to section 251(b)(5) at the capped rates.[842] The *ISP Intercarrier Compensation Order* does not specify the manner in which this offer must be made. We do not believe that contract language covering Verizon's commitment is necessary, particularly since neither AT&T nor WorldCom suggests that Verizon has not fulfilled the requirements of the mirroring rule. Given our decision below to memorialize in the contract the rates at which Verizon has offered to exchange this traffic, we are not concerned that Verizon will attempt to end its compliance with the mirroring rule in the absence of a change of law. Accordingly, we reject AT&T's and WorldCom's proposed language on the mirroring rule.[843]

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[835] Verizon IC Brief at 7, citing Tr. at 1863-64.

[836] *Id*.

[837] *Id*. at 7-8.

[838] *Id*. at 8. Verizon notes that the existing interconnection agreements have dispute resolution mechanisms, through which AT&T and WorldCom can seek past-due compensation.

[839] *Id*.

[840] *Id*. n.3.

[841] Verizon IC Reply at 5-6 n.22.

[842] Verizon submitted an example letter offer as an exhibit to this arbitration. *See* Verizon Ex. 55.

[843] AT&T and WorldCom articulate the mirroring rule through two separate provisions in each of their proposed contracts. *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.3(a), (b); WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3(a), (b). We reject each of these provisions for both parties.

250. We also decline to adopt AT&T and WorldCom's language requiring payment of disputed compensation amounts for ISP-bound traffic prior to June 14, 2001, the effective date of the *ISP Intercarrier Compensation Order*.[844] The order does not indicate that this type of dispute must be resolved before the incumbent LEC can avail itself of the capped rates. As Verizon correctly notes, these disputes arise under its existing interconnection agreements with AT&T and WorldCom. Accordingly, they should be resolved pursuant to the dispute resolution mechanisms or other enforcement options available under those agreements.[845]

c. Change of Law Provision

251. In the event that the *ISP Intercarrier Compensation Order* is successfully appealed or modified, the petitioners each propose a change of law provision establishing the appropriate intercarrier compensation regime for ISP-bound traffic, with a retroactive effect on amounts due.[846] The petitioners argue that such provisions are important because the order remains subject to further modification and review.[847] Verizon opposes inclusion of these provisions in the contracts. Because each party has agreed to a general change of law provision, we reject the petitioners' change of law provisions that are specific to this issue.

(i) Positions of the Parties

252. AT&T asserts that, because of the uncertainty created by the ongoing review of the controlling Commission order, the interconnection agreement should contain a change of law provision specific to the issue of compensation.[848] Under AT&T and WorldCom's specific change of law provisions, upon reversal or modification of the Commission's order, ISP-bound traffic would be deemed section 251(b)(5) traffic subject to reciprocal compensation.[849] They add that, in this situation, retroactive payment would be due for the period when, consistent with

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[844] Accordingly, we reject AT&T's proposed section 5.7.5.2.2.3(c); and WorldCom's proposed Part C, Attachment I, section 8.3(c), and the remaining text in section 8.3.

[845] We express no opinion on the appropriate compensation mechanism for ISP-bound traffic before June 14, 2001, or on any amounts that may be due.

[846] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6; Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[847] *See WorldCom, Inc. v. FCC*, 288 F.3d at 434-34 (remanding order to Commission, holding that section 251(g) does not support Commission's conclusion that ISP-bound traffic falls outside section 251(b)(5)). Although the court remanded the matter to the Commission, we expect that, because the court did not vacate the Commission's rules or decide what rate should apply to ISP-bound traffic, the petitioners' concerns persist.

[848] AT&T Brief at 85.

[849] AT&T's November Proposed Agreement to Verizon, § 2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6. *See* Tr. at 1673; WorldCom Brief at 78-79. WorldCom conceded at the hearing, however, that the *ISP Intercarrier Compensation Order* does not assert at any point that reciprocal compensation for ISP-bound traffic was required by law prior to the order. Tr. at 1686.

the terms of the *ISP Intercarrier Compensation Order*, Verizon did not pay the higher reciprocal compensation rate for termination of ISP-bound traffic.[850] WorldCom asserts that interconnection agreements typically contain analogous provisions regarding replacement of agreed-to rates caused by an intervening change in law, and sometimes also give the new rates retroactive application.[851] WorldCom argues that the interconnection agreement's general change of law provision would not settle uncertainties regarding ISP intercarrier compensation, because the general provision requires negotiation of new contract terms and Verizon has no incentive to negotiate on this issue.[852] Moreover, WorldCom and Cox assert that the history between the carriers of disagreeing on the appropriate compensation for ISP-bound traffic compels a provision that specifies the proper compensation in the event that the *ISP Intercarrier Compensation Order* is successfully appealed.[853]

253. Verizon argues that the petitioners' issue-specific change of law provisions are unnecessary in light of the agreements' general change of law provisions, which would apply if the federal rules governing ISP-bound traffic are successfully appealed or modified.[854] Verizon further argues that AT&T and WorldCom's retroactivity provisions fail to offer an equivalent true-up for Verizon to account for the higher reciprocal compensation rates that Verizon paid for ISP-bound traffic before the *ISP Intercarrier Compensation Order* became effective.[855] Verizon argues that, under the petitioners' proposed change of law provisions, section 251(b)(5) reciprocal compensation for ISP-bound traffic would result from even the most nominal modification of the order, regardless of whether the Commission's interim rates were disturbed by the appeal.[856]

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[850] AT&T's November Proposed Agreement to Verizon, § 2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6.

[851] WorldCom Brief at 79 n.41, citing WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Attach. I, Table 1.

[852] WorldCom Brief at 79 n.40; WorldCom Reply at 70.

[853] WorldCom Brief at 78; Cox Brief at 33-34; Cox Reply at 24. WorldCom notes that, because Verizon maintains that ISP-bound traffic is not subject to reciprocal compensation, a successful appeal would result in Verizon refusing to pay for delivery of ISP-bound traffic altogether. WorldCom Reply at 70 & n.27. Cox does not argue for retroactive payment of reciprocal compensation for ISP-bound traffic upon successful appeal of the order. Cox Brief at 34 n.134; Cox Reply at 23-24. Cox's proposal would apply, *inter alia*, if the *ISP Intercarrier Compensation Order* were "affected by any legislative or other legal action." Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[854] Verizon IC Brief at 12; Verizon IC Reply at 7.

[855] Verizon IC Brief at 12-13.

[856] *Id*. at 13; Verizon IC Reply at 7-8. WorldCom's change of law provision would apply "if any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in part." WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6. AT&T's change of law provision would apply section 251(b)(5) reciprocal compensation to ISP-bound traffic "at such time (continued….)

(ii) Discussion

254. We agree with Verizon that the general change of law provision in each interconnection agreement is sufficient to address any changes that may result from the ongoing proceedings relating to the *ISP Intercarrier Compensation Order*. None of the petitioners demonstrates that the general change of law provision would be inadequate to effectuate any court decision that reverses, remands or otherwise modifies the *ISP Intercarrier Compensation Order*. Verizon has asserted, as to Cox, that its general change of law provision's renegotiation terms would be activated by a reversal, other court decision, or remand of the *ISP Intercarrier Compensation Order*.[857] It appears that the same is true for the change of law provisions in the agreements with AT&T and WorldCom.[858] Additionally, the dispute resolution procedures incorporated into the parties' general change of law provisions are sufficient to address the petitioners' concerns that any change of law would trigger protracted negotiations when Verizon has no incentive to reach agreement.[859] Therefore, in light of the agreed-to general change of law provisions and related dispute resolution procedures, we reject the petitioners' proposed change of law provisions that are specific to this issue.[860]

255. We also find troubling those portions of AT&T and WorldCom's proposed change of law provisions that would retroactively increase the compensation due for delivery of ISP-bound traffic in the event of any stay, modification or (in the case of WorldCom) remand of the *ISP Intercarrier Compensation Order*.[861] These proposals sweep too broadly and could, as

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as the ISP Remand Order is stayed, reversed or modified." AT&T's November Proposed Agreement to Verizon, § 2.5.

[857] Tr. at 1790-92. *See* Verizon's November Proposed Agreement to Cox, § 27.

[858] *See* Verizon's November Proposed Agreement to AT&T, § 27; *see also* Issues IV-113/VI-1-E *infra* (adopting WorldCom's proposed section 25.2 of Part A).

[859] For example, according to the agreed-to general change of law provisions between Cox and Verizon, the parties commit to two rounds of good-faith negotiations that cannot exceed 45 days each. If they still cannot reach agreement, either side may file a complaint with the Virginia Commission or take other appropriate regulatory or legal action. *See* Verizon's November Proposed Agreement to Cox, § 28.9. *See also* Verizon's November Proposed Agreement to AT&T, § 28.11; Verizon's November Proposed Agreement to WorldCom, Part A, § 14; WorldCom's November Proposed Agreement to Verizon, Part A § 13; Issue IV-101 (dispute resolution provisions).

[860] Accordingly, we reject AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6; and Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[861] AT&T proposes that upon a stay, reversal or modification of the order, "then (1) ISP-bound Traffic shall be deemed Local Traffic retroactive to the effective date of this Agreement; (2) any compensation that would have been due under this Agreement since its effective date for the exchange of ISP-bound traffic shall immediately be due and payable." AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5. WorldCom proposes that certain contract provisions, including rates, "may be voided by either Party . . . if any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in (continued….)

Verizon argues, be triggered by a modification or remand that did not reject, or even address, the order's rate structure for ISP-bound traffic. Indeed, we note that the D.C. Circuit's recent remand of the *ISP Intercarrier Compensation Order* likely would have triggered at least WorldCom's proposed language, even though the court expressly declined to reach the issue of rates for ISP-bound traffic.

d. Definition of "Internet Traffic"

256. In the *ISP Intercarrier Compensation Order*, the Commission determined that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5).[862] Generally speaking, the order focused on traffic bound for ISPs over the public switched telecommunications network, which the Commission referred to as "ISP-bound traffic." Because the order "carved out" ISP-bound traffic as one category of traffic not subject to section 251(b)(5) reciprocal compensation, the parties argue about precisely how to define the rest of the universe of traffic that is not subject to section 251(b)(5) reciprocal compensation. Verizon also proposes the term "Measured Internet Traffic" to define the traffic that is bound for an ISP and therefore not subject to reciprocal compensation under section 251(b)(5).

(i) Positions of the Parties

257. The petitioners assert that Verizon's proposed contract, which provides that reciprocal compensation does not apply to "interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access,"[863] is over-inclusive and could be read to exclude from reciprocal compensation not only ISP-bound traffic, but also other forms of information access traffic, or more broadly, all of the traffic types listed in section 251(g).[864] Cox argues that Verizon's proposed language improperly reverses the presumption in section 251(g), exempting the traffic types listed therein from reciprocal compensation, rather than, as the statute requires, leaving in place previous compensation regimes until they have been superseded by new rules.[865]

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part," adding that ISP-bound traffic would be deemed section 251(b)(5) traffic, and retroactive payment would be due. WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6.

862 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9166-74, paras. 34-47. As we note above, this order has been remanded to the Commission. *See WorldCom, Inc. v. FC*C, 288 F.3d 429 (D.C. Cir. 2002).

863 *See, e.g.*, Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1.

864 WorldCom Brief at 80; Cox Reply at 22-23; *see* Verizon's November Proposed Agreement to AT&T, § 1.68(a); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1; Verizon's November Proposed Agreement to Cox, § 1.60a. According to WorldCom, exclusion of information access services could affect "traffic to other enhanced service providers that has traditionally been treated as local." WorldCom Brief at 80.

865 Cox Reply at 23, citing 47 U.S.C. § 251(g).

258. WorldCom complains that Verizon's defined term, "Measured Internet Traffic," which incorporates another Verizon-defined term – "Internet Traffic" – defines ISP-bound traffic more broadly than does the *ISP Intercarrier Compensation Order* and therefore generates confusion.[866] AT&T complains that Verizon's proposed definition of "Measured Internet Traffic" includes not only traffic delivered to an ISP, but also any traffic that is delivered to a customer and that is "transmitted to or returned from the Internet at any point during the duration of the transmission."[867] AT&T argues that, through this definition, Verizon is attempting to expand the universe of traffic exempted from reciprocal compensation by including all traffic that traverses the Internet and is delivered to any customer, not just traffic delivered to an ISP.[868] AT&T argues that, for example, Verizon could seek to use this language to avoid paying compensation for packet-switched voice calls.[869]

259. Verizon argues that the petitioners' approaches are under-inclusive. Verizon claims that petitioners' language is inconsistent with the Commission's rules because petitioners fail to exclude certain types of traffic, especially toll traffic, from section 251(b)(5) reciprocal compensation.[870] The result, according to Verizon, is that access traffic and toll traffic in particular would be subject to reciprocal compensation by being grouped together with bona fide section 251(b)(5) traffic traditionally rated as "local."[871] In this context, Verizon argues that AT&T's use of the terms "local traffic" and "voice traffic" are problematic because they fail to account for certain distinctions that the Commission has recognized. Verizon says the correct

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[866] *See* WorldCom Brief at 79. On August 7, 2001, Cox filed a motion to strike the term "Internet Traffic" that Verizon added through the filing of a revised JDPL, after the parties had previously agreed to a definition of ISP-bound traffic. Cox Motion to Strike Untimely Raised Issues Related to Issue I-5 at 4 (filed Aug. 7, 2001) (Cox Motion to Strike). Cox argued that Verizon's proposed definition of "Internet Traffic" is overbroad, and could be construed to extend beyond dial-up ISP-bound traffic into other advanced telecommunications services such as IP telephony. *Id.* at 5-6. In an August 17, 2001 letter, we granted Cox's motion in part, striking the term "Internet Traffic" from Verizon's proposed language to the extent that Verizon sought to use the term and definition to introduce an issue beyond the implementation of the Commission's Order. Letter from Jeffrey H. Dygert to Scott Randolph and Alexandra Wilson (Aug. 17, 2001) (*August 17 Letter Order*). In a September 18, 2001 revised JDPL, Verizon continued to use the term "Internet Traffic," prompting Cox to file a motion to enforce the *August 17 Letter Order*. Cox Motion to Enforce the August 17 Order (filed Sept. 21, 2001).

[867] AT&T Brief at 80-81. Verizon has agreed, with respect to Cox and WorldCom, to define "Measured Internet Traffic" to include only traffic delivered to an ISP, not this broader category of traffic delivered to any customer.

[868] *Id.*; *see also* Verizon's November Proposed Agreement to AT&T, § 1.52(a).

[869] AT&T Brief at 81.

[870] Verizon IC Brief at 4.

[871] *Id*. at 4.

approach focuses instead on traffic subject to section 251(b)(5) reciprocal compensation obligations, together with traffic excluded from those obligations by section 251(g).[872]

260. With regard to its definition of Measured Internet Traffic, Verizon asserts that when it describes traffic that is delivered to a customer *or* an ISP, there is no real distinction between the two terms within the definition.[873] In addition, as noted above, through its hearing testimony, Verizon agreed to replace the phrase "delivered to a customer or an ISP" with "delivered to an ISP" in Cox's contract.[874] It appears that Verizon has made the same change in its proposed contract to WorldCom.[875]

(ii) Discussion

261. We disagree with Verizon's assertion that every form of traffic listed in section 251(g) should be excluded from section 251(b)(5) reciprocal compensation. In remanding the *ISP Intercarrier Compensation Order* to the Commission, the D.C. Circuit recently rejected the Commission's earlier conclusion that section 251(g) supports the exclusion of ISP-bound traffic from section 251(b)(5)'s reciprocal compensation obligations.[876] Accordingly, we decline to adopt Verizon's contract proposals that appear to build on logic that the court has now rejected.[877] We address below Verizon's argument that exchange access (*e.g.*, toll traffic) should not be subject to reciprocal compensation under the Commission's rules.

262. Furthermore, we agree that use of Verizon's term "Measured Internet Traffic" rather than "ISP-bound traffic," which is the term used by the Commission in the *ISP Intercarrier Compensation Order*, may be confusing. Verizon's term does not appear in the

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[872] *Id*. at 4-5. Verizon notes that the Pennsylvania and Maryland Commissions have rejected a "local traffic" definition, in favor of "reciprocal compensation traffic." *Id.* at 4, citing *Petition of Sprint Communication Co., L.P. for an Arbitration Award Pursuant to 47 U.S.C. § 252(b)*, Opinion and Order, A-310183F002, at 47 (issued by Pennsylvania Comm'n Oct. 14, 2001); *In re Arbitration of Sprint Communications Co., L.P. v. Verizon Maryland, Inc., Pursuant to Section 252(b)*, Order No. 77320, Case No. 8887, at 23-24 (issued by Maryland Comm'n Oct. 24, 2001).

[873] Tr. at 1740-41.

[874] *Id.* at 1784. We note that Verizon was referring to section 1.41(a) of Verizon's proposed agreement with Cox.

[875] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.12.

[876] *WorldCom v. FCC*, 288 F.3d at 433-34.

[877] Therefore, we strike Verizon's November Proposed Agreement to AT&T, § 1.68(a); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1 and corresponding language in § 7.14; Verizon's November Proposed Agreement to Cox, § 1.60a.

petitioners' language that we adopt herein. Accordingly, we reject it and its companion term "Internet Traffic."[878]

e. Rebuttable Presumption of 3:1

263. Rather than requiring parties separately to identify ISP-bound traffic and section 251(b)(5) traffic for purposes of calculating intercarrier compensation, the *ISP Intercarrier Compensation Order* created a rebuttable presumption that "traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic."[879] To rebut this presumption, a carrier must demonstrate to the relevant state commission that the 3:1 ratio fails accurately to reflect the traffic flow.[880] The parties offer competing language to implement the 3:1 ratio and procedures for rebutting it.[881] We adopt the petitioners' language.

(i) Positions of the Parties

264. AT&T describes the 3:1 calculation in terms of separating "local traffic" from ISP-bound traffic.[882] Specifically, AT&T defines "local traffic" as traffic that stays within a local calling area as determined by the NPA-NXX codes of the calling and called parties;[883] it does not consider any toll traffic qualifying for access payments to be subject to the 3:1 calculation.[884] AT&T contends that it defines "ISP-bound traffic" in the same manner as the *ISP Intercarrier Compensation Order* uses the term.[885] WorldCom also asserts that it would not include

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878 Accordingly, we reject Verizon's November Proposed Agreement to AT&T, § 1.52(a); Verizon's November Proposed Agreement to Cox, §§ 1.36, 1.41; and Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 7.10, 7.12.

879 *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187-88, para. 79.

880 *Id*.

881 *See* Verizon's November Proposed Agreement to AT&T § 5.7.4; AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.1; Verizon's November Proposed Agreement to Cox § 5.7.4; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a); Verizon's November Proposed Agreement to WorldCom , Part C, Interconnection Attach., § 7.3.2.1; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. 1, § 8.4.

882 AT&T Brief at 80; AT&T's November Proposed Agreement to Verizon, § 2.1.

883 AT&T Brief at 80 n.269, citing AT&T's November Proposed Agreement to Verizon, § 1.51. The rating of calls based on the NPA-NXX codes of the calling and called parties is discussed in Issue I-6 below.

884 Tr. at 1654.

885 AT&T Brief at 80. Specifically, AT&T clarifies that the term ISP-bound traffic "shall have the same meaning, when used in this Agreement, as used in the [*ISP Intercarrier Compensation Order*]." AT&T's November Proposed Agreement to Verizon, § 1.46.

intraLATA toll calls in the 3:1 calculation.[886] However, WorldCom does seek to include within the 3:1 calculation its traffic originating over both interconnection trunks and UNE-platform arrangements.[887] WorldCom argues that nothing in its proposal precludes rebuttal of the 3:1 presumption; indeed, it offers to make explicit the rebuttable nature of the 3:1 presumption.[888] Cox also proposes contractual provisions to implement the 3:1 calculation.[889] Cox states that, according to its proposed language, toll traffic would not be subjected to the 3:1 calculation.[890]

265. Verizon disagrees with each petitioner's approach to implementing the 3:1 calculation, largely based on its interpretation that the petitioners would include all traffic, whether "local" or "toll," in the calculation.[891] Verizon's approach, as noted earlier, is to exclude all traffic listed in section 251(g) from reciprocal compensation and, hence, the 3:1 calculation.[892] In addition to Verizon's concern about traffic types, Verizon also argues that AT&T and WorldCom's language, if adopted, should specifically note the rebuttable nature of the 3:1 presumption.[893]

(ii) Discussion

266. The petitioners' language implementing the 3:1 presumption is largely consistent with the *ISP Intercarrier Compensation Order*. We adopt their proposed contract language, modifying AT&T's and WorldCom's to clarify that the 3:1 presumption is rebuttable.[894] The petitioners have all asserted that exchange access traffic types, including traffic that has traditionally been rated as "toll," would not be included in the 3:1 calculation. We see nothing in the petitioners' proposed contracts that would suggest a contrary result. Having rejected in the preceding section Verizon's argument that all categories of section 251(g) traffic should be excluded from section 251(b)(5) reciprocal compensation, we decline to follow Verizon's

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886 WorldCom Reply at 67; Tr. at 1689.

887 WorldCom Brief at 76-77; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.4.1.

888 WorldCom Brief at 76 n.39; WorldCom Reply at 67-68.

889 Cox Brief at 33; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a).

890 *See* Cox Reply at 22-23.

891 Verizon IC Brief at 4; Verizon IC Reply at 1-2.

892 Verizon IC Reply at 1-2.

893 *Id*. at 2-3.

894 *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.1; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, §§ 8.4, 8.4.2; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a). Further, we reject Verizon's competing language. *See* Verizon's November Proposed Agreement to AT&T, § 5.7.4; Verizon's November Proposed Agreement to Cox, § 5.7.4; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.2.1.

approach of excluding that "universe" of traffic from the 3:1 calculation. The petitioners are not proposing to subject exchange access traffic to the 3:1 calculation, and their proposed contracts cannot be read to do so.

267. With regard to WorldCom's argument that both its originating interconnection trunk and UNE-platform traffic should be subject to the 3:1 calculation, we note that Verizon has agreed to include WorldCom's originating UNE-platform traffic.[895] We find that traffic originating on WorldCom's interconnection trunks should also be included in the 3:1 calculation.[896] The *ISP Intercarrier Compensation Order* does not distinguish between UNE-platform traffic and originating interconnection trunk traffic in its application of the 3:1 ratio. We conclude, therefore, that both categories of traffic should be included in this calculation. Verizon has offered no reason why we should reach a contrary conclusion.

268. Finally, we agree with Verizon that at least AT&T's proposal could be read as making the 3:1 presumption irrebuttable and is therefore inconsistent with the *ISP Intercarrier Compensation Order*. To make AT&T's proposal consistent with the *ISP Intercarrier Compensation Order*, we substitute the phrase "shall be presumed, subject to rebuttal, to be" for the phrase "shall be conclusively defined as" in both places where this phrase appears in AT&T's proposed section 5.7.5.2.1. We also direct WorldCom to modify its section 8.4 proposal explicitly to reflect the rebuttable nature of the 3:1 presumption, as it agreed to do.[897]

f. Audits and Billing Factors

269. The *ISP Intercarrier Compensation Order* does not set forth any specific billing or auditing measures to govern intercarrier compensation for ISP-bound traffic. AT&T proposes certain additional provisions that establish billing factors, blended rates and audits. Verizon opposes AT&T's language. Meanwhile, Verizon proposes auditing provisions to Cox that would allow it unilaterally to conduct audits of Cox's traffic at any time. We adopt AT&T's provisions that establish billing factors, while rejecting the additional issue-specific auditing provision that AT&T proposes to Verizon, and that Verizon proposes to Cox.

(i) Positions of the Parties

270. AT&T proposes quarterly billing in which the relative percentage of section 251(b)(5) traffic to ISP-bound traffic from the first two months of a calendar quarter establishes the appropriate compensation for the subsequent quarter.[898] AT&T proposes that Verizon must calculate quarterly factors that represent Verizon's assessment of the relative amounts of section

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[895] *See* Tr. at 1853-54.

[896] Accordingly, we adopt WorldCom's proposed section 8.4.1 of Attachment I.

[897] *See* WorldCom Brief at 76 n.39; WorldCom Reply at 67-68.

[898] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.4.2.

251(b)(5) and ISP-bound traffic between the carriers.[899] AT&T then proposes blended rates that incorporate these established factors so that the single applicable rate for all traffic consists of the section 251(b)(5) rate and the ISP-bound traffic rate weighted according to the proportion established by the quarterly billing factors.[900] Finally, AT&T proposes contract language that allows it specifically to audit these calendar quarter factors and their associated bills.[901]

271. Cox criticizes Verizon's proposal that would grant an unlimited, unilateral right for Verizon to audit the relative proportions of Cox's section 251(b)(5) and ISP-bound traffic to determine whether proper rates are being charged.[902] Cox argues that the audit right proposed by Verizon is unfairly unilateral in nature, and that Verizon could abuse it with burdensome audit requests.[903] Furthermore, Cox argues, Verizon does not need an auditing provision specifically for ISP-bound traffic because the *ISP Intercarrier Compensation Order* alone makes it possible for Verizon to raise a concern about traffic flow to the Virginia Commission at any time.[904] Additionally, the parties have agreed to a general auditing provision, giving either party the right to conduct an audit twice per year (or more, if discrepancies are found) which, Cox argues, offers Verizon sufficient protection.[905]

272. Verizon argues that AT&T's proposals for billing factors and blended rates go beyond the specific requirements of the *ISP Intercarrier Compensation Order* and therefore do not belong in this interconnection agreement.[906] Verizon also offers specific criticisms of each. With regard to AT&T's proposal to estimate a calendar quarter's compensation based on the first two months of the previous quarter, Verizon argues that the provision would fail to protect the parties against changes in relative volumes of traffic during the third month of the previous quarter.[907] Verizon states that it would agree to AT&T's language if it were modified to provide for a true-up, available for the subsequent quarter, based on the third month's actual balance of traffic.[908] Verizon opposes AT&T's proposal concerning the calculation of traffic factors,

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899 *See id.* § 5.7.5.2.4.3.

900 *See id.* § 5.7.5.2.4.4.

901 *See id.* § 5.7.5.2.4.5.

902 Cox Brief at 34-35; Tr. at 1745, citing Verizon's November Proposed Agreement to Cox, § 5.7.8.

903 Cox Brief at 35.

904 Cox Brief at 34-35, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd. at 9187-88 para. 79. During the hearing, Verizon agreed with this assertion. *See* Tr. at 1752-53.

905 Cox Brief at 34, citing Verizon's November Proposed Agreement to Cox, § 5.7.5.

906 Verizon IC Brief at 11.

907 *Id.*

908 *Id.*

arguing that it is not in any better position than AT&T to assess them and, therefore, should not have the responsibility of calculating the factors that AT&T seeks to impose on it.[909] Finally, Verizon simply disagrees with a blended rate structure, contending that the *ISP Intercarrier Compensation Order* provides no support for such a provision.[910] Verizon adds that AT&T's auditing provision is unnecessary because there is already an agreed-to general auditing provision in its interconnection agreement with AT&T.[911]

273. Regarding the audit provision it proposes to Cox, Verizon argues that the additional provision is more focused on obtaining data to rebut the 3:1 presumption, while the general provision is meant to monitor minutes of use and the distinction between "local" and "toll" traffic.[912] Verizon concedes, however, that the general provision could indeed function to obtain the same data as the additional provision, yet it does not in Verizon's view go far enough.[913]

(ii) Discussion

274. We adopt AT&T's proposal to determine the split between ISP-bound and 251(b)(5) traffic in a particular quarter by looking to the split between these two categories of traffic in the first two months of the preceding calendar quarter. This should provide an objectively verifiable means to ensure prompt and accurate intercarrier compensation payments between the parties.[914] Additionally, in order to minimize any burden on Verizon, we modify AT&T's proposed language regarding the calculation of traffic factors to provide that AT&T is responsible for the calculations. We also agree with Verizon that the contract should provide for quarterly true-ups that account for changes in traffic proportions that may occur in the third month of a quarter.[915]

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[909] *Id.*

[910] *Id.*

[911] *Id.*

[912] Tr. at 1751.

[913] Tr. at 1751-52.

[914] Accordingly, we adopt AT&T's November Proposed Agreement to Verizon, §§ 5.7.5.2.4, 5.7.5.2.4.1, 5.7.5.2.4.2.

[915] Accordingly, we adopt AT&T's proposed section 5.7.5.2.4.3 but revise it to read as follows:

> AT&T will calculate the factors to be used for the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during periods referred to in section 5.7.5.2.4.2 above, and AT&T will notify Verizon of such factors in writing by no later than the first day of the period during which such factors will be used. Such factors will govern all billing during the applicable period, and, on a quarterly basis, the Parties will true up any billing for prior periods based on actual balance of traffic during such period.

275. We reject AT&T's proposal for blended rates based on the factors that each party will develop.[916] We agree with Verizon that, with the exception of the mirroring rule, the *ISP Intercarrier Compensation Order* does not contemplate a blended rate applicable to all traffic exchanged between carriers. We conclude that the proposal for traffic factors, which we have just adopted, will permit the parties adequately to determine the amounts of traffic compensable as ISP-bound and subject to section 251(b)(5), respectively. We also reject AT&T's proposed auditing provision,[917] and agree with Verizon that the availability of an agreed-to general auditing provision is sufficient for the parties to audit the traffic factors and associated bills.[918]

276. We also reject Verizon's proposed language that would give it extra auditing rights with respect to Cox.[919] Verizon can already accomplish the aim of its additional auditing provision through the agreed-to, general auditing provision.[920] Verizon has offered no justification for the unlimited, unilateral audit privilege that it seeks.

g. Rates, Not Just Caps

277. The *ISP Intercarrier Compensation Order* establishes an interim compensation regime by limiting the rate for ISP-bound traffic according to a cap that declines over a period of years.[921] The order does not, however, specify the exact rate for terminating ISP-bound traffic; it preserves the right of state commissions to set a rate below the applicable cap.[922] The parties disagree over whether their agreements should set the actual rates, or leave them to subsequent negotiations. We adopt the petitioners' proposals to include the rates.

(i) Positions of the Parties

278. The petitioners argue that the contracts must specify rates, rather than merely refer to caps.[923] They assert that the rates should be set at the caps that are established by the *ISP Intercarrier Compensation Order*.[924]

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916 Accordingly, we reject AT&T's proposed section 5.7.5.2.4.4.

917 Accordingly, we reject AT&T's proposed section 5.7.5.2.4.5.

918 *See* Verizon's November Proposed Agreement to AT&T, § 28.10 (general auditing provisions).

919 Specifically, we reject Verizon's proposed section 5.7.8 made to Cox.

920 *See* Verizon's November Proposed Agreement to Cox, § 5.7.5 (general auditing provision).

921 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9186-87, paras. 77-78.

922 *Id.* at 9188, para. 80.

923 AT&T Brief at 82; WorldCom Brief at 76; Cox Brief at 33.

279. Verizon argues that its interconnection agreements need not set rates because the Virginia Commission could order rates below the caps at any time, in accordance with the *ISP Intercarrier Compensation Order*.[925] Verizon concedes, however, that the Virginia Commission has not yet set a rate for termination of ISP-bound traffic.[926] Verizon also agrees that the initial rate proposed by the petitioners is the same rate that Verizon proposed in its May 14, 2001 letter offers to all competitive carriers in Virginia.[927]

(ii) Discussion

280. We adopt the petitioners' proposed contracts regarding rates for termination of ISP-bound traffic.[928] If, before the adoption of the *ISP Intercarrier Compensation Order*, the Virginia Commission had adopted rates, applicable to the exchange of ISP-bound traffic, that were lower than the caps reflected in the *Order*, the Virginia Commission's rates would govern. Because the parties agree, however, that the Virginia Commission has not set a rate for termination of ISP-bound traffic, the rate caps in the *ISP Intercarrier Compensation Order* are the rates governing the exchange of ISP-bound traffic in Virginia. Furthermore, we note that the rates the petitioners propose to include in their interconnection agreements are the rates at which Verizon has already agreed to exchange traffic in Virginia. We earlier determined that it was not necessary to memorialize in the interconnection agreement Verizon's offer to comply with the mirroring rule[929]; however, it is insufficient for ISP-bound traffic rates to be established by mere reference to Verizon's letter offers issued to comply with the mirroring rule. Therefore, we find no reason to leave the rates out of these interconnection agreements.

h. Growth Caps

281. Apart from the rate caps discussed above, the *ISP Intercarrier Compensation Order* also imposes a cap, with a limited annual growth factor, on the volume of ISP-bound traffic minutes for which LECs are entitled to compensation.[930] This "growth cap" builds on the

(Continued from previous page)

[924] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.2; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3.2; Cox's November Proposed Agreement to Verizon, § 5.7.7.2(b)-(e).

[925] Tr. at 1761-64.

[926] Tr. at 1761-62.

[927] Tr. at 1865.

[928] Accordingly, we adopt AT&T's proposed section 5.7.5.2.2.2; WorldCom's proposed section 8.3.2 of its Attachment I; and Cox's proposed sections 5.7.7.2(b)-(e). We note that Cox's proposal establishes single rates for delivering ISP-bound traffic to either a tandem or an end office. Verizon conceded at the hearing that, as Cox argues, rates should be uniform whether tandem or end office interconnection applies. *See* Tr. at 1776-78; Cox Brief at 31-32.

[929] *See* subsection b. above, discussing the mirroring rule.

[930] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78.

number of ISP-bound minutes for which carriers were entitled to compensation under a particular contract during a baseline period, the first quarter of 2001.[931] The petitioners propose language to establish this baseline amount, together with the growth cap calculation, in order to avoid future disputes.[932] Verizon opposes the inclusion of any such language or, at a minimum, argues that the growth cap calculation should include only those ISP-bound minutes for which a LEC is entitled to compensation. We adopt the petitioners' proposed language with certain modifications.

(i) Positions of the Parties

282. The petitioners incorporate the growth cap calculation methodology into their proposed contracts.[933] AT&T proposes that the growth cap baseline should be established by subjecting all traffic that it exchanged with Verizon in the first quarter of 2001 to the Commission's 3:1 presumption.[934] This means that the baseline amount would equal either party's minutes of terminating non-toll traffic that was equal to three times the minutes of the other party's terminating non-toll traffic during the first quarter of 2001. AT&T disagrees with Verizon's limitation on the calculation—to include only those minutes for which a LEC is entitled to compensation—because, it asserts, Verizon likely would apply to this limitation a unilateral determination that AT&T was not entitled to compensation for any of the ISP-bound traffic during the first quarter of 2001.[935] AT&T argues that its proposal would minimize disputes, in tandem with the Commission's 3:1 presumption.[936] WorldCom asserts that, in any case, Verizon did not object during the hearing to contract language that would establish, and therefore settle, the minutes of ISP-bound traffic for which WorldCom was eligible for compensation during the first quarter of 2001.[937] Cox proposes to include the actual baseline amount (rather than merely the calculation methodology) in its interconnection agreement with Verizon.[938] Cox also argues that its growth cap calculation for 2002 should be based on the previous year's calculated cap, rather than on the previous year's actual traffic.[939]

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[931] *Id*.

[932] *See* AT&T's November Proposed Interconnection Agreement to Verizon, § 5.7.5.2.3; WorldCom's November Proposed Interconnection Agreement to Verizon, Part C, Attach. I, § 8.5; Cox's November Proposed Interconnection Agreement to Verizon, § 5.7.7.4.

[933] AT&T Brief at 83; WorldCom Brief at 77; Cox Reply at 22 n.80.

[934] AT&T Reply at 43.

[935] *Id.* at 41-42.

[936] *Id.* at 43.

[937] WorldCom Brief at 77, citing Tr. at 1869-71.

[938] Cox Brief at 33 n.130.

[939] Cox Reply at 22 n.80.

283. Verizon argues that the growth cap baseline calculation should be explicitly qualified to include only those ISP-bound minutes for which a LEC was entitled to compensation, in accordance with the *ISP Intercarrier Compensation Order*.[940] Verizon opposes AT&T and WorldCom's attempts to remove this qualifier from the calculation, because AT&T and WorldCom are continuing to dispute the amount of compensation to which they are entitled for ISP-bound traffic from the first quarter of 2001.[941] Verizon also disagrees with Cox's 2002 growth cap calculation in that it is strictly based on the 2001 growth cap, rather than on an independent calculation of the number of ISP-bound minutes for which Cox actually was entitled to compensation in 2001.[942]

(ii) Discussion

284. We agree with the petitioners that it is appropriate to include the *ISP Intercarrier Compensation Order*'s methodology for calculating growth caps in their interconnection agreements with Verizon. We agree with Verizon, however, that the order applies the growth caps only to those minutes for which the LECs were entitled to compensation. According to the order, the number of minutes for which a LEC was entitled to compensation is a question to be resolved pursuant to the particular interconnection agreement that governed the exchange of traffic during the first quarter of 2001.[943] Therefore, the number of minutes for which any petitioner was entitled to compensation during the first quarter of 2001 is beyond the scope of this arbitration. AT&T and Cox cannot establish the baseline here using either the 3:1 presumption or the record before us. Accordingly, we adopt the petitioners' proposals, while revising AT&T and WorldCom's language to reflect only those minutes for which they were

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[940] Verizon IC Brief at 9, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78. The order qualifies growth caps to include only those minutes for which a LEC was entitled to compensation:

> For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes *for which that LEC was entitled to compensation* under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes *for which it was entitled to compensation* under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.

Id. (emphasis added).

[941] Verizon IC Brief at 9-10.

[942] *Id.* at 10 n.4.

[943] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78.

entitled to compensation, and removing Cox's language establishing the numbers for the actual baseline, and subsequent growth cap, amounts.[944]

285. We disagree with Verizon's criticism of Cox's language implementing the growth cap for 2002.[945] Verizon asserts that "the number of ISP-bound minutes for which [Cox] is entitled to compensation in 2001 may be *less* than the 2001 cap itself."[946] While that may be true, the calculation of minutes to which Cox was entitled to compensation in 2002 is the product of the cap in 2001 and the 10 percent growth factor. The *ISP Intercarrier Compensation Order* established a baseline – the first quarter of 2001 – as a starting point for all subsequent calculations. The growth cap for 2002 does not reflect a calculation independent of the first quarter of 2001, based on actual traffic for the whole of 2001.

2. Issue I-6 (Toll Rating and Virtual Foreign Exchanges)

a. Introduction

286. The parties disagree over how to determine whether a call passing between their networks is subject to reciprocal compensation (traditionally referred to as "local") or access charges (traditionally referred to as "toll"). The petitioners advocate a continuation of the current regime, which relies on a comparison of the originating and terminating central office codes, or NPA-NXXs, associated with a call. Verizon objects to the petitioners' call rating regime because it allows them to provide a virtual foreign exchange ("virtual FX") service that obligates Verizon to pay reciprocal compensation, while denying it access revenues, for calls that go between Verizon's legacy rate centers. This virtual FX service also denies Verizon the toll revenues that it would have received if it had transported these calls entirely on its own

[944] Thus, we adopt AT&T's proposed section 5.7.5.2.3, but replace the second sentence with the following: "The parties shall first determine the total number of minutes of use of ISP-bound Traffic, for which they were entitled to compensation, terminated by one Party for the other Party for the three-month period commencing January 1, 2001 and ending March 31, 2001." We adopt WorldCom's proposed section 8.5 of Attachment I, but replace the first sentence with the following: "For ISP-bound Traffic exchanged during the year 2001, and to the extent this Agreement remains in effect during that year, the information access rates set out in Section 8.3.2 shall be billed by MCIm to Verizon on ISP-bound Traffic for MOU only up to a ceiling equal to, on an annualized basis, the number of ISP-bound Traffic minutes, for which MCIm was entitled to compensation, that originated on Verizon's network and was delivered by MCIm during the first quarter of 2001, plus a ten percent growth factor." Finally, we adopt Cox's proposed section 5.7.7.4(a), but replace the last two sentences with the following: "The cap for total Internet Traffic minutes for 2001, expressed on an annualized basis, is calculated by multiplying the first quarter total by four and increasing the result by ten percent."

[945] Accordingly, we also adopt Cox's proposed section 5.7.7.4(b), but revise it by replacing the last sentence with the following: "The cap for total Internet Traffic minutes for 2002 is calculated by increasing the cap for total Internet Traffic minutes for 2001 by ten percent." Finally, we adopt Cox's proposed sections 5.7.7.4(c)-(e) without revision.

[946] *See* Verizon IC Brief at 10 n.4.

network as intraLATA toll traffic. Verizon argues simply that "toll" rating should be accomplished by comparing the geographical locations of the starting and ending points of a call.

287. Of particular importance to this issue is a comparison of the two sides' FX services. When Verizon provides FX service ("traditional FX"), it connects the subscribing customer, via a dedicated private line for which the subscriber pays, to the end office switch in the distant rate center from which the subscriber wishes callers to be able to reach him without incurring toll charges. Verizon then assigns the FX subscriber a number associated with the distant switch. By contrast, when the petitioners provide their virtual FX service, they rely on the larger serving areas of their switches to allow callers from a distant Verizon legacy rate center to reach the virtual FX subscriber without incurring toll charges. Thus, the petitioners simply assign the subscriber an NPA-NXX associated with the rate center the subscriber designates and rely on their switches' broad coverage, rather than a dedicated private line, to transport the calls between legacy rate centers.

288. We adopt the petitioners' proposed language for this issue. Verizon has failed to propose a workable method for rating calls based on their geographical end points, and it has alleged no abuse in Virginia of the process for assigning NPA-NXX codes.

b. Positions of the Parties

289. AT&T notes that Verizon itself compares originating and terminating NPA-NXXs when it decides whether to charge reciprocal compensation for completing calls from another carrier's customer to Verizon's FX subscribers.[947] If the two relevant NPA-NXXs are within the same rate center, Verizon charges reciprocal compensation for its completion of the call, regardless of where a caller is actually located.[948] AT&T argues that section 251(b)(5) similarly obligates Verizon to pay reciprocal compensation for calls to AT&T's virtual FX customers when the Verizon customer's NPA-NXX falls within the same rate center as the virtual FX subscriber's number does.[949]

290. AT&T disagrees with Verizon's argument that section 251(g) exempts virtual FX traffic from section 251(b)(5)'s reciprocal compensation obligation.[950] According to AT&T, section 251(g) merely grandfathered pre-existing rules governing exchange access and information access, and there were no such rules relating to the category of traffic at issue here.[951] AT&T further asserts that virtual FX traffic is not exchange access traffic, which

[947] AT&T Brief at 88-89.

[948] *Id.* at 89.

[949] *Id.* at 92, citing 47 U.S.C. § 251(b)(5).

[950] *Id.* at 90-93.

[951] *Id.* at 92-93.

involves, by definition, the origination and termination of telephone toll calls.[952] AT&T notes that telephone toll service is defined as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[953] Because AT&T does not impose a separate charge for its virtual FX service, AT&T argues that it is not a toll service. Accordingly, AT&T argues, it falls within the section 251(b)(5) reciprocal compensation regime rather than being subject to Verizon's access tariffs.[954]

291. AT&T also argues that its proposal does not impose any additional costs upon Verizon, whether or not virtual FX is involved, because AT&T designates a single POI for an NPA-NXX and Verizon's responsibility for transporting a call ends there, regardless of the physical location of the AT&T customer.[955] AT&T argues that it would be redundant and inefficient for it to mimic Verizon's traditional FX service by purchasing a dedicated private line, as Verizon proposes. AT&T asserts that such an arrangement would leave it at a serious competitive disadvantage.[956]

292. AT&T defends the structure of its virtual FX service, noting that Verizon does not claim that the petitioners are receiving NPA-NXX code assignments in exchanges where they do not actually serve customers of their own.[957] AT&T distinguishes the Maine Commission decision upon which Verizon relies, noting that such numbering abuse is not at issue between AT&T and Verizon in Virginia.[958] AT&T further asserts that, under Verizon's proposal, AT&T would have to obtain NPA-NXX code assignments in every rate center where it has a customer, even though customers in some rate centers may be satisfied with numbers from another Verizon rate center.[959] AT&T argues that this itself would unnecessarily waste numbering resources.[960]

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[952] *Id.* at 93, citing 47 U.S.C. § 153(16).

[953] *Id.*, citing 47 U.S.C. § 153(48).

[954] *Id.*

[955] *Id.* at 89-90.

[956] *Id.* at 96. AT&T notes that this interoffice transport is unnecessary according to AT&T's network architecture of a single switch with a single POI. *Id.* at 96 n.323, citing Tr. at 1908.

[957] *Id.* at 93-94; *id.* at 94 n.317, citing Tr. at 1909.

[958] AT&T Reply at 49, citing AT&T Ex. 8 at 56-57. The Maine Commission revoked NPA-NXX assignments when it found that a competitive LEC was receiving numbering assignments for exchanges where the competitive LEC served no customers. *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC*, Dkt No. 98-78, Maine PUC (rel. June 30, 2000). AT&T notes that, in any case, this Maine decision was concerned with abuses related to ISP-bound traffic during the era before adoption of the Commission's *ISP Intercarrier Compensation Order*. AT&T Reply at 49.

[959] AT&T Brief at 94.

293. AT&T further notes that, if Verizon were to prevail in treating AT&T's virtual FX traffic as toll traffic, there would have to be some way to segregate the virtual FX traffic from section 251(b)(5) traffic.[961] AT&T asserts that there is currently no way to accomplish this by, as Verizon suggests, comparing the physical end points of a call.[962] Furthermore, AT&T argues that a traffic study to determine the relative percentages of virtual FX and section 251(b)(5) traffic would be costly and overly burdensome.[963]

294. WorldCom asserts that every carrier in the country, including Verizon, rates calls by comparing originating and terminating NPA-NXX codes and that no state has devised a different method to distinguish between "local" and toll traffic.[964] WorldCom asserts that the Commission has never held that the physical locations of the calling and called parties determine whether a call is "local"; it has left the determination of "local" calling areas to the states.[965] WorldCom also notes that Verizon's billing system cannot identify the physical location of a calling or called party, even though Verizon proposes to base its intercarrier compensation regime on that foundation.[966] WorldCom notes that Verizon's network is not the only one providing transport to and from virtual NPA-NXXs.[967] According to WorldCom, it often hauls traffic for much longer distances than does Verizon.[968] In any case, WorldCom notes, its virtual FX service does not change the average transport distance for Verizon because the incumbent LEC still must transport the traffic to WorldCom's POI.[969]

295. WorldCom takes issue with Verizon's assertion that it loses toll revenues because of virtual FX service. WorldCom notes that the basic enticement of a virtual FX is that it enables a calling party to call a business in a distant location without incurring a toll charge. Absent a virtual local number, WorldCom argues, the caller would typically find a similar

(Continued from previous page)

960 *Id.*

961 *Id.*

962 *Id.* at 95, citing Tr. at 1813, 1815, 1905.

963 AT&T Reply at 47, citing Verizon IC Brief at 19.

964 WorldCom Brief at 82.

965 WorldCom Reply at 76, citing *Local Competition Order*, 11 FCC Rcd. at 16013-14, para. 1035.

966 WorldCom Brief at 84.

967 *Id.* at 87.

968 *Id.* at 88.

969 *Id.*

vendor that has a local number.[970] Thus, according to WorldCom, without its virtual FX offering, the call to the distant location likely would not take place at all.[971]

296. WorldCom argues that it should not be required to purchase a dedicated private line from Verizon and provide traditional FX service. According to WorldCom, this would eliminate competitive pressure and freeze rates at their current levels because the competitive LEC would essentially replace all the private-line revenue that Verizon would otherwise have lost when it lost the FX customer.[972] WorldCom argues that Verizon's proposed requirement also would prevent WorldCom from exploiting the advantages of its unique network architecture: Verizon's traditional FX service transports calls between two switches, while WorldCom typically serves an equivalent area with one switch.[973]

297. Cox argues that Verizon is trying to force it to match Verizon's network architecture.[974] Cox further asserts that Verizon's end-to-end compensation regime is infeasible and that Verizon makes no workable proposal for determining the originating and terminating points of a call.[975] Cox argues that Verizon compares apples to oranges when it complains that it receives compensation for transporting calls to Verizon's FX customers, but not for transporting virtual FX calls to Cox's switch.[976] Cox asserts that Verizon's costs for delivering traffic to Cox have nothing to do with the nature of the underlying service, but rather with the distance to Cox's switch.[977] The difference in compensation, Cox notes, arises from the dedicated private line charge that Verizon imposes on its traditional FX customers—a charge that Verizon obviously cannot impose on Cox's customers.[978]

298. Finally, Cox notes that Verizon need not be concerned about NPA-NXX code assignment abuses, because state commissions have acted quickly to correct such abuses, and

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970 *Id.* at 89.

971 *Id.*

972 *Id*.

973 *Id*.

974 Cox Brief at 35. Verizon admits, Cox notes, that requiring a competitive LEC to duplicate Verizon's network architecture is inefficient and unnecessarily costly. *Id.* at 36-37, citing Tr. at 1822-23.

975 Cox Brief at 39, citing Tr. at 1811-12; Cox Reply at 27-28, citing Tr. at 1812-14.

976 Cox Brief at 37.

977 *Id.* at 37. Notably, Cox asserts that Verizon does not split access revenues for traditional FX calls with Cox or other competitive LECs. Cox Reply at 26.

978 Cox Brief at 37-38.

Verizon has not shown evidence of any abuse here.[979] According to Cox, this arbitration is not the appropriate forum to evaluate compliance with such regulatory requirements.[980]

299. Verizon argues that the petitioners are effectively trying to thwart Verizon's access regime by treating toll traffic as "local" traffic.[981] Verizon asserts that the *ISP Intercarrier Compensation Order* supports its position that a call's jurisdiction is based on its end points.[982] Accordingly, Verizon argues, there is no difference between a virtual FX call and a toll call.[983] In contrast to virtual FX, Verizon asserts that its traditional FX service is an alternative pricing structure for toll service, rather than a "local" service as claimed by the petitioners.[984] Verizon argues that the petitioners should assume financial responsibility for virtual FX traffic by paying Verizon for transport from the calling area of the Verizon caller to the petitioner's POI.[985]

300. Verizon acknowledges that virtual FX traffic cannot be distinguished from "local" traffic at Verizon's end office switches.[986] Verizon proposes, however, that the petitioners conduct a traffic study or develop a factor to identify the percentage of virtual FX traffic.[987] Verizon would then exchange the identified proportion of traffic either pursuant to the governing access tariff or on a bill and keep basis under its VGRIP proposal.[988] Finally, Verizon notes that several state commissions, including Maine, Connecticut, Missouri, Texas and Georgia, have found that virtual FX traffic is not subject to reciprocal compensation.[989]

c. Discussion

301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's

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979 *Id.* at 40.

980 *Id*.

981 Verizon IC Brief at 16.

982 *Id.*, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9159-60, 9163, paras. 14, 25.

983 *Id.* at 17.

984 *Id.* at 18.

985 Verizon IC Reply at 11.

986 Verizon IC Brief at 19.

987 *Id.* at 19.

988 *Id.*

989 *Id.* at 19-21.

language that would rate calls according to their geographical end points.[990] Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide.[991] The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[992]

302. Verizon proposed, late in this proceeding, that the petitioners should conduct a traffic study to develop a factor to account for the virtual FX traffic that appears to be "local" traffic. However, Verizon's contract fails to lay out such a mechanism in any detail. Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.[993]

303. Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations. As discussed earlier, the Maine Commission found that a competitive LEC there was receiving NPA-NXXs for legacy rate centers throughout the state of Maine although it served no customers in most of those rate centers.[994] To the extent that Verizon sees equivalent abuses in Virginia, it can petition the Virginia Commission to review a competitive LEC's NPA-NXX allocations.

3. Issue III-5 (Tandem Switching Rate)

a. Introduction

304. In the *Local Competition First Report and Order*, the Commission found that the costs of transport and termination are likely to vary depending on whether traffic is routed through a tandem switch or routed directly to an end-office switch.[995] It concluded, therefore,

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[990] Thus, we adopt WorldCom's November Proposed Agreement to Verizon, Attachment I, § 4.2.1.2 (subject to modifications accomplished below in connection with Issue IV-35); Cox's November Proposed Agreement to Verizon, §§ 5.7.1 and 5.7.4; and AT&T's November Proposed Agreement to Verizon, § 1.51. We have previously rejected the proposals that Verizon offers to AT&T with respect to this issue. *See supra* Issues I-1 and VII-4 (rejecting , Verizon's November Proposed Agreement to AT&T, § 5.7.3); Issue I-5, subsection (d) (rejecting Verizon's November Proposed Agreement to AT&T, §1.68a). We reject Verizon's November Proposed Agreement to WorldCom, Part B, § 2.81; we have previously rejected Verizon's Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. *See supra* Issue I-2. We reject the last sentence of Verizon's November Proposed Agreement to Cox, § 5.7.1; we have previously rejected Verizon's November Proposed Agreement to Cox, § 1.60a. *See supra* Issue I-5.

[991] *See* Tr. at 1889-1900.

[992] *See* AT&T Brief at 95; WorldCom Brief at 84; Cox Brief at 39; Tr. at 1812-13.

[993] *See* Tr. at 1812-13.

[994] *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC d/b/a/ Brooks Fiber*, Docket No. 98-78, Maine PUC (rel. June 30, 2000).

[995] *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090.

that states may establish different transport and termination rates for tandem-routed traffic that reflect the additional costs associated with tandem switching.[996] It also recognized, however, that new entrants might employ network architectures or technologies different than those employed by the incumbent LEC.[997] It thus adopted a rule stating that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate."[998] Recently, in the *Intercarrier Compensation NPRM*, the Commission clarified that in order to receive the tandem rate under section 51.711(a)(3), a competitive LEC need only demonstrate that it serves a geographic area comparable to that of the incumbent LEC; it need not establish functional equivalency.[999] AT&T, WorldCom, and Verizon disagree about the standard for establishing geographic comparability under section 51.711(a)(3). AT&T and WorldCom argue that they are entitled to Verizon's tandem rate when any of their switches is capable of serving a geographic area comparable to the area served by Verizon's tandem switch. Verizon argues that the tandem rate is only available when the competitive LEC's switch actually serves a comparable geographic area. We adopt the petitioners' language.

b. Positions of the Parties

305. AT&T argues that the geographic comparability test requires a demonstration by the competitive LEC that its switch is merely *capable* of serving, rather than actually serves, a geographic area comparable to that of the incumbent LEC tandem.[1000] AT&T asserts that there is no basis in the *Local Competition First Report and Order* or in the Commission's rules to require *actual service* to a comparable geographic area.[1001] Furthermore, AT&T notes, Commission precedent does not define the parameters of any such "actual service" standard.[1002] AT&T argues that its position is also consistent with state commission and federal court precedent.[1003] AT&T adds that, to the extent the tandem rate rule is meant as a proxy for the

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[996] *Id.*

[997] *Id.*

[998] 47 C.F.R. § 51.711(a)(3).

[999] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9648, para. 105 (2001) (*Intercarrier Compensation NPRM*); *see also* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC and Dorothy T. Attwood, Chief, Common Carrier Bureau, FCC to Charles McKee, Senior Attorney, Sprint PCS (May 9, 2001) (clarifying that geographic comparability alone is sufficient).

[1000] AT&T Brief at 98.

[1001] *Id.*

[1002] *Id.*

[1003] *Id.* at 99. The Michigan Commission, AT&T notes, found that a competitive LEC met the geographic comparability test based on its capability to serve the same customers as the incumbent LEC, even though the (continued….)

costs incurred by the competitive LEC to terminate a call from an incumbent LEC, Verizon has offered no cost or other evidence demonstrating that it is inappropriate to use this proxy when the competitive LEC's switch is capable of serving an area comparable to the area served by the incumbent LEC's tandem.[1004] According to AT&T, Verizon has also failed to explain how its proposed "actually serves" standard would be defined and implemented.[1005]

306. AT&T also disagrees with Verizon's alternative proxy proposal, which would estimate the reciprocal compensation rate that AT&T would charge Verizon by using the average rate charged by Verizon to AT&T for call termination during the previous calendar quarter.[1006] This Verizon proposal would apply if AT&T demonstrates that its switches perform both tandem and end office functions.[1007] AT&T contends that this Verizon proposal has nothing to do with whether AT&T's switch serves a geographic area comparable to Verizon's tandem, and thus is inconsistent with the Commission's rule.[1008] AT&T also argues that Verizon's average termination costs are completely unrelated to AT&T's termination costs, since Verizon's costs depend upon AT&T's decisions whether to deliver traffic to a Verizon tandem or a Verizon end office.[1009] According to AT&T, such a proxy would punish the competitive LEC for trying to reduce Verizon's termination costs, since Verizon would pay a lower rate if the competitive LEC chose, over time, to terminate traffic at Verizon end offices rather than at tandems.[1010] Apart from these objections, AT&T asserts that, as a factual matter, all of its switches qualify for the tandem rate.[1011]

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competitive LEC had fewer customers and locations. *Id.*, citing *Petition of MediaOne Telecommunications of Michigan, Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Michigan Public Service Commission, Case No. U-12198, Opinion and Order at 18 (issued by Michigan Comm'n Mar. 3, 2000). In addition, AT&T notes, a federal court found that a competitive LEC's capability to serve an equivalent geographic area was sufficient even though the competitive LEC was not actually providing service throughout the incumbent LEC's territory. AT&T Brief at 99, citing *US West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d 968 (D.Minn. 1999).

[1004] AT&T Brief at 100.

[1005] *Id.* at 100-101. In any case, AT&T argues, Verizon cannot assert that the *Intercarrier Compensation NPRM* requires an even distribution of customers across the geographic area. AT&T Reply at 52, citing Verizon Intercarrier Compensation (IC) Brief at 24-25.

[1006] AT&T Brief at 101.

[1007] *Id.* at 101.

[1008] *Id.* at 101-02.

[1009] *Id.* at 102.

[1010] AT&T Reply at 54.

[1011] AT&T Brief at 102.

307. WorldCom asserts that its fiber-intensive network architecture allows a single switch to access a much larger geographic area than that served by the numerous switches of Verizon's copper-based, hierarchical network.[1012] WorldCom objects to Verizon's proposal that the tandem rate be available only if the competitive LEC has a geographically dispersed customer base.[1013] WorldCom argues that a competitive LEC's success in attracting a geographically dispersed customer base is not relevant, because the competitor has to make an investment in its network before it is even able to serve customers.[1014] In any case, WorldCom argues, Verizon fails to propose a methodology to demonstrate geographic dispersion, and Verizon's own witness conceded that he did not know how such a test would be administered.[1015] As a factual matter, WorldCom asserts that all of its switches qualify for the tandem rate.[1016]

308. As a general principle, Verizon argues that competitive LECs must demonstrate that their switches are actually serving, rather than merely capable of serving, a geographic area comparable to that of Verizon's tandem.[1017] Verizon argues that the *Local Competition First Report and Order*, section 51.711(a)(3), and the recent *Intercarrier Compensation NPRM* support its position that competitive LECs bear the burden of proof with respect to actual geographic comparability.[1018] Simply put, Verizon argues that if the Commission ever meant to describe capability to serve rather than actual service, it would have done so.[1019] Verizon adds that several state commission decisions support its position.[1020] According to Verizon, both

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[1012] WorldCom Brief at 92. In fact, according to WorldCom, each one of its switches in the Washington, DC area serves an area that is comparable to, or greater than, the service area of any of Verizon's 12 tandem switches serving the same Virginia rate centers. WorldCom Brief at 93.

[1013] WorldCom Brief at 94.

[1014] *Id.* at 95.

[1015] WorldCom Reply at 80, citing Tr. at 1600-01, 1606.

[1016] WorldCom Brief at 90. WorldCom also contends that Verizon does not dispute that WorldCom's switches satisfy the geographic comparability test. *Id*. at n.53.

[1017] Verizon IC Brief at 24-25.

[1018] *Id.* at 24-25, citing *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090; 47 C.F.R. § 51.711(a); *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9648, para. 105.

[1019] Verizon IC Reply at 13.

[1020] Verizon IC Brief at 25. Verizon notes that the Texas Commission held that the competitive LEC must demonstrate it is actually serving, rather than merely capable of serving, the comparable geographic area in order to receive the tandem rate. *See Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Arbitration Award, at 28-29 (issued by Texas Comm'n July 2000). AT&T argues, however, that the Texas decision engaged in the kind of tandem functionality analysis that the Commission later rejected in the *Intercarrier Compensation NPRM*, and therefore it is irrelevant. AT&T Brief at 99. Verizon also cites to the California and Florida Commissions, which held that the ability to serve an area, or a plan for future customers, does not satisfy the tandem rate rule. *See Application by AT&T Communications of* (continued….)

AT&T and WorldCom have failed to offer evidence about the geographic scope of service, and have instead merely offered evidence purporting to show that their end office switches are capable of serving areas comparable to Verizon's tandems.[1021] Furthermore, Verizon argues that it would be unfair for AT&T and WorldCom to be able to pay either the tandem or end office rate, depending on how they choose to route their traffic, while Verizon must always pay the tandem rate for termination by AT&T and WorldCom.[1022] Verizon proposes that, as to AT&T, Verizon should pay an averaged rate according to Verizon's call termination charges to AT&T, based on Verizon's relative proportions of end office and tandem terminations during the previous calendar quarter.[1023]

c. Discussion

309. We adopt AT&T and WorldCom's proposals because we determine that they are consistent with the Commission's rule.[1024] As discussed earlier, the Commission clarified in its *Intercarrier Compensation NPRM* that, in order to qualify for the tandem rate, a competitive LEC need only demonstrate that its switch serves a geographic area comparable to that of the incumbent LEC's tandem switch.[1025] Although Verizon has conceded that the tandem rate rule does not have a functionality requirement,[1026] it continues to assert that the competitive LEC

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California, Inc., et al. (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Decision No. 00-08-011 at 21-22 (issued by California Comm'n Aug. 3, 2000); *Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252, Docket No. 000731-TP*, Order No. PSC-01-1402-FOF-TP, Final Order on Arbitration, at 79-80 (issued by Florida Comm'n June 28, 2001). Verizon cites to case law as well. Verizon IC Reply at 13 n.38, citing *MCI Telecommunications Corp. v. Michigan Bell Telephone Co.*, 79 F. Supp. 2d 768, 790-92 (E.D. Mich. 1999) (the "rule focuses on the area currently being served by the competing carrier, not the area the competing carrier may in the future serve").

[1021] Verizon IC Brief at 26-27.

[1022] *Id.* at 27-28.

[1023] *Id.* at 28. Verizon notes that the Pennsylvania Commission adopted such a proposal. *Id.* at 28 n.14, citing *Application of MFS Intelenet of Pennsylvania, Inc. et al.*, Docket Nos. A-310203F0002, A310213F0002, A310236F0002 and A-310258F0002 (issued by Pennsylvania Comm'n Apr. 10, 1997).

[1024] Specifically, we adopt AT&T's November Proposed Agreement, § 5.7.4 and WorldCom's November Proposed Agreement, Attach I, § 4.2.1.4.2. We reject Verizon's November Proposed Agreement to AT&T, §§ 4.1.3 and 5.7.4 and Verizon's November Proposed Agreement to Worldcom, Part C, Interconnection Attach., § 7.1.1. Because we adopt WorldCom's proposal, we deny as moot its motion to strike Verizon's revised contract language for this issue. *See* WorldCom Motion to Strike, Ex. F at 86-88.

[1025] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9648, para. 105.

[1026] *See* Tr. at 1600 (Verizon agrees with AT&T "that the standard is geographic coverage as opposed to functionality"); *cf. US West Communications, Inc. v. Washington Utilities and Transportation Commission*, 255 F.3d 990 (2001).

switch must actually serve a geographically dispersed customer base in order qualify for the tandem rate. We agree, however, with AT&T and WorldCom that the determination whether a competitive LEC's switch "serves" a certain geographic area does not require an examination of the competitor's customer base. Indeed, Verizon has not proposed any specific standard for AT&T and WorldCom to prove that they are actually serving a geographically dispersed customer base.[1027] The tandem rate rule recognizes that new entrants may adopt network architecture different from those deployed by the incumbent; it does not depend upon how successful the competitive LEC has been in capturing a "geographically dispersed" share of the incumbent LEC's customers,[1028] a standard that would penalize new entrants. We agree with AT&T and WorldCom, therefore, that the requisite comparison under the tandem rate rule is whether the competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch. We find, moreover, that Verizon appears to concede that the AT&T and WorldCom switches satisfy this standard. In its brief, Verizon states, "At best, [AT&T] has shown that its switches may be *capable of serving* customers in areas geographically comparable to the areas served by Verizon's tandems," and, "[a]s with AT&T, [WorldCom] offered only evidence relating to the capability of its switches."[1029] As we explain above, such evidence is sufficient under the tandem rate rule and Verizon fails to offer any evidence rebutting the evidence provided by the petitioners. Should there be any future dispute regarding the capability of the petitioners' switches to serve a geographical area comparable to Verizon's switches, we expect the parties to use their agreements' dispute resolution procedures to resolve them.

4. Issue IV-35 (Reciprocal Compensation for Local Traffic)

a. Introduction

310. The parties disagree over language describing the traffic eligible for reciprocal compensation. WorldCom proposes language that would govern the payment of reciprocal compensation for "local traffic" and defines that term to exclude traffic to Internet service providers (ISPs) but to include traffic to other information service providers reached through the dialing of an NPA/NXX within the caller's local calling area.[1030] This proposed language is separate from WorldCom's language governing intercarrier compensation for ISP-bound traffic,

[1027] *See* Tr. at 1600-01 (Verizon witness stating he did not know how the Commission should determine whether a competitive LEC's switch actually serves a geographic area comparable to that of Verizon's tandem).

[1028] Accordingly, we also reject Verizon's additional proposal to AT&T, involving rates averaged between tandem and end office terminations.

[1029] Verizon IC Brief at 27, citing Tr. at 1589-97 (emphasis in original).

[1030] *See* WorldCom's November Proposed Agreement, Part C, Attach. 1, § 4.2.

which is considered under Issue I-5. Verizon opposes the inclusion of WorldCom's language.[1031] We adopt WorldCom's language subject to certain modifications.

b. Positions of the Parties

311. First, WorldCom argues that, to implement the parties' legal obligation to provide reciprocal compensation for the exchange of certain traffic pursuant to sections 251(b)(5) and 252(d)(2), the agreement should contain language addressing reciprocal compensation for non-ISP-bound local traffic.[1032] Second, WorldCom contends that, notwithstanding its pronouncements on ISP-bound traffic, the Commission has not addressed the type of information service provider calls that are covered by WorldCom's proposed language.[1033] WorldCom argues its language is necessary to clarify which compensation mechanism will apply to traffic bound for non-ISP information service providers.[1034] WorldCom explains that information service

[1031] Verizon offers consolidated language, which would cover reciprocal compensation for both ISP and non-ISP-bound traffic. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7. We note that the only language identified as at issue *solely* under Issue IV-35 (and under no other issue) is offered by WorldCom and provides that "Reciprocal Compensation for the exchange of Local Traffic is set forth in Table 1 of this Attachment and shall be assessed on a per minute-of-use basis for the transport and termination of such traffic." *See* WorldCom November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.1.1. Verizon contests this language in the context of its overall challenge to WorldCom's section 4.2. *See* Verizon Intercarrier Compensation (IC) Brief at 29-30. The remaining language proposed by each party under Issue IV-35 is also challenged under other issues. Verizon's proposed language is also considered under Issues I-1 (Single Point of Interconnection), I-2 (Transport of Verizon Traffic from the IP to the POI), I-5 (Intercarrier Compensation for ISP-bound traffic), I-6 (Intercarrier Compensation based on Originating and Terminating NXX Codes), and III-5 (Intercarrier Compensation at the Tandem Rate). WorldCom's proposed language is also considered under Issues I-6 (Intercarrier Compensation based on Originating and Terminating NXX Codes) and III-5 (Intercarrier Compensation at the Tandem Rate). Given our consideration of each of these issues, only a few points remain for discussion under Issue IV-35. We also note that, in November, Verizon modified its proposed language to WorldCom. *See* WorldCom Motion to Strike, Ex. F at 76-83, 86-97 (comparing Verizon's September JDPL with Verizon's November JDPL on language proposed for Issue IV-35 and cross-referencing language proposed for Issue I-5). In its motion to strike, WorldCom argues that Verizon introduced substantively new proposals, in violation of the Commission's procedural order, the requirements of the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment. *See* WorldCom Motion to Strike at 1-2, 5-8.

[1032] WorldCom Brief at 178; *see* 47 U.S.C. §§251(b)(5), 252(d)(2).

[1033] WorldCom Brief at 178, citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9171-73, paras. 44-46 (2001) (*ISP Intercarrier Compensation Order*), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). We note that although the United States Court of Appeals for the District of Columbia Circuit recently remanded the Commissions' *ISP Intercarrier Compensation Order,* finding that the Commission could not rely on section 251(g) as a basis to exempt ISP traffic from section 251(b)(5)'s reciprocal compensation obligations, it did not vacate that order because of the "non-trivial likelihood that the Commission has authority to elect" to order a bill-and-keep system for reciprocal compensation. *Id*., 288 F.3d at 434.

[1034] WorldCom Brief at 178.

providers that would be covered by its language include time and temperature information providers, whose numbers are local as determined by the NPA/NXXs.[1035] WorldCom argues that, historically, this traffic has been defined as jurisdictionally local and hence subject to reciprocal compensation and, moreover, it is not subject to the special interim rates that the Commission has adopted for ISP-bound traffic.[1036] Accordingly, the agreement must establish a mechanism for the carriers to be compensated for the flow of such traffic.[1037]

312. Verizon claims that its language, which it also offers in support of its argument under Issue I-5, is consistent with the Commission's approach in the *ISP Intercarrier Compensation Order*, which excludes section 251(g) traffic from traffic subject to section 251(b)(5).[1038] Verizon argues that the Commission's revised rules require that traffic must meet two requirements in order to be eligible for reciprocal compensation: (1) it must not be excepted by section 251(g); and (2) it must originate on the network of one carrier and terminate on the network of another, pursuant to section 51.701(e) of the Commission's rules.[1039] Verizon advocates that we reject WorldCom's language as inconsistent with the *ISP Intercarrier Compensation Order* because, under the Commission's interpretation of section 251(g) in that order, a call to any information service provider is exempt from the reciprocal compensation requirements of section 251(b).[1040] Verizon also argues that WorldCom seeks to preserve the term "local traffic," but, under the Commission's *ISP Intercarrier Compensation Order*, eligibility for reciprocal compensation no longer turns on whether the traffic is "local."[1041]

c. Discussion

313. With respect to Issue IV-35, and consistent with our decisions on Issues I-1, I-2, I-5, I-6, and III-5, we adopt section 4.2 of WorldCom's proposed Price Schedule but order that the term "section 251(b)(5) traffic" be substituted for the term "Local Traffic" in section 4.2 and that the reference to "information service providers" in section 4.2.1.2 be stricken.[1042]

[1035] *Id.* citing WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 32; Tr. at 1729-30.

[1036] WorldCom Reply at 159, citing WorldCom Ex. 8, at 31-32; WorldCom Brief at 177-78.

[1037] WorldCom Reply at 159; WorldCom Brief at 177-78.

[1038] Verizon IC Brief at 29, citing Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.

[1039] Verizon IC Brief at 29, citing 47 U.S.C. § 251(g); 47 C.F.R. §51.701(e).

[1040] Verizon IC Reply at 15-16, citing 47 U.S.C. § 251(g); *ISP Intercarrier Compensation Order* 16 FCC Rcd at 9166-67, 9171, paras. 34, 44.

[1041] Verizon IC Brief at 29, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.

[1042] Based upon our reasoning here and under each of these issues, we also reject section 7.2 of Verizon's proposed Interconnection Attachment. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. Because we find in favor of WorldCom, we deny as moot its Motion to Strike on this issue.

314. The parties disagree as to whether the Commission's ruling in the *ISP Intercarrier Compensation Order* (which has been remanded but not vacated since the time the parties filed their briefs) dictates that non-ISP information service provider traffic is not subject to reciprocal compensation.[1043] We need not decide this issue because we find that reference to such traffic in this agreement is unnecessary. As we discuss *infra*, with respect to Issue IV-1-AA, the parties agree that this type of traffic does not currently exist in Virginia and that neither party intends to carry it absent a change in Virginia law.[1044] Accordingly, we order that the reference to "information service providers" in WorldCom's section 4.2.1.2 be stricken.[1045]

315. Verizon also objects to WorldCom's use of the term "Local Traffic" in section 4.2. It claims that the Commission rejected that term in the *ISP Intercarrier Compensation Order*, and argues that it should not be preserved in the agreement.[1046] Verizon is correct: the Commission did find that use of the phrase "local traffic" created unnecessary ambiguities.[1047] Instead, the Commission has used the term "section 251(b)(5) traffic" to refer to traffic subject to reciprocal compensation.[1048] When questioned, the WorldCom witness stated that the term "Local Traffic" in section 4.2 has the same meaning as the term "section 251(b)(5) local

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[1043] WorldCom's proposed section 4.2 would make traffic directed to "local" information service providers subject to reciprocal compensation obligations. *See* Tr. at 1728-31. Specifically, proposed subsection 4.2.1.2, provides that section 4.2 "appl[ies] to reciprocal compensation for transport and termination of Local Traffic." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. 1, § 4.2.1.2. With the exception noted here, we adopt subsection 4.2.1.2 under Issue I-6. *See* discussion of Issue I-6. "Local Traffic," in turn, is defined to be:

> traffic originated by one Party and directed to the NPA-NXX-XXXX of a LERG-registered end office of the other Party *within a Local Calling Area* and any extended service area, as defined by the Commission. Local Traffic *includes most traffic directed to information service providers, but does not include traffic to Internet Service Providers*.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.1.2 (emphasis added). The WorldCom witness stated that, under this language, traffic directed to information service providers would be classified as "local" when, for example, a call was made to a time and temperature-type service "reached through the dialing of an NPA/NXX which is local to whatever the originating telephone number is." Tr. at 1729. Verizon, instead, would exclude all information service provider traffic from eligibility for reciprocal compensation. *See* Verizon IC Brief at 29. We address under Issue I-5 above Verizon's argument that all section 251(g) traffic is excepted from section 251 reciprocal compensation.

[1044] *See infra*, Issue IV-1-AA.

[1045] Specifically, the final sentence of section 4.2.1.2 should be amended to read: "section 251(b)(5) traffic does not include traffic to Internet Service Providers." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, at § 4.2.1.2.

[1046] Verizon IC Brief at 29.

[1047] *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9173, para. 45 (use of term "local" could mean either traffic subject to local rates or traffic that is jurisdictionally intrastate).

[1048] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9157, 9193-94, 9199, paras. 8, 89 & n.177, 98.

traffic."[1049] Accordingly, we direct the parties to substitute the term "section 251(b)(5) traffic" where the term "Local Traffic" appears in section 4.2. Based upon WorldCom's testimony, this is consistent with its intent and will avoid ambiguity surrounding the term "local traffic."

D. Unbundled Network Elements

1. Issue III-6 ("Currently Combines" versus "Ordinarily or Typically Combined" UNEs)

a. Introduction

316. The Commission articulated an incumbent LEC's obligations with respect to UNE combinations that are "ordinarily" and "currently" combined in its *Local Competition First Report and Order*, which promulgated rules 51.315(a)-(f).[1050] Although the Eighth Circuit set aside Rules 51.315(b)-(f),[1051] the Supreme Court has reversed the Court of Appeals and affirmed those rules.[1052] We recognize that these rules were not in effect when we held the hearing in this proceeding, and when the parties filed their final proposed language and briefs.[1053] We nonetheless have a sufficient record upon which to base our decision. We find that, of the contract language properly before us, Verizon's language proposed to AT&T best incorporates rules 51.315(a)-(f) and the Supreme Court's decision by simply referring to "Applicable Law." With one minor modification, we adopt this language for inclusion in both the Verizon-AT&T and Verizon-WorldCom contracts.

b. Positions of the Parties

317. WorldCom proposes two paragraphs of language governing UNE combinations. Verizon challenges three aspects of this proposal: WorldCom's language relating to (i) UNEs that are "ordinarily" and "currently" combined; (ii) the pricing of UNE combinations; and (iii) the effect of a change in applicable law. With respect to the first area of dispute, WorldCom proposes language stating that: "At MCI's request . . . Verizon shall provide Combinations of

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[1049] Tr. at 1879; *see* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.2.

[1050] *Local Competition First Report and Order*, 11 FCC Rcd 16208.

[1051] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000).

[1052] *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 395 (1999); *Verizon Telephone Cos. v. FCC*, 122 S.Ct. 1646 (2002) (*Verizon*).

[1053] We note that WorldCom and Verizon both filed letters in recent weeks, supplementing their arguments regarding this issue to reflect the Supreme Court's action. *See* Letter from Jodie L. Kelley, Counsel to WorldCom, to Jeffrey Dygert, Assistant Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, May 17, 2002 (WorldCom May 2002 Letter); Letter from Kelly L. Faglioni, Counsel to Verizon, to Jeffrey Dygert, Assistant Bureau Chief, Common Carrier Bureau, Federal Communications Commission, July 10, 2002 (Verizon July 2002 Letter).

Network Elements ordinarily combined in its network, whether or not those Network Elements are currently combined in Verizon's network."[1054] While WorldCom initially relied on Rule 51.315(a) as the basis for this provision,[1055] it has more recently argued that "the Supreme Court's reinstatement of Rules 51.315(c)-(f) removes any doubt which may have existed regarding the validity of WorldCom's proposed terms."[1056] Specifically, WorldCom argues that, pursuant to rule 51.315(c), Verizon "plainly cannot refuse to provide ordinarily combined elements merely because they are not combined at the moment the competitive carrier requests them."[1057]

318. As noted above, WorldCom's proposal also contains language regarding the pricing of UNE combinations, as well as "change of law" language specifically relating to rules 51.315(c)-(f). WorldCom's pricing language would limit Verizon's charges for combinations to the TELRIC price for the sum of the network elements that comprise the combination.[1058] WorldCom's "change of law" language states that "in the event a court of competent jurisdiction declares lawful the FCC's Rules 51.315(c)-(f), . . .Verizon agrees to provide such novel combinations in accordance with the terms of that rule."[1059]

319. WorldCom opposes Verizon's proposed language relevant to Issue III-6 because it "consists almost entirely of statements about what [Verizon] will not do, what it does not promise, and what cannot be inferred by anything it may voluntarily provide."[1060] WorldCom objects, for example, to Verizon's language that would require it to provide combinations "only to the extent required by Applicable Law," and enabling it to decline to provide combinations that are "not required by Applicable Law."[1061] WorldCom also objects to Verizon's proposed sections 1.4.1 and 1.4.2, which "essentially indicate only that if Verizon is required to provide

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[1054] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 2.4.

[1055] WorldCom argued that rule 51.315(a) has never been vacated, and by its plain meaning codifies a portion of paragraph 296 of the *Local Competition First Report and Order*, which states that "[i]ncumbent LECs are required to perform the functions necessary to combine those elements that are ordinarily combined within their network in the same manner in which they are typically combined." WorldCom Brief at 16. WorldCom also claimed that by not allowing access to existing UNE combinations that are not already combined at the location requested, Verizon's language would run afoul of both the Act's non-discrimination provisions and the Commission's implementing regulations that mandate access to a UNE that is "at least equal in quality to that which the incumbent LEC provides to itself." WorldCom Brief at 99.

[1056] WorldCom May 2002 Letter.

[1057] *Id.* at 1.

[1058] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 2.4.

[1059] *Id.*

[1060] WorldCom Reply at 85.

[1061] *Id.* at 86.

UNE combinations pursuant to a change in law, the relevant terms will be contained in a Verizon tariff."[1062] Furthermore, WorldCom opposes Verizon's section 17, which asserts that Verizon will voluntarily provide a number of combinations, but only "to the extent provision of such Combination is required by applicable law."[1063] Finally, WorldCom argues that we should reject Verizon's proposed "anti-gaming" language that prohibits a potential WorldCom customer from ordering service from Verizon (which requires deployment of facilities) and then migrating the service to WorldCom.[1064] According to WorldCom, Verizon's proposed language acts as an "embargo" and gives Verizon "the unilateral right to abrogate its responsibilities under the Act," and limit WorldCom's right to compete for Verizon's existing customers.[1065]

320. Like WorldCom, AT&T proposes language that would require the provision of new combinations that are "ordinarily combined" in Verizon's network. However, AT&T relies instead on rule 51.315(b) for support.[1066] AT&T argues that this language is consistent with the Commission's conclusion in the *Local Competition First Report and Order* that "the proper reading of the 'currently combines' language in Rule 51.315(b) means those UNEs 'ordinarily combined within [the incumbent's] network, in the manner in which they are typically combined.'"[1067] AT&T further argues that any other interpretation of rule 51.315(b) would generally frustrate the development of competition and deny a competitive LEC access to the rapidly expanding and lucrative demand for residential second lines.[1068] Thus, according to AT&T, competitive LECs would be unable to provide telecommunications services ubiquitously in Virginia and compete with Verizon absent such an interpretation of the rule.[1069] AT&T also proposes specific contract language permitting Verizon to charge only the "direct economic cost of providing" UNE combinations; permitting AT&T to combine UNEs and other services (including "Access Services") obtained from Verizon; permitting AT&T to use UNEs and UNE

[1062] *Id.* at 85.

[1063] *Id.* at 85-86. Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 17.

[1064] *See* WorldCom Brief at 102; *see also* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.2.

[1065] *See* WorldCom Reply at 136. Verizon discusses its proposed "anti-gaming" and "embargo" language in Issue III-6. Although WorldCom responds to the Verizon proposal in discussing Issue VI-1-E, we determine that it is more appropriate to address the matter here.

[1066] *See* AT&T Brief at 105.

[1067] *See id.* at 104; AT&T Reply at 55-56. AT&T also argues that rule 51.315(b) applies to all UNE combinations other than "novel combinations." *Id.*

[1068] *See* AT&T Ex. 2 (Direct Testimony of M. Pfau), at 7-8.

[1069] *See* AT&T Ex. 1 (AT&T Pet.), at 107

combinations to "provide telecommunications services" to itself; and language relating to the combination of "contiguous" network elements.[1070]

321. Verizon proposes language with respect to AT&T that would require it to provide combinations of UNEs "to the extent required by Applicable Law." Verizon's proposal also includes a non-exclusive list of combinations that it offers, but again, limits its offering "to the extent required by Applicable Law."[1071] Verizon states that the proposal provides existing loop transport combinations in a manner consistent with the *Supplemental Order Clarification.*[1072] Verizon urges the rejection of AT&T's proposed language because, Verizon argues, it goes beyond the requirements of existing law.[1073]

322. The language Verizon initially proposed to WorldCom generally defines its obligations regarding combinations with reference to "applicable law," but includes additional language limiting its obligations. For example, Verizon's initial proposal makes clear that it has no obligation to provide UNE combinations not "currently combined" in Verizon's network, or to construct or deploy new facilities to offer UNE combinations.[1074] While Verizon has not expressly withdrawn this proposal, it submitted new contract language on July 10, 2002, and claimed that this new language reflects the Supreme Court's recent decision.[1075] Verizon rejects WorldCom's argument that rule 51.315(a) requires Verizon to provide combinations not already combined but that are "ordinarily combined" in the network, stating that this rule requires only that the incumbent LEC provide unbundled network elements in a manner "that allows *requesting telecommunications carriers* to combine such elements" but does not require the

[1070] *See* AT&T's November Proposed Agreement to Verizon, § 11.7.4. In response to Verizon's criticism of several of these terms, such as "direct economic costs," are undefined or lack specificity, AT&T responds that "[i]f Verizon does not like the phrase "economic costs of efficiently providing such combinations," it can suggest some other phrase that expresses the same thought." *See* AT&T Reply at 59.

[1071] *See* Verizon UNE Brief at 7. Verizon suggests that its proposal would not include those UNE-platform arrangements that require new construction, expansion of central office facilities or cable build-outs. *See* Verizon UNE Reply at 11; AT&T Brief at 107-108.

[1072] The *Supplemental Order Clarification* extended and clarified the temporary constraint on some loop/transport combinations as UNEs. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587, 9592, para. 8 (2000) (*Supplemental Order Clarification*).

[1073] *See* Verizon UNE Brief at 8-9, 11.

[1074] *See* Verizon UNE Reply at 1-4. For example, Verizon contends that "for UNE-P, service that is considered 'currently combined' is a loop-port combination already combined at a particular location." For EELs, Verizon contends service that is considered 'currently combined' is a loop transport combination already combined at a particular location. Verizon states that it "will not offer any particular combination if Verizon is not legally required to do so."

[1075] *See* Verizon July 2002 Letter.

incumbent LEC to combine anything.[1076] In its recent supplemental submission, Verizon also contends that WorldCom's proposed language is inconsistent with rule 51.315(c) because it fails to reflect certain limits, recognized by the Court in *Verizon,* to an incumbent's duty to offer UNE combinations.[1077]

323. Verizon's proposal also includes an "anti-gaming" provision, which Verizon argues is necessary to prohibit WorldCom from inducing a Verizon customer to migrate the newly combined service over to WorldCom.[1078] According to Verizon, such a conversion would give WorldCom access indirectly to a new combination that it could not lawfully obtain directly.[1079] Verizon argues that this language targets WorldCom's conduct, and is not intended to prohibit customer migration to WorldCom. Moreover, Verizon suggests that the provision would not apply when a customer orders services that require construction of facilities and later decides to change carriers.[1080]

c. Discussion

324. We adopt Verizon's language proposed to AT&T, with one minor modification, for inclusion in both the Verizon-AT&T and Verizon-WorldCom contracts.[1081] This language defines Verizon's obligations in this regard simply, with direct reference to "Applicable Law."[1082] We recognize that the recent changes in applicable law have largely rendered obsolete the parties' initial positions, and to a great extent their proposed contract language. In this context, we find it is particularly appropriate to adopt language that refers to applicable law, rather than to adopt one of the parties' out-of-date proposals, or Verizon's recently-filed proposal that lacks the benefit of response from petitioners. We note, however, that Verizon's brief specifically argued that "Applicable Law does not require Verizon VA to provide

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[1076] *See* Verizon UNE Reply at 7, quoting 47 C.F.R. §51.315(a) (emphasis supplied by Verizon).

[1077] *See* Verizon July 2002 Letter at 2-3 (citing *Verizon,* 122 S.Ct. at 1685, and arguing that WorldCom's proposal omits reference to technical feasibility and impairment of other carriers' access to UNEs).

[1078] *See* Verizon UNE Brief at 11-12. The Verizon proposed language provides that if Verizon provides notice to WorldCom that WorldCom has knowingly induced a Verizon customer to order services from Verizon with the primary intention of enabling WorldCom to convert those services to UNEs, and WorldCom fails to satisfactorily respond within 15 days, then Verizon shall have the right within 30 days advance written notice to institute an embargo on the provision of new services and facilities to WorldCom. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.2.

[1079] *See* Verizon UNE Brief at 12.

[1080] *See id*.

[1081] We adopt Verizon's November Proposed Agreement to AT&T, §§ 11.7.5, 11.7.6, and 11.12 *et. seq*.

[1082] We reject WorldCom's argument that Verizon's use of the phrase "only to the extent required by Applicable Law" somehow relieves Verizon of some obligations otherwise conferred by law. We disagree, noting that Verizon does not make this assertion, and find that "Applicable Law" means "Applicable Law."

combinations that are not currently combined."[1083] Because this argument is now at odds with the reinstated rules and the Supreme Court's recent decision, we must emphasize that our adoption of Verizon's language does not carry with it an endorsement of Verizon's (out-of-date) interpretation of "Applicable Law."

325. We find it necessary to make one minor modification to Verizon's proposal. Verizon's proposal describes three types of combinations (UNE Platform, EELS and "Extended Dedicated Trunk Port") that it "may" offer under the contract. To ensure that this list is interpreted as being non-exclusive and illustrative of Verizon's obligation, we instruct the parties to change Verizon's proposal as described in the margin.[1084]

326. We decline to adopt any of the other language proposed under this issue. First, we reject AT&T's proposed language because, in several respects, it contains language that is ambiguous or inconsistent with current rules.[1085] Specifically, we note that AT&T's language refers to the "direct economic cost of providing" UNE combinations; establishes terms relating to the combination of "contiguous" network elements; and establishes that AT&T may use UNEs and UNE combinations "to provide telecommunications services to AT&T."[1086] We agree with Verizon that AT&T failed to define these terms and describe their impact; furthermore, we note that these terms do not appear in the statute or in the Commission's relevant rules. Through the change of law process, AT&T will have ample opportunity, if it chooses, to explain why these provisions are consistent with rules 51.315(c) through (f), and the Supreme Court's ruling in *Verizon v. FCC*.[1087]

327. We also reject both parties' language proposed in the Verizon-WorldCom contract. While WorldCom suggests that its proposal is supported by rule 51.315(a), it does not suggest that its language addresses everything to which it is entitled under rules 51.315(c)-(f).[1088] We also note, as discussed above, that Verizon has challenged the extent to which WorldCom's language is, in fact, consistent with rule 51.315(c). Rather than prolong this proceeding to allow the parties additional time to litigate this issue, we believe the better approach would be for WorldCom – to the extent it seeks additional contract language beyond the incorporation of

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[1083] Verizon UNE Brief at 4.

[1084] The underlined phrase is thus inserted into the second sentence of Verizon's § 11.12, which shall read: "To the extent required by Applicable Law, such Combinations ~~may~~ shall include, but will not be limited to, the following Combinations as defined below… ."

[1085] We thus reject AT&T's November Proposed Agreement, § 11.7.4.

[1086] AT&T Reply at 59.

[1087] *See* Verizon UNE Reply at 8-9. *See* also *Verizon*, 122 S.Ct. 1646.

[1088] Indeed, we note that WorldCom's language proposes access only to combinations of network elements that are "ordinarily combined" (*see* WorldCom's November Proposed Agreement, Part C, Att. III, § 2.4), while it is now entitled under rule 51.315(c), in certain instances, to network elements that are "not ordinarily combined."

"Applicable Law" – to propose new language pursuant to the contract's change of law process. We also decline to adopt WorldCom's proposed language addressing "novel" combinations and what was, when the language was drafted, the *possible* reinstatement of rules 51.315(c)-(f).[1089] As we have indicated in several other contexts in this proceeding, we have chosen to adopt a single change of law provision governing all changes affecting the contract, rather than balkanize the contract's change of law process by adopting several provisions applicable only to certain sub-parts of the contract.[1090]

328. We also do not adopt Verizon's language – either its initial language, which it appears to have withdrawn, or its newly-filed language.[1091] Verizon's initial position clearly is inconsistent with the reinstated rules, to the extent it would not provide access to network elements that are not "currently combined." Furthermore, as indicated above, we decline to consider Verizon's newly-proposed contract language because WorldCom has not had an opportunity to respond to it, and we will not delay issuance of this order for the sake of this single issue. Moreover, because Verizon's language regarding new facilities deployment (contained in this rejected language) will not be included in the approved agreement, we need not address WorldCom's recently posed argument about Verizon's putative obligation to deploy new facilities.[1092] We note, in any case, that WorldCom offers no contract language implementing this obligation.

329. We also reject Verizon's "anti-gaming" language contained in section 1.2.[1093] We agree with WorldCom that the Verizon language would limit WorldCom's ability to compete for customers. We recognize Verizon's concern that a competing carrier, if it were unable to obtain combinations in a particular instance, could induce Verizon customers to purchase certain services that could then be converted to UNE combinations. We conclude, however, that Verizon can adequately address this issue by offering lawful terms and conditions that provide volume or price incentives for customers to enter long term contracts and not switch to another carrier. Accordingly, we will not allow Verizon to use this agreement as a means to restrict competition for customers, or to limit a competitive LEC's ability to obtain access to UNEs or UNE combinations to the extent permitted by Commission rules. If Verizon is concerned about competitive LECs "gaming" the system or unforeseen loopholes not contemplated by

[1089] We thus decline to adopt WorldCom's November Proposed Agreement to Verizon, Part C, Att. III, §§ 2.4 and 2.4.1.

[1090] *See, e.g.,* Issues IV-113/VI-1(E) *infra.*

[1091] We thus reject Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attachment, section 1.2, and the newly-proposed language contained in Verizon's July 2002 Letter.

[1092] *See id.* (in pertinent part, "Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination"); *see also,* WorldCom May 2002 Letter.

[1093] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.2 (second through fifth sentences – starting with "Consistent with the foregoing…" through the end of the paragraph).

Commission rules, then Verizon should seek modifications of those general rules rather than attempt, as here, to restrict carriers' access to UNEs through contracts.

2. Issue III-7-A (Service Disruption and OSS Degradation)

a. Introduction

330. AT&T and Verizon disagree about when service disruptions may occur during the process of converting special access service to an Enhanced Extended Link (EEL).[1094] AT&T proposes that such disruptions may only occur at its request; Verizon proposes that the parties must mutually agree to the disruption. The parties also disagree about the appropriate maintenance intervals to apply to a service arrangement after it is converted from a special access arrangement to an EEL. Verizon opposes AT&T's proposal to apply the same maintenance and repair intervals to the TELRIC-priced EEL as to the higher-priced, special access service. We adopt Verizon's proposed language requiring mutual agreement as to the circumstances when service disruption or physical disconnection cannot be avoided during conversion of special access services to EELs, and we reject AT&T's proposal that the service guarantees for special access should also apply to EEL arrangements. We also reject AT&T's language that it claims would "eliminate the need for lengthy negotiations following Commission resolution of the applicability of use restrictions."[1095]

b. Positions of the Parties

331. AT&T proposes contract language that, absent its consent, forbids Verizon from physically disconnecting, separating, altering, or changing the equipment or facilities of a UNE combination during a conversion from special access services to EELs.[1096] AT&T claims that the physical disruption of combined elements is not permitted under existing rules and that there generally is no technical or other legitimate reason to interrupt service because the special access services and UNE combinations are physically identical, provide the same functions, and carry the same traffic to the same customers.[1097] According to AT&T, Verizon concedes that this conversion process is "essentially a billing process"[1098] and Verizon's new contract language contained in its brief is a "welcome step forward in the resolution of this issue between AT&T and Verizon."[1099]

[1094] An EEL consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. *UNE Remand Order*, 15 FCC Rcd at 3703, Executive Summary.

[1095] AT&T Brief at 112, citing AT&T's November Proposed Agreement, § 11.13.1.

[1096] *See* AT&T Brief at 112-13.

[1097] *See id.* at 113.

[1098] *Id.*, citing Tr. at 95.

[1099] AT&T Reply at 61, citing Verizon UNE Brief at 18.

332. AT&T also proposes language establishing that "protocols…reporting mechanisms and response times" for maintenance and repair of EELs should be the same as those applicable to the special access arrangement being replaced.[1100] AT&T argues that, just as there is no need to disrupt the physical configuration during a special access service conversion, there is no basis for degrading or disrupting the operational processes supporting the delivery of service.[1101] AT&T contends its proposed language is an express acknowledgment of the Commission's requirement that Verizon may not "disconnect" OSS UNEs employed to support EELs converted from special access if such a "disconnection" degrades the operational support delivered for EELs.[1102] AT&T asserts that Verizon has provided no justification for its contention that voice grade dial tone is the proper analogue for EELs converted from special access.[1103] Moreover, AT&T argues that Verizon can no longer claim that special access is not a "retail analogue" (as opposed to a wholesale service) since Verizon testified before the New Jersey Board of Public Utilities (New Jersey Board) that "[s]pecial access services are retail services, which are sold to end user as well as CLECs."[1104] Finally, on a related matter, AT&T contends that the Commission is currently considering the applicability of restrictions on the conversion of special access to UNE combinations and, to prevent Verizon from delaying its implementation of this Commission decision, AT&T has proposed language eliminating the need for lengthy negotiations following the Commission's ruling.[1105]

333. Verizon argues that it has no intention of disrupting service during the conversion of special access service to EELs and would only do so when necessary.[1106] It contends that AT&T's language amounts to a blanket prohibition against any service disruption and, therefore, ignores reality.[1107] Verizon proposes alternative language that would prohibit disconnection or alteration of equipment and facilities during the conversion to EELs, "except upon mutual agreement of both Parties, e.g., in the event that the conversion cannot be accomplished without disconnecting, separating or altering such equipment or facilities."[1108]

[1100] *See* AT&T's November Proposed Agreement, § 11.13.5.2.

[1101] AT&T Brief at 115.

[1102] *Id.*, citing 47 C.F.R. § 51.315(b). *See also* AT&T Reply at 62.

[1103] AT&T Reply at 63.

[1104] *Id.* at 63, quoting *Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey*, Docket No. TO01090541, Reply Measurements Declaration on Behalf of Verizon New Jersey Inc., Declarants: Julie A. Canny and Marilyn C. DeVito, at 7, para. 14 (Nov. 2001).

[1105] AT&T Reply at 60-61.

[1106] Verizon UNE Brief at 16; Verizon UNE Reply at 14.

[1107] Verizon UNE Reply at 15, citing Tr. at 246.

[1108] Verizon UNE Reply at 15. Verizon also argues that AT&T concedes that some interruption may be necessary. *Id*. at 14, citing AT&T Ex. 2 (Direct Testimony of M. Pfau), at 17.

334. Verizon also argues that there is no support for AT&T's assertion that maintenance of special access service is performed through an unbundled "OSS UNE."[1109] Furthermore, Verizon contends that AT&T misstates Verizon's parity obligations under the Act when it asserts that the EEL must be maintained at parity with the special access service that the EEL replaces.[1110] According to Verizon, parity of service requires it to "provide service to its retail customers similarly to that provided by CLECs using [UNEs]."[1111] Verizon argues that, in this instance, AT&T would use the EEL to provide dial tone service, the appropriate retail analogue is dial tone service, and the maintenance of the two should be equivalent.[1112]

c. Discussion

335. We adopt Verizon's proposed language, which requires the parties to agree as to the circumstances when physical disruption, disconnection, separation or alteration of the service ("service disruption") cannot be avoided during conversion of special access services to EELs.[1113] Also, we reject AT&T's contention that using voice dial tone line intervals -- and not special access intervals -- for maintenance and repair of EELs is tantamount to a degradation of service and a violation of Verizon's obligations under the Act.[1114] Finally, we reject AT&T's proposed section 11.13.1, finding that it is unnecessary.[1115]

336. We conclude that Verizon's language offers an acceptable resolution to the issue of service disruption because it recognizes that, in general, service should not be interrupted, and that AT&T's assent is required where service disruption must occur.[1116] AT&T recognizes that there are limited circumstances where service disruption may be necessary,[1117] but it is concerned with interruptions during the conversion process that might affect its ability to provide service to

[1109] Verizon UNE Reply at 15 & n.41, citing AT&T Brief at 115.

[1110] Verizon UNE Reply at 16, citing AT&T Brief at 115.

[1111] *Id.*, citing 47 C.F.R. § 51.311(b).

[1112] *Id.*, citing Tr. at 262.

[1113] *See* Verizon's November Proposed Agreement to AT&T, §§ 11.13.1, 11.13.2. We note that we reject Verizon's proposed sections 11.13.3. and 11.13.4 in Issue III-7-B; and adopt AT&T's proposed section 11.13.5.-5.1 and 11.13.4-4.1. in Issue III-7-B. Moreover, we reject AT&T's proposed section 11.13.6 in Issue III-7-C.

[1114] AT&T Brief at 116. Accordingly, we reject AT&T's proposed section 11.13.5.2. We also reject Verizon's proposed section 11.13.4.

[1115] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.1.

[1116] Verizon UNE Reply at 15.

[1117] However, Verizon and AT&T differed over whether any of those limited circumstances apply to the conversion process from special access to EELs. Verizon UNE Brief at 17-18; AT&T Brief at 114-15.

its customers.[1118] While we agree that AT&T's service disruption concerns are reasonable, we note that Verizon states it "will not disrupt existing service during conversion except when necessary."[1119] We find that Verizon addresses AT&T's concerns by proposing language that requires it first to obtain AT&T's permission before intentionally disrupting service. We determine that by notifying AT&T, as opposed to acting unilaterally, Verizon likely will mitigate customer inconvenience.

337. We disagree with AT&T's contention that it is a violation of Verizon's parity obligations under the Act, or tantamount to a degradation in service, to apply UNE reporting mechanisms and standards after the service is converted. We thus decline to adopt the language proposed by AT&T.[1120] AT&T's proposal would have the practical effect of grandfathering performance intervals or guarantees offered under Verizon's special access tariff. We agree with Verizon that, when an individual end user of a special access arrangement converts the service to UNEs, the maintenance and repair intervals formerly applicable to that special access arrangement no longer apply. Instead, because AT&T would now be providing service to the end user using UNEs, the performance standards applicable to UNEs in Virginia would apply. We note that the performance standards set by the Virginia Commission relating to UNEs may be more stringent, less stringent, or the same as Verizon's performance guarantees relating to special access service.

338. Lastly, we reject AT&T's proposed section 11.13.1, which provides that AT&T may substitute UNEs (including combinations of UNEs), which provide identical functionality, for any service, except as provided by Commission rule or order in effect on the date and time AT&T submits the conversion order.[1121] AT&T has failed to explain how the contract's change of law provision is inadequate to address its concern of any Verizon delay in implementing new Commission requirements. Moreover, based upon the record before us, it is unclear what services, other than special access services, AT&T seeks to convert to UNEs. Verizon has a contractual obligation to provide AT&T with nondiscriminatory access to UNEs, including combinations of UNEs, at any technically feasible point and including all of the UNE's features, functions and capabilities.[1122] Because AT&T has not identified why it requires the broadly worded language set forth in its section 11.13.1, we determine that language already agreed to by

[1118] AT&T apparently is seeking assurance of a seamless process where there would be *no* service interruption during any type of service conversion, including but not limited to a conversion from special access to EELs. *See* Verizon UNE Brief at 16-17, Verizon UNE Reply at 14.

[1119] *See* Verizon UNE Brief at 16.

[1120] We reject AT&T's November Proposed Agreement to Verizon, § 11.13.5.2.

[1121] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.1.

[1122] *See* Verizon's November Proposed Agreement to AT&T, § 11.0; AT&T's November Proposed Agreement to Verizon, § 11.0.

the parties is sufficient to address AT&T's rights with respect to UNEs, including combinations.[1123]

3. Issues III-7-B/VII-11 (Bulk Ordering)[1124]

a. Introduction

339. AT&T and Verizon disagree on two issues related to the bulk ordering process for UNE conversions: (i) whether billing changes associated with a conversion from special access to EELs should be effective immediately, or at the beginning of the following month; and (ii) whether Verizon's bulk ordering process should be subject to its change management process.[1125] As set forth below, we adopt AT&T's proposed language regarding the effective date of billing changes and the change management process, but reject AT&T's arguments raised under this issue regarding termination fees.

b. Positions of the Parties

340. First, AT&T proposes that the effective date for any billing change associated with an EELs conversion should be the date that Verizon receives all required conversion information from AT&T.[1126] AT&T contends that conversion from special access to EELs usually requires no physical work, and involves little more than a billing change. Accordingly, AT&T argues that Verizon's proposal to delay applying the new rate until the beginning of the next month is unwarranted.[1127] Second, AT&T proposes language specifying that Verizon's bulk ordering guidelines should be subject to its formal change management procedures.[1128] According to AT&T, the guidelines are simply pages on a web site that Verizon could change informally and unilaterally.[1129]

[1123] As noted above, we adopt Verizon's proposed section 11.13.1, which provides that it will permit AT&T to convert eligible special access services to EELs in accordance with applicable state and federal requirements. *See* Verizon's November Proposed Agreement to AT&T, § 11.13.1.

[1124] We note that the parties describe Issue VII-11 as identical to III-7-B. AT&T Brief at 154; Verizon UNE Brief at 13 n.14.

[1125] We address the parties' arguments regarding termination liability fees in the following issue, III-7-C.

[1126] *See* AT&T Brief at 119; AT&T's November Proposed Agreement to Verizon, § 11.13.5.1 (stating, in part, that "the conversion order shall be deemed to have been completed effective upon receipt by Verizon of notice from AT&T, and recurring charges set forth in Exhibit A of this Agreement applicable to unbundled Network Elements shall apply as of such date. . . .").

[1127] AT&T Brief at 119.

[1128] *Id.* at 118-119; AT&T Reply at 66.

[1129] AT&T Brief at 119.

341. Verizon objects to AT&T's proposal regarding effective billing dates, and argues that it is reasonable for it to make billing changes associated with special access conversions on the first day of the following month (*i.e.,* 30 calendar days or less from the time Verizon receives a conversion request).[1130] While Verizon recognizes that conversion is "essentially no more than a billing change, [it] must still have ample time to make the necessary administrative changes to accommodate a CLEC request."[1131] Moreover, according to Verizon, its conversion procedures are uniform for all competitive LECs, and that competitive LECs benefit from having one conversion date for all requests in a month.[1132] Verizon opposes AT&T's language that references the Verizon change management process; Verizon claims the AT&T language is unnecessary because AT&T "incorrectly assumes that Verizon VA will not follow the change of control process currently in place."[1133]

c. Discussion

342. We agree with AT&T that it should receive the benefit of the UNE rates on the date Verizon that receives all of the required information relating to an EELs conversion, and thus adopt AT&T's proposed language on this point.[1134] While we recognize that Verizon may require time to make administrative changes to accommodate a competitive LEC's request for conversion from special access to EELs, it has not explained why AT&T must wait for it to complete these tasks before it is entitled to the new billing rate. We thus agree with AT&T that it is the effective billing date, not the actual completion date of the conversion, that is relevant. We also note that AT&T's proposed language allows for a different process where disconnection or other physical work is required to effectuate a conversion.[1135] Accordingly, we find that Verizon must offer AT&T the UNE rate upon receiving a complete conversion order.

343. We also adopt AT&T's proposed language regarding the change management process.[1136] Verizon indicates that it has "consistently" followed the change management process when making changes to the EELs conversion process in the past, and suggests that AT&T

[1130] Verizon UNE Reply at 16, citing Tr. at 273-74.

[1131] Verizon UNE Brief at 19.

[1132] Verizon UNE Reply at 17, citing Tr. at 101.

[1133] *Id.* at 16-17; *see also* Tr. at 271-73.

[1134] Accordingly, we adopt AT&T's November Proposed Agreement to Verizon, § 11.13.5.1 and we reject Verizon's November Proposed Agreement to AT&T, § 11.13.4 . We also adopt AT&T's proposed section 11.13.4, which provides that AT&T may request any number of conversions in a single notice.

[1135] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.5.1 (providing for pro-rated charges based upon the earlier of when Verizon committed to complete the work, or the actual completion date); *see also* AT&T Brief at 119-120.

[1136] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.4.1.

unfairly assumes that it will not follow this process in the future.[1137] Verizon thus does not suggest that the reference to the change management process is improper, only unnecessary. We thus find it reasonable to include AT&T's language it in the agreement, to the extent it accurately reflects the parties' current practices and future expectations. Finally, we reject AT&T's argument about Verizon's "linkage" of termination fees to bulk ordering.[1138] AT&T fails to identify any specific Verizon language to which it objects and, in any case, we reject AT&T's arguments regarding termination liability in the next section, Issue III-7-C.

4. Issue III-7-C (Termination Liability)

a. Introduction

344. AT&T and Verizon disagree on whether early termination fees should apply when the facilities used to serve an end-user are converted from special access to a UNE combination, such as an EEL.[1139] AT&T's proposed language would have the effect of canceling the early termination provisions contained in Verizon's special access tariffs or other service contracts between the parties.[1140] We reject AT&T's proposed language.

b. Positions of the Parties

345. AT&T argues that termination liabilities should not apply to the process of converting from special access to EELs for four reasons.[1141] First, according to AT&T, an access-to-EELS conversion does not qualify as a termination or cessation of service – rather, it is simply a billing change, and the end user would still continue to receive service.[1142] Second, AT&T contends that after the passage of the Telecommunications Act of 1996 Verizon did not make UNE combinations available at TELRIC prices, thus "AT&T was faced with the choice to either to cease serving customers or pay Verizon's inflated special access charges."[1143] Since it had no effective alternative to special access service as a means of serving its customers, AT&T argues it should not be held to the termination liabilities that Verizon imposed on those services by tariff or contract.[1144] AT&T concedes that such termination fees should apply to changes or

[1137] Verizon UNE Reply at 17; *see also* Tr. at 271-73.

[1138] *See* AT&T Brief at 118.

[1139] AT&T Brief at 120-126.

[1140] AT&T's November Proposed Agreement to Verizon, § 11.13.6.

[1141] AT&T Brief at 120.

[1142] *Id.*

[1143] *Id.* at 121.

[1144] *Id*. AT&T argues that, in concept, its predicament is no different from the "fresh look" initiative that allowed customers to terminate Tariff 12 services without termination liabilities when 800 numbers became portable in the early 1990s. *Id*. AT&T states that "five years of legal challenges by Verizon . . . denied AT&T the ability to make (continued….)

cancellations of special access contracts that it may enter in the future and, thus, seeks to avoid these provisions only for service purchased during the period Verizon refused to offer UNE combinations.

346. Third, AT&T points out that the *UNE Remand Order* states "any substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties under volume or term contracts."[1145] AT&T argues that in this instance termination fees are, in fact, not appropriate because to maintain such fees would permit Verizon both to recoup the monopoly profits implicit in special access pricing, and to recover its costs under the TELRIC pricing scheme.[1146] Finally, AT&T points out that Verizon waives contractual early termination fees for its own retail customer in other contexts – for example, when Verizon initiates a rate decrease, or Verizon makes available a more efficient network configuration.[1147]

347. Verizon argues that the *UNE Remand Order* expressly envisions the payment of "*any* appropriate termination penalties required under volume or term contracts."[1148] Verizon contends that the Commission affirmed this approach in approving Verizon's section 271 application in Pennsylvania and other states, when it held that "current rules do not require incumbent LECs to waive tariffed termination fees for carries requesting special access circuit conversion."[1149] Verizon further contends that its rates for service are not extortionate because, when AT&T ordered special access services from Verizon, it had a choice of rates, depending on the length of commitment it agreed to. One of the requirements for obtaining the lower rates over the longer term, however, was acceptance of a termination penalty.[1150]

(Continued from previous page)
practical use of special access-to-EEL conversions, from the time of the passage of the Act until now, and . . . until the Commission decides the applicability of the interim use restrictions." AT&T Reply at 68.

[1145] AT&T Brief at 121, citing *UNE Remand Order*, 15 FCC Rcd at 3912, para. 486 n.985 (emphasis supplied by AT&T).

[1146] *Id.* at 121-22.

[1147] *Id.* at 122-24; AT&T Reply at 70.

[1148] Verizon UNE Reply at 18, citing *UNE Remand Order*, 15 FCC Rcd at 3912, para 486 n.985 (emphasis added).

[1149] *Id.*, citing *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17461, para. 75 (2001) (*Verizon Pennsylvania Order*).

[1150] Verizon UNE Reply at 20.

c. Discussion

348. We reject AT&T's proposed language and decline to override the termination penalties contained in Verizon's special access tariffs.[1151] AT&T voluntarily purchased special access services pursuant to Verizon's filed tariff and took advantage of discount pricing plans that offered lower rates in return for a longer term commitment.[1152] We will not nullify these contractual arrangements that AT&T previously accepted. AT&T's argument about the meaning or applicability of Verizon's tariff language (*i.e.,* whether "conversion" qualifies as "termination") is not appropriate for resolution in this proceeding. Also, because AT&T has not challenged the *amount* of the penalties, but merely their existence, the record does not permit us to determine whether the existing penalties are not "appropriate," as set forth in the *UNE Remand Order*.

5. Issue III-8 (Interconnection at any Technically Feasible Point)[1153]

a. Introduction

349. WorldCom proposes contract language establishing that Verizon must provide WorldCom with interconnection at any technically feasible point, for the purpose of obtaining access to UNEs and UNE combinations, without requiring WorldCom to collocate.[1154] Verizon objects to this language and suggests that its own proposal is consistent with the Commission's rules.[1155] Specifically, Verizon's proposal provides that, except as otherwise expressly stated in the contract, WorldCom may access Verizon's UNEs only via collocation.[1156] For reasons provided below, we reject both parties' proposals and determine that language we adopt elsewhere is adequate to address the parties' concerns.

b. Positions of the Parties

350. WorldCom argues that its proposal is consistent with the Act and the Commission's holding that an incumbent cannot offer collocation as the only method of allowing

[1151] Thus, we reject AT&T's proposed section 11.13.6. According to Verizon, its FCC Tariff No. 1, on file with Commission, provides for termination liability. We find that any relevant termination liability provisions found in the Verizon tariff and associated with conversion from special access to EELs shall apply.

[1152] Verizon UNE Brief at 21; Tr. at 224.

[1153] In its brief, AT&T states that this issue is the same as Issue III-11. *See* AT&T Brief at 126. Consequently, we will discuss AT&T's arguments and its proposal in Issue III-11, *infra*.

[1154] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 2.5.

[1155] Verizon UNE Brief at 28-34.

[1156] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.7.

a competitor to access and recombine UNEs.[1157] WorldCom argues that Verizon's proposal, on the other hand, would effectively allow Verizon to limit WorldCom's options to collocation and, thus, is directly at odds with Commission precedent.[1158] According to WorldCom, although Verizon argues that it permits carriers to obtain access to UNEs through other means, Verizon concedes that its proposed list of alternatives to collocation does not contain all technically feasible methods.[1159] Moreover, WorldCom argues that Verizon's reliance on the Bona Fide Request (BFR) process does not satisfy Verizon's obligations because, under that process, the ultimate decision to approve a request for a particular method of access to UNEs rests solely with Verizon.[1160] WorldCom also notes the BFR process places the burden on WorldCom to demonstrate that a particular method of obtaining access to UNEs is technically feasible.[1161]

351. Verizon argues that its proposed contract language offers access to UNEs and UNE combinations in several different ways and with express reference to applicable law.[1162] Verizon asserts that its position has never been that collocation is the only means of accessing its UNEs.[1163] According to Verizon, if WorldCom seeks a "technically feasible point" of access to UNEs other than collocation or other methods expressly identified in the contract, it may request such access through the BFR procedure.[1164] Verizon contends that WorldCom's proposal is a "blanket prohibition against collocation" and is, therefore, contrary to both law and practice because collocation is generally required for access to many UNEs.[1165] Finally, Verizon argues that its proposed language to WorldCom is substantially similar to that agreed to by AT&T, and that both proposals confirm Verizon's intention to comply with the Commission's rules and all

[1157] WorldCom Brief at 103, citing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.7; 47 C.F.R. § 51.307(a); *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20701, para. 164 (1998) (*Second BellSouth Louisiana Order*) (stating that incumbents cannot limit a competitor's choice to collocation as the only method for gaining access to and recombining UNEs).

[1158] WorldCom Brief at 103.

[1159] WorldCom Brief at 103-04, citing Verizon Ex. 23 (UNE Additional Direct Testimony), at 9-10; Tr. at 113-14.

[1160] WorldCom Reply at 89.

[1161] *Id.* at 88-89.

[1162] *See* Verizon UNE Brief at 29 (describing the means to obtain access to particular UNEs).

[1163] Verizon UNE Reply at 21, citing Verizon Ex. 23, at 8-9.

[1164] Verizon UNE Brief at 30, citing Verizon's November Proposed Agreement to WorldCom, Ex. B.

[1165] *Id.* at 33.

other applicable law, and provide the petitioners with all the necessary assurances that Verizon will provide access to UNEs in an appropriate and lawful fashion.[1166]

c. Discussion

352. For reasons described below, we reject both WorldCom's proposed section 2.5 and Verizon's proposed section 1.7 as being inconsistent with Commission rules and precedent.[1167] We find that language that exists elsewhere in the proposed agreement is sufficient to address the issue presented by the parties. Specifically, under Verizon's proposed section 1.1, which we adopt in Issue IV-15 below, Verizon is obliged to provide UNEs in accordance with applicable law.[1168] We determine that this language, together with our findings herein, adequately addresses the parties' disagreement about their rights regarding collocation and access to UNEs. Neither WorldCom nor Verizon has established that adoption of their additional language is warranted.

353. Verizon's proposed language is inconsistent with the Commission's rules. While it may be true as a practical matter that a competitor would have to collocate to obtain a particular UNE, Commission precedent does not support generally requiring a competitor to collocate at an incumbent LEC's facilities in order to gain access to UNEs.[1169] Verizon fails to demonstrate how such a general provision is consistent with its statutory obligation to provide access to UNEs "at any technically feasible point."[1170] Moreover, we agree with WorldCom that forcing it to use the contract's BFR process to obtain access to UNEs other than through collocation would impermissibly shift the burden of demonstrating technical feasibility onto WorldCom. The Commission's rule 51.321(d) expressly provides that an incumbent that denies a competitor's request for a particular method of obtaining access to UNEs must demonstrate to the state commission that the requested method of obtaining such access is not technically feasible.[1171] In addition, rejecting Verizon's proposal is consistent with our findings below in

[1166] *Id.* at 34, citing Verizon's November Proposed Agreement to AT&T, § 11.0; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.

[1167] WorldCom's November Proposed Agreement to Verizon, Attach. III, § 2.5; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.7.

[1168] *See* Issue IV-15 *supra*; Verizon's November Proposed Agreement to WorldCom, Network Elements Attach., § 1.1.

[1169] *See, e.g., Net2000 Communications, Inc. v. Verizon-Washington D.C., Inc. et al.*, FCC 01-381, Memorandum Opinion and Order, 17 FCC Rcd 1150, 1158 at para. 26 (2002).

[1170] 47 U.S.C. § 251(c)(3).

[1171] 47 C.F.R. § 51.321(d).

Issue V-2, where we disagree with Verizon's assertion that the petitioner (in that issue, AT&T) must be collocated in order to purchase UNE dedicated transport.[1172]

354. We also reject WorldCom's proposal. As noted above, we find that WorldCom's introductory provision on network elements, which we adopt in this proceeding, is adequate to ensure that it may obtain access to Verizon's UNEs in accordance with applicable law, which includes its rights under section 251(c) to access UNEs using any technically feasible method and to collocate necessary equipment.[1173] We reject WorldCom's proposed language not simply because it is unnecessary, but also because it is ambiguous and possibly inconsistent with the Commission's rules. We agree with Verizon that, because WorldCom currently does, and for practical reasons must, collocate to obtain access to most UNEs, it makes little sense to include language phrased as an outright bar on requiring collocation. We also agree with Verizon that WorldCom's proposed language appears to conflict with Commission precedent in at least one circumstance, to the extent that the Commission has established that, under certain circumstances, a requesting carrier must collocate to obtain EELs.[1174] Given the choice between two ambiguous provisions with unsteady bases in Commission precedent, we find that the better alternative is to rely on language – that exists already in the adopted contract – referring to "applicable law."

6. Issue III-9 (Four-line Switching Exception)

a. Introduction

355. In the *UNE Remand Order*, the Commission determined that "requesting carriers are not impaired without access to unbundled local circuit switching" in certain circumstances.[1175] The Commission adopted rule 51.319(c)(2), which states:

> Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides nondiscriminatory access to

[1172] *See* Issue V-2 *infra*.

[1173] *See* WorldCom's November Proposed Agreement to Verizon, Attach. III, § 1.1; 47 C.F.R. § 51.321(a).

[1174] For example, the Commission has expressly recognized that to avail itself of two of the three local usage options to obtain the EEL combination, a requesting carrier must collocate in at least one incumbent LEC central office. *See Supplemental Order Clarification*, 15 FCC Rcd at 9598-99, para. 22. *See also* Verizon UNE Brief at 29.

[1175] *UNE Remand Order*, 15 FCC Rcd at 3823, para. 278.

> combinations of unbundled loops and transport (also known as the 'Enhanced Extended Link') throughout Density Zone 1, and the incumbent LEC's local switches are located in . . . [t]he top 50 Metropolitan Statistical Areas . . . and [i]n Density Zone 1 . . . .[1176]

We address below seven issues regarding the scope of this exception to Verizon's obligation to unbundle local switching. According to petitioners, the resolution of these issues will affect their ability to serve some small businesses profitably in the event Verizon invokes the local switching exception in Virginia. We note that Verizon has not invoked that exception and therefore currently must offer local switching as a UNE throughout Virginia.[1177]

356. The first issue concerns whether "end-users," as used in rule 51.319(c)(2), should be counted on a "per location" basis, as AT&T and WorldCom contend, or on a "per customer" basis, as Verizon urges. We accept AT&T's and WorldCom's position on this issue. In the second issue, AT&T and WorldCom dispute Verizon's position that the usage restrictions adopted in the *Supplemental Order* and *Supplemental Order Clarification* limit its obligation to provide access to enhanced extended links (EELs) under rule 51.319(c)(2).[1178] As explained below, we decline to resolve this issue at this time. The remaining five issues relate to AT&T's proposed contract language. This language would limit, both through advance notice provisions and what AT&T refers to as "quasi grandfathering," Verizon's ability to charge market-based prices for local switching, rather than prices based on the Commission's total element long-run incremental cost (TELRIC) methodology, in the event Verizon invokes the local switching exception. This language also sets forth AT&T's interpretation of "voice grade (DS0) equivalents or lines" in rule 51.319(c)(2); requires that Verizon list in an appendix to the agreement the offices for which it may invoke the local switching exception; and includes a unique change of law provision governing only the local switching exception. We rule against AT&T on these issues, except to the extent Verizon has accepted AT&T's position.

[1176] 47 C.F.R. § 51.319(c)(2).

[1177] *See* Verizon UNE Brief at 35.

[1178] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, 15 FCC Rcd 1760 (2000) (*Supplemental Order*) (subsequent history omitted); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) (*Supplemental Order Clarification*) (subsequent history omitted). In the *Supplemental Order*, the Commission determined that an incumbent need not allow IXCs to convert special access services to EELs, except where a competitive LEC would use the EEL to provide "a significant amount of local exchange service," in addition to exchange access service, to a particular customer. *Supplemental Order*, 15 FCC Rcd at 1762, para. 5. In the *Supplemental Order Clarification*, the Commission determined that a requesting carrier is providing "a significant amount of local exchange service" to a particular customer if it meets at least one of three safe harbors. *Supplemental Order Clarification*, 15 FCC Rcd at 9598-600, para. 22. An EEL consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. *UNE Remand Order*, 15 FCC Rcd at 3703, Executive Summary.

357. WorldCom and Verizon propose virtually identical language for the portion of their contract addressing the local switching exception,[1179] and we find both proposals consistent with the Communications Act and the Commission's rules. Because we find for WorldCom regarding the meaning of "end user," we adopt the rest of its uncontested language.[1180] The language regarding the local switching exception that Verizon proposes for its contract with AT&T differs significantly both from its proposal to WorldCom and from AT&T's proposed language.[1181] As explained below, we find AT&T's language to be inconsistent with rule 51.319(c)(2) in significant respects. We therefore adopt Verizon's proposal to AT&T, which is consistent with that rule, except as noted below.

b. Meaning of End-User

(i) Positions of the Parties

358. Under rule 51.319(c)(2), an incumbent LEC need not provide local switching as a UNE when the requesting telecommunications carrier serves "end-users with four or more voice grade (DS0) equivalents or lines" and certain other conditions are met.[1182] AT&T and WorldCom propose language that would limit application of this exception to situations where the requesting carrier provides four or more lines to a single customer location.[1183] They argue that counting lines on a "per location" basis is consistent with the impairment analysis that led the Commission to adopt the local switching exception, and that counting lines on a "per customer" basis would be inconsistent with that analysis.[1184] They contend that, in adopting the local switching exception, the Commission used line counts to signify a high volume of traffic. They maintain that a competitive LEC cannot economically connect its switch to individual lines scattered throughout a LATA and that Verizon's interpretation therefore would curtail

[1179] *Compare* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1, *with* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1.

[1180] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1. Because we accept WorldCom's proposed language, we dismiss as moot WorldCom's motion to strike Verizon's prior proposal regarding this issue. *See* WorldCom Motion to Strike at Ex. A at 12-13.

[1181] *Compare* Verizon's November Proposed Agreement to AT&T, § 11.4.1.5, *with* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1, & AT&T's November Proposed Agreement to Verizon, §§ 11.4.1.5-11.4.1.5.11.

[1182] 47 C.F.R. § 51.319(c)(2).

[1183] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4 (proposing that the exception apply only with regard "to a single end user customer account name, at a single physical customer location"); WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1 (proposing that the exception would apply to "customers who have four or more voice grade (DS0) or equivalent lines at one location"); *see* AT&T Brief at 126-29; WorldCom Brief at 106-10.

[1184] AT&T Brief at 127; WorldCom Brief at 106; AT&T Reply at 71 (contending that customer locations, not customer identity, was the Commission's primary consideration in the Commission's impairment analysis).

competitive options available to customers.[1185] WorldCom states that, while in theory there may be billing efficiencies in dealing with one customer in multiple locations, as opposed to different customers in those locations, the Commission never discussed those efficiencies in adopting the local switching exception.[1186]

359. Verizon would apply the local switching exception to situations in which the requesting carrier provides the customer with four or more lines within the same LATA.[1187] It maintains that the exception applies on a "per customer," rather than "per location," basis.[1188] Verizon argues that it is appropriate to apply that exception to customers with four or more lines within a LATA because customer billing is done on a LATA-wide basis.[1189] Verizon states that underpinning the exception is the idea that a customer has competitive alternatives to local switching within the metropolitan statistical area (MSA). Verizon asserts that businesses with multiple locations have such alternatives and often order services for groups of locations together, and that that a customer's total number of lines within the LATA therefore is the appropriate measuring stick for determining where the exception applies.[1190]

(ii) Discussion

360. We conclude that the local switching exception applies on a "per location" basis; we therefore adopt AT&T's and WorldCom's proposed language on this point.[1191] We find that, unlike Verizon's interpretation, the petitioners' interpretation properly recognizes that the collocation, hot cut, and other costs that the purchase of local switching enables a competitive

[1185] AT&T Brief at 128-29; AT&T Reply at 71; WorldCom Reply at 90-91.

[1186] WorldCom Brief at 107; WorldCom Reply at 90-91.

[1187] Verizon UNE Brief at 35-36. We note that Verizon's contract proposals do not reflect this single-LATA restriction. *See* Verizon's November Proposed Agreement to AT&T, § 11.4.1.5.1 (proposing that the exception apply when AT&T "serves end-users with four or more voice grade (DS0) equivalents or lines"); Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1 (proposing that the exception apply when WorldCom serves "customers who have four or more voice grade (DS0) or equivalent lines in the density zone 1 of the Washington, D.C. and Norfolk-Virginia Beach-Newport News Metropolitan Statistical Areas").

[1188] Verizon UNE Brief at 36-37.

[1189] *Id.* at 35-36.

[1190] Tr. at 163-65 (testimony of Verizon witness Gilligan); Verizon UNE Brief at 36-38.

[1191] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4 (stating that a customer must meet the four line threshold "at a single physical customer location"; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1 (stating that a customer must "have four or more voice grade (DS0) or equivalent lines at one location"). We reject the remainder of AT&T's proposed language regarding this issue. *See* AT&T's November Proposed Agreement to Verizon, §§ 11.4.1.5-11.4.1.5.3, 11.4.1.5.4 (first sentence to the extent it defines "single physical customer location"), 11.4.1.5.4 (remaining sentences), & 11.4.1.5.5-11.4.1.5.11. We find that AT&T has failed to justify this additional language.

LEC to avoid are largely a function of customer location.[1192] We therefore also conclude that rule 51.319(c)(2) is best interpreted as applying when the competitive LEC is serving a customer that has four or more lines at a single location.

361. In adopting the four-line threshold, the Commission distinguished "certain high-volume customers" from those residential and small business customers for which unbundled local switching would continue to be available.[1193] Applying the local switching exception on a strict "per customer" basis could count lines located in different states, but there is no suggestion in the *UNE Remand Order* or the record in this proceeding that a customer with one line in each of four different states could ever be considered a high-volume customer.[1194] Indeed, in conceding that we should count only lines within the LATA in determining a customer's line total, Verizon implicitly recognizes that a "per customer" line count is ultimately untenable and that some limiting construction is necessary to salvage its position. Verizon suggests that its marketing and billing practices, which typically but not invariably are tied to a particular LATA,[1195] provide the basis for such a limitation.[1196] Verizon provides no indication, however, that the Commission was taking a LATA-by-LATA approach when it adopted the local switching exception.[1197]

362. In addition, the record before the Commission in the *UNE Remand* proceeding supports application on a "per location" basis. In adopting the four-line threshold, the Commission relied on an *ex parte* letter that defined customers at the "[l]ocation [l]evel."[1198] This letter stated that approximately 72 percent of the filing carrier's business customers had three lines or fewer at a single location.[1199] The Commission concluded, based in part on this letter, that unbundled local switching should continue to be available as a UNE for end users

[1192] Tr. at 166-68 (testimony of AT&T witness Pfau and WorldCom witness Goldfarb); *cf. UNE Remand Order*, 15 FCC Rcd at 3830, para. 296 & n.577 (discussing collocation, hot cut, and other costs).

[1193] *UNE Remand Order*, 15 FCC Rcd at 3830-31, para. 297; *see also* Verizon UNE Brief at 36 (stating that the "underpinning of the four or more line exception is that the customer has competitive alternatives to local switching within the requisite MSA").

[1194] *See UNE Remand Order*, 15 FCC Rcd at 3822-32, paras. 276-99; Tr. at 114-21, 161-89.

[1195] *See* Tr. at 164-65.

[1196] Verizon UNE Brief at 38, citing Tr. at 164-65.

[1197] *See, e.g.,* Verizon UNE Brief at 35-41; *see also UNE Remand Order*, 15 FCC Rcd at 3822-32, paras. 276-99.

[1198] Letter from James K. Smith, Director Federal Relations, Ameritech, to Magalie R. Salas, Secretary, FCC, CC Docket No. 96-98, Attach. at 4 (filed Sept. 8, 1999), cited in *UNE Remand Order*, 15 FCC Rcd at 3831 n.580.

[1199] *See UNE Remand Order*, 15 FCC Rcd at 3831 n.580.

with three lines or fewer.[1200] The Commission's reliance on this letter suggests an analysis that focused on a "per location" threshold.

363. While the Commission did not state explicitly in the *UNE Remand Order* whether the four-line threshold should be applied on a "per location" basis, a subsequent determination by the Commission lends support to petitioners' argument. Specifically, in the *Local Competition and Broadband Reporting Order*, the Commission required LECs to report, among other information, the percent of total voice-grade equivalent lines they provide to residential and small business customers.[1201] The Commission stated that these customers would be identified "by separate billing addresses to which fewer than four lines are in service," in order to reflect "the definition of residential and small business customers that [it had] adopted to distinguish between the mass market and the medium and large business market in the *UNE Remand Order*."[1202] We find this order to be further indication that the Commission intended the local switching exception to be applied on a "per location" basis.

c. Access to EELs

(i) Positions of the Parties

364. AT&T proposes language that would require Verizon, in the event it invokes the local switching exception, to provide AT&T with access to EELs throughout the density zone for which the exception is invoked "without use restrictions of any kind."[1203] WorldCom proposes language that would require Verizon, in the event it invokes that exception, to provide WorldCom with "Non-Discriminatory access" to EELs throughout the relevant density zone.[1204] These parties argue that, in the event Verizon invokes the exception, it must provide EELs on an unqualified basis (*i.e.,* not subject to the restrictions set forth in the *Supplemental Order* and *Supplemental Order Clarification*).[1205] Specifically, WorldCom maintains that the *UNE Remand Order* requires incumbents that invoke the exception to provide EELs on an unqualified basis, that the *Supplemental Order* and *Supplemental Order Clarification* amended only certain

[1200] *Id.*, 15 FCC Rcd at 3830-31, para. 297.

[1201] *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7754, para. 77 (2000) (*Local Competition and Broadband Reporting Order*).

[1202] *Local Competition and Broadband Reporting Order*, 15 FCC Rcd at 7754, para. 77 & n.206, citing *UNE Remand Order*, 15 FCC Rcd at 3829, paras. 292-94.

[1203] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.2.

[1204] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1.

[1205] AT&T Brief at 129; WorldCom Brief at 110-13; AT&T Reply at 75-76.

paragraphs of the *UNE Remand Order*, and that the amendments did not change any part of the Commission's discussion of unbundled local switching.[1206]

365. For its contract with AT&T, Verizon proposes language stating that it need not provide unbundled local switching when AT&T serves end users with four or more voice grade (DS0) equivalents or lines, "provided that [Verizon] complies with the requirements of 47 C.F.R. §51.319(c)(2)."[1207] For its contract with WorldCom, Verizon proposes language virtually identical to that proposed by WorldCom.[1208] Although Verizon proposes different language with respect to AT&T and WorldCom, its position on the contested issue is the same: unlike the petitioners, it contends that the usage restrictions set forth in the *Supplemental Order Clarification* limit its obligation under rule 51.319(c)(2) to provide access to EELs.[1209] Verizon states that after adopting the local switching exception in the *UNE Remand Order*, the Commission held that, absent a waiver, a competitive LEC may convert a customer's special access services to EELs only if it certifies that it meets at least one safe harbor provision.[1210] Verizon argues that nothing in the *Supplemental Order Clarification* finds or even suggests that an incumbent's invocation of the local switching exception would nullify the criteria that the Commission determined must be met by a competitive LEC before it can convert special access services to EELs.[1211]

(ii) Discussion

366. We accept Verizon's language proposed to AT&T requiring that Verizon comply with the requirements of rule 51.319(c)(2) as well as WorldCom's language requiring that Verizon provide access to EELs "in accordance with Applicable Law" in the event Verizon invokes the local switching exception.[1212] In both instances, the adopted language is consistent

[1206] WorldCom Brief at 110-11.

[1207] Verizon's November Proposed Agreement to AT&T, § 11.4.1.5.1.

[1208] *Compare* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1 *with* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1. We discuss the single difference between these proposals below.

[1209] Verizon UNE Reply at 23.

[1210] *Id.*, citing *Supplemental Order Clarification*, 15 FCC Rcd at 9598-600, para. 22.

[1211] Verizon UNE Reply at 23.

[1212] We thus adopt Verizon's November Proposed Agreement to AT&T, § 11.4.1.5.1; and WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1. We note that the only difference between Verizon's and WorldCom's proposals for this part of their contract is that Verizon would define an EEL as "including multiplexing equipment," while WorldCom would define an EEL as "including multiplexing/concentration equipment." Because the Commission defined an EELs as including "multiplexing/concentrating equipment," (*see UNE Remand Order*, 15 FCC Rcd at 3703, Executive Summary), we find WorldCom's language preferable to Verizon's language.

with current law because it refers directly to the relevant Commission rule and "Applicable Law." In accepting this language, we decline to decide whether Verizon's obligation to provide EELs, in the event it invokes the local switching exception, would be subject to the restrictions set forth in the *Supplemental Order* and *Supplemental Order Clarification*. Those orders neither address this issue directly nor make clear how it should be resolved. Given that Verizon has not invoked the exception in Virginia,[1213] we conclude that the best course is for us not to resolve this issue in this order. We note that, in the *Triennial UNE Review NPRM*, the Commission is in the process of reevaluating the local switching exception, including the requirement that incumbent LECs make EELs available as a precondition to taking advantage of the exception.[1214] Commission action in that proceeding may change the requirements of rule 51.319(c)(2) or otherwise alter the "Applicable Law" pertaining to Verizon's EELs-related obligations prior to any invocation of the local switching exception by Verizon. For the same reason, we reject AT&T's proposal that we require Verizon, in the event it invokes the local switching exception, to provide access to EELs "without use restrictions of any kind."[1215]

d. Advance Notice of Non-TELRIC Pricing

(i) Positions of the Parties

367. AT&T proposes language that would require Verizon to provide 180 days' advance notice before charging market-based prices, rather than TELRIC prices, for local switching, in the event Verizon invokes the local switching exception.[1216] AT&T contends that competitive LECs require a stable business environment to attract capital and that Verizon's offer of 30 days' advance notice is patently inadequate to allow for such stability.[1217] Verizon's proposed contract language contains no reference to a notice period,[1218] but it states in its brief that it will provide advance notice and argues that 30 days would be adequate.[1219] Verizon points

[1213] *See* Verizon UNE Brief at 35.

[1214] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, 16 FCC Rcd 22781, 22806-08, paras. 56-60 (2001) (*Triennial UNE Review NPRM*).

[1215] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.2.

[1216] *Id.*

[1217] Tr. at 186-88 (testimony of AT&T witness Pfau); AT&T Brief at 130-31; AT&T Reply at 74-75.

[1218] *See* Verizon's November Proposed Agreement to AT&T, §§ 11.4.1.5.1-11.4.1.5.6.

[1219] Verizon UNE Brief at 40; *see* Tr. at 187-88 (testimony of Verizon witness Gilligan) (offering 30 days advance notice).

out that AT&T has been on notice that Verizon may invoke the local switching exception since the Commission released the *UNE Remand Order* in November 1999.[1220]

(ii) Discussion

368. We rule for Verizon on this issue. The *UNE Remand Order* already has given AT&T abundant notice that Verizon may invoke the local switching exception in qualifying areas, and it did not recognize the need for a lengthy additional advance notice period. Contrary to AT&T's suggestion, we expect that the capital markets have already accounted for the potential that Verizon may invoke the local switching exception. Moreover, we find that AT&T has not shown that the notice period of 30 days would be unreasonably or unlawfully short. AT&T and Verizon shall reflect that notice period in their interconnection agreement.

e. "Quasi Grandfathering" of TELRIC Prices

(i) Positions of the Parties

369. AT&T proposes language that would preclude Verizon from applying non-TELRIC prices to unbundled local switching received or ordered before the effective date of Verizon's invocation of the exemption.[1221] This "quasi grandfathering" would extend, under AT&T's proposal, until the parties renegotiate the prices in the interconnection agreement.[1222] AT&T maintains that non-TELRIC pricing would make AT&T's rates non-competitive.[1223] Verizon maintains that the one direct and foreseeable result of an incumbent's exercise of the local switching exception is to move from providing local switching at a TELRIC rate to providing local switching at a non-TELRIC rate. Verizon also argues that the Commission's rules provide no support for AT&T's position.[1224]

(ii) Discussion

370. We rule for Verizon on this issue. AT&T's proposal would effectively nullify the local switching exception for AT&T's existing customers for the duration of the interconnection agreement. AT&T has failed to identify any support in applicable Commission precedent for such a result.

[1220] Verizon UNE Brief at 40.

[1221] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.5.

[1222] AT&T Brief at 130; AT&T Reply at 75.

[1223] AT&T Reply at 75.

[1224] Verizon UNE Reply at 24-25.

f. Meaning of "Voice Grade (DS0) Equivalents or Lines"

(i) Positions of the Parties

371. AT&T proposes language that would allow Verizon to exercise the local switching exception only with regard to "2-wire unbundled [l]oops."[1225] AT&T argues that the phrase "voice grade (DS0) equivalents or lines" in rule 51.319(c)(2) applies to the quantity of two-wire loops that are capable of terminating on a circuit switch, not to the number of DS0s.[1226] AT&T states that, under Verizon's proposal, the four-line threshold could be reached on a single loop: for example, in a line splitting environment, if a carrier used the low frequency spectrum to provide a DS0 and the high frequency spectrum to support data transfer rates exceeding 192 kilobits per second (kbps) (the equivalent of three DS0s).[1227]

372. Verizon argues that AT&T's interpretation of the Commission's rule as counting only 2-wire unbundled loops is "tortured," and ignores the plain language of the rule, which clearly refers to "voice grade (DS0) equivalents."[1228] According to Verizon's interpretation, then, a four-line threshold could be reached on a single loop, if that loop carries four or more voice-grade (DS0) equivalents (that is, four times 64 kbps). Verizon points out, for example, that a customer may receive up to 24 voice-grade channels through a single integrated services digital network (ISDN) line.[1229] Verizon agrees with AT&T, however, that we should interpret the rule as addressing capacity that terminates on a circuit switch,[1230] but it proposes no contract language reflecting this position.

(ii) Discussion

373. The local switching exception eliminates an incumbent's obligation to provide unbundled local switching when the requesting carrier serves end-users with four or more "voice grade (DS0) equivalents or lines."[1231] By definition, a DS0 is a 64 kbps digital channel.[1232] We therefore conclude that the phrase "four or more voice grade (DS0) equivalents or lines"

[1225] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4.

[1226] Tr. at 174 (testimony of AT&T witness Pfau); AT&T Brief at 130; *see* AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4 (proposing that Verizon be able to exercise the local switching exception only with regard to "2-wire unbundled [l]oops").

[1227] Tr. at 174 (testimony of AT&T witness Pfau); AT&T Brief at 130.

[1228] Verizon UNE Brief at 36, n.43; Verizon UNE Reply Brief at 24.

[1229] Tr. at 175 (testimony of Verizon witness Gilligan).

[1230] *Id.* at 174-75 (testimony of Verizon witness Gilligan); *see* Verizon UNE Brief at 36 n.43.

[1231] 47 C.F.R. § 51.319(c)(2).

[1232] Tr. at 175.

encompasses, in addition to four two-wire loops, other facilities that provide an end user with at least 256 kbps of transmission capacity (*i.e.,* four DSO equivalents, at 64 kbps each). For instance, as Verizon suggests, a customer that receives four or more voice-grade (DS0) equivalents through a single ISDN line would meet the four-line threshold.[1233] Neither Commission precedent, nor the text of Commission rule 319(c)(2), suggests that this exception applies strictly to the number of 2-wire loops. We accordingly reject AT&T's interpretation of this language in rule 51.319(c)(2).

374. Because a competitive LEC would not purchase local switching for non-switched traffic, we agree with AT&T and Verizon that the rule requires that the 64 kbps of transmission capacity be capable of terminating in a switch.[1234] Specifically, as Verizon concedes, capacity in the high frequency portion of a local loop that is split off and dedicated to an ISP should not be counted in determining whether the four-line threshold is met.[1235] AT&T and Verizon shall reflect this ruling in their interconnection agreement.

g. Offices Where Exception Will Apply

375. AT&T proposes language that would require Verizon to list the offices for which it may invoke the unbundled local switching exception in an appendix to the interconnection agreement.[1236] Although Verizon's witness appeared to accept this proposal during the hearing,[1237] Verizon's proposed contract language does not reflect this acceptance.[1238] Consistent with Verizon's position at the hearing, we require that the interconnection agreement specify the offices for which Verizon may invoke the exception. We find AT&T's suggestion to be reasonable, and Verizon has not argued otherwise.

h. Change of Law

376. AT&T proposes language under which the interconnection agreement provisions regarding the unbundled local switching exception would become null and void 30 days after the effectiveness of any Commission rule eliminating or modifying that exception.[1239] AT&T claims that it should not have to relitigate, renegotiate, or arbitrate the unbundled local switching

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[1233] *Id.* (testimony of Verizon witness Gilligan).

[1234] Verizon UNE Brief at 36 n.43, citing Tr. at 175 (testimony of Verizon witness Gilligan).

[1235] Tr. at 175 (testimony of Verizon witness Gilligan).

[1236] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.2.

[1237] Tr. at 188-89 (Verizon witness Gilligan stating that she would have no objection to the agreement's listing the offices for which Verizon could invoke the local switching exception).

[1238] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1.

[1239] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.1.

exception in the event the Commission eliminates or modifies it.[1240] Verizon argues that the change of law provisions in Verizon's proposed contract would address this situation and that there is nothing unique about the local switching exception that requires a separate change of law provision.[1241] We agree with Verizon that the unbundled local switching exception presents no unique change of law considerations.[1242] We therefore conclude that the interconnection agreement's overall change of law provisions should apply in this area.[1243]

7. Issue III-10 (Line Sharing and Line Splitting)

a. Introduction

377. AT&T, WorldCom and Verizon disagree about the language to include in the agreement concerning Verizon's obligations related to advanced services, particularly line sharing and line splitting.[1244] According to WorldCom, it has settled with Verizon all but one of its advanced services issues: if and when Verizon upgrades its network to provide xDSL-based services out of its remote facilities, should the agreement include language requiring Verizon to provide WorldCom with access to remote facilities and to loops attached to those facilities on the same terms and conditions as Verizon provides to itself or to its affiliates.[1245] Generally, AT&T and Verizon disagree about the level of operational detail to be included in the agreement. At one point in this proceeding, AT&T identified 15 sub-issues within Issue III-10 (which asks the general question of "How and under what conditions must Verizon implement line splitting and line sharing?").[1246] However, AT&T chose not to identify which language, if any, in its proposal is responsive to which sub-issue and did not brief Issue III-10 by sub-issue. While the parties are free to choose how to present their arguments, because of the briefing format selected by AT&T,

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[1240] AT&T Brief at 131.

[1241] Verizon UNE Reply at 25.

[1242] *See id.*

[1243] We address those change of law provisions in connection with Issues IV-113/VI-1-E, below.

[1244] Line sharing occurs when an incumbent is providing, and continues to provide, voice service on the particular loop to which the competing carrier seeks access in order to provide xDSL service. Line splitting refers to the situation where the competing carrier(s) provides both voice and data service over a single loop. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26, 16 FCC Rcd 2101, 2110, para. 17 (2001) (*Line Sharing Reconsideration Order*).

[1245] WorldCom Brief at 157. WorldCom's proposed language responsive to Issue III-10-4 is found in Attachment III, section 4.10.

[1246] This number rises to 17 if we include Issues III-10-A and III-10-B, both of which ask whether Verizon must provide line sharing and line splitting in a "nondiscriminatory and commercially reasonable manner." *See* Verizon Advanced Services Brief at 13 n.16.

it is difficult and impractical for us to follow AT&T's organizational scheme. We note, however, that we nonetheless resolve each issue presented by AT&T, albeit in a different sequence.

378. After the record in this proceeding closed, the United States Court of Appeals for the District of Columbia Circuit issued an opinion addressing two Commission decisions, one of which, the *Line Sharing Order*, is directly relevant to this arbitration issue.[1247] As mentioned earlier, the Commission is reviewing its UNE rules, which includes an incumbent LEC's obligations with respect to line sharing, in the *Triennial UNE Review NPRM*, and recently extended the reply comment date to allow parties to incorporate their review and analysis of the D.C. Circuit's recent decision. We recognize, nonetheless, that Verizon's line sharing obligations are still in place in Virginia, pursuant to the merger conditions set forth in the *Bell Atlantic-GTE Merger Order*.[1248] Specifically, the relevant condition states that Verizon's line sharing obligations continue until June 16, 2003, or until the effective date of a final and non-appealable judicial decision that Verizon is not required to provide this UNE, whichever is earlier. Because the Commission has requested a rehearing of the *USTA v. FCC* decision, neither of these events has yet occurred.[1249] Consequently, we determine that we must resolve the disputes presented in this issue because the petitioners are entitled to an interconnection agreement containing terms and conditions that give practical effect to Verizon's current legal obligations. Should Verizon's line sharing obligations change, either by court or Commission action, we note that the change of law provisions contained in the parties' contracts would apply.

b. xDSL Services Provided out of Remote Terminals (WorldCom)

(i) Positions of the Parties

379. WorldCom argues that Verizon has acknowledged that WorldCom's proposal reflects the current state of the law,[1250] and has promised to provide competitive carriers with nondiscriminatory access to fiber-fed digital loop carrier (DLC) if it upgrades its network.[1251] According to WorldCom, if we do not adopt its proposal, Verizon will interpret this decision "as sanction to engage in discrimination," but memorializing this obligation in the agreement gives the parties the opportunity to "adjust disputes and remedy violations" under established

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[1247] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*). The court stated that "the *Line Sharing Order* must be vacated and remanded." *Id.* at 429. The court also stated that it "grant[ed] the petitions for review and remand[ed] the *Line Sharing Order* and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id.* at 430.

[1248] *Bell Atlantic-GTE Merger Order,* 15 FCC Rcd at 14180, para. 316; *Bell Atlantic-GTE Merger Order* at Appendix D, 15 FCC Rcd at 14316, para. 39.

[1249] *See* Petition of FCC and United States for Rehearing or Rehearing *En Banc*, D.C. Circuit Nos. 00-1012, *et al.* & 00-1015, *et al*., filed July 8, 2002.

[1250] WorldCom Brief at 157, citing Tr. at 742.

[1251] *Id.*, citing Verizon Ex. 16 (Rebuttal Testimony of R. Clayton *et al.*), at 56.

procedures.[1252] WorldCom disagrees with Verizon's assertion that the proposal is premature, arguing that the proposal only applies "if and when" Verizon deploys such equipment.[1253]

380. Verizon argues that WorldCom's language is premature because its interconnection obligations apply only to its current network, not to an as yet unbuilt one.[1254] Verizon contends that its proposed language adequately ensures that it will comply with "applicable law" if and when it upgrades its network to provide xDSL-based services out of remote terminals.[1255] Verizon also argues that, unlike WorldCom's language, its proposal ensures that it is required throughout the life of the agreement to comply with the governing legal requirements so that the contract will neither become quickly dated nor require constant revision or amendment.[1256] Moreover, Verizon asserts that WorldCom's proposal inaccurately paraphrases applicable law.[1257]

(ii) Discussion

381. We agree with Verizon's suggestion and defer consideration of this issue. The subject of WorldCom's issue is the same as AT&T's Issue V-6, which we deferred in a letter ruling last year at the request of the parties. With respect to both issues, we find that deferral is appropriate because the Commission is considering issues related to an incumbent's next-generation DLC obligations in the *Triennial UNE Review NPRM*.[1258] Deferral is also appropriate

[1252] WorldCom Brief at 157-58 (also arguing that its proposal will prevent unnecessary delays because Verizon frequently insists that even the most straight-forward statutory requirements be integrated into agreements before Verizon will obey them).

[1253] WorldCom Reply at 141.

[1254] Verizon Advanced Service Brief at 8.

[1255] *Id.* Verizon also argues that its proposed section 2 to the UNE Attachment with WorldCom contractually binds it to comply with applicable law and that no further contract language is required. *Id.* at 9. In the alternative, Verizon contends that since the Commission is currently reviewing access to next-generation DLC loops in a rulemaking and has deferred AT&T's Issue V-6 until the conclusion of that proceeding, the Bureau should also defer WorldCom's Issue III-10-4. *Id.* at 8-9.

[1256] Verizon Advanced Services Reply at 4. Verizon argues that this defect is particularly compelling in the advanced services context, where the ground rules are still developing. *Id.*

[1257] *Id.* at 1.

[1258] *See* September 25, 2001 Letter Order, at 2. *See also Triennial UNE Review NPRM*, 16 FCC Rcd at 22788-89, para. 14. As noted earlier in this Order, the D.C. Circuit's *USTA v. FCC* decision also remanded the Commission's *UNE Remand Order* and accompanying rules, one of which is rule 51.319(c)(4) concerning packet switching.

because Verizon has yet to deploy in Virginia network facilities envisioned by WorldCom's language.[1259]

c. Incorporation of Decisions from New York into Agreement (AT&T)[1260]

(i) Positions of the Parties

382. While AT&T initially proposed extensive contract language enumerating line sharing and line splitting operational details, it subsequently withdrew this detailed language[1261] and instead proposes that the agreement expressly establish a process that: (1) assures all outputs of the "New York DSL Process" are promptly applied in Virginia;[1262] (2) addresses any appropriate differences in the operational support for line sharing and line splitting between New York and Virginia; and (3) resolves operational issues in cases where the New York DSL Collaborative does not apply.[1263]

383. AT&T argues that its proposal builds upon work underway in New York and, thus, avoids duplicative efforts, and establishes a reasonable and neutral process to assure that New York outputs are appropriately implemented in Virginia.[1264] AT&T also notes that its proposal creates a mechanism by which the parties could seek to modify operational details imported from New York in order to accommodate any "jurisdictional differences" that may

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[1259] *See* Verizon Ex. 16 (Rebuttal Testimony of R. Clayton *et al.*), at 55-56 (stating that if Verizon Virginia upgrades its network to provide xDSL-based services using loops served by fiber-fed DLC it will provide competitors access to those facilities on the same terms and conditions as it grants to its affiliates).

[1260] We note that the New York Commission, together with industry, began reviewing xDSL-related issues during the New York Commission's consideration of Verizon's (f/k/a Bell Atlantic-New York) compliance with section 271 of the Act. In January 2000, the New York Commission decided to continue its review of xDSL issues and opened a proceeding, the New York DSL Collaborative, that continues under the direction of a New York Commission administrative law judge. *See* Case 01-C-0127, *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Order Instituting Proceeding to Examine Digital Subscriber Line Issues (issued by N.Y. Pub. Serv. Comm'n on Jan. 12, 2000). Both AT&T and Verizon participate in this collaborative.

[1261] To that end, AT&T indicates its willingness to delete the following sections from its earlier Schedule 11.2.17 proposal: all definitions (though create a cross-reference definition to Line Sharing and Line Splitting as they have been implemented in New York), 1.1.1, 1.1.2, 1.3.4, 1.3.5, 1.3.8, 1.3.9, 1.3.12, 1.3.13, 1.5, 1.7, 1.8, 1.9, and 1.10. AT&T Brief at 160-61.

[1262] AT&T defines this term to mean all activities related to the New York DSL Collaborative and any AT&T-Verizon operational agreement reached in New York relating to support for line sharing and line splitting. AT&T Brief at 157 n.515, citing AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.0.

[1263] *Id.* at 158.

[1264] *Id.* at 162. The details of its new proposal are provided at pages 161-66 of its brief.

arise.[1265] AT&T argues that its proposal addresses Verizon's concerns about conflicts between the contract and results of the New York Process, and enables the parties to modify the applicable advanced services operational procedures in Virginia without modifying the contract.[1266] According to AT&T, if the New York DSL Process is to be the basis for the advanced services issues in Virginia, Verizon must agree to accept all of the results of that process, including both agreed upon and "ordered" requirements (*i.e.,* those ordered over Verizon's objection).[1267]

384. Verizon asserts that AT&T's proposal forces Verizon to accept a litigated result from another state, thereby effectively requiring Verizon to forego its First and Fifth Amendment rights to argue in good faith for a different result in Virginia.[1268] Verizon further argues that decisions from New York should not be blindly adopted in another state without understanding their context. Verizon thus argues that AT&T's advanced services language should be rejected in its entirety.[1269]

385. Verizon criticizes AT&T's revised proposal for lacking necessary operational details, which, it argues, are particularly necessary with respect to line splitting, because line splitting is a new product that requires resolving complicated operational issues and establishing new carrier relationships.[1270] Verizon argues that its proposal implements line splitting in Virginia consistent with the service descriptions, procedures, and timelines agreed upon in the New York DSL Collaborative.[1271] According to Verizon, these procedures are the same that the Commission reviewed in Verizon's Massachusetts, Connecticut, and Pennsylvania section 271

[1265] *Id.* at 166. AT&T states that section 1.5.6 establishes a deadline by which the New York processes must be available in Virginia (or no more than 30 days later than in New York) unless Verizon requests an extension from the Virginia Commission. It also notes that section 1.5.7 creates a process so that the Virginia Commission can delay or modify obligations established in New York, and section 1.5.8 provides that if the implementation of a New York output is delayed, AT&T may seek expedited implementation in Virginia through use of the alternative dispute resolution provisions (ADR) in the agreement. *See id.* at 163.

[1266] *Id.* at 166.

[1267] *Id.* at 162. For example, section 1.5.1 defines generically the New York "outputs" that will apply in Virginia. These include published operating procedures, agreements (both industry-wide and between AT&T and Verizon), tariffs and orders of the New York Commission, unless AT&T has expressly agreed otherwise or unless the Virginia Commission has issued an order applying federal law that specifically directs that different rules or processes shall apply. *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.5.1.

[1268] Verizon Advanced Services Reply at 3.

[1269] *Id.* at 3-4.

[1270] *Id.* at 2.

[1271] Verizon Advanced Services Brief at 15 (discussing Issue III-10-B-2, which concerns providing AT&T with proposed procedures to implement line splitting on a manual basis).

applications.[1272] Verizon also argues that it will implement the agreed-upon results of the New York DSL Collaborative in Virginia consistent with the "implementation schedules, terms, conditions, and guidelines established by the Collaborative, allowing for local jurisdictional and OSS differences."[1273] Moreover, Verizon contends that the New York DSL Collaborative has addressed or is considering many of the specific issues raised by AT&T, including loop pre-qualification, minimizing service disruptions during a conversion from a line sharing to a line splitting arrangement, and physical re-termination of wiring.[1274]

(ii) Discussion

386. Except as described below, we adopt AT&T's revised Schedule 11.2.17. Consistent with our decision to direct the parties to incorporate line sharing and line splitting practices established in New York, discussed below, we adopt all of AT&T's proposed sections 1.5 through 1.5.11, with one modification. The last two sentences of section 1.5 provide that Verizon's line sharing and line splitting performance shall be monitored in the same manner as in New York and that if Verizon delivers performance to itself or an affiliate that is superior than the applicable metric then that superior performance will become the standard.[1275] We strike these last two sentences because, as indicated above, the Virginia Commission has established its own performance measurements and standards, albeit based on work done in New York. It would be inappropriate to circumvent the Virginia Commission's work in the manner suggested by AT&T's proposal. We also adopt AT&T's revised definitional section, which provides that "Line Sharing," "Line Splitting," and all associated terminology shall have the same meaning as in Verizon's New York tariffs, New York DSL Collaborative documents, and operational agreements between AT&T and Verizon.[1276]

387. We find that it is reasonable for the parties to incorporate the operational details in place in New York into their Virginia interconnection agreement, as requested by AT&T. As

[1272] *Id.* at 16. Verizon also states that it provided all methods and procedures developed in the New York Collaborative in an arbitration exhibit. *Id.*, citing Verizon Ex. 63 (response to record request on methods and procedures, and service descriptions).

[1273] *Id.* at 19, citing its proposed section 11.2.18.1 and discussing Issue III-10-B-9 (implementing services in a manner consistent with that ordered in New York). *See also id.* at 16 (discussing, in response to Issue III-10-B-3, its good effort efforts to implement line splitting OSS in Virginia at the same time as in New York but no later than the effective date of the agreement).

[1274] *Id.* at 17-18 (discussing Issues III-10-B-5 and III-10-5-A, which concern whether AT&T should be required to pre-qualify a loop for xDSL functionality and what are the resulting consequences if AT&T elects not to pre-qualify certain loops). *See also id.* at 22, 23 (discussing service disruptions in relation to Issue III-10-B-13 and physical re-termination of wiring for Issue III-10-B-14).

[1275] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.5.

[1276] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.0. We also adopt AT&T's proposed section 1.1. *Id.* at § 1.1.

an initial matter, both parties recognize that the area of advanced services is rapidly evolving and that it is in neither party's interest for us to adopt language that may be obsolete in six months, or even sooner.[1277] We also recognize that both parties have suggested, at different points in this proceeding, that it does not make sense to establish a detailed set of operational requirements for line sharing in this contract but, rather, that it makes sense to build upon the progress made in the New York DSL Collaborative. We thus agree with both parties' general premise that the contract should import, in some manner, line sharing and line splitting methods and procedures developed in the New York DSL Collaborative, rather than establish a separate set of specific requirements.[1278] We also find that, as a practical matter, it is preferable for the parties to use New York's proven methods and procedures for line sharing and line splitting than for us to approve or mandate new, untested operational details in this proceeding. We note, moreover, that this approach is consistent with the spirit of the Commission's recommendation in its *Line Sharing Reconsideration Order* for incumbents and competitive LECs to use existing state collaboratives to address certain operational details.[1279]

388. The primary dispute between the parties on this issue is whether to import those operational details *ordered by* the New York Commission, along with the "consensus" items they agree to import. On this question, we side with AT&T. We note that the DSL Collaborative established by the New York Commission has not – and likely will not in the future – resolve all open questions about implementing Verizon's line sharing and line splitting offerings. Indeed, the New York Commission instituted a litigation track to resolve line sharing and line splitting issues that have not been agreed upon by the parties.[1280] Accordingly, we believe that importing only certain operational details from New York, as Verizon proposes, would leave an odd assortment of requirements in Virginia, leaving gaps and uncertainty that, in New York, have been filled by the New York Commission. We believe it to be a far better result, from a practical perspective, for Verizon and AT&T to use the same processes for line sharing and line splitting in Virginia as in New York (with allowances for jurisdictional differences, as discussed below).

389. To be clear, we only direct the parties to incorporate those New York Commission decisions that are based on federal law. As mentioned earlier in this Order, we will only apply federal law in resolving the parties' disputes. Should Verizon's line sharing

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[1277] Verizon argued in its opening brief, with respect to line splitting, that "it is premature and inappropriate to lock a great deal of operational detail in an interconnection agreement on a product that may need further refinement based on actual market experience." Verizon Advanced Services Brief at 5.

[1278] We note that under AT&T's proposal, the prices for line sharing and line splitting shall be specific to Virginia. *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.2.

[1279] *Line Sharing Reconsideration Order*, 16 FCC at 2111-12, para. 21.

[1280] *See* Case 00-C-0127, *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, at 1-2 (issued by N.Y. Pub. Serv. Comm'n on Oct. 31, 2000) (stating that the New York Commission instituted a litigation track to consider those xDSL issues that have eluded collaborative resolution).

obligations under federal law change, the interconnection agreement's change of law provision would apply. Should such a change occur and the New York Commission determines that it has independent state authority to require Verizon to offer certain services, we do not direct the parties to import those New York non-consensus decisions to Virginia. Finally, we further find that AT&T's request to import the New York Commission's decisions – with the procedural safeguards addressed below – is appropriate because the New York Commission has developed expertise regarding Verizon's line sharing and line splitting offerings that cannot be easily replicated.

390. We find it significant that the Virginia Commission has adopted a similar approach in a different context. Specifically, we note that the Virginia Commission, having adopted a set of performance measurements and standards based on those established by the New York Commission, recently created a process for importing from New York both consensus and non-consensus modifications to the performance measurements and standards.[1281] Under this process, Verizon is required to file with the Virginia Commission the New York consensus and non-consensus metric changes within 30 days of Verizon-New York's compliance filing with the New York Commission.[1282] Together with this filing, Verizon may argue why a metric change is not appropriate in Virginia and Virginia Commission staff and any interested party may request a hearing on the proposed metric.[1283] Since the operational details for line sharing and line splitting are technical in nature and may require slight adjustment from state to state, just like performance measurements, we find it compelling that the Virginia Commission adopted a similar approach to keeping its metrics current.

391. We disagree that importing to Virginia decisions rendered in New York over Verizon's objections deprives Verizon of its First and Fifth Amendment rights to argue for a different result in Virginia.[1284] Quite the contrary, the approach adopted herein explicitly envisions that Verizon may oppose the adoption of any New York Commission decision and provides Verizon the means to do so.[1285] Under the language we adopt, Verizon is afforded the opportunity to explain in as much detail as it likes why a particular decision on line sharing or line splitting should not be adopted in Virginia. Thus, we disagree that the New York Commission's decisions will be "blindly adopted" in Virginia without an understanding of the

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[1281] *Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change Metrics, issued January 4, 2002 (*Virginia Commission Performance Metrics and Standards Order*). The Virginia Commission defines a non-consensus decision as one that has not been agreed to by all parties in another New York Commission-run collaborative. *Id*. at 15 n.22.

[1282] *Virginia Commission Performance Metrics and Standards Order* at 15.

[1283] *Id.* at 15-16.

[1284] Verizon Advanced Services Reply at 3.

[1285] *See* AT&T's proposed section 1.5.7, which provides that either party may petition the Virginia Commission to delay or modify implementation of obligations established through the New York Process.

context in which they were made.[1286] We note that adopting AT&T's approach actually is consistent with certain objectives articulated by Verizon. For example, we find that our decision on this issue is consistent with, and indeed furthers, Verizon's stated "desire to implement a standard line splitting product throughout the entire Verizon footprint."[1287] Moreover, we find that our decision to incorporate the New York Process for line sharing and line splitting operational details is responsive to Verizon's concern of locking in details that prove unworkable in practice.[1288] In addition, we agree with AT&T that its approach "embraces," not "circumvents," the process and results of the New York DSL Collaborative.[1289]

392. Our approach here is also consistent with the approach taken by the New York Commission in its *New York Commission AT&T Arbitration Order*. Although Verizon contends that its proposal implements the results of agreements reached in the New York DSL Collaborative and that the New York Commission approved this approach in the *New York Commission AT&T Arbitration Order*, we disagree with Verizon's characterization of that order.[1290] While the New York Commission ordered the inclusion of "consensus" decisions from the collaborative, it also directed the parties to incorporate by reference the applicable tariff when approved, which is almost certain to contain "non-consensus" decisions.[1291] Finally, we note that our adopted approach is equally appropriate for line sharing because any separate and distinct business rules and service descriptions between line sharing and line splitting would be reflected in the decisions from New York.[1292]

393. Although we address it last, perhaps the most important issue to discuss is the Virginia Commission's role under our adopted approach. As is apparent from the Virginia Commission's performance metrics change process, the Virginia Commission is not averse to importing decisions, even litigated ones, rendered by another state commission on technical issues such as performance measurements and standards.[1293] We determine that, as set forth in AT&T's proposed Schedule 11.2.17, section 1.5.7, it is appropriate to afford the Virginia Commission the opportunity to make any necessary and appropriate adjustments to New York processes and requirements. The Virginia Commission is uniquely positioned by its state-

[1286] Verizon Advanced Services Reply at 3-4.

[1287] Verizon Advanced Services Brief at 4.

[1288] *Id.* at 5.

[1289] *See* AT&T Reply at 94-95; Verizon Advanced Services Brief at 1.

[1290] *See* Verizon Advanced Services Brief at 4, citing *New York Commission AT&T Arbitration Order* at 67-68.

[1291] *New York Commission AT&T Arbitration Order* at 67-68.

[1292] *See* Verizon Advanced Services Brief at 10 (arguing that industry, through the New York DSL Collaborative, developed separate and distinct business rules and service descriptions for these two offerings).

[1293] *Virginia Commission Performance Metrics and Standards Order* at 15-16.

specific knowledge to review decisions from New York in an efficient manner and determine whether and how these decisions should be executed in its state. This process will also eliminate the need for the Virginia Commission to reinvent the wheel by enabling it to allow decisions from New York that are equally applicable to Virginia to go into effect without further action. Without doubt, the process we adopt here will expedite the implementation of operational details for advanced services between the parties to this proceeding and will, therefore, speed the availability of these services to Virginia residents.

394. We note that AT&T's proposal provides that a party seeking to delay or modify an obligation established in the New York Process may petition the Virginia Commission. But the proposal gives no other guidance as to the procedure a party should follow in such circumstances. Since there is no existing process, either at the Virginia Commission or before the FCC, to review a party's petition filed pursuant to section 1.5.7 of AT&T's proposal, we modify AT&T's proposal to address any procedural uncertainty should the Virginia Commission decline to act on a petition. If the Virginia Commission indicates that it will not review a party's petition, we direct the parties to negotiate for 30 days. If the parties are unable to reach agreement within that period of time, either party may seek resolution of the dispute through the ADR process. This is the same process that will apply under AT&T's proposal in the event that a party seeks to change a Verizon xDSL obligation and the New York DSL Collaborative is no longer operating or considering modifications.[1294]

d. Loop Qualification (AT&T)[1295]

(i) Positions of the Parties

395. AT&T proposes language that would: permit it to use both Verizon and non-Verizon loop pre-qualification tools;[1296] allow it to participate in Verizon's planning and implementation of modifications to existing or new loop qualification tools;[1297] relieve Verizon of service performance obligations if AT&T elects not to use Verizon's tools;[1298] and permit AT&T to re-use a loop if that loop is currently providing active xDSL service, regardless of whether it performs a loop qualification.[1299] AT&T disputes Verizon's claims about the cost and the effect

[1294] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.5.10.

[1295] AT&T and Verizon disagree about whether AT&T should be required to use Verizon's loop qualification tools. Since AT&T has agreed to use Verizon's loop qualification tools for line sharing, the only dispute in this issue relates to line splitting. *See* AT&T Brief at 168 n.533 (stating that AT&T will use Verizon's loop qualification tools for line sharing).

[1296] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, §§ 1.3.1, 1.3.2.

[1297] *See id.* at Schedule 11.2.17, § 1.3.1.

[1298] *See id.* at Schedule 11.2.17, § 1.3.2.

[1299] *See id.* at Schedule 11.2.17, § 1.3.3.

of permitting AT&T to use its own loop qualification tools for line splitting, arguing that it will not affect the provisioning of any Verizon retail service, does not require Verizon to incur any costs because Verizon would not have to alter any of its systems or processes, and has already been used successfully.[1300] In addition, AT&T states that if it does not use one of Verizon's tools, AT&T would be unable to hold Verizon responsible for the performance of a loop,[1301] and that its loop qualification tool proposal is consistent with the *New York AT&T Arbitration Order*, upon which, AT&T argues, Verizon relies.[1302]

396. Verizon argues that the Commission has already determined that Verizon's loop qualification procedures fulfill its *UNE Remand Order* obligations and that its proposals in Virginia are identical to processes used in Massachusetts, Connecticut, and Pennsylvania.[1303] Verizon also argues that its existing loop qualification methods and tools were implemented on the basis of the consensus of all parties to the New York DSL Collaborative and collectively meet the competitors' needs for pre-qualifying loops for xDSL.[1304] According to Verizon, it has invested significant amounts of time and money into modifying its systems and building new capabilities and should not be required to spend more to accommodate just one competitor in a manner that is not required under applicable law.[1305] Verizon also urges the Commission to reject AT&T's proposal regarding qualification of loops previously used to provide advanced services, arguing that pre-qualification for one type of advanced data service does not automatically qualify that loop for another type of advanced data service.[1306] Finally, Verizon contends that as a participant in the New York DSL Collaborative, AT&T is already positioned to participate in meetings on modifications to loop qualifications procedures and, therefore, the Commission should reject AT&T's request to participate in the planning and implementation of modifications to Verizon's data compilations or procedures.[1307]

[1300] AT&T Reply at 97, citing Verizon Advanced Services Brief at 26; AT&T Brief at 169-70.

[1301] AT&T Reply at 97-98.

[1302] *Id.* at 98, citing Verizon Advanced Services Brief at 26; Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues (issued July 30, 2001) (*New York Commission AT&T Arbitration Order*).

[1303] Verizon Advanced Services Brief at 16-17 (also arguing that its proposed language reflects the efforts of the New York DSL Collaborative). We note that Verizon's response was provided in Issue III-10-B-4, which asks whether Verizon must provide nondiscriminatory automated access to all loop qualification data and permit AT&T to participate in the planning and implementation of such automated access.

[1304] Verizon Advanced Services Brief at 26.

[1305] *Id.* (noting that other state commissions have rejected AT&T's proposal).

[1306] *Id.* at 27-28.

[1307] *Id.* at 28.

(ii) Discussion

397. We adopt only that part of AT&T's proposed section 1.3.1 that permits it to use, at its option, any of the loop pre-qualification methods currently provided or used by Verizon, including any of its affiliates.[1308] Since Verizon indicates that its loop qualification procedures reflect the efforts of the New York DSL Collaborative, we do not expect that, in practice, the loop qualification procedures made available to AT&T through this contract would differ from what Verizon proposes in its section 11.2.17.2. However, to maintain the greatest amount of flexibility for both carriers, we determine that it is preferable to use AT&T's language together with the procedure incorporating New York decisions discussed above. We do not adopt the remainder of this section because we find that AT&T's request to participate in "planning and implementing modifications to available data compilations or new procedures" is unnecessary and not required by Commission precedent.[1309]

398. We also adopt AT&T's proposed section 1.3.2, which gives AT&T the option of using non-Verizon loop qualification tools for line splitting, subject to the modifications discussed below.[1310] Consistent with the holding in the *New York Commission AT&T Arbitration Order*, we decide that, to the extent it is technically feasible for Verizon to modify the requisite systems to accommodate both AT&T's needs and those of other competitive LECs, and if AT&T is willing to pay for these modifications, Verizon should make them.[1311] We note that, in its rebuttal testimony, Verizon accepts these conditions.[1312] In addition, we find that if AT&T uses a non-Verizon loop pre-qualification tool for line splitting, it should not hold Verizon responsible for the service performance of that loop, regardless of whether that loop was in use providing the same xDSL service at the time of AT&T's order. Verizon has persuaded us that simply because a loop has been qualified to support one type of advanced data service does not mean that it will support another type, especially if the previous provider used technology different from what

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[1308] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.1.

[1309] Also, as noted by Verizon, AT&T has every opportunity to participate in the New York DSL Collaborative, which has extensively addressed loop qualification issues, and AT&T has not explained how its participation in this body has proven inadequate. *See* Verizon Advanced Services Brief at 17.

[1310] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.2.

[1311] *See New York Commission AT&T Arbitration Order* at 55. Because of our earlier rulings with respect to the New York Process and because we are adopting the same ruling as the New York Commission on this question, we would expect that the determinations of technical feasibility and cost will be made in New York. We note that our finding on this matter is analogous to and consistent with rule 51.230(b) , which provides that an incumbent may not deny a carrier's request to deploy an advanced services technology presumed acceptable for deployment unless it demonstrates to the state commission that deployment of this technology will significantly degrade the performance of other advanced services or traditional voiceband services. *See* 47 C.F.R. § 230(b).

[1312] *See* Verizon Ex. 16 (Corrected Rebuttal Testimony of Advanced Services Panel), at 51 ("Verizon VA agrees that only those modifications that are technically feasible, accommodate the needs of all CLECs, and that the CLECs commit to paying for should be make to its systems.").

AT&T intends to use.[1313] We also decide that, other than seeking reimbursement of its costs to modify its OSS, Verizon should not charge AT&T for Verizon's loop pre-qualification tools when AT&T does not use them. Therefore, we direct the parties to modify AT&T's proposed section 1.3.2 to reflect these rulings.

399. Finally, consistent with our findings above, we decline to adopt AT&T's proposed section 1.3.3, which concerns pre-qualification of loops that are currently used for xDSL service. AT&T urged us not to adopt specific language about the operational details of Verizon's line sharing and line splitting offerings, and instead proposed that these details be resolved in New York, and later imported into this contract. As Verizon notes, the subject of this AT&T proposal is under consideration in New York.[1314] Therefore, we find it appropriate to reject AT&T's language in favor of deferring to the New York Process and the procedure for importing that decision into this agreement through the process proposed by AT&T and adopted here.

e. Nondiscriminatory Support between Line Sharing and Line Splitting (AT&T)

(i) Positions of the Parties

400. AT&T has proposed language requiring Verizon to provide "nondiscriminatory support" for line splitting as compared to Verizon's provisioning of line sharing or comparable xDSL-based services for itself or an affiliate.[1315] AT&T argues that this language only applies to "comparable DSL-based services . . . when the physical arrangements supporting such offerings are comparable."[1316] According to AT&T, the only difference between line sharing and line splitting that Verizon identified dealt with billing, and since the bills related to line sharing and line splitting are rendered to different entities, they are not "comparable" under AT&T's language and need not be exactly the same for each.[1317]

401. Verizon argues that its proposed line sharing, line splitting and loop qualification provisions satisfy Verizon's nondiscrimination obligations and that it provides the same

[1313] *See* Verizon Advanced Services Brief at 27-28.

[1314] *See* Verizon Advanced Services Brief at 17-18 (describing efforts of the New York DSL Collaborative on loop qualification issues). *See also*, Verizon Ex. 2 (Direct Testimony of Advanced Services Panel), at 16.

[1315] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.5. This section also states that an example of nondiscriminatory support is using no more cross-connections for line splitting than for line sharing when the services are provisioned in the same office and the splitter is deployed in a comparable collocation arrangement. *Id.*

[1316] AT&T Reply at 98. According to AT&T, Verizon acknowledges providing the same underlying support for these service offerings. *Id.* at n.309, citing Verizon Advanced Services Brief at 15.

[1317] AT&T Reply at 98.

underlying support for both line sharing and line splitting.[1318] Namely, Verizon contends that modifications to its systems were implemented in October to permit Verizon's loop qualification, ordering, provisioning, maintenance, and billing systems to accommodate both line sharing and line splitting.[1319] However, Verizon also argues that if AT&T seeks to force Verizon to implement line splitting in an identical manner as line sharing, this would ignore the differences between the two offerings.[1320]

(ii) Discussion

402. We reject AT&T's language, seeking "nondiscriminatory support" for line splitting as compared to line sharing, because it is unnecessary and likely to cause confusion.[1321] We recognize that Verizon is already under a statutory (and contractual) obligation to provide access to UNEs on a nondiscriminatory basis. AT&T does not demonstrate why special "nondiscrimination" language is necessary with respect to line sharing and line splitting. Furthermore, it is peculiar to apply "nondiscrimination" language as between two Verizon service offerings -- particularly two service offerings that AT&T acknowledges may differ in significant ways. We also note that confusion would be likely to stem from AT&T's use of "nondiscriminatory *support*," which AT&T has not defined with clarity. Nonetheless, we expect concerns about differing OSS and network architecture requirements, if any, as between line sharing and line splitting arrangements, to be resolved in the New York DSL Collaborative; those results would be imported to Virginia pursuant to the process described above.[1322] Moreover, even absent this proposal, we find that AT&T would have recourse under the dispute resolution process if Verizon sought to require unnecessary cross connections.

[1318] Verizon Advanced Services Brief at 14, 15, citing Tr. at 758-59. We note that Verizon supplied this argument in response to Issue III-10-B-1, which concerns nondiscriminatory support for line sharing and line splitting.

[1319] Verizon Advanced Services Brief at 15, citing Tr. at 759.

[1320] Verizon Advanced Services Brief at 20 (arguing that Verizon cannot provide "indistinguishable" support in all cases). We note that Verizon provided this response in Issue III-10-B-11, which seems to ask whether Verizon must support line splitting through the UNE-platform in a manner that is indistinguishable from the operational support Verizon provides in a line sharing configuration.

[1321] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.5. We note that AT&T's earlier proposal used the term "operational support." *See* AT&T Ex. 1 (AT&T Pet.), Attach. B, Schedule 11.2.17, § 1.3.5.

[1322] Indeed, AT&T's reply states that its revised contract language "would adopt all differences between line sharing and line splitting that have been implemented in New York." AT&T Reply at 99.

f. Collocation Issues

(i) Positions of the Parties

403. AT&T states that its revised collocation proposal removes virtually all operational detail and merely implements the parties' agreement that work performed to enhance an existing collocation arrangement (known as a "collocation augmentation") will be provided within 45 business days.[1323] Moreover, AT&T contends that other sections of its revised proposal are based directly on the requirements set forth in the *Collocation Remand Order* and provide a clearer interpretation of Verizon's obligations than Verizon's vague recitation that it will comply with "applicable law."[1324] Thus, AT&T argues, since there is no ground for dispute or disagreement as to Verizon's obligations under federal law, there is nothing to be resolved by any future proceeding before the Virginia Commission regarding rates, terms or conditions associated with collocation.[1325] Consequently, AT&T argues that its collocation provisions do not implicate issues of comity.[1326]

404. Verizon argues that its proposed language contractually commits it to provide collocation, including competitive LEC-to-competitive LEC cross connects, in accordance with applicable law and Verizon's tariffs.[1327] Verizon argues that no further contract language is necessary because it has already amended its interstate and intrastate collocation tariffs to comply with the *Collocation Remand Order*.[1328] Verizon states that while its proposal

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[1323] *Id.* at 99 n.312 (stating that AT&T has not agreed to all of the terms and conditions of the Massachusetts Department order referenced by Verizon in its brief). *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.4.

[1324] AT&T Reply at 99. AT&T also disagrees that its proposed section 1.4.3 gives it an unrestricted right to collocate packet switching equipment but, instead, requires Verizon to demonstrate that AT&T's equipment does not comply with the Commission's rules. *Id.* at n.314. *See also* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, §§ 1.4.1, 1.4.2, 1.4.2.1, 1.4.3.1. We note that the Commission's *Collocation Remand Order* was recently affirmed by the United States Court of Appeals for the District of Columbia. *See Verizon Telephone Cos. v. FCC*, Nos. 01-1371 *et al.* (D.C. Cir., decided June 18, 2002).

[1325] AT&T Reply at 99-100.

[1326] *Id.* at 100, citing Verizon Advanced Services Brief at 12. AT&T also disagrees with Verizon's assertion that since it has filed tariffs implementing the *Collocation Remand Order* contract language is unnecessary, arguing that unlike tariffs, the contract cannot be modified without AT&T's consent unless there is a change of law. *Id.* at 100 n.316.

[1327] Verizon Advanced Services Brief at 19, citing its proposed section 13. Verizon's response is provided under Issue III-10-B-8, which asks whether Verizon must perform cross-connection wiring at AT&T's request.

[1328] *Id.* at 19-20. Verizon explains that for Issue III-10-B-6, which relates to the types of collocation available to AT&T to place a splitter, the Commission has repeatedly found that Verizon's line sharing configuration options comply with its legal requirements, and both options are consistent with Verizon's line splitting service descriptions developed in New York. *Id.* at 18, citing Verizon Ex. 16, at 39. Verizon also indicates that its statements are responsive to Issue III-10-B-10, which concerns the collocation of packet switches.

incorporates the collocation augmentation intervals contained in Verizon Virginia's applicable tariffs, Verizon is willing to import the Massachusetts intervals (*i.e.,* 45 days), terms and conditions to Virginia by amending its tariff to include language from the Massachusetts Department order.[1329]

405. With respect to the other collocation issues raised during this proceeding, Verizon argues that it only requires AT&T to collocate if AT&T or an authorized agent must physically or virtually collocate a splitter or DSLAM equipment to provide data services.[1330] Verizon states that a voice provider engaged in the line splitting scenario does not need any additional collocation arrangement beyond that required for the splitter where it uses the loop and switch port combination provided by Verizon to provide voice service.[1331] Verizon also contends that AT&T is seeking to go beyond the current state of law by proposing, for example, that it be permitted to collocate equipment that performs packet switching functionality before making a determination that such equipment qualifies for collocation under Commission rules and imposing on Verizon the burden of proof that such equipment does not qualify for collocation.[1332]

(ii) Discussion

406. We adopt AT&T's proposed section 1.3.4.[1333] Verizon does not dispute AT&T's statement that the parties reached agreement on a 45-day augmentation interval.[1334] Verizon's language is similar to AT&T's, except that Verizon would use the collocation intervals set forth in its applicable tariff.[1335] Given the choice of language that specifies an exact interval to which the parties have already agreed or language referencing intervals set forth in a tariff that may not be in effect at the time this Order is issued, we select the former because it is more specific.

407. We will not direct the parties to include AT&T's proposed section 1.4.1, which provides that, in a line splitting arrangement, Verizon will not require AT&T to collocate unless

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[1329] *Id.* at 21-22, citing *Letter Order on Joint Motion by Verizon Massachusetts and Covad Communications Company for Entry of Order According to the Terms as Stipulated by the Parties*, D.T.E. 98-57-Phase III-C (2001) (*Massachusetts Department Collocation Augmentation Letter Order*). According to Verizon, the Massachusetts order incorporates terms and conditions agreed to by the New York Carrier to Carrier Working Group, including a 45 business-day interval for certain augmentations. *See id.* at 21.

[1330] *Id.* at 23 (discussing Issue III-10-B-15, which asks whether Verizon can require any form of collocation as a pre-requisite to gaining access to the low or high frequency spectrum of a loop, unless such collocation is required to place equipment needed to provide service).

[1331] *Id.*

[1332] Verizon Advanced Services Reply at 1.

[1333] AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.4.

[1334] *See* AT&T Reply at 99 n.312.

[1335] Verizon's November Proposed Agreement to AT&T, § 11.2.17.4.

the splitter necessary to separate the low and high frequency portions of the spectrum is located in AT&T's collocation space.[1336] AT&T claims that this issue should be uncontroversial because Verizon's witness agreed with this position at the hearing.[1337] We disagree with AT&T's interpretation of the record.[1338] As we interpret the record, AT&T has failed to establish that Verizon has required AT&T to collocate when the data LEC it had partnered with was already collocated in Verizon's facilities.[1339] Accordingly, we reject AT&T's proposal. In any event, it is possible, though unclear in our record, that the New York DSL Collaborative has addressed or will address this subject.

408. We agree with Verizon that this contract need not contain a recitation of rules from the Commission's *Collocation Remand Order* and that Verizon's contractual commitment to comply with applicable law is sufficient. We thus reject AT&T's proposed sections 1.4.2, 1.4.2.1, 1.4.3, and 1.4.3.1, which generally paraphrase Verizon's obligations with respect to cross connections and the collocation of multi-functional equipment.[1340] AT&T does not explain why it is necessary simply to re-state these requirements, which are set forth in Commission Rule 51.323. Should disputes arise about the nature of the traffic that will be carried through cross connections or whether certain equipment may properly be collocated in Verizon's facilities, we expect the parties to follow the procedures set forth in the Commission's rules and use the agreement's dispute resolution process as necessary. We note that this decision is consistent with our findings in Issue IV-28, below, where we reject a similar request by WorldCom and determine that there is no disagreement between the parties about what is the applicable law (*i.e.,* the *Collocation Remand Order* and the rules promulgated therein).[1341]

[1336] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.4.1.

[1337] AT&T Brief at 174, citing Tr. at 822-23.

[1338] We note that Verizon's witness did say that "somebody has to be collocated to have a DSLAM and a splitter . . . [I]f you have a UNE-P [and] you've partnered up with a data CLEC, and they have collocation . . . and a DSLAM and we convert this to a loop and a port, you don't need collocation." Tr. at 821-22. AT&T did not dispute this statement and since its proposal does not make clear that if it is not collocated at Verizon's facilities, the data LEC with whom AT&T has partnered must be, we will not direct the parties to include AT&T's proposal.

[1339] Additionally, we are persuaded by Verizon's contention that it does not require:

> AT&T to collocate as a prerequisite to gaining access to the low frequency [portion] of a loop, the high frequency portion of the loop, or both except to the extent that a data provider - whether AT&T or an authorized agent - must physically or virtually collocate a splitter and DSLAM equipment to provide data services.

Verizon Advanced Services Brief at 23.

[1340] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, §§ 1.4.2, 1.4.2.1, 1.4.3, 1.4.3.1.

[1341] *See* Issue IV-28 *infra*. By contrast, when there is no such agreement between the parties about what Commission rules, if any, apply to a given situation, we have directed the parties to adopt the petitioner's proposal. *See, e.g.,* Issues III-11/IV-19 *infra*.

g. Miscellaneous Matters

(i) Positions of the Parties

409. In explaining why it is appropriate to retain the remainder of its proposed contract language, AT&T contends that the additional details contained in its proposal provide certainty and clarity, unlike Verizon's use of the term "applicable law," which is vague and would lead to interpretative disputes in the future.[1342] Among other things, AT&T argues that its remaining proposals concern service disruptions (*e.g.,* when the loops for UNE-platform customers are converted for line splitting),[1343] and implement Commission directives and principles on line splitting, including those contained in the *Collocation Remand Order*.[1344] With respect to AT&T's remaining proposals, Verizon argues that its "applicable law" approach is superior to AT&T's (and WorldCom's) approach of loosely paraphrasing the state of the law.[1345]

(ii) Discussion

410. The following AT&T sections remain in dispute: 1.3.7 (which we adopt in part and modify in part), 1.3.8 (which we adopt), and 1.3.6 (which we reject). AT&T's proposed section 1.3.7 concerns information about the xDSL technology AT&T deploys. Under Commission Rule 51.321(b), a requesting carrier that seeks access to a loop or the high frequency portion of a loop to provide advanced services is required to provide to the incumbent information on the type of technology that the requesting carrier seeks to deploy.[1346] Both parties seek to incorporate that requirement in the contract but in different ways.[1347] We adopt AT&T's proposal in part and modify it in part. The first sentence of AT&T's proposed section 1.3.7 provides that AT&T will provide Verizon with the information required by Commission rules regarding the type of xDSL technology that it deploys on each loop facility used in line sharing or line splitting.[1348] Verizon's language is similar to AT&T's but for AT&T's addition of "line splitting." Since the Commission's rule is not limited to line sharing, using AT&T's broader language is appropriate.

[1342] AT&T Brief at 167.

[1343] *Id.* at 172-73, citing revised Schedule 11.2.17, § 1.3.6. *See also id.* at 173-74, citing revised Schedule 11.2.17, §§ 1.3.7, 1.3.8.

[1344] *Id.* at 174-75, citing revised Schedule 11.2.17, §§ 1.4.1, 1.4.2, 1.4.3, and 1.4.3.1.

[1345] Verizon Advanced Services Reply at 5.

[1346] 47 C.F.R. § 51.231(b).

[1347] *See* AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.7; Verizon's November Proposed Agreement to AT&T, § 11.2.17.3.

[1348] AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.7.

411. We modify AT&T's second sentence of section 1.3.7 to read, "Unless the Parties agree otherwise, this information will be conveyed by the Network Channel/Network Channel Interface Code (NC/NCI) or equivalent." As currently drafted, it is unclear to us whether AT&T could decide unilaterally to provide this information to Verizon through a different means. Moreover, Verizon testified that, at least as of today, it cannot operate and activate xDSL service without a NC/NCI code.[1349] Finally, we reject AT&T's last sentence, which states that Verizon shall retain this information and shall not modify its facilities so as to make the loop incapable of providing the xDSL service. AT&T argues that this sentence reflects Verizon's testimony provided at the hearing.[1350] It does not; moreover, such language is unnecessary because Verizon testified that this information is the subject of its business rules, which typically are not included in contract language.[1351]

412. AT&T's proposed section 1.3.8 provides that a Trouble Isolation Charge will not apply unless the removal of the advanced service from a line sharing configuration substantially improves the service quality in the low frequency of the loop.[1352] Our record is silent on whether the New York DSL Collaborative has addressed the circumstances under which it is appropriate for Verizon to assess a Trouble Isolation Charge. Consequently, we must assume that it has not. Commission rule 51.233(a) states that where a carrier claims that a deployed advanced service is significantly degrading the performance of other advanced services or voiceband services, that carrier must notify the deploying carrier and allow the deploying carrier a reasonable opportunity to correct the problem.[1353] Additionally, rule 51.233(b) provides that if the degradation remains unresolved by the deploying carrier after a reasonable opportunity to correct the problem, the carrier whose services are being degraded must establish before the relevant state commission that a particular technology deployment is causing the significant degradation.[1354] We determine that AT&T's proposal is most consistent with the Commission's rules. Verizon's proposed section 11.2.17.9.1 would permit it to take unilateral steps to restore its customer's voice service and, thus, is inconsistent with Commission rules.[1355] Finally, we reject AT&T's proposed section 1.3.6, regarding disruption of service when adding services in the high frequency portion of a loop to an existing UNE-platform configuration, because we determine that it, too, is the subject

[1349] *See* Tr. at 803.

[1350] AT&T Brief at 173, citing Tr. at 902.

[1351] *See* Tr. at 803. While AT&T's citation to page 902 is a typographical error, we find no testimony from Verizon between pages 800 through 803 on this subject. Moreover, any anti-competitive concerns that AT&T may have related to Verizon modifying its facilities to prevent AT&T from using them are better addressed elsewhere.

[1352] AT&T's November Proposed Agreement to Verizon, Schedule 11.2.17, § 1.3.8.

[1353] 47 C.F.R. § 51.233(a).

[1354] 47 C.F.R. § 51.233(b).

[1355] Namely, rule 51.233(b) does not contemplate an incumbent's unilateral termination, however temporary, of a competitive LEC's data service.

of the New York DSL Collaborative.[1356] As we have indicated above, we have adopted AT&T's proposal to import New York approaches to line sharing and line splitting operational details, and it is thus inappropriate to adopt language that may be inconsistent or may become inconsistent with the approach under development in New York.

8. Issues III-11/IV-19 (Subloops and NID)[1357]

a. Introduction

413. As background, we note that the Commission's rules define the subloop network element as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant.[1358] Access to subloops allows competitors to deploy their own facilities and combine them with the incumbent's facilities, thereby encouraging gradual development of facilities-based competition.[1359] When the parties' current agreements were negotiated, subloop elements, with the exception of the network interface device (NID), were not available as stand-alone UNEs.[1360] The parties disagree as to how to implement Verizon's obligations under section 251(c)(3) to allow nondiscriminatory access to the subloop UNE. Both AT&T and WorldCom propose language that differs materially from Verizon's proposed language concerning access to feeder, distribution, and inside wire subloops, the NID, and to customer-owned premises wire. In general, Verizon's proposed language reflects its concern to protect and control the quality and integrity of the network.[1361] The proposals of AT&T and WorldCom reflect their desire for direct access to the dedicated wire connecting their customers

[1356] *See* Verizon Advanced Services Brief at 22-23 (stating that the New York DSL Collaborative has addressed and continues to review procedures to minimize service disruptions during conversions to line splitting arrangements).

[1357] As noted above, because Verizon offered identical subloop language to AT&T in both this issue and Issue III-10, we discuss it here, together with our discussion of the subloop language Verizon proposed to WorldCom. Also, because AT&T indicates that its dispute in Issue III-8 is identical to that in Issue III-11, we address its proposal here. Verizon includes proposals pertaining to the NID with other subloop proposals in Issue III-11 (Subloops). AT&T also discusses access to inside wire and the NID in Issue III-11. WorldCom, by contrast, discusses the NID in Issue IV-19 (NID). We have followed Verizon's practice and included the NID within the Issue III-11 discussion for reasons of efficiency and to emphasize the congruence of our NID holdings in both agreements. However, we discuss WorldCom's arguments separately because, unlike AT&T's proposals, they track the current agreement, and were briefed by WorldCom separately as Issue IV-19 (NID).

[1358] 47 C.F.R. § 51.319(a)(2).

[1359] *UNE Remand Order*, 15 FCC Rcd at 3789-90, paras. 205, 207.

[1360] 47 C.F.R. § 51.319(a)(2). The incumbent LECs' obligation to provide access to subloops took effect on May 17, 2000.

[1361] *See, e.g.*, Verizon UNE Brief at 42, 46, 52-53.

to the network at the NID, and, within the bounds of technical feasibility, for maximum flexibility to interconnect their own facilities to subloops.[1362]

414. The Commission has explained that the subloop unbundling rules apply across a broad spectrum of possible network architectures. For example, fiber feeder requires electricity and a climate-controlled space in a remote terminal hut or vault. By contrast, where both feeder and distribution are copper, the feeder distribution interface (FDI) is typically housed in a freestanding metal box that is neither powered nor climate-controlled.[1363] The Commission has also explained that the NID connecting the network to the subscriber's dedicated line may be accessed either as a stand-alone UNE, or, as is frequently the case, in connection with a loop or subloop.[1364] Although the NID is sometimes conceived of as a small, two-chamber device,[1365] the Commission has stressed repeatedly that a NID is any facility used to connect the loop distribution plant to the customer premises wiring, including the substantial terminal devices sometimes found in multi-tenant environments (MTEs) and multiple dwelling units (MDUs).[1366]

415. In MTEs and MDUs the room or closet containing a NID is often located at the minimum point of entry (MPOE), which the Commission's rules define as "the closest practicable point to where the wiring crosses a property line or . . . enters a multiunit building or buildings."[1367] The NID in the MPOE may serve as the demarcation point where the incumbent LEC's ownership or control of the loop ceases. On the other hand, in cases where incumbent-owned wire continues on the customer side of the NID, that incumbent-owned premises wire, which the Commission's rules identify as the "inside wire subloop," may be accessed either at or through the incumbent's NID.[1368] The distinction between the demarcation point, which is an incorporeal boundary denoting ownership, and the NID, which is equipment for connecting customer-side wiring to network-side wiring, is important to any discussion of the inside wire subloop, which consists of wire that, although on the customer side of the NID, is nonetheless on the network side of the demarcation point.

[1362] *See, e.g.*, AT&T Brief at 132; WorldCom Brief at 117.

[1363] *See generally, UNE Remand Order*, 15 FCC Rcd at 3789-91, paras. 206-210 & n.398.

[1364] 47 C.F.R. § 51.319(b); *UNE Remand Order*, 15 FCC Rcd at 3800-01, paras. 230, 232.

[1365] *UNE Remand Order*, 15 FCC Rcd at 3800, para. 231.

[1366] *Id.*, 15 FCC Rcd at 3800, para. 230, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15697, para. 392.

[1367] 47 C.F.R. §§ 68.3 & 105; *UNE Remand Order*, 15 FCC Rcd at 3773-74, para. 169.

[1368] 47 C.F.R. § 51.319(a)(2)(i)(definition of the inside wire subloop); *UNE Remand Order*, 15 FCC Rcd at 3773-74, para. 169 (demarcation may occur either at, beyond or inside NID); *id.*, 15 FCC Rcd at 3802, para. 235 ("By continuing to identify the NID as an independent [UNE], we underscore the need of competitive LECs to have flexibility in choosing where best to access the loop.").

416. Initially we discuss AT&T's and Verizon's proposals that relate specifically to access inside MTEs and MDUs; next we discuss WorldCom's and Verizon's proposals regarding access to the NID generally. Having thus addressed access to the subscriber at the edge of the network, we turn to the parties' proposals regarding access to feeder and distribution plant at the FDI. Differences between parties over subloop definitions and other proposed language are discussed last.

b. Access to MTEs and MDUs

(i) Positions of the Parties

417. AT&T proposes language to govern access to the inside wire at MDUs and MTEs. AT&T claims it needs specific language to ensure access in those situations, admittedly rare in Virginia, in which the demarcation point is not at the NID, and Verizon controls the inside wire subloop.[1369] According to AT&T, Verizon's proposal makes access to Verizon-owned inside wire difficult through onerous collocation requirements; by requiring superfluous intervention by Verizon employees; and by failing to include Verizon-owned "house and riser" (*i.e.*, the inside wire subloop) among Verizon's standard subloop offerings.[1370]

418. AT&T argues that its proposed language corrects these faults and is consistent with our rules. AT&T objects to Verizon's insistence that, in order to interconnect to subloops, AT&T must collocate a "telecommunications outside plant interconnection cabinet" (TOPIC)[1371] that is subject to a detailed construction process and numerous constraints.[1372] Specifically, AT&T argues that Verizon's proposal is unreasonable because it would require AT&T to submit a TOPIC request and wait for as long as 60 days for a Verizon response before AT&T installs the TOPIC, for which Verizon demands payment in advance.[1373] AT&T argues that construction of a TOPIC is unnecessary, and claims that Verizon's own witness acknowledged this.[1374] Under its proposal, AT&T will install its own terminal block subject only to Verizon's reasonable reservation of space for growth or to permit safe working conditions.[1375] In addition,

[1369] AT&T Brief at 135-37; AT&T Reply 77-78.

[1370] AT&T Brief at 133.

[1371] This facility is also known as a "competitive LEC outside plant interconnection cabinet" (COPIC). *Cf.* Verizon's November Proposed Agreement to AT&T, § 11.2.14.6.3. (TOPIC) with Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 5.3 (COPIC). *See also* Verizon UNE Brief at 46 n.54 (indicating that the devices are the same).

[1372] AT&T Brief at 136.

[1373] *Id.*; Verizon's November Proposed Agreement to AT&T, §§ 11.2.14.6.6 – 11.2.14.6.7.

[1374] AT&T Brief at 136, citing Tr. at 476-78.

[1375] AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.6.2.3. "If a limitation exists, Verizon shall provide an acceptable alternative and any additional costs . . . shall be shared between the parties." *Id.*

AT&T proposes that, regardless of who owns or controls the intra-premises wiring, and also in cases where who owns or controls the wiring may be unclear or disputed, AT&T will have free access to that wiring.[1376] AT&T proposes that it, and not Verizon, will perform cross connection between AT&T's terminal block and intra-premises wiring.[1377]

419. In support of these positions, AT&T quotes a report prepared by the New York Commission staff concluding that "direct access to house and riser cable owned by other carriers will reduce costs and time associated with providing certain types of competitive facilities-based telecommunications services, thereby enhancing competition."[1378] AT&T further argues that a Verizon witness conceded that AT&T can access inside wire without the intervention of a Verizon employee.[1379] Finally, while AT&T recognizes Verizon does not generally own or control wire beyond the MPOE, AT&T contends that Verizon must offer a standardized inside wire subloop for the premises wiring that Verizon does own or control.[1380] AT&T argues that, however few in number, access to the subloop in those cases where Verizon *does* control inside wire is essential to gain access to the customer.[1381]

420. Verizon maintains that, under its proposal, it would provide access to MTEs and MDUs through cross connections between its NID and the competitive LEC's NID or, if an entrance module is available, directly through Verizon's NID, and that these methods accord with the Commission's rules.[1382] Verizon further maintains that it is willing to review bona fide requests (BFR) from AT&T for other methods of access and, where appropriate, to develop a price for the proposed method of access.[1383] Verizon further asserts that Virginia is an MPOE state where "the customer typically owns the inside wire on the customer side of the [NID]."[1384]

[1376] AT&T's November Proposed Agreement to Verizon, §§ 11.2.14.4.6.2.6 - 11.2.14.4.6.2.8.

[1377] AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.6.2.2.

[1378] AT&T Brief at 135, citing Case No. 00-C-1931, *In the Matter of Staff's Proposal to Examine the Issues Concerning Cross Connection of House and Riser Cables*, at 6 (issued by New York Comm'n on May 23, 2001).

[1379] AT&T Brief at 134, citing Tr. at 304-05.

[1380] *Id.* at 137.

[1381] AT&T Reply at 77-78.

[1382] Verizon UNE Brief at 29, citing Verizon's November Proposed Agreement to AT&T, § 11.2.14. The term "entrance module" is not defined, but appears to indicate a node on the network side of the NID for the attachment of distribution wiring.

[1383] *Id.* at 30.

[1384] Verizon UNE Reply at 27. Verizon states verbatim that "Virginia is a minimum point of entry (MPOE) state and the customer typically owns the inside wire on the customer side of the demarcation point," but we assume Verizon means that the customer typically owns the inside wire on the customer side of the NID. The landlord or customer *always* owns the wire on the customer side of the demarcation point; that is what "demarcation point" means. 47 C.F.R. § 68.105.

Thus, according to Verizon, the amount of wire at issue is not substantial.[1385] Regarding this wire, however, Verizon argues that AT&T does not and should not have direct access, because AT&T employees are not under the control of Verizon, which maintains strict training and competency standards for its own employees.[1386]

(ii) Discussion

421. We agree with AT&T that it should have direct access to all wire on the customer side of the NID, even when that wire is owned by Verizon; therefore we adopt AT&T's proposed language.[1387] Verizon concedes this point in its reply brief: "To the extent that Verizon VA owns inside wire, CLECs have full access to the customer side of the telecommunications network pursuant to the Commission's regulations."[1388] Because the access AT&T seeks will always occur on the customer side of the NID, it will not conflict with Verizon's need to maintain control on the network side of the NID.

422. Elsewhere in its briefs, however, Verizon appears to lose sight of the distinction between situations where the NID and demarcation point coincide (so that there is no Verizon inside wire subloop) and situations where the ownership demarcation falls on the customer side of the NID, so that there *is* a Verizon inside wire subloop to which AT&T has right of access.[1389] In this second "inside wire subloop" scenario, an AT&T technician working on the customer side of the NID would also be on the network side of the demarcation point. There is, however, no network-security distinction between the two scenarios.[1390] In either instance, AT&T's technician would handle wire dedicated to a single customer, as opposed to handing distribution facilities on the network side of the NID. Verizon has legitimate interests relating to any wire it owns between the NID and the demarcation point; for example, Verizon will want to know when to begin billing AT&T for use of the subloop. We conclude, however, that dispatching a

[1385] Verizon UNE Brief at 44.

[1386] Verizon UNE Reply at 27.

[1387] AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.6 *et seq*.

[1388] Verizon UNE Reply at 27-28, citing Tr. at 304-05 (no intervention by a Verizon employee would be necessary because AT&T "would not be touching Verizon's side of the network interface device").

[1389] *See, e.g.*, Verizon UNE Brief at 45 ("AT&T wants full access to Verizon VA's network, not just the customer side of the NID or demarcation point."); Verizon UNE Reply at 28 ("Verizon VA does not, and will not, restrict access to the customer side of the network . . . Verizon VA, however, has not conceded that it would be appropriate for CLECs to have access to the network side of the demarcation point.").

[1390] Thus, we disagree with Verizon's comparison of access to the NID to access at a central office. Verizon UNE Brief at 45. The critical difference is that, when a competitive LEC's technician works on the customer side of the NID (albeit the network side of the demarcation point), that technician works on dedicated rather than network facilities.

Verizon technician to perform or oversee AT&T's work on the customer side of the NID is unnecessary to address the security concerns identified by Verizon in this proceeding.

423. We reject Verizon's TOPIC requirement for access to premises wiring because it conflicts with the Commission's rules, which seek to ensure maximum flexibility for the requesting carrier in installing adjacent equipment.[1391] By contrast, AT&T's proposed language, which permits but does not require AT&T to install an adjacent terminal device, accords with the letter and purpose of the unbundling requirement.[1392] The agreement must ensure AT&T's access the subloop in those instances – rare though they may be – where Verizon does own wire on the customer side of the NID. The Commission has explained in detail why access to inside wire is important to competition; indeed, inside wire is the only subloop element to which the Commission devotes a specific rule.[1393] The time it would take Verizon to decide whether or not to grant AT&T's BFR, plus the additional time needed to develop a price, would constitute an unreasonable burden on AT&T's access to the inside wire subloop.[1394] For these reasons, we agree with AT&T that the agreement must provide for a standardized inside wire subloop, even though, in Virginia, that subloop will be available in relatively few situations.[1395]

c. Access at the NID (Issue IV-19) [1396]

(i) Positions of the Parties

424. WorldCom contends that its proposal regarding the NID, unlike Verizon's, faithfully preserves WorldCom's right of access.[1397] Specifically, WorldCom objects to

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[1391] *Cf.* Verizon's November Proposed Agreement to AT&T, §§ 11.2.14.6.3, 11.2.14.6.8, and 11.2.14.6.9 with the *UNE Remand Order*: "Our rules do not require incumbents to build additional space. Nor do our rules preclude requesting carriers from constructing their own facilities adjacent to the incumbent's equipment." *UNE Remand Order*, 15 FCC Rcd at 3796, para. 221; "[W]e seek to provide requesting carriers maximum flexibility to interconnect with the incumbent's network at technically feasible points in order to allow competitors to serve customers efficiently." 15 FCC Rcd at 3797, para. 223; 47 C.F.R. §§ 51.319(a)(2)(i) and (ii).

[1392] Specifically, we adopt AT&T's November Proposed Agreement to Verizon, §§ 11.2.14.4.6. in its entirety. We reject Verizon's November Proposed Agreement to AT&T section 11.2.16, which denies that Verizon has house and riser in Virginia. Verizon admits that section 11.2.16 is incorrect or at best misleading. *See* Verizon UNE Brief at 44 n.51.

[1393] *UNE Remand Order*, 15 FCC Rcd at 3792-93, paras. 215-216; 47 C.F.R. § 51.319(a)(2)(i).

[1394] *See* Verizon UNE Brief at 30 (Upon receipt of BFR, Verizon will (1) conduct analysis for impact on network reliability and security, (2) consult bearing of applicable law, and (3) determine effect on operational support systems. Only if the request clears these hurdles will Verizon develop a price for the requested access.).

[1395] *Id.* at 44 n.51 (stating that Verizon owns inside wire in some pre-1968 campuses.)

[1396] Unlike AT&T's proposals, which concern access in MTEs and MDUs only, WorldCom's proposals concern access to all NIDs, including two-chamber, single-dwelling NIDs.

Verizon's insistence that WorldCom install its own NID adjacent to that of Verizon.[1398] WorldCom proposes instead that its technicians should be allowed to work on the customer side of Verizon's NID.[1399] According to WorldCom, Verizon's requirement that WorldCom construct an adjacent NID, and then engage Verizon technicians to perform cross connections to Verizon's NID, would needlessly burden WorldCom with additional costs.[1400] WorldCom also states that its language merely renews its rights under the current interconnection agreement.[1401] WorldCom further argues that its proposed technical procedures satisfy any safety objection arising from the direct access that WorldCom seeks to the customer side of Verizon's NID.[1402]

425. Verizon argues that its overriding concern is to protect and preserve the integrity of the network by limiting other carriers' access to only that wire that is located on the customer, but not the network, side of its NIDs.[1403] Verizon maintains that its proposals explicitly ensure WorldCom's access to the customer side in its proposed section 8.6, which provides that WorldCom may connect to the customer's side of the NID without submitting a request to Verizon.[1404] Verizon contends that WorldCom's proposals would go further and allow WorldCom to remove wire from Verizon's NID, thus jeopardizing Verizon's ability to ensure network quality and reliability.[1405] In addition, Verizon argues that WorldCom's proposal to connect its wiring through Verizon's NID in "any technically feasible manner" is vague and should be rejected; permitting any "technically feasible" connections could expose

(Continued from previous page)

[1397] WorldCom Brief at 131-32; WorldCom Reply at 112-13; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.7. *et seq*. WorldCom also proposes alternative language derived from its contract with BellSouth: WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.17 *et seq*. All references in this section refer to the WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III §§ 4.7 *et seq*., and not to the language borrowed from the BellSouth contract.

[1398] WorldCom Brief at 132; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.7.3.1.1.

[1399] WorldCom Brief at 131.

[1400] WorldCom Brief at 132; *Cf.* WorldCom's November Proposed Agreement to Verizon, Attach. III, § 4.7.3.1.3 (permitting WorldCom technicians to enter the subscriber access chamber or "side" of a dual chamber NID) with Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 8.6 (permitting WorldCom access, but incorporating by reference all restrictions in the sections 8.2-8.7 and section 6 inside wire rules, which require construction of an adjacent "terminal block" *i.e*. WorldCom's own NID).

[1401] WorldCom Reply at 112-13.

[1402] *Id*.

[1403] Verizon UNE Brief at 42, 45.

[1404] *Id.* at 55, citing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 8.6.

[1405] *Id.* at 52-53, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.7.3.1.2.

Verizon and its contract employees to uncertain or unsafe conditions at the NID.[1406] Finally, Verizon cites AT&T's adoption of Verizon's proposals as evidence that its language is reasonable.[1407]

(ii) Discussion

426. With minor modification, we adopt WorldCom's proposed section 4.7 and reject Verizon's proposed section 8.[1408] For reasons we explain below, we reject the restrictions Verizon would place on WorldCom technicians' access to Verizon's NID. We agree with Verizon, however, that WorldCom may access the network side of Verizon's NID only when the connection is performed by a Verizon technician and that one of WorldCom's proposals contains language that could be read to the contrary. To remedy any ambiguity we order the parties to insert the phrase "the customer side of" into WorldCom's proposed section 4.7.3.1.2.[1409] Also, because we agree with Verizon that, in context, the phrase "any other Technically Feasible manner" is unreasonably vague, we remove it from WorldCom's proposed section 4.7.2.[1410] With those minor adjustments, we find WorldCom's proposals to be reasonable and to interpret fairly the Act and the Commission rules regarding subloop unbundling and the NID.

427. *Adjacent NID*. We find that WorldCom's language enabling it to access Verizon's NIDs without installing separate, adjacent NIDs is consistent with the Act and our rules.[1411] Although Verizon agrees in principal that WorldCom should have access to the customer side of the NID, we find that Verizon's proposed language burdens WorldCom with obligations and conditions that could unreasonably impede the full exercise of that right.[1412] Specifically, Verizon's proposed section 8.1 offers WorldCom two methods of NID access.[1413]

[1406] *Id.* at 53; Verizon UNE Reply at 26.

[1407] Verizon UNE Reply at 26, n.75, citing §§ 11.3 *et seq*. of Verizon's and AT&T's proposed agreements.

[1408] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.7 *et seq*.

[1409] Specifically, the phrase "the customer side of" should be inserted into WorldCom's proposed section 4.7.3.1.2 after the phrase "either party may remove the inside wire from" and before the phrase "the other Party's NID."

[1410] Thus, WorldCom's proposed section 4.7.2 should conclude with the phrase "the manner set forth in Section 4.7.3."

[1411] WorldCom's November Proposed Agreement to Verizon, Attach. III, § 4.7.3.

[1412] Verizon UNE Brief at 55, citing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 8.6.

[1413] In addition, the inclusion by reference of Verizon's inside wire proposals would also require WorldCom to install its own NID. Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 8.6, including by reference Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 6.

Under the first method, Verizon technicians would attach WorldCom's wire directly to a free module on the network side of the NID. If WorldCom chooses direct attachment to a nodule on the NID's network side, it is reasonable to expect that Verizon technicians would perform the work. WorldCom may, however, prefer to connect directly to the customer side of the NID. Here Verizon's proposed section 8.1 would impose unreasonable terms. This second option – Verizon technicians performing a cross connection to WorldCom's adjacent NID – not only imposes a needless expense on WorldCom, but could also disadvantage WorldCom with subscribers, who may prefer not to have an additional device installed on their property.[1414] Requiring WorldCom to install a NID runs counter to the principle that requesting carriers should, to the extent feasible, determine the configuration of their access to subloops.[1415]

428. *Direct Access*. We find that WorldCom's language enabling its technicians to have direct access to the customer side of Verizon's NIDs is consistent with the Act and our rules.[1416] By contrast, Verizon's proposals regarding direct access are ambiguous. Verizon's proposed section 8.6 appears both to guarantee and to withhold direct access, and Verizon's section 8.1 clearly requires that all cross connection be performed by Verizon technicians.[1417] Because the wire on the customer side of the NID is dedicated to and owned by the customer, involving a Verizon technician would put a needless burden on WorldCom.[1418] In addition, we reject Verizon's argument that allowing WorldCom direct access to the customer side of the NID could pose a safety risk to Verizon personnel. Rather, we are satisfied that WorldCom's proposed language regarding safety procedures, and specifically WorldCom's promise to maintain the connection of ground wires, addresses any safety concern.[1419] On the other hand, we agree with Verizon that WorldCom's proposal to connect its wiring in "any Technically Feasible manner" is too vague to be useful, and could be read to place unreasonable

[1414] *See UNE Remand Order* 15 FCC Rcd at 3793, para. 216 (landlord aversion to redundant wiring could impede competition).

[1415] *See id.*, 15 FCC Rcd at 3797, para. 223 (requesting carriers should have maximum flexibility to interconnect to serve customers efficiently).

[1416] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.7.3.

[1417] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 8.6: "MCIm does not need to submit a request to Verizon, and Verizon shall not charge MCIm for access to the Verizon NID" but also "Verizon shall perform all installation work on Verizon equipment" (Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 6.5, incorporated by reference).

[1418] Even in cases where Verizon owns an inside wire subloop, requiring a truck roll would be out of proportion to Verizon's need to know when to commence billing.

[1419] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.7.3.2.

requirements on Verizon.[1420] For that reason we remove it from WorldCom's language defining the NID.[1421]

d. Access at the FDI

429. As stated above, parties disagree primarily over Verizon's position that competitive LECs must build a separate cabinet – a "telecommunications outside plant interconnection cabinet" (TOPIC) or a "competitive LEC outside plant interconnection cabinet" (COPIC) – in order to gain access to subloops at the FDI.[1422] Verizon proposes to WorldCom and AT&T substantially the same terms and conditions for access to its subloops.[1423] Although AT&T briefed its concerns with Verizon's proposal in Issue III-10 concerning line sharing and line splitting, for reasons of administrative efficiency, we consider them here.

(i) WorldCom's Proposed Language

(a) Positions of the Parties

430. WorldCom argues that the agreement should use WorldCom's proposed language because its proposals are better grounded in the rules than Verizon's. In particular, WorldCom argues that Verizon may not require WorldCom to build a COPIC in order to access subloops at a Verizon FDI.[1424] WorldCom maintains that a COPIC requirement would subject WorldCom to needless costs and administrative burdens. WorldCom further argues that both acquiring the COPIC itself and building the pad or apron to support it would impose heavy costs.[1425] WorldCom likewise maintains that it would have to devote substantial administrative resources to obtaining the necessary zoning and right-of-way permits.[1426] WorldCom further argues that the requirement is at odds with the Commission's rules and orders, which put the burden on

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[1420] Verizon UNE Brief at 53, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.7.2.

[1421] Thus, WorldCom's November Proposed Agreement to Verizon, Part C, Attachment III, section 4.7.2 should conclude with the phrase "the manner set forth in Section 4.7.3."

[1422] Both TOPIC and COPIC refer to the same device. We use whichever term applies to the language at issue, hence TOPIC when discussing AT&T's arguments, but COPIC when discussing WorldCom's arguments.

[1423] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 5 (Sub-Loop); Verizon's November Proposed Agreement to AT&T, § 11.2.14.6 (Unbundled Sub-Loop Distribution Facility).

[1424] WorldCom Brief at 115-16; *see* WorldCom Reply at 88. Both AT&T and WorldCom argue against requiring a TOPIC or COPIC. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 5.3 *et seq*.; Verizon's November Proposed Agreement to AT&T, § 11.2.14.6.3. *et seq*.

[1425] WorldCom Brief at 116; WorldCom Reply at 94.

[1426] *Id*.

Verizon of proving that a means of interconnection WorldCom chooses is not feasible, and which specifically state that "incumbent carriers cannot limit a competitive carrier's choice to collocation as the only means for gaining access to and recombining network elements."[1427] WorldCom argues that its own access proposal is reasonable and closely tracks the language of the Commission's rules.[1428]

431. Verizon argues that an adjacent facility is needed because the FDI equipment is not designed to have the cables of multiple carriers attached to it.[1429] According to Verizon, the COPIC or TOPIC requirement reflects practical considerations that render direct access technically infeasible.[1430] Verizon also contends that WorldCom exaggerates the expense and administrative burden associated with building COPICs, characterizing WorldCom's concerns as "speculative" and "unsupported."[1431] Verizon also declares itself open to considering through the BFR process other allegedly feasible methods of interconnection.[1432] Finally, Verizon argues that WorldCom's proposals should be rejected because, by paraphrasing the Commission's rules rather than directly quoting the rules, WorldCom seeks to impose obligations on Verizon that are different from the obligations in the rules themselves.[1433]

(b) Discussion

432. For reasons we explain below, we adopt WorldCom's proposed sections 4.3.1 through 4.3.5 to govern access to the FDI. However, to ensure that the agreement accurately reflects the Act and Commission rules, the phrase "Loop Concentrator/Multiplexer" should be stricken from the list in section 4.3.2 of subloop elements to which WorldCom has unbundled

[1427] WorldCom Brief at 117; WorldCom Reply at 88, citing *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, Inter-LATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, at 20701, para. 164 (1998).

[1428] WorldCom Brief at 114-15, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.3.1- 4.3.5; 47 C.F.R. § 51.319(a)(2). WorldCom maintains that its proposed section 4.3.1 paraphrases the subloop definition rule; section 4.3.3 paraphrases the inside wire rule; section 4.3.2 identifies five subloop components; section 4.3.4 paraphrases the technical feasibility and best practices rules; and section 4.3.5 paraphrases the single point of interconnection rule.

[1429] Verizon UNE Brief at 45-46; Verizon UNE Reply at 30, citing Tr. at 324 (not technically feasible to add cables on request and sustain normal operation). *See generally* Tr. at 324-27, 365-66 (Verizon testimony against direct connection).

[1430] *Id*.

[1431] Verizon UNE Reply at 30.

[1432] Verizon UNE Brief at 28-29.

[1433] Verizon UNE Reply at 31.

access. Unlike the other elements listed in section 4.3.2, the Commission's impairment analysis regarding subloops does not address unbundled concentrators and multiplexers.[1434]

433. We adopt WorldCom's proposed language regarding access to the FDI because an adjacent collocation is not necessary for WorldCom to access a Verizon FDI. Whether WorldCom builds an adjacent collocation or seeks direct access, all work would be performed by Verizon technicians. Accordingly, the only real difference appears to be the substitution of cross connection wires in the case of adjacent collocation and, based on the record before us, the benefit of this is not apparent. Using connecting wires merely shifts the intrusion into the FDI from the WorldCom wire to the cross connect.[1435] Under cross examination, Verizon's witness explained that the benefit of the COPIC lay in avoiding the need for coordination between Verizon and the requesting carrier.[1436] Such coordination would likely entail Verizon and WorldCom technicians working together on site, and perhaps remote coordinated verification of the results. Although close coordination between Verizon and WorldCom doubtless carries a cost, we find that the difficulty does not rise to the level of obstruction that would make this mode of operation technically infeasible, and thereby justify the burdensome requirement that WorldCom construct a COPIC as a precondition of access to subloops at the FDI.

434. By contrast, WorldCom's objections to the COPIC – the difficulty of obtaining zoning approval for a box, the need to establish rights-of-way, the cost of creating the adjacent platform (or renting space on Verizon's platform, if available), the cost of building the facility itself – seem real and substantial, and not merely "speculative" as Verizon suggests.[1437] We conclude it is unreasonable to require every competitive LEC desiring subloop access at a Verizon FDI to go through such a process.[1438] We also find that nothing objectionable in WorldCom's proposed section 4.3.5, which requires Verizon to provide a single point of interconnection at multi-unit premises, as do our rules.[1439]

435. That Verizon makes available to WorldCom an alternative BFR process does not save the COPIC requirement. Given Verizon's arguments in its briefs we are concerned that

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[1434] In addition, we regard some multiplexers as part of the packet switching functionality; *See* 47 C.F.R. § 51.319(c)(4).

[1435] Tr. at 324

[1436] *Id.* at 476-78. Verizon witness Gansert explains that the problem lies in "this whole very ambiguous situation of who schedules things, who controls it, how do you verify there was quality, who does the testing." Tr. at 477.

[1437] Verizon UNE Reply at 30.

[1438] In making this determination we also consider the resistance from the community that future competitors requesting zoning permission would likely meet.

[1439] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.3.5; 47 C.F.R. § 51.319(a)(2)(v).

Verizon would meet with skepticism any proposal for direct access at the FDI.[1440] In any case, Verizon's review for feasibility and legality before beginning to develop a price for the proposed access would cause considerable delay.[1441] Therefore, we conclude that the BFR process would place an unreasonable burden on WorldCom's right of access to subloops at the FDI.

(ii) AT&T's Proposed Language

(a) Positions of the Parties

436. AT&T states that it is willing to defer consideration of contract terms and issues relating to remote terminal and adjacent collocation until the Commission resolves its pending proceeding relating to competitive LEC access to next-generation DLC loops and, therefore, opposes the inclusion of such proposed terms in the agreement at this time.[1442] Verizon contends that AT&T is urging the adoption of its own subloop language while simultaneously asking us to defer consideration of *Verizon's* proposed subloop language until the Commission addresses such issues in its next-generation DLC proceeding.[1443] According to Verizon, AT&T's "attempted sleight of hand" is a transparent effort to impose its own proposal for some indefinite period until the Commission addresses Verizon's proposals.[1444] Verizon also argues that if we defer ruling on its proposal, the result will be that the agreement will not provide for ordering and provisioning of subloops. Accordingly, Verizon asserts that the Commission should adopt Verizon's proposal, which the Commission has elsewhere found to satisfy Verizon's obligations under Act and Commission rules.[1445]

(iii) Discussion

437. We agree with AT&T's recommendation to defer consideration of both parties' subloop proposals until the Commission completes its next-generation DLC proceeding.[1446] Unlike Issues V-9/IV-84, for example, where we do not defer consideration, in this instance we

[1440] Verizon UNE Brief at 28-29; Verizon UNE Reply at 30, citing Tr. at 324.

[1441] *See* Verizon UNE Brief at 30 (describing BFR process).

[1442] AT&T Brief at 159. *See also* AT&T Brief at 175, citing Verizon's November Proposed Agreement to AT&T, §§ 11.2.14.6.3 – 11.2.14.6.14; 11.2.14.7 – 11.2.14.7.6; AT&T Brief at 175-79 (AT&T's discussion of Verizon's proposal).

[1443] Verizon Advanced Services Reply at 5, citing AT&T's November Proposed Agreement to Verizon, Schedule 11.2.14.

[1444] *Id.* (arguing that if we defer consideration of Verizon's subloop proposals as AT&T suggests, we should also defer consideration of AT&T's subloop proposals).

[1445] *Id.*, citing *Verizon Massachusetts Order*, 16 FCC Rcd 8988, at 9074-75, paras. 154-55.

[1446] *See Triennial UNE Review NPRM*, 16 FCC Rcd at 22788-89, para. 14.

find that both we and the parties will benefit from the Commission's comprehensive review of next-generation DLC matters. In Issues V-9/IV-84, the parties submitted simple proposals concerning the ability to obtain Verizon's resold xDSL over the UNE-platform or UNE loop. Such proposals could be modified, if necessary, and easily inserted at a later date through the agreement's change of law provisions. Here the parties have offered complex proposals, the details of which were little discussed either at the hearing or in their filings. Based on the amount of information in the record about these proposals, deferring consideration is the most reasonable course of action. Specifically, we defer consideration of AT&T's proposed sections 11.2.14.4.3 *et seq.*, 11.2.14.4.4 *et seq.*, and 11.2.14.4.5 *et seq.*, and Verizon's proposed sections 11.2.14.6 *et seq.* and 11.2.14.7 *et seq*. To be clear, nothing in this ruling shall affect our decisions above with respect to MTEs and MDUs (*i.e*., adopting AT&T's MTE/MDU access section of its subloop proposal). We reject Verizon's proposed TOPIC requirement for access to premises wiring, but we defer our consideration of that same language with respect to access to the FDI.[1447]

e. Definitions and Remaining Language

(i) WorldCom's Proposed Language

(a) Positions of the Parties

438. Verizon raises a number of specific objections to language proposed by WorldCom. Verizon contends that WorldCom's use of paraphrase subjects Verizon to unreasonable burdens that go beyond the Commission's rules. In particular, Verizon characterizes as "unacceptable" WorldCom's paraphrase of the "technical feasibility" and "best practices" rules.[1448] In particular, Verizon contends that, should the rule change, Verizon would be subjected to the heavy administrative burden of revising all of its affected contracts, a burden which may be avoided by incorporating applicable law by reference.[1449] Verizon also argues that WorldCom's proposed requirement that Verizon must provide appropriate power to the feeder subloop goes beyond Verizon's duty to provide the network as it is.[1450] Finally, Verizon argues that WorldCom's proposal that Verizon provide WorldCom with a copper loop even in

[1447] *See supra* at para. 422 (explaining that TOPIC is inconsistent with Commission rules and precedent on inside wiring.

[1448] Verizon UNE Brief at 51, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.3.4. *See* 47 C.F.R. §§ 51.319(a)(2)(ii)-(iii) (Presumption of technical feasibility; incumbents held to "best practices" standard).

[1449] Verizon UNE Brief at 51-52.

[1450] *Id.* at 52, citing *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.4.2.4.

instances where Verizon is using fiber feeder could require construction of new facilities, and thus exceeds the scope of existing law.[1451]

439. WorldCom disputes Verizon's assertions, and maintains that Verizon exaggerates the burden of using the agreement's change of law provisions.[1452] WorldCom argues that, should the law change, Verizon can minimize the burden by offering new language that "parties would quickly agree to [because] it accurately reflected the change in law."[1453] WorldCom further argues that Verizon's failure to acknowledge its obligations under the current rules, as revealed by its proposed contract terms, highlights the need to include language that describes the parties' obligations clearly.[1454] Finally, WorldCom argues that requiring Verizon to power fiber feeder is entirely reasonable, as is requiring Verizon to provide twisted copper pair where it is available in Verizon's existing network and is unused.[1455]

(b) Discussion

440. We adopt WorldCom's remaining subloop proposals as amended. We reject Verizon's arguments against WorldCom's language or, where we agree with Verizon, we find that the drafting deficiencies may easily be remedied by inserting language that addresses Verizon's concerns. In particular, we find that WorldCom's paraphrases of the Commission's rules are a good-faith and reasonable effort to clarify the effect of the rules on the agreement, and do not conflict with the corresponding rules of general application. For example, Verizon characterizes as "unacceptable" WorldCom's paraphrase in section 4.3.4 of rule 51.319(a)(2)(ii), but Verizon does not explain why this is so.[1456] To the contrary, WorldCom's proposal appears to be a reasonable and fair distillation of the "technical feasibility" and "best practices" rules as they apply to the parties.[1457] Although a change of law would admittedly put an administrative burden on the parties, we agree with WorldCom that where, as here, parties differ greatly over the meaning of existing law, new language would probably have to be

[1451] Verizon UNE Brief at 52; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.4.2.2.

[1452] WorldCom Reply at 92.

[1453] *Id*.

[1454] *Id.* at 93, citing as an example Verizon's insistence that it may require installation of a COPIC to access the FDI.

[1455] *Id.* at 94-95.

[1456] Verizon UNE Brief at 51, citing WorldCom's November Proposed Agreement to Verizon, Attach. III, § 4.3.4.

[1457] 47 C.F.R. § 51.319(a)(2)(ii)-(iii).

negotiated in any case.[1458] Referring to "applicable law" is not helpful when parties clearly disagree over what the present applicable law requires.[1459]

441. We also reject Verizon's argument that the agreement should not require it to supply power to fiber subloops. Fiber feeder does not function without electric power, and therefore appropriate power is part of the subloop element.[1460] The definition of the loop explicitly includes the loop's functions and capabilities, and thus, in the context of a powered loop, bars Verizon from withholding electricity. Even if the loop definition did not dispose of Verizon's argument, Verizon's insistence that WorldCom duplicate its power arrangements for subloops would still be senseless, and the anticompetitive potential plain. We further disagree with Verizon that WorldCom's language requiring Verizon to provide a copper loop to WorldCom even in instances where Verizon is using fiber feeder conflicts with the holding of the Eighth Circuit that requesting carriers take the network as they find it.[1461] As the Commission has explained, "Because it is in place and easily called into service, we find that dark fiber is analogous to "dead count" or "vacant" copper that carriers keep dormant but ready for service."[1462] In other words, unused copper, like dark fiber, is available to requesting carriers. Therefore, we agree with WorldCom that it is entitled to use a loop or subloop in a medium other than that used by Verizon if the facility is in place and easily called into service. WorldCom itself explains that it seeks access to copper facilities only "where it is available in Verizon's existing network and unused."[1463] WorldCom's own interpretation of its proposed language thus provides a rule of construction wherever WorldCom's subloop proposals could otherwise be read to impose an unlawful construction requirement on Verizon.[1464]

[1458] WorldCom Reply at 92.

[1459] *See, e.g.,* Issue IV-28 *infra* (adopting Verizon's "applicable law" language because there is no disagreement about what Commission rules apply).

[1460] *See* 47 C.F.R. 51.319(a)(1) (Loop defined to include all features, functions, and capabilities of the transmission facility).

[1461] *Iowa Utils. Bd. v. FCC.,* 120 F.3d at 813.

[1462] *UNE Remand Order*, 15 FCC Rcd at 3776, para. 174.

[1463] WorldCom Reply at 95.

[1464] *See, e.g.*, WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.5.2.2 & 4.5.4.

(ii) AT&T's Proposed Language

(a) Positions of the Parties

442. Verizon argues that AT&T's proposed language misstates Verizon's obligations.[1465] For example, according to Verizon, AT&T's proposal to require Verizon to unbundle the "Loop Concentration/Multiplexing Functionality," improperly attempts to import the unbundling of a transport functionality into the subloop proposal.[1466] Verizon also alleges that AT&T's proposal misstates Verizon's obligation to provide access to subloops, which, Verizon maintains, is limited to accessible terminals, and does not extend to any point along the loop regardless of whether or not such a terminal exists.[1467] Verizon also objects to AT&T's language that, according to Verizon, would impose performance standards on Verizon that conflict with the principle that a requesting carrier takes the network as it finds it.[1468] In addition, Verizon argues that AT&T's proposed language appears to give AT&T the right to perform work on Verizon's network facilities, which, for reasons of security and reliability, only Verizon should perform.[1469] In addition, Verizon faults AT&T's proposals for introducing novel terms with uncertain meanings such as "transmission path" instead of "loop," and "access terminal" instead of "accessible terminal."[1470] Verizon contends that at least one of AT&T's novel phrases – "ordinarily combined" instead of "currently combined" – would require Verizon to modify its network in ways contrary to the Eighth Circuit's holding regarding combination of network elements.[1471]

(b) Discussion

443. We adopt Verizon's proposed subloop definitions in sections 11.2.14.1 and 11.2.14.2.[1472] We find this language to be consistent with the Commission's rule 51.319(a)(2),

[1465] AT&T's briefs do not address Verizon's charge that AT&T's proposed definitional language misstates Verizon's obligations. Instead, AT&T's arguments focus on access to premises wire at MTEs and MDUs. *See* AT&T's November Proposed Agreement to Verizon, § 11.2.14.6 *et seq.*, discussed above.

[1466] Verizon UNE Brief at 31, citing AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.2.1; Verizon UNE Brief at 50.

[1467] Verizon UNE Brief at 31, citing AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.2.1 ("Verizon may only refuse to limit availability of or access to a subloop at or between two points by demonstrating that the access sought by AT&T is technically infeasible"); *id.* at 47, citing *UNE Remand Order*, 15 FCC Rcd at 3789-90, para. 206.

[1468] *Id.* at 31-32, citing AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.2.2.

[1469] *Id.*; Verizon UNE Brief at 54.

[1470] *Id.* at 31-32, citing AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.2.3.

[1471] *Id.* at 49. *See Iowa Utils. Bd. v. FCC*, 120 F.3d at 813.

[1472] Verizon's November Proposed Agreement to AT&T, §§ 11.2.14.1-11.2.14.2.

and is a good-faith and reasonable effort to apply the Commission's definition of the subloop to the agreement. By contrast, agree with Verizon that AT&T's proposal contains phrases that would expand Verizon's obligations substantially or that appear to conflict with the Commission's rules. For example, we agree with Verizon that AT&T's proposed requirement that Verizon unbundle the "Loop Concentration/Multiplexing Functionality" is improper.[1473] We find no support in any of the Commission's rules or orders for routinely unbundling individual multiplexing or concentrating equipment.[1474] We also agree with Verizon that AT&T's proposal to access subloops at any point except where Verizon demonstrates that access is technically infeasible misstates Verizon's obligation because it ignores the "accessible terminals" limitation on subloop unbundling.[1475] In addition, we find that AT&T's language imposes an excessively vague and high performance standard on Verizon when it requires that all subloops perform as well as any "similar configuration" within Verizon's network.[1476]

444. Because the language to which Verizon objects is pervasive, and because AT&T's post-hearing briefs contain no support for the substantial effects that the proposals would have, we reject AT&T's proposed definitions and general requirements sections 11.2.14.1 through 11.2.14.4.2 *et seq.*, with the sole exception of AT&T's proposed definition of Intra-Premises Wiring for MTEs, section 11.2.14.3.[1477] The language of AT&T's section 11.2.14.3 imports the definitions relating to the point of demarcation in the Commission rules 68.3 and 68.105 and, in contrast to AT&T's other proposed definitions, the subject matter has been argued thoroughly in the parties' briefs.[1478]

9. Issue III-12 (Dark Fiber)

a. Introduction

445. Commission rules specifically include dark fiber within the definition of the loop and transport UNEs that incumbents must make available to competitors pursuant to section

[1473] AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.2.1.

[1474] Verizon UNE Brief at 50. *See* Issue IV-18. The rules also consider certain multiplexers to be a packet switching functionality; *See* 47 C.F.R. 51.319(c)(4) (The DSLAM is a packet switching functionality subject to unbundling under certain conditions only.) We do not simply excise this phrase from AT&T's proposal, as we do from similar language proposed by WorldCom, because the phrase appears to form part of a larger pattern of questionable statements by AT&T.

[1475] AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.2.1; *UNE Remand Order*, 15 FCC Rcd at 3789-90, para. 206; 47 C.F.R. 51.319(a)(2).

[1476] Verizon UNE Brief at 31-32, citing AT&T's November Proposed Agreement to Verizon, § 11.2.14.4.2.2.

[1477] AT&T's November Proposed Agreement to Verizon, § 11.2.14.3, incorporating definitions in 47 C.F.R. § 68.3. Our adoption of AT&T's proposed Intra-Premises Wiring definition is an exception to our general rejection of AT&T's definitional language in AT&T's sections 11.2.14.1 through 11.2.14.4.2 *et seq.*

[1478] 47 C.F.R. §§ 68.3 & 105; s*ee* Access to MTEs and MDUs, *supra*. paras. 416-22.

251(c)(3) of the Act.[1479] Dark fiber is analogous to unused copper loop or transport facilities, and distinguishable from unused materials stored in a warehouse, in that dark fiber is physically connected to the incumbent's network and is easily called into service.[1480] WorldCom and AT&T seek to remove what they see as impermissible restrictions to their ability to access Verizon's dark fiber, which can be used by incumbent and competing LECs alike to handle increased capacity. Specifically, WorldCom joins AT&T in arguing that Verizon should permit them to access dark fiber by splicing their fiber to Verizon's at points other than hard termination points, permit splicing of non-continuous fiber paths, and permit them to reserve fiber during the collocation and ordering process. AT&T also disputes several other aspects of Verizon's dark fiber offering that it considers deficient. These include whether or not the term "unused transmission media" should supplant the term "dark fiber;" whether Verizon must perform upgrades or consider AT&T's forecasts when installing fiber; and the reasonableness of Verizon's ordering and provisioning practices. WorldCom also argues against inclusion of Verizon's proposal to limit the percentage of dark fiber in a given route that a competitor may obtain, and against allowing Verizon, upon a showing of need, to revoke dark fiber. We address each of these issues below.

446. In addition to disagreeing on these specific issues which we discuss at greater length below, the parties present extensive competing, although apparently largely uncontested, sets of contract language. Because of the complexity of the proposals, and to guide the parties in drafting their agreements in compliance with our findings, we choose between these competing sets of contract language, as well as resolve the specific disputes that the parties have presented. Thus, we adopt Verizon's proposed language regarding dark fiber with modifications or with petitioner's language inserted as needed to accord with our analysis below.[1481] We conclude that Verizon's language provides a better starting point than AT&T's because Verizon's language requires less adjustment to comply with our holdings. Verizon's language provides a better starting point for its agreement with WorldCom because Verizon's language provides greater detail, which will aid enforcement and minimize potential disputes.[1482]

447. We deny WorldCom's motion to strike as it relates to the issue of dark fiber.[1483] In its response to WorldCom's motion, Verizon indicates that it provided the contested language to WorldCom in its answer.[1484] The hearing transcript confirms that WorldCom's counsel cross examined Verizon witnesses at length regarding the language that is now the subject of

[1479] 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.319(a)(1) & (d)(1)(ii).

[1480] *UNE Remand Order*, 15 FCC Rcd at 3776, 3843-46, paras. 174, 325-330 & n.323.

[1481] *See supra,* Standard of Review, for discussion of when we deviate from "final offer" arbitration

[1482] *See, e.g.*, WorldCom Brief at 2-3, 125 (arguing for detailed contract language).

[1483] WorldCom Motion to Strike, Ex. A at 23-27.

[1484] Verizon Response, Ex. B at 11-13.

WorldCom's motion to strike.[1485] The questioning by WorldCom's counsel on the effect of the proposed language dispel any doubt that WorldCom was indeed afforded adequate notice and opportunity to review this proposal.

b. Access at Hard Termination Points

(i) Positions of the Parties

448. AT&T proposes that Verizon should permit AT&T to access dark fiber at multiple points in Verizon's network.[1486] Specifically, AT&T contends that Verizon must permit access at splice points, regenerator or optical amplifier equipment, and "stubbed fibers" in remote terminals.[1487] AT&T maintains that such access is technically feasible, and that denying access would be discriminatory, and for these reasons Verizon must provide access under section 251(c)(3) of the Act.[1488] AT&T contends there can be no question that splice point access is technically feasible because the Massachusetts Department requires Verizon to include splice point access to dark fiber in its tariff.[1489] AT&T further argues that, because Verizon splices into stubbed fiber for its own purposes, access to stubbed fiber in remote terminals also is technically feasible.[1490]

449. WorldCom also proposes to access fiber at splice points.[1491] WorldCom argues that BellSouth's agreement to splice point access on the terms WorldCom seeks here indicates that the access WorldCom seeks is technically feasible.[1492] In particular, WorldCom contends that, according to the Commission's subloop unbundling rules, BellSouth's agreement to splice point access means that Verizon bears the burden of proving that such access is *not* technically feasible, and that Verizon has not met that burden.[1493] WorldCom maintains that the

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[1485] *See* Tr. 396-399 (WorldCom counsel questions Verizon witness closely on the effect of Verizon's November Proposed Agreement to WorldCom, section 7.2.2).

[1486] AT&T's November Proposed Agreement to Verizon, § 11.2.15.2.

[1487] Verizon refers to fiber that is not terminated or spliced to other fiber but rather left sealed, as for possible use in a future project, as "stubbed fiber." Tr. at 386-87. *See also* AT&T Brief at 140, n.468.

[1488] AT&T Ex.1 (AT&T Pet.), at 200; AT&T Brief at 138; AT&T Reply at 80-81.

[1489] AT&T Brief at 140 and AT&T Reply at 81, both citing Tr. at 381.

[1490] AT&T Ex.1, at 200; AT&T Brief at 138; AT&T Reply at 80-81.

[1491] WorldCom's November Proposed Agreement to Verizon, § 5.2.5; WorldCom Brief at 119-124; WorldCom Reply at 97.

[1492] WorldCom Brief at 119-20; WorldCom Reply at 97, citing WorldCom Ex. 5 (Direct Testimony of C. Goldfarb *et al.*), at 30; WorldCom Ex. 13 (Rebuttal Testimony of C. Goldfarb *et al.*), at 15.

[1493] WorldCom Brief at 119-20 & n.67; WorldCom Reply at 97, citing 47 C.F.R. § 51.319(a)(2)(ii) (subloop unbundling presumed technically feasible).

Commission's subloop unbundling rules do not prohibit accessing dark fiber through splice points in manholes or vaults.[1494] WorldCom further argues that, because Verizon routinely performs new splices for itself, limiting fiber access to hard termination points as Verizon proposes is discriminatory.[1495] WorldCom dismisses as misleading and inaccurate Verizon's claim that requiring splices at points other than hard termination points would impose a construction requirement on Verizon.[1496]

450. Verizon maintains that, as a threshold matter, fiber with regenerator or optical amplifiers is, by definition, not "dark," so regenerators or amplifiers cannot serve as points of access to dark fiber.[1497] Verizon further argues that AT&T and WorldCom misread the Commission's rules and reasoning relating to subloop unbundling, which, Verizon states, specifically limit the incumbent's unbundling obligation to accessible terminals.[1498] Verizon disagrees that denying access at splice points is discriminatory, arguing instead that access at hard termination points satisfies Verizon's unbundling obligation, and that requiring access at points other than such terminals would require Verizon to perform construction.[1499] Verizon also contends that access to the fiber at splice points is not technically feasible, because access to the fiber other than at hard termination points would degrade the fiber's transmission capability and could disrupt working customer service.[1500] Verizon states that creating new splice points, or breaking into sealed ones, is neither operationally reasonable nor accepted engineering practice, and would jeopardize the integrity of the network.[1501] Verizon responds to AT&T's evidence that Massachusetts accepts splice point access by noting that the New Jersey Board takes the opposite position, and cites the New Jersey Board's statement that "splicing into dark fiber is an inefficient and wasteful use of these valued facilities."[1502]

[1494] WorldCom Brief at 120; WorldCom Reply at 97, citing 47 C.F.R. § 51.319(a)(2) (accessible terminals for subloop unbundling are any point on loop where technicians can access wire or fiber without removing splice case).

[1495] WorldCom Brief at 122-23, citing Tr. at 371-73, 375, 377; WorldCom Reply at 97.

[1496] WorldCom Reply at 98, citing Verizon UNE Brief at 57.

[1497] Verizon Answer at 109; Verizon UNE Brief at 57.

[1498] Verizon UNE Brief at 60; Verizon UNE Reply at 33-34; *UNE Remand Order*, 15 FCC Rcd at 3789-90, para. 206; 47 C.F.R. § 51.319(a)(2).

[1499] Verizon UNE Brief at 60; Verizon UNE Reply at 36.

[1500] Verizon Answer at 109-10; Verizon UNE Brief at 61, citing Verizon Ex. 15, at 17; Verizon UNE Reply at 35.

[1501] Verizon UNE Brief at 61, citing Tr. at 389, 398-99, 455.

[1502] Verizon UNE Reply at 35, citing New Jersey Board Meeting, Docket No. TO0060356, *In the Matter of the Board's Review of Unbundled Network Element Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.,* at 28-29 (Nov. 20, 2001.)

(ii) Discussion

451. Based on the record before us, we find that Verizon's language limiting access to hard termination points accords with the Commission's rules, and we adopt Verizon's proposal to AT&T section 11.2.15.2 and proposals to WorldCom sections 7.2.2 and 7.2.5 insofar as they require access at hard termination points only.[1503] We also adopt WorldCom's proposed section 5.1, which provides that Verizon may not remove lightwave repeaters such as regenerators or optical amplifiers from unbundled dark fiber.[1504] We agree with Verizon that network reliability and security are important aspects of technical feasibility analysis.[1505] Verizon casts doubt on the technical feasibility of splice point access when it claims that the practice could "jeopardize the integrity of Verizon VA's network" and "impact the transmission capabilities of the fiber optic facilities."[1506] The record indicates that Verizon does not routinely practice splice point access to its fiber for retail operations, and in weighing the evidence of technical feasibility we consider it significant that Verizon avoids the procedure because of possible risk to its facilities.[1507]

452. We reject WorldCom's argument that the presumption of technical feasibility in the subloop unbundling rules, coupled with BellSouth's agreement to WorldCom's terms and the Massachusetts Department's order, means that Verizon must agree to splice point access.[1508] We agree with WorldCom, however, that access to fiber at points other than at a central office is, in effect, access to a fiber subloop, and is therefore subject to the Commission's subloop rules and analysis. The Commission's subloop unbundling rules do not address splice point access to dark

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[1503] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., §§ 7.2.2 and 7.2.5; Verizon's November Proposed Agreement to AT&T, § 11.2.15.2. Consequently, we reject WorldCom's proposed Part C, Attachment III, section 5.2.5 and that part of section 5.3.2 from the phrase "For connections at a splice point" through the end of the section. To bring the section into conformity with our holding in the subsection addressing "Inter Office Fiber Routes" discussed immediately below, the words "or more" are inserted between the phrases "between two" and "Verizon central offices" in Verizon's November Proposed Agreement to AT&T, § 11.2.15.2(ii).

[1504] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 5.1.

[1505] Verizon UNE Brief at 61, citing, *Local Competition First Report and Order*, 11 FCC Rcd at 15605-06, para. 203.

[1506] Verizon UNE Brief at 61; Verizon UNE Reply at 34-35 ("Repeatedly opening splice cases to provide access to individual fibers threatens the integrity of Verizon VA's physical network, negatively affects the transmission capabilities of its fiber optic facilities, and poses operational risk to other services riding the fiber ribbon or cable); Verizon Ex. 1 (Direct Testimony of M. Detch *et al.*), at 20-21.

[1507] Verizon UNE Brief at 61, citing Tr. at 389, 398-99, 455 ("Verizon's offering with no access at splice points is at parity with how we offer our other service. . . if there is no fiber into the building, Verizon would never splice out two strands from a cable to go into a customer building.").

[1508] WorldCom Brief at 120, citing WorldCom Ex. 13 (Rebuttal Testimony of C. Goldfarb *et al.*), at 19 (operational questions associated with access to dark fiber are resolvable through good faith negotiations as evidenced by BellSouth's agreement to WorldCom's terms); 47 C.F.R. § 51.319(a)(2).

fiber, but instead mandate access to subloops at terminals in the incumbent's plant.[1509] Although the Commission noted that such terminals might occur in a variety of forms, the Commission explained that competitive LECs would have access at three basic locations: at or near the customer premises; at the main distribution frame; and anywhere that feeder and distribution plant meet.[1510] The Commission's subloop unbundling analysis thus applies, at least in the copper wire context, to a limited number of accessible terminals. Moreover, the Commission specifically limited access to copper wire subloops to terminals, and declined to require the splice point access that AT&T and WorldCom request.[1511] The Commission has not specifically required unbundling at splice points or created a presumption of feasibility; thus, we find no "best practices" presumption of feasibility for splice point access that is automatically binding on Verizon.[1512]

453. We are not persuaded by WorldCom's argument that, because there are hundreds of splices in any real fiber cable, Verizon routinely splices fiber in its own network.[1513] WorldCom apparently refers to the initial splicing of fiber cable segments, which we are not convinced presents the same operational risks as reopening the cable, perhaps repeatedly, for spliced access at manholes, as WorldCom proposes.[1514] Instead, we find credible Verizon's testimony that the access WorldCom desires differs materially from Verizon's own splices.[1515] We also reject AT&T's argument that Verizon's admitted policy of returning to stubbed fiber in order to complete fiber routes proves that splicing is both feasible and practiced by Verizon.[1516] The record suggests, rather, that Verizon does not perform such splices for itself routinely, and splices into sealed fiber stubs rarely and for compelling reasons, such as to extend the

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[1509] 47 C.F.R. § 51.319(a)(2).

[1510] *UNE Remand Order*, 15 FCC Rcd at 3789-90, para. 206.

[1511] *Id*. at n.395:

> Accessible terminals contain cables and their respective wire pairs that terminate on screw posts. This allows technicians to affix cross connects between binding posts of terminals collocated at the same point. Terminals differ from splice cases, which are inaccessible because the case must be breached to reach the wires within. For a discussion of outside plant, *see* Green, James Harry, *The Irwin Handbook of Telecommunications*, McGraw Hill, New York (3rd Ed. 1997), at ch. 6.

[1512] In other words, we interpret 47 C.F.R. § 51.319(a)(2)(iii) (if any state finds that unbundling at a given point is technically feasible, the burden is henceforth on incumbents to show otherwise) to be confined to accessible terminals as described in 47 C.F.R. § 51.319(a)(2) (access to subloops limited to accessible terminals).

[1513] WorldCom Brief at 120, citing Tr. at 371-373, 375.

[1514] *Id*.

[1515] Tr. at 375 (Verizon witness Detch: "When and if Verizon splices fiber together, they're splicing cables in its entirety, not a strand here and a strand there, to create a fiber route.")

[1516] AT&T Brief at 139-40, citing Tr. at 398-400.

network.[1517] It does not appear discriminatory for Verizon to withhold from competitive LECs a form of access that Verizon itself prefers not to use because it considers that access to be risky and operationally unsound, notwithstanding that Verizon may resort to an analogous procedure on relatively rare occasions to construct new facilities. Because the current record does not allay concern regarding the effect on the fiber's capacity or integrity of multiple or repeated invasive practices, the agreements should include Verizon's limit of access to hard termination points.[1518]

454. Because we find Verizon's limit on access to hard termination points to be reasonable and compatible with the Commission's rules, we do not direct Verizon to permit AT&T to access fiber at regenerators or amplifiers. We reject, however, Verizon's argument that fiber with regenerators or amplifiers has electronics and so, by definition, is not dark fiber.[1519] In the context of dark fiber, we find that the word "electronics" refers to the electronic devices at either end of the fiber that activate or "light" the fiber and enable it to carry traffic.[1520] To give the word "electronics" the broader reading that Verizon suggests, and include within that term the regenerators or amplifiers along the fiber which are routinely necessary to carry signals over long distances, would undercut the rule's stated intent of giving competitive carriers access to incumbent LECs' unused loop and transport capacity.[1521] For this reason, Verizon may not remove them.[1522]

c. Inter-Office Fiber Routes

(i) Positions of the Parties

455. The parties dispute whether a dark fiber transport route may pass through intermediate central offices, or must be leased in segments directly between wire centers where the requesting carrier is collocated. AT&T proposes language that would prevent Verizon from limiting access to dark fiber to "continuous paths," a policy that would make dark fiber available

[1517] Tr. at 389.

[1518] The forthcoming triennial review of incumbent LECs' unbundling obligations may provide a better forum for the Commission to reassess subloop unbundling as it applies to fiber than the present arbitration does. *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (rel. Dec. 20, 2001) (*Triennial UNE Review NPRM*).

[1519] Verizon Answer at 109; Verizon UNE Brief at 57.

[1520] *See, e.g.*, *UNE Remand Order*, 15 FCC Rcd at 3776, para. 174 ("Dark fiber is fiber that has not been activated through connection to the electronics that "light" it, and thereby render it capable of carrying communications services.").

[1521] *UNE Remand Order*, 15 FCC Rcd at 3776, 3844, para. 174, 326.

[1522] WorldCom's proposed Attachment III, section 5.1, adopted above, prevents Verizon from such action.

only between central offices where AT&T is collocated.[1523] AT&T argues that Verizon should instead splice fiber to create new fiber routes.[1524] AT&T maintains that creation of such routes meets the definition of dark fiber, to the extent such fiber is accessible, available, and otherwise physically connected to Verizon's network.[1525] WorldCom similarly argues that language that essentially establishes a collocation requirement constrains WorldCom's use of fiber in a manner that goes beyond the Commission's rules.[1526] WorldCom also argues that Verizon's requirement that WorldCom establish collocation to access fiber unreasonably limits WorldCom's ability to use dark fiber.[1527]

456. Verizon maintains that any requirement to splice dark fiber for a competitor is contrary to the Commission's description of dark fiber as "unused loop capacity that is physically connected to facilities that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can be used by competitive LECs without installation by the incumbent."[1528] Verizon also argues that limiting its dark fiber offering to paths connecting two central offices with no intermediate offices is consistent with the Commission's statement that fiber "connects two points," and has been endorsed by the New York Commission.[1529] According to Verizon, fiber that must spliced does not meet the Commission's definition of dark fiber because it necessarily requires "installation" by the incumbent, and is not "physically connected" to the facilities that Verizon uses to provide service.[1530] Verizon's proposed definition of, and subsequent references to, dark fiber specify that it be continuous and between two Verizon central offices.[1531]

[1523] AT&T's November Proposed Agreement to Verizon, § 11.2.15.2.

[1524] AT&T Brief at 139-40.

[1525] *Id*.

[1526] WorldCom Brief at 120.

[1527] *Id.* at 123, citing Verizon's proposed §§ 7.2.1 and 7.3.

[1528] Verizon UNE Reply at 36-37, citing, *UNE Remand Order*, 15 FCC Rcd at 3776, para. 174, n.323.

[1529] Verizon UNE Brief at 57, citing *Re Digital Subscriber Line Services*, Order Granting Reconsideration In Part and Denying Reconsideration part, and Adopting Schedule, Case No. 00-C-0127, 2001, WL 322813 *7 (issued by New York Comm'n on Jan. 29, 2001); Verizon UNE Reply at 36-37, citing *UNE Remand Order*, 15 FCC Rcd at 3843-44, para. 325.

[1530] Verizon UNE Reply at 36-37.

[1531] *See, e.g.,* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 7.2.3; Verizon's November Proposed Agreement to AT&T, §§ 11.2.15.1; 11.2.15.2(ii); 11.2.15.5(ii).

(ii) Discussion

457. We do not require Verizon to splice new routes in the field, as the agreement reflects in Verizon's proposal to AT&T section 11.2.15.2 and proposals to WorldCom sections 7.2.2 and 7.2.5, adopted above.[1532] As we explain above regarding splice point access, it appears likely that unlimited splicing could damage the network and is contrary to Verizon's own practice. We reject, however, Verizon's position that connecting fiber routes at central offices may not be required of Verizon, and therefore we reject Verizon's proposed section 7.2.3 and, where we adopt Verizon's language, we require Verizon to strike the word "continuous" and to amend the phrase "two Verizon central offices" to "two or more Verizon central offices" wherever that phrase is used.[1533] We agree with WorldCom that Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with Commission rules 51.307 and 51.311.[1534] In particular, we reject Verizon's argument against requiring such connection because the *UNE Remand Order* describes dark fiber as "physically connected" and "without installation."[1535] In context, the text Verizon cites explains how an incumbent's dark, unused fiber differs from unused capacity that is stored on spools in a warehouse. We decline to expand this holding and read these phrases to impose limits on either WorldCom's or AT&T's ability to use dark fiber. The more reasonable reading of these phrases is that dark fiber has already been installed in the network, and not that Verizon may decline to cross connect fiber at intermediate central offices to complete a route.[1536] Moreover, Verizon's interpretation could lead to a wasteful use of finite central office collocation space. Finally, we find that a requirement that a requesting carrier submit separate requests or orders for each leg of a fiber route places an unreasonable burden on carriers that is

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[1532] *See supra* para. 450 (Access at Hard Termination Points),

[1533] *Id*.

[1534] 47. C.F.R. § 51.307: Duty to provide access on an unbundled basis to network elements; 47. C.F.R. § 51.311: Nondiscriminatory access to unbundled network elements.

[1535] Verizon Answer at 110, citing *UNE Remand Order*, 15 FCC Rcd at 3776, para. 174, n.323. The entire footnote is as follows:

> In designating dark fiber as a network element, we acknowledge that some facilities that the incumbent LEC currently uses to provide service may not constitute network elements (*e.g.* unused copper wire stored in an incumbent LEC's warehouse). Defining all such facilities as network elements would read the "used in the provision" language of section 153(29) too broadly. Dark fiber, however, is distinct in that it is unused loop capacity that is physically connected to facilities that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can be used by competitive LECs without installation by the incumbent Thus, we conclude that dark fiber falls within the statutory definition of a network element.

[1536] We concur with the New Jersey Board that requiring collocation at intermediate central offices would needlessly inflate the cost of using dark fiber. New Jersey Board Meeting, Docket No. TO0060356, *In the Matter of the Board's Review of Unbundled Network Element Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.* at 11-12, (Nov. 20, 2001).

not comparable to Verizon's own information about and access to its fiber, and that is therefore inconsistent with the nondiscrimination requirements of the Act and the Commission's rules.[1537]

d. Reservation While Ordering

(i) Positions of the Parties

458. AT&T proposes that Verizon should permit AT&T to reserve fiber for 90 days after confirmation of request by AT&T for such facilities.[1538] AT&T argues that denying AT&T this ability would violate the Act's nondiscrimination requirement and Commission rules forbidding incumbents to treat themselves more favorably than competitive LECs.[1539] AT&T contends that, unless it has the ability to reserve dark fiber for the time necessary to install or augment its collocation, it risks collocating or augmenting its collocation only to find that the fiber is no longer available.[1540] AT&T further maintains that a 90-day hold would be sufficient for its needs and a reasonable business practice.[1541] WorldCom and A&T each propose that Verizon hold fiber they order for ten business days after they receive written confirmation of the availability of fiber.[1542]

459. Verizon proposes language prohibiting such reservations, and argues that it does not allow any carrier, including itself, to reserve dark fiber.[1543] Specifically, Verizon notes that its proposal enables it only to use Dark Fiber Loops and Dark Fiber IOF for maintenance purposes, and/or to satisfy customer orders for fiber related services."[1544] Verizon testifies that it is developing a process of "parallel provisioning" in Pennsylvania which allows competitive LECs to apply for collocation space and order fiber simultaneously, so that Verizon is able to provision the fiber shortly after the collocation is installed.[1545] Verizon further states that trials of

[1537] 47 U.S.C. § 251(c)(3); 47 C.F.R §§ 51.311 & 51.319(g).

[1538] AT&T's November Proposed Agreement to Verizon, § 11.2.15.3; AT&T Ex.1, at 193; AT&T Brief 141.

[1539] AT&T Ex.1, at 193; AT&T Brief at 140-41.

[1540] Tr. at 463-64.

[1541] AT&T's November Proposed Agreement to Verizon, § 11.2.15.3; AT&T Brief at 141; Tr. at 464.

[1542] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 5.2.4; AT&T November Proposed Agreement to Verizon, § 11.2.15.4.

[1543] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 7.2.11; Verizon's November Proposed Agreement to AT&T, § 11.2.15.3; Verizon Answer at 106; Verizon UNE Brief at 64.

[1544] Verizon's November Proposed Agreement to AT&T, § 11.2.15.3.

[1545] Tr. at 465.

parallel provisioning in Pennsylvania remain incomplete, and that further Virginia-specific trials would be necessary before parallel provisioning could be introduced in Virginia.[1546]

(ii) Discussion

460. Consistent with the nondiscrimination requirement of the Act, AT&T and WorldCom have the right to reserve fiber while filling received customer orders, so we adopt AT&T's proposed section 11.2.15.3 from the beginning up to and including the phrase "for a period of 90 days after confirmation of a request for such facilities by AT&T."[1547] Permitting AT&T to hold fiber for 90 days puts AT&T, which may need to build or augment collocation, on a more equal footing with Verizon, which is able to assign fiber immediately to satisfy customer requirements.[1548] AT&T's requested ability to hold fiber for 90 days to fill such orders is commercially reasonable and avoids the risk of stranded investment in collocation or augmentations to collocated equipment.[1549] Holding fiber briefly to fill customer requirements does not constitute "warehousing" or "hoarding," as Verizon characterizes AT&T's proposal."[1550] Such terms are out of proportion to the 90-day duration of the proposed hold. Verizon's parallel provisioning process appears to offer a viable and practical solution to the risk of stranded collocation, but we note that the process is still under development. Once Verizon's parallel provisioning process is fully tested and implemented throughout Virginia, a separate 90-day hold on fiber may no longer be necessary.[1551]

[1546] *Id.* at 464-68.

[1547] Because we intend to bring AT&T's access to dark fiber closer to parity with Verizon's ability to access fiber to satisfy customer orders, we insert the phrase "to satisfy customer orders" into AT&T's November Proposed Agreement to Verizon, section 11.2.15.3, between the phrases "after a confirmation of request for such facilities" and "by AT&T." We also strike the final phrase of Verizon's November Proposed Agreement to AT&T, section 11.2.15.6, "before it submits an order for such access," because the requirement is incompatible with parallel provisioning procedures.

[1548] Verizon may likewise refrain from providing such facilities to requesting carriers for a period of 90 days after confirmation of a request from its customers. This finding is consistent with the Commission's rule that an incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that neither the incumbent LEC nor any of its affiliates may reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use. 47 C.F.R. § 51.323(f)(4). *See also* 47 C.F.R. § 51.313(b) (incumbents shall provide access to UNEs on terms and conditions no less favorable than the incumbent provides to itself).

[1549] We note that the 90-day period we adopt in this agreement corresponds to the Commission's rule that an incumbent LEC must complete provisioning of a requested physical collocation arrangement within 90 days after receiving an application that meets the incumbent LEC's established collocation application standards. 47 C.F.R. § 51.323(l)(2).

[1550] Verizon UNE Brief at 58. Verizon Ex. 1, at 16-17.

[1551] AT&T Brief at 141.

461. We adopt WorldCom's proposed section 5.2.4 and strike Verizon's proposed section 7.2.11 as it pertains to reservation of fiber during the preordering and ordering procedures. After receiving written confirmation that usable fiber exists, WorldCom may hold the fiber for ten business days. This very brief hold between the pre-ordering and ordering phase is commercially reasonable, and is consistent with Verizon's first-come, first-served policy, in that fiber is allotted to requesting carriers in the order they request it.[1552] WorldCom's proposal protects its interests during the ordering process, so that fiber is not withdrawn between the pre-ordering and ordering phases of the order. This also helps make WorldCom's access more equal to that of Verizon, which, as the incumbent, does not signal the fiber it wishes to use to its competitor through a pre-ordering process. Thus, WorldCom's proposal accords with the nondiscrimination requirement of the Act. Because it addresses the needs of a fully-collocated competitive LEC, it should remain in place even after full implementation of parallel provisioning in Virginia.[1553] For the same reasons, we adopt AT&T's proposed ten business day hold on fiber between the pre-order and ordering phases of an order.[1554]

e. "Unused Transmission Media"

(i) Positions of the Parties

462. AT&T proposes that the agreement should use the term "unused transmission media" instead of the term "dark fiber."[1555] AT&T argues that "unused transmission media" more accurately reflects the extent of Verizon's obligation to unbundle the "facility or equipment used in the provision of a telecommunications service" – the relevant obligation under the Act – which the Commission interprets to include "unused transport capacity."[1556] According to AT&T, it is immaterial that the *UNE Remand Order* discusses fiber rather than coaxial cable or other transmission media, because the Commission's analysis pertains equally to any facility the incumbent uses to carry traffic.[1557]

[1552] We note that the parties are in fundamental agreement on "first come, first served:" *compare* Verizon Testimony Tr. at 403-04 ("[Fiber] is available to any customer first come first serve.") *with* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 5.2.4 ("Verizon shall provide Dark Fiber on a first come, first served basis.")

[1553] 47 U.S.C. § 251(c)(3). Specifically, WorldCom is placed on a more even footing with Verizon, which need not submit a pre-order inquiry.

[1554] *See infra* subsection G "Information and Operational Issues."

[1555] AT&T's November Proposed Agreement to Verizon, § 11.2.15.1; AT&T Ex. 1, at 191-92; AT&T Brief at 138 n.463.

[1556] AT&T Ex. 1, at 191, citing 7 U.S.C. § 3(29); *UNE Remand Order*, 15 FCC Rcd at 3844, para. 326.

[1557] AT&T Ex. 1, at 191; AT&T Brief at 138, n.463, citing Tr. at 461.

463. Verizon maintains that, in the *UNE Remand Order*, the Commission intended to define dark fiber as encompassing only fiber optic cable because the Commission used fiber-specific language to define the term: "unused fiber through which no light is transmitted, or installed fiber optic cable not carrying a signal."[1558] Verizon notes that, by contrast, the term "unused transmission media" appears nowhere in the order. Verizon further argues that the term "unused transmission media" is vague and overly broad, and therefore is not an appropriate term for an interconnection agreement.[1559]

(ii) Discussion

464. We reject AT&T's proposal to replace the term "dark fiber" with the term "unused transmission facilities," and any of AT&T's proposed language that we adopt should be amended to conform to this decision. We likewise reject WorldCom's proposed section 5.4, which also seeks to incorporate the term "unused transmission facilities."[1560] The practical effect of adopting AT&T's novel terminology is unclear; for example, the record does not reveal how much unused coaxial cable is at issue or whether transmission media other than copper wire and coaxial cable may be implicated. Because both the *UNE Remand Order* and the Commission's rules use the term "dark fiber," the meaning of that term is more fixed and clear than the meaning of "unused transmission media."[1561] For the purpose of these agreements, this clarity outweighs the possibility that the phrase "unused transmission media" may in the abstract better express an incumbent's obligation.

f. Upgrades and Installations

(i) Positions of the Parties

465. In its section 11.2.15.3, AT&T proposes requiring Verizon to meet certain conditions before denying a request by AT&T for dark fiber if the denial is based on a reservation of capacity.[1562] Specifically, AT&T proposes that, under such conditions, Verizon may deny AT&T fiber only after making all technically feasible upgrades to its fiber facilities, including upgrading attached electronics in order to generate additional capacity on existing facilities.[1563] WorldCom argues that Verizon's proposals regarding its right to seek emergency

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[1558] Verizon Answer at 105-06, citing *UNE Remand Order*, 15 FCC Rcd at 3771, para. 162 n.292; Verizon UNE Brief at 62-63.

[1559] Verizon Answer at 106; Verizon UNE Brief at 63.

[1560] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 5.4.

[1561] *UNE Remand Order*, 15 FCC Rcd at 3771, 3776, 3843-46, paras. 162, 174, 325-330 & nn.262 and 323; 47 C.F.R. §§ 51.319(a)(1) and (d)(1)(ii).

[1562] AT&T's November Proposed Agreement to Verizon, § 11.2.15.3; AT&T Ex.1, at 193; AT&T Brief at 141.

[1563] *Id*.

relief from the Virginia Commission should be rejected altogether because the suggestion that fiber could be withheld or revoked could discourage competitors from using Verizon's fiber.[1564] AT&T argues that, as the Commission stated in the *UNE Remand Order*, a shortage of dark fiber can easily be averted because the capacity of fiber to carry traffic can be increased significantly by upgrading the electronics that light it.[1565] AT&T further maintains that, when Verizon installs new facilities, or adds to its existing facilities, Verizon must add enough capacity to meet the projected requirements of AT&T.[1566] According to AT&T, for Verizon's compliance with its unbundling obligation to be meaningful, installations of new or additional fiber facilities must include enough capacity to accommodate AT&T's forecasted demand, because otherwise Verizon could evade requests for fiber by simply failing to install sufficient capacity in the network.[1567] AT&T similarly proposes that Verizon should repair any dark fiber that fails to meet design specifications, or that falls short of the service quality that Verizon provides itself.[1568]

466. Verizon responds that it need not upgrade its electronics before denying AT&T fiber because attached electronics fall outside the definition of dark fiber, and because the United States Court of Appeals for the Eighth Circuit has clarified that the unbundling obligation extends only to the existing network, and not to a yet unbuilt superior network.[1569] Verizon further argues that dark fiber is, by definition, "unused," and that AT&T may not require Verizon to install additional fiber, and then claim entitlement to the fiber because Verizon is not using it.[1570]

(ii) Discussion

467. We agree with Verizon regarding each of these proposals by AT&T. Specifically, we do not require Verizon to upgrade the electronics on its fiber before it may deny a request by AT&T for dark fiber.[1571] The text from the *UNE Remand Order* to which AT&T refers merely

[1564] WorldCom Brief at 123-24.

[1565] AT&T Ex.1, at 195; AT&T Brief at 141-42. *See UNE Remand Order*, 15 FCC Rcd at 3785-86, 3854, paras. 198, 352 (Upgraded electronics can avert fiber shortages.).

[1566] AT&T Ex.1, at 197.

[1567] *Id.* at 198.

[1568] AT&T's November Proposed Agreement to Verizon, §11.2.15.9; Verizon UNE Brief at 65.

[1569] Verizon Answer at 107; Verizon UNE Brief at 64; *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd. in part and remanded, AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

[1570] Verizon Answer at 108; Verizon UNE Brief at 64, citing *UNE Remand Order*, 15 FCC Rcd at 3843-45, paras. 324-328.

[1571] The Agreement should use Verizon's proposed § 11.2.15.9, and not the language in AT&T's proposed section 11.2.15.3 which refers to such upgrades. The stricken passage in AT&T's section 11.2.15.3 begins "Verizon must disclose such reservation . . ." and continues to the end of AT&T's proposed section 11.2.15.3.

notes that, because fiber's capacity can be greatly increased by upgrading the electronics, it is not likely that incumbent carriers, to fulfill their role as carriers of last resort, will need to hold a percentage of their total fiber capacity in reserve; these passages are not relevant to the ability of Verizon to fill any particular order by AT&T.[1572] In its proposed section 11.2.15.3, Verizon refers to its right to claim before the Virginia Commission that Verizon should not have to fulfill an AT&T request for dark fiber because filling the request would, for example, impair Verizon's ability to serve as carrier of last resort.[1573] If Verizon were to bring such a claim before the Virginia Commission, and if Verizon persuaded the Virginia Commission that some reservation of fiber was necessary, the Virginia Commission might well impose conditions, such as technically-feasible upgrades, before granting the requested relief. It is not necessary or appropriate, however, for the agreement to specify in advance the steps the Virginia Commission might take in an emergency. We also reject WorldCom's argument that the possibility that Verizon might seek emergency relief from the Virginia Commission could inhibit competitors from relying on Verizon's fiber. Although the Commission has stated that it regards a fiber shortfall as unlikely, the Commission specifically has not preempted the states' role in overseeing an incumbent carrier's ability to serve as carrier of last resort.[1574] That Verizon may ask the Virginia Commission for emergency relief does not, however, entitle it to claim that relief in advance, and we amend Verizon's proposed section 7.2.10 to clarify that relief from the dark fiber unbundling obligation may only be obtained upon a showing of need before the Virginia Commission.[1575]

468. Verizon is also correct that the Act does not require it to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for AT&T or other carriers. We reject AT&T's proposal that Verizon be required to factor in AT&T's forecasts when adding capacity to the network. Moreover, Verizon is correct that AT&T may not hold Verizon's dark fiber to a given standard of transmission capacity.[1576] The inclusion of dark fiber within the definition of the loop and transport UNEs gives AT&T access to the best spare fiber that Verizon has readily available, but it does not permit AT&T to specify a standard of transmission capacity that exceeds the current capacity of the available fiber.

[1572] *UNE Remand Order*, 15 FCC Rcd at 3785-86, 3854, paras. 198, 352.

[1573] Verizon's November Proposed Agreement to AT&T, §11.2.15.3.

[1574] *UNE Remand Order*, 15 FCC Rcd at 3785-86, 3854, paras. 198, 352.

[1575] We amend Verizon's November Proposal to WorldCom, section 7.2.10, by replacing the phrase "Verizon will limit" with "Verizon may, upon a showing of need to the Commission, limit."

[1576] *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813. The Agreement should include Verizon's rather than AT&T's proposed section 11.2.15.9.

g. Information and Operational Issues

(i) Positions of the Parties

469. AT&T proposes that Verizon be required to provide AT&T with fiber layout maps and with a field survey that confirms the availability of dark fiber pairs between two or more central offices.[1577] AT&T argues that it should not be required to pay Verizon to perform field surveys for available fiber with no guarantee that the facilities will remain available after the surveys are complete.[1578] AT&T also argues it should not have to submit multiple inquiries to determine whether fiber exists between two desired locations.[1579] In addition, AT&T contends that Verizon should not be permitted to require a 30-day interval to provision dark fiber, and suggests a 20-day interval would be more reasonable.[1580] Finally, AT&T cites as unreasonable Verizon's position that as few as ten requests per month in a LATA should release Verizon from all provisioning commitments. However, AT&T agrees that some relaxation of provisioning standards may be appropriate when Verizon receives numerous requests for access to dark fiber.[1581]

470. Verizon responds that it does not require, but merely recommends, field surveys to determine the quality, sufficiency, and transmission characteristics of dark fiber.[1582] Verizon maintains that the process of checking the fiber records for the location of fiber and then confirming this information with a field survey is the same method that Verizon uses to confirm whether fiber is suitable for its own use.[1583] Verizon adds that AT&T provides no support for its claim that Verizon's rules are unreasonable, and that Verizon does not intend its "10 requests/30 days" rule to release it from all provisioning requirements, but only that provisioning intervals under such circumstances need to be negotiated individually.[1584]

(ii) Discussion

471. We adopt Verizon's proposals concerning information and provisioning contained in Verizon's sections 11.2.15.4 and 11.2.15.5, provided that those sections are brought into

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[1577] AT&T's November Proposed Agreement to Verizon, § 11.2.15.5.

[1578] AT&T Brief at 140.

[1579] *Id.* at 140-41.

[1580] AT&T Ex.1, at 210.

[1581] *Id.* at 209.

[1582] Verizon Answer at 112; Verizon UNE Brief at 59.

[1583] *Id*.

[1584] Verizon Answer at 112.

conformity with our holdings above.[1585] Specifically, the parties should use Verizon's section 11.2.15.4 up to and including the phrase "provide AT&T with an estimate of the mileage of those facilities."[1586] We agree, however, with AT&T that it is unreasonable for AT&T to conduct fiber surveys to confirm the existence of viable dark fiber only to run the risk presented by Verizon's language that the fiber is no longer available to AT&T. Therefore, after the phrase "provide AT&T with an estimate of the mileage of those facilities," parties should use AT&T's section 11.2.15.4 from the phrase "Within (10) business days of receipt of Verizon's response "until the end of section 11.2.15.4. These amendments not only conform to our prior holdings, but also put to rest AT&T's concern that it may lose fiber that it has sunk resources into locating during the pre-order process. If, however, AT&T follows Verizon's advice and performs, or engages Verizon to perform on AT&T's behalf, a field survey to confirm the viability of a fiber path, it is reasonable for AT&T to bear the expense of that survey, regardless of the result, just as Verizon must do when it performs such surveys for itself.

472. The parties should also use Verizon's proposed section 11.2.15.5, but we insert into section 11.2.15.5(ii) the words "or more" to the phrase "availability of dark fiber pairs between two *or more* Verizon central offices" so that the section conforms to our holding above regarding interoffice fiber routes. In addition, to bring section 11.2.15.5(ii) into conformity with our holding regarding reservation of fiber during the ordering procedure, we strike from section 11.2.15.5(ii) the passage that begins "If a field survey shows that a dark fiber pair is available" up to and including the phrase "a field survey subject to a negotiated interval."

473. The Commission has made plain that incumbent LECs must provide to competitors the same detailed underlying information regarding the composition and qualifications of the loop that the incumbent itself possesses.[1587] Verizon does not argue that the obligation to provide access to such information excludes access to maps. In addition, the Commission's rules requiring nondiscriminatory access to UNEs, and specifically to OSS, preclude any requirement by Verizon that AT&T submit multiple inquiries to discover whether fiber is available along each leg of a desired route.[1588]

[1585] Verizon's proposed sections 11.2.15.4 and 11.2.15.5 should be brought into conformity with our holdings regarding reservation of fiber during the pre-ordering and ordering process, and regarding fiber routes through intermediate offices.

[1586] The remainder of section 11.2.15.4 is not compatible with our decision regarding reservations on fiber during the ordering process. After the phrase "provide AT&T with an estimate of the mileage of those facilities" section 11.2.15.4 should continue with AT&T's proposed language for that section beginning with the phrase "Within (10) business days of receipt of Verizon's response, AT&T will specify" and continues to the end of AT&T's proposed section 11.2.15.4.

[1587] *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

[1588] 47 C.F.R. §§ 51.311 & 51.319(g).

474. Verizon's provisioning intervals appear reasonable and AT&T provides no evidence to the contrary. Accordingly, we reject AT&T's proposed interval of 20 days in favor of Verizon's language providing for 30 days.

10. Issue IV-14 (Certain Definitions and Operational Terms)

a. Introduction

475. WorldCom proposes that the contract contain certain definitions and operational terms involving access to subloop and advanced services. WorldCom asserts that these proposed sections closely track the Commission's rules and orders. Verizon opposes inclusion of these provisions. With significant modifications described below, we adopt WorldCom's proposals.

b. Positions of the Parties

476. WorldCom argues that these definitions and operational terms are consistent with Commission orders (and the rules promulgated therein), including the *Local Competition First Report and Order, UNE Remand Order,* and *Line Sharing Order*. Some of these proposed sections define terms that appear elsewhere in the agreement.[1589] Among these proposed definitions are: loop, subloop, loop feeder, loop distribution, electronic and manual access to loop make-up information, packet switching, and advanced services terms (*e.g.,* spectral compatibility, binder management, and cross-connects).[1590] WorldCom also suggests that several of the proposed provisions provide implementing details, such as articulating technical specifications.[1591] According to WorldCom, the high degree of detail in its proposal is designed to minimize future disputes. WorldCom argues that we should adopt its proposal because Verizon failed to offer any criticism of WorldCom's language.[1592] Verizon refers to its general provisions governing UNEs as its proposed language for this issue, but offers no specific criticism of WorldCom's language.[1593]

[1589] WorldCom states that only such terms and definitions remain in dispute in this issue. *See* WorldCom Brief at 125.

[1590] WorldCom Brief at 125-127.

[1591] *See, e.g., id.* at 128 (discussing spectrum and binder group management procedures).

[1592] WorldCom Reply at 100.

[1593] *See* Second Revised Joint Decision Point List, Attach. V (UNEs), at 88. The only substantive argument raised by Verizon under this issue heading relates to its proposed 45-day schedule for implementing certain changes in law. *See* Verizon UNE Brief at 70-73; Verizon UNE Reply Brief at 40-41. We address this argument under Issues IV-113/VI-1-E.

c. Discussion

477. We find, as WorldCom itself suggests, that most of WorldCom's proposed language generally paraphrases Commission rules.[1594] Consistent with our rulings elsewhere in this Order, we determine that such re-statement or paraphrasing of the Commission's rules is unnecessary, and therefore we reject this language.[1595] We further find that Verizon's contractual obligation to comply with "applicable law" is sufficient to protect WorldCom's rights with respect to the Commission rules it seeks to include in its contract. Moreover, because several of these provisions actually differ from our rules, we find that paraphrasing can actually add to, rather than minimize, confusion.[1596] Several proposed sections, however, merit further consideration and, we determine, inclusion in the contract because they provide the parties with guidance about how our rules should operate in a commercial environment. Moreover, we note that Verizon offers no direct response to, or criticism of, WorldCom's proposal. We thus address, in numerical order, only those provisions that do not merely paraphrase the Commission's rules and to which the parties have not agreed.[1597]

478. We direct the parties to modify WorldCom's proposed section 4.2.2 to read, in its entirety: "When requested by MCIm, Verizon shall provide Loops provisioned over integrated digital loop carrier (IDLC) by removing the circuit from the IDLC system and placing it, where available and at no additional charge to MCIm, onto all-copper facilities to the main distribution frame." The phrase that we have inserted, "where available and at no additional charge to MCIm," is drafted to reflect the possibility that Verizon has no spare copper facilities to reach that customer. With this addition, we find WorldCom's proposal to conform with IDLC language that we have adopted in Issue VII-10 and, for the reasons explained in that Issue, consistent with the Commission's rules and precedent.[1598] Consequently, we find that

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[1594] *See, e.g.,* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.1, 4.2.1, 4.12.1-3.

[1595] Specifically, we reject sections 4.1, 4.2.1, 4.2.8 (which is also addressed above in Issues III-11/IV-29), 4.2.10.2, 4.2.12 *et seq.*, and 6 *et seq.*

[1596] *Compare, e.g.,* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.2.12.2, *with* 47 C.F.R. § 51.231(a)(2) and (3). In this example, we note that WorldCom's proposed language follows the Commission's rule, but also adds a requirement regarding "cable assignments," which is not mentioned in the rule and is not explained by WorldCom.

[1597] Specifically, we address WorldCom's November Proposed Agreement to Verizon, Part C, Attachment III, sections 4.2.2, 4.2.3, 4.2.6.7, 4.2.9, 4.2.10, 4.2.10.1, 4.2.11 *et seq.* These proposed sections remain contested between the parties, according to statements made by WorldCom's counsel during the hearing and in WorldCom's proposed contract, and they are not addressed in other sections of this order. Also, consistent with our approach of addressing only the contested issues identified by the parties, we decline to address the several sections marked by WorldCom as "Agreed." *See* Second Revised Joint Decision Point List, Attach. V (UNEs), at 88-100.

[1598] *See* Issue VII-10 *infra* (where we adopt Verizon's IDLC proposal to AT&T that contains the "no additional charge to AT&T" language).

WorldCom's second (and last) sentence in this section is unnecessary and we direct the parties to delete it.[1599]

479. Consistent with our decision above in Issue III-10-4, we defer consideration of WorldCom's proposed section 4.2.3, which provides for the collocation of DSLAMs "or other DSL equipment" at Verizon's remote terminals when IDLC is present.[1600] We direct the parties to include WorldCom's proposed Attachment III, section 4.2.6.7, which requires Verizon to make xDSL loops and Digital Designed Loops available to WorldCom at the rates set forth in the Pricing Attachment. According to the parties, they have reached agreement that the rates for Digital Designed Loops should be included in this attachment but disagree on xDSL loops.[1601] Because Verizon has failed to explain why xDSL loops should not be included in the Pricing Attachment, the rates for which we will set later in this proceeding, we find WorldCom's proposal reasonable.

480. The parties are directed to include WorldCom's proposed section 4.2.9, requiring Verizon to adopt and comply with all applicable national and international industry standards (*e.g.*, ANSI and ITU) for the provision of advanced services. Again, we find this requirement adds clarity to the parties' interactions, and note that Verizon has offered nothing to suggest that the proposed requirement is unreasonable or counterproductive. We agree that WorldCom's approach of referencing applicable standards is preferable to actually articulating the standards in the contract, because the standards may change over time. For similar reasons, we adopt WorldCom's proposed sections 4.2.10, 4.2.10.1, and 4.2.10.2. These sections establish that the parties shall work cooperatively, using industry standards, to minimize interference and crosstalk.

481. We also find reasonable WorldCom's sections 4.2.11 and 4.2.11.1, which direct the parties to use spectrum management to manage the deployment of xDSL and other advanced services in the network. The first sentence of section 4.2.11.1 requires Verizon to provide its pre-existing spectrum management procedures to WorldCom within ten days after the effective date of the agreement. We note that the Commission's rule 51.231(a)(1) requires incumbents to provide to requesting carriers this information, but does not specify a time-frame.[1602] WorldCom's proposal adds a reasonable deadline to this requirement, and Verizon offers nothing to suggest that this requirement is unreasonable. We also adopt the remainder of WorldCom's

[1599] This last sentence in WorldCom's proposal provides that "Verizon shall not charge MCIm any additional rates for the provisioning of Loops over IDLC, as the costs of such provisioning are included in the recurring rate for the Loop."

[1600] *See* Issue III-10-4 *supra*.

[1601] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 4.2.6.7; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 3.13.

[1602] 47 C.F.R. § 51.231(a)(1).

proposal, which provides for the development of spectrum management procedures, to the extent they do not yet exist.

482. We adopt in part, and reject in part, WorldCom's proposed sections 4.2.11.2 and 4.2.11.3, which address interfering technologies such as AMI T1 systems. During the hearing, Verizon's witness testified that AMI T1 is an interfering technology that Verizon no longer deploys.[1603] Additionally, this witness stated that Verizon assigns xDSL loops in different binder groups than those containing AMI T1s so that there is no need to remove those binder groups at this time.[1604] Upon hearing Verizon's policy, WorldCom agreed that it would not have an operational problem with AMI T1s in Virginia.[1605] Therefore, we direct the parties to delete those references requiring Verizon to remove AMI T1 systems because, based on our record, such a step appears unnecessary at this time.[1606] Finally, because we have addressed WorldCom's proposed Attachment III, sections 4.4 and 4.5 (related to "loop feeder" and "distribution") above in Issues III-11/IV-19, we will exclude those sections from our discussion.

11. Issue IV-15 (Full Features, Functions, Combinations, Capabilities)

a. Introduction

483. WorldCom contends that the interconnection agreement should mirror, and spell out in detail, Verizon's incumbent LEC obligations under section 251(c)(3). WorldCom contends its proposed language – a one-paragraph "Introduction" to its Network Elements attachment – would prevent discriminatory treatment by Verizon.[1607] While Verizon does not specifically address this issue, it proposes an introductory provision that roughly parallels WorldCom's. We adopt Verizon's proposed language.

b. Position of the Parties

484. WorldCom requests the inclusion of proposed language which, it claims, memorializes Verizon's obligations to provide WorldCom with nondiscriminatory access to UNEs in a manner consistent with "Applicable Law." WorldCom's proposal also memorializes its entitlement (pursuant to rule 51.307) to the full features, functions and capabilities of UNEs.[1608] WorldCom argues that including such details in the interconnection agreement would

[1603] *See* Tr. at 908.

[1604] *Id.* at 908-09.

[1605] *Id.* at 909.

[1606] Should the demand for xDSL increase in Virginia such that Verizon should begin removing AMI T1s but has not done so, upon WorldCom's request, we would reconsider this decision.

[1607] WorldCom Brief at 101.

[1608] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §1.1; *see also* WorldCom Brief at 129; 47 C.F.R. § 51.307 (a).

minimize ambiguity, litigation, and delay.[1609] WorldCom finds no particular fault with Verizon's proposed language, except to suggest that it does not include as much detail as WorldCom's proposal. As an alternative to WorldCom's language, Verizon proposes a paragraph stating (essentially) that "Applicable Law" should govern UNE provisions in the contract.[1610] Verizon provides no further objections to WorldCom's proposed language.

c. Discussion

485. We adopt Verizon's proposed section 1.1, which we find to be consistent with the Commission's rules, and reject WorldCom's proposed section 1.1. We find that both parties' language is inherently consistent with the Commission's rules by referring to "Applicable Law," and note that neither party suggests that the other's language expands or limits the parties' rights or obligations. We agree with WorldCom that additional detail is often desirable and may avoid ambiguity, litigation and delay – but find that certain of the additional detail proposed by WorldCom could have the opposite effect. In at least one respect, WorldCom's proposed language departs from the Commission rule it purports to paraphrase (inserting the word "Combinations" into the middle of the familiar phrase "features, functions, and capabilities").[1611]

486. We also note that, by requiring Verizon to provide UNEs "available when this agreement becomes effective," WorldCom's language may suggest that Verizon is required to provide such UNEs throughout the term of the contract, notwithstanding any changes in law implemented through the contract's "change of law" provision.[1612] We consider the parties' specific contract language governing UNE combinations and change of law elsewhere in this Order, in Issues III-6 and IV-113/VI-1(E), and reject WorldCom's language to the extent it may contradict the language adopted with respect to those issues.

12. Issue IV-18 (Multiplexing/Concentrating Equipment)

a. Introduction

487. WorldCom requests that the interconnection agreement define multiplexing and concentrating equipment. It also argues that it is entitled to access multiplexing/concentrating equipment because it is a feature, function, or capability of unbundled local loops that enables it to transmit traffic economically. We note that WorldCom has abandoned its initial position that

[1609] WorldCom Reply at 101.

[1610] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., §1.1.

[1611] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §1.1. In pertinent part, WorldCom proposes language stating: "The obligations set forth in this Attachment III shall apply to such Network Elements: (i) available when this Agreement becomes effective; (ii) that subsequently become available; and (iii) in all cases to those features, functions, Combinations, and capabilities, the provision of which is Technically Feasible at such time as they are incorporated in unbundled Network Elements offered by Verizon."

[1612] *See id.*

it is entitled to access the "Loop Concentrator/Multiplexer" as a network element, but has proposed no contract language reflecting its new position regarding access to this equipment.[1613] Verizon opposes WorldCom's arguments as well as its proposed contract language that would define the "Loop Concentrator/Multiplexer" as a network element. We rule for Verizon.

b. Positions of the Parties

488. WorldCom maintains that "multiplexing" is a term of art that WorldCom's proposed contract language defines accurately, and that detailed specification of the functionality, technical, and interface requirements of multiplexing equipment will eliminate ambiguity and minimize future disputes.[1614] WorldCom further argues that it is entitled to access multiplexing/concentrating equipment because it a "feature, function, or capability" of an unbundled local loop.[1615] It challenges the notion that it need only provide "multiplexing in the middle" (*i.e.,* multiplexing for links that have the same transmission capacity at either end).[1616] WorldCom asserts that the Commission's rules do not limit a requesting carrier to accessing only those features, functions, or capabilities that an incumbent happens to include in the middle of a local loop.[1617]

489. Verizon proposes language that would require it to provide WorldCom with access to unbundled local loops, among other network elements, "in accordance with . . . the requirements of Applicable Law" and "only to the extent required by Applicable Law."[1618] Verizon argues that multiplexing is not a stand-alone UNE and that it need only provide multiplexing "in the middle" of an unbundled local loop.[1619] Verizon also explains that it voluntarily offers multiplexing to competitive LECs as a stand-alone service that competitive LECs may access from their collocation arrangements.[1620] Verizon further states that it does not

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[1613] Tr. at 495-98 (testimony of WorldCom witness Buzacott); *see also* WorldCom's Proposed November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.6-4.6.5.5, 4.18-4.18.4.4.

[1614] WorldCom Brief at 130, citing WorldCom Ex. 37 (Rebuttal Testimony of C. Goldfarb *et al.*), at 1-2.

[1615] WorldCom Ex. 12 (Direct Testimony of C. Goldfarb *et al.*), at 9, citing 47 C.F.R. § 51.319(a)(1) (unbundled local loop includes "all features, functions, and capabilities of such transmission facility . . . including attached electronics [other than DSLAMs]"); WorldCom Brief at 133, citing 47 C.F.R. § 51.307(c) ("An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities").

[1616] WorldCom Ex. 25 (Rebuttal Testimony of C. Goldfarb *et al.*), at 2-3.

[1617] WorldCom Ex. 12, at 10; WorldCom Reply at 106.

[1618] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., at § 1.1; *see* Verizon UNE Brief at 80.

[1619] Verizon Ex. 23 (Direct Testimony of M. Detch, *et al.*), at 4-5; Verizon UNE Brief at 75-76.

[1620] *See* Tr. at 412-15 (testimony of Verizon witness Fox); Verizon Ex. 23, at 5-6; Verizon UNE Brief at 74.

deploy concentration equipment in its central offices or outside plant and maintains that the interconnection agreement should not address this equipment.[1621]

c. Discussion

490. As explained above in Issue IV-15, we adopt Verizon's proposed section 1.1, finding it consistent with the Act and the Commission's rules.[1622] We note that, in Issue IV-18, WorldCom makes no claim that Verizon's language is inconsistent with section 251 of the Act or the Commission's rules implementing section 251.[1623] Because we find no such inconsistency and because WorldCom proposes no acceptable alternative,[1624] we accept Verizon's proposal. We note, however, that WorldCom *does* contest Verizon's characterization of its multiplexing obligations under "Applicable Law" in relation to unbundled local loops. For example, the parties appear to disagree over Verizon's obligation to provide multiplexing associated with cross-connects between local loops and collocated equipment.[1625] This debate over Verizon's obligations under the contract in particular circumstances relates to implementation of the agreement. While the parties apparently disagree on this implementation point, the specific question is not addressed by contract language proposed by either party for this issue and thus is not squarely presented.[1626] We emphasize that our adoption of Verizon's proposed contract language on this issue should not be interpreted as an endorsement of Verizon's substantive positions expressed in this proceeding regarding its multiplexing obligations under applicable law.

491. Although WorldCom appears to have abandoned its argument that the Commission should require Verizon to provide access to multiplexing as a new UNE, it has not withdrawn or modified the portion of its proposed language implementing this argument. We thus reject WorldCom's proposed contract language because it defines the "Loop Concentrator/-Multiplexer" as a network element, which the Commission has never done.[1627] We also reject the

[1621] Verizon Ex. 23, at 6; Verizon UNE Brief at 79-80.

[1622] *See* Issue IV-15 *supra*; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.1. *See also* Issue III-6 *supra* (discussion of Verizon's proposed section 1.2).

[1623] *See* 47 U.S.C. § 252(c)(1).

[1624] In the separate context of Issue IV-21 (*see infra*), however, we adopt other language proposed by WorldCom regarding access to multiplexing as a feature of unbundled transport.

[1625] *See* WorldCom Reply at 107; *cf. Local Competition First Report and Order*, 11 FCC Rcd at 15693, para. 386 (requiring that an incumbent LEC must provide cross-connects between unbundled loops and collocated equipment under reasonable and nondiscriminatory rates, terms, and conditions).

[1626] *But see* Issue IV-21, *infra*, for a discussion of multiplexing as a feature of unbundled transport.

[1627] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 4.6 *et seq.* & 4.18 *et seq.* We note that WorldCom offered the latter proposal as an alternative. *Compare* WorldCom's proposed section 4.6 *et seq. with* Tr. at 494-95 (testimony of WorldCom witness Buzacott).

rest of WorldCom's extremely detailed proposed language because it entirely lacks support in the record. WorldCom has offered no basis for us to adopt, for example, its detailed "technical requirements" governing loop concentrator/multiplexers that, it argues, must be made available by Verizon. We further find that, to the extent that WorldCom is entitled to access multiplexing and concentrating functionalities in relation to the local loop, that entitlement is effectively incorporated into this agreement by reference to "Applicable Law."[1628]

13. Issue IV-21 (Unbundled Transport)

a. Introduction

492. WorldCom seeks language that would permit it access to dedicated transport that includes multiplexing functionality and the digital cross-connect functionality contained in Verizon's IntelliMux offering to interexchange carriers, and the ability to order dedicated transport to provide physical redundancy to its end users.[1629] WorldCom wants to ensure it receives the full features and functions of UNE dedicated transport and contends that physical diversity is necessary to protect its customers from systems failures. Verizon wants to avoid providing at UNE rates to WorldCom those facilities not designated by law as UNEs. We discuss multiplexing, digital cross-connect systems (DCS), and physical diversity separately. We adopt WorldCom's proposal but modify specific sections of WorldCom's proposed language.

493. According to WorldCom, the parties resolved their disagreement regarding shared transport early in this proceeding (prior to September 2001).[1630] We note, however, that Verizon's most recent proposed contract contains different language than the language WorldCom asserts the parties have agreed to.[1631] Verizon's proposed contract is the only record document that reflects this additional language, and the new language was not included in Verizon's other filings identifying proposed contract language.[1632] Moreover, Verizon has offered no support for this proposed language, and appears to agree that the parties have settled the shared transport dispute.[1633] Further, not one of Verizon's objections to WorldCom's proposed language under this issue pertains to shared transport. Therefore, we accept

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[1628] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.1.

[1629] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 10.1.1, 10.1.4.1, 10.2.2, 10.2.4, 10.3, 10.3.1, 10.3.2.

[1630] *See* WorldCom Brief at 133; WorldCom Reply at 103; WorldCom Ex. 25 (Rebuttal Testimony C. Goldfarb *et al.*), 6-7.

[1631] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., §§ 10.1.1.1 & 10.2.1.1.

[1632] For example, this language was not contained in Verizon's briefs or in its November JDPL.

[1633] *See* Definitions Matrix, filed electronically by Verizon and WorldCom on June 14, 2002, for Issue IV-129. Also, Verizon has not challenged – in its briefs or testimony – WorldCom's assertion that this issue is resolved.

WorldCom's assertion and, in resolving Issue IV-21, we decide only those matters which the parties identify as disputed, as outlined below.

b. Transport and Multiplexing

(i) Positions of the Parties

494. WorldCom's proposed section 10.1.1 defines dedicated transport as "Verizon transmission facilities, including all Technically Feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by Verizon or requesting telecommunications carriers, or between switches owned by Verizon or requesting telecommunications carriers."[1634] WorldCom's proposed section 10.1.4.1 would obligate Verizon to provide WorldCom "exclusive use of Dedicated Transport facilities, features, functions, and capabilities." One of the included "features" of transport, according to WorldCom, is that it can be channelized. In order to support this feature, WorldCom argues that Verizon must provide it with the capability to configure these channels, which, WorldCom contends, is accomplished through the use of a multiplexer.[1635] WorldCom's proposed section 10.2.4 thus requires Verizon to offer multiplexing "together with, and separately from, Dedicated Transport."[1636] According to WorldCom, this reflects Verizon's obligation to provide multiplexing as a feature, function, and capability of UNE dedicated transport.[1637]

495. WorldCom disputes Verizon's contention that its obligation is limited to providing only "multiplexing in the middle" – that is, providing only multiplexing for circuits that have the same transmission capacity at either end.[1638] WorldCom asserts that this limitation has no basis in the Commission's rules,[1639] and that aggregating lower bandwidth signals onto higher bandwidth circuits is the essence of multiplexing.[1640] According to WorldCom, when a

[1634] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.1.1.

[1635] *Id.* at § 10.1.4.1; WorldCom Brief at 133-34.

[1636] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.2.4

[1637] WorldCom Brief at 133. WorldCom cites section 51.307(c) of the rules in support of its position: "An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's *features, functions, and capabilities*, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element." WorldCom Brief at 133, citing 47 C.F.R. § 51.307(c) (emphasis added by WorldCom).

[1638] WorldCom Brief at 135; WorldCom Reply at 105. WorldCom challenges Verizon's refusal "to terminate WorldCom's unbundled dedicated transport into a multiplexer for the purpose of aggregating the existing signals onto a higher bandwidth facility and disaggregating the signal into lower bandwidth." WorldCom Reply at 105-06, citing Verizon UNE Brief at 76.

[1639] WorldCom Reply at 105.

[1640] WorldCom Brief at 135; WorldCom Reply at 105.

competitive LEC orders DS-3 UNE transport, Verizon acknowledges it must provide multiplexing necessary to aggregate the competitive LEC's traffic onto that facility, and then to disaggregate the traffic at the other end of the transport facility.[1641] WorldCom maintains that this scenario is no different from one in which a requesting competitive LEC requires multiplexing from DS-1 circuits onto DS-3 circuits and vice versa.[1642] Thus, WorldCom argues that, if a competitive LEC orders DS-3 transport, Verizon must provide the necessary multiplexing to configure DS-1 and DS-0 channels within that DS-3.[1643] Finally, WorldCom contends that the Commission's rules do not require it to collocate its facilities at a particular end office in order to obtain transport to or from that end office.[1644]

496. Verizon recognizes that multiplexing is an inherent part of dedicated transport,[1645] and suggests that it is thus required to provide multiplexing "in the middle" of transport facilities, but not "*at the termination*" of dedicated transport facilities.[1646] For example, if WorldCom orders DS1 transport, Verizon agrees to transmit that traffic within its network, providing "multiplexing as necessary to achieve efficient transmission," and terminating that traffic "at WorldCom's collocation facilities at a DS-1 level, as ordered."[1647] In seeking multiplexing "at the termination" of dedicated transport facilities, however, Verizon contends that WorldCom treats the multiplexer like a separate UNE.[1648] Verizon argues it has no obligation to terminate UNE dedicated transport into a multiplexer in order to aggregate the existing signal onto a higher bandwidth or disaggregate it onto a lower bandwidth.[1649] Verizon contends that terminating UNE transport into a multiplexer does not render that multiplexer a feature of transport, but instead is an additional service that Verizon is under no obligation to provide.[1650] Verizon also maintains that it is under no obligation to provide UNE transport at multiple transmission speeds.[1651] Verizon indicates, however, that, pursuant to its proposed

[1641] WorldCom Brief at 135.

[1642] *Id.*

[1643] *Id.* at 134. WorldCom also argues that the Commission includes a specific type of multiplexing equipment as an example of the electronics that are encompassed by the definition of transport. WorldCom Brief at 136, citing *UNE Remand Order*, 15 FCC Rcd at 3842-43, para. 323 n.637.

[1644] WorldCom Reply at 107. We resolve issues relating to collocation within the context of Issues III-8 and V-2, *supra*, where parties have proposed contract language relating to collocation.

[1645] Verizon UNE Brief at 74.

[1646] *Id.* at 75-76 (emphasis added by Verizon); Verizon UNE Reply at 42.

[1647] Verizon UNE Reply at 42-43.

[1648] Verizon UNE Brief at 74-75 (emphasis omitted).

[1649] *Id.* at 76.

[1650] Verizon UNE Reply at 42-43.

language, it voluntarily offers multiplexing to collocated carriers, separate from unbundled loops and transport, in two circumstances: DS-3 to DS-1, and DS-1 to DS-0.[1652]

(ii) Discussion

497. We adopt WorldCom's proposed language for sections 10.1.1 and 10.1.4.1, and we adopt a modified version of WorldCom's proposed section 10.2.4.[1653] We find that WorldCom's proposed language, as modified, meets the requirements of section 251 and the Commission's rules.[1654] We reject Verizon's proposed language defining dedicated transport.[1655] While Verizon's language appears in its proposed contract, Verizon fails to explain its proposal, and it is unclear whether this language is designed to have any effect beyond defining dedicated transport in accordance with applicable law.

498. We adopt WorldCom's proposed section 10.1.1 and 10.1.4.1 because we find this language closely tracks the Commission's rules governing the definition and characteristics of unbundled transport. Specifically, incumbent LECs must provide UNE dedicated transport, including all technically feasible capacity-related services (*e.g.*, DS-1, DS-3, and OC-n levels) that provide telecommunications between wire centers or switches owned by incumbent LECs or requesting telecommunications carriers.[1656] This includes all electronics necessary to the functionality of capacity-related services.[1657]

499. We also adopt WorldCom's proposed section 10.2.4 (except as modified below). We agree with WorldCom that Verizon must provide multiplexing "together with" dedicated

(Continued from previous page)

[1651] Verizon UNE Brief at 76 n.97.

[1652] *Id.* at 76. "This multiplexing is offered separate and apart from unbundled loops and unbundled interoffice transport and can be accessed by a CLEC from a collocation arrangement." *Id*.

[1653] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 10.1.1, 10.1.4.1, & 10.2.4.

[1654] WorldCom has claimed, in its motion to strike, that Verizon inappropriately introduced new language or new disputes in its November 2001 JDPL filing. *See* WorldCom Reply at 103. *See also* WorldCom Motion to Strike, Ex. A at 27. Because we do not adopt Verizon's language, any such claims are moot with regard to Issue IV-21.

[1655] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 10.2.1.1.

[1656] The Commission determined that UNE dedicated transport constitutes "incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(i). Incumbents must "unbundle DS1 through OC192 dedicated transport offerings and such higher capacities as evolve over time." *UNE Remand Order,* 15 FCC Rcd at 3843, para. 323.

[1657] By "technically feasible capacity-related services," the Commission means "those provided by electronics that are necessary components of the functionality of capacity-related services and are used to originate and terminate telecommunications services." *UNE Remand Order,* 15 FCC Rcd at 3842, para. 323. *See* 47 C.F.R. § 51.307(c).

transport. We reject Verizon's contention that it is not required to multiplex DS-1 circuits onto DS-3 transport or terminate transport into multiplexing equipment in its wire centers. To the extent that multiplexers are necessary to endow a transmission facility with DS-1 or DS-3 capability, for example, the rules do not distinguish multiplexing "in the middle" of the transport facility from multiplexing at the termination of the transport facility.[1658] Therefore, in order to provide the channelizing functionality of dedicated transport, Verizon must provide multiplexing at the termination of the facility if WorldCom so requests. Further, Verizon is incorrect to assert that it need not provide UNE transport at multiple transmission speeds: the rules contemplate that incumbent LECs will provision transport to competitive LECs at whatever bandwidths the incumbent provides in its own network.[1659]

500. We agree with Verizon, however, that WorldCom's section 10.2.4 appears to obligate Verizon to provide multiplexing as a separate element.[1660] Section 10.2.4 provides that "Verizon shall offer DCS and multiplexing, both together with, and separately from Dedicated Transport." WorldCom has not explained what it means to provide multiplexing "separately from" transport, or why it is entitled to this, and we find that inclusion of this language is inconsistent with its holding that WorldCom is entitled to multiplexing as a "feature" of transport. We thus instruct the parties to modify this sentence to read: "At the request of MCIm, Verizon shall offer DCS and/or multiplexing together with Dedicated Transport."[1661] Contrary to Verizon's argument, the modified WorldCom language we adopt correctly states that DCS and multiplexing are features of UNE dedicated transport, but does not establish multiplexing equipment as a separate UNE. Therefore, it is irrelevant that the Commission has not performed "necessary" or "impair" analysis for multiplexers.[1662] Rather, the multiplexer is a feature, function, or capability of dedicated transport, for which the Commission has performed the

[1658] Multiplexing also is a feature of the loop UNE, and the Commission's treatment of it in this context is instructive. The Commission included multiplexing equipment in the definition of the loop, finding that "excluding such equipment from the definition of the loop would limit the functionality of the loop." *UNE Remand Order*, 15 FCC Rcd at 3776, para. 175. Verizon cannot refuse to provision a particular loop by claiming that multiplexing equipment is absent from the facility. In that case, Verizon must provide the multiplexing equipment, because the requesting carrier is entitled to a fully-functioning loop. So too is it for dedicated transport.

[1659] *See UNE Remand Order,* 15 FCC Rcd at 3842-43, para. 323-24. The *UNE Remand Order* states that "an incumbent LEC's unbundling obligation extends throughout it ubiquitous transport network, including ring transport architectures." *UNE Remand Order*, 15 FCC Rcd at 3843, para 324. *See also UNE Remand Order*, 15 FCC Rcd at 3861-62, paras. 366-68.

[1660] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.2.4.

[1661] To avoid possible ambiguity, we have added language to section 10.2.4, as indicated, to reflect that WorldCom may request dedicated transport with, or without, multiplexing or DCS at the end of a dedicated transport facility. *See* WorldCom Reply at 106; *see also* AT&T/WorldCom Cost Initial Brief at 191.

[1662] These distinct standards, which the Commission uses to identify UNEs, focus on whether lack of access to an element would preclude or materially diminish a carrier's ability to provide a service. *See UNE Remand Order*, 15 FCC Rcd at 3704-05, Executive Summary.

requisite analysis.[1663] Similarly, because multiplexers are not separate elements, using them in conjunction with transport does not, as Verizon suggests, establish a new UNE combination.

c. Digital Cross-connect Systems

(i) Positions of the Parties

501. WorldCom's proposed section 10.3 would require Verizon to permit WorldCom "to the extent Technically Feasible, to obtain the functionality provided by Verizon's DCS in the same manner that Verizon provides such functionality to interexchange carriers."[1664] WorldCom's proposed section 10.2.4 would require Verizon to provide DCS "both together with, and separately from Dedicated Transport."[1665] WorldCom contends that DCS is a feature of dedicated transport, and suggests that its proposal closely tracks the Commission's rules regarding the provision of DCS.[1666]

502. WorldCom also proposes, in sections 10.3.1 and 10.3.2, detailed language establishing the technical requirements of DCS that Verizon must provide.[1667] A key aspect of these sections is the requirement that Verizon provide to WorldCom the capabilities of its "IntelliMux" system (a system that includes DCS functionality, currently provided by Verizon to IXCs). WorldCom argues that, through Verizon's "IntelliMux" system, Verizon permits IXCs to communicate instructions to DCS.[1668] WorldCom contends that if IXCs have access to the DCS functionality of IntelliMux, they are not limited merely to the DCS functionality "inherent" in UNE transport, as Verizon asserts.[1669] Accordingly, WorldCom maintains that because IntelliMux is a manner in which Verizon provides IXCs access to DCS, Verizon also must offer the capabilities of IntelliMux to competitive LECs.[1670] Finally, WorldCom contends that this language is identical to provisions in its current agreement with Verizon.[1671]

[1663] *Id.*, 15 FCC Rcd at 3842, para. 321.

[1664] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.3.

[1665] *Id.* at § 10.2.4.

[1666] WorldCom Brief at 136-37, citing Tr. at 517-18; WorldCom Reply at 108, citing 47 C.F.R. § 51.319(d)(2)(iv). *See also* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.2.4.

[1667] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 10.3.1 and 10.3.2.

[1668] WorldCom Brief at 137, citing Verizon's Tariff FCC No. 1.

[1669] WorldCom Reply at 109.

[1670] WorldCom Brief at 137; WorldCom Reply at 108-09.

[1671] WorldCom Brief at 137, citing Tr. at 517-18.

503. WorldCom further complains that Verizon's position would require WorldCom to order both transport and DCS out of Verizon's access tariffs, because Verizon will not provide the IntelliMux functionality as the DCS feature of UNE dedicated transport, nor will Verizon permit WorldCom to "commingle" tariffed DCS with UNE transport.[1672] Therefore, WorldCom contends that Verizon would leave WorldCom no choice but to order both transport and DCS out of Verizon's tariffs.[1673]

504. According to Verizon, WorldCom's language would essentially require Verizon to provide DCS as a separate UNE. Verizon argues that, while DCS is an inherent part of dedicated transport, it is not a separate UNE.[1674] Verizon asserts that it provides DCS to WorldCom in the same manner as it does to IXCs.[1675] It contends, however, that it does not provide DCS to IXCs on an unbundled basis; therefore it need not provide DCS to WorldCom on an unbundled basis.[1676]

505. Verizon further contends that its IntelliMux system is not a functionality of UNE transport, and that IntelliMux provides a variety of features in addition to DCS, such as network reconfiguration, customer management, mileage and port charges, channel terminations, and database modifications.[1677] Therefore, Verizon maintains that IntelliMux is not equivalent to the DCS functionality that Verizon provides to IXCs and competitive LECs.[1678]

(ii) Discussion

506. We adopt WorldCom's proposed language in sections 10.3, 10.3.1, and 10.3.2,[1679] and, as we indicate previously in our discussion, we adopt a modified version of WorldCom's language in section 10.2.4. We find that WorldCom's proposed section 10.3 closely tracks the Commission's rules, which require an incumbent LEC to permit, to the extent technically

[1672] WorldCom Reply at 109.

[1673] *Id.*

[1674] Verizon UNE Brief at 74, 77.

[1675] *Id.*, citing 47 C.F.R. 51.319(d)(2)(iv). Verizon argues that it provides transport to IXCs and relies on the use of DCS within its transport network. *Id.* at 77. *See also* Verizon Ex. 9 (Direct Testimony of M. Detch *et al.*), at 3-8 (arguing that to the extent DCS is present in the interoffice infrastructure underlying the transport facilities, this is how it provides DCS to IXCs.)

[1676] Verizon UNE Brief at 77.

[1677] *Id.* at 77-78, citing Tr. at 507. According to Verizon, IntelliMux is "not access to DCS but access to a service that is far more than" DCS. *Id.* at 78, citing Tr. at 507. Verizon indicates, "The cross-connect system happens to be what makes the cross-connect. The service is a management service for channels." *Id.*

[1678] *Id.* at 78.

[1679] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 10.3, 10.3.1, and 10.3.2.

feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's DCS in the same manner as IXCs obtain the functionality of the incumbent LEC's DCS.[1680] Verizon concedes that it provides DCS functionality to IXCs, albeit packaged with other functionality, through its IntelliMux service.[1681] We reject Verizon's argument that, by packaging DCS functionality with other services, Verizon is somehow excused from its obligations with respect to DCS.[1682] Moreover, Verizon does not argue that WorldCom's proposed sections 10.3.1 and 10.3.2 request access to specific IntelliMux capabilities other than DCS features. We also note that Verizon does not demonstrate or argue that providing the capabilities of IntelliMux to WorldCom is technically infeasible. Therefore, we agree that Verizon must provide the DCS capabilities of IntelliMux to WorldCom. Finally, we also reject Verizon's argument that WorldCom's section 10.2.4, as modified above to make clear that DCS is offered "together with" dedicated transport, would establish DCS as a separate UNE.[1683]

d. Physical Diversity of Facilities

(i) Positions of the Parties

507. WorldCom's proposed section 10.2.2 provides that "Verizon will provide such physical diversity where it is available, at Verizon's prevailing additional charge, if any. If physical diversity is not reasonably available in response to [WorldCom's] request, then [WorldCom] may order such additional physical diversity by submitting a request for special construction."[1684] According to WorldCom, this language would permit it to purchase UNE dedicated transport, or facilities ordered out of Verizon's tariffs, in order to provide physical redundancy to its end users.[1685] WorldCom contends that its proposed language would permit it, when physically diverse facilities are not available, to order new facilities out of Verizon's interstate and intrastate tariffs as "special construction," at tariffed rates, and to use these facilities in combination with UNEs to achieve physical diversity.[1686] According to WorldCom,

[1680] According to the Commission's rules, the incumbent LEC shall "[p]ermit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers." 47 C.F.R. § 51.319(d)(2)(iv); *see Local Competition First Report and Order,* 11 FCC Rcd at 15719-20, paras. 444-45.

[1681] *See* Verizon UNE Brief at 77-78, citing Tr. at 507.

[1682] We are not persuaded by Verizon's characterization of IntelliMux as something fundamentally different than DCS. Verizon argues that IntelliMux is much more than DCS, but including the additional functions that Verizon enumerates does not render IntelliMux distinct from DCS.

[1683] Similarly, combining IntelliMux with dedicated transport does not render it a new UNE combination.

[1684] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.2.2.

[1685] WorldCom Brief at 137-38; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.2.2.

[1686] WorldCom Brief at 138.

this request is technically feasible and not precluded by the Commission's rules or relevant case law.[1687] WorldCom also points out that Verizon provides redundancy for its retail customers, so it would be discriminatory for Verizon to refuse to do the same for WorldCom.[1688] WorldCom disputes Verizon's contention that WorldCom's language would impermissibly allow the use of UNEs in conjunction with tariffed services, arguing that the enhanced extended link (EEL) is the only context in which incumbent LECs may refuse to permit competitive LECs to employ UNEs and tariffed services together.[1689]

508. Verizon argues that there is no basis for WorldCom's proposal that Verizon construct "additional physical diversity" in response to a WorldCom request for special construction.[1690] Verizon contends that a competitive LEC is entitled to "access only to an incumbent LEC's existing network – not to a yet unbuilt superior one."[1691] Verizon maintains that the Commission's *UNE Remand Order* supports Verizon's position by declining to "require incumbent LECs to construct new transport facilities to meet specific competitive point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use."[1692] According to Verizon, it need not enhance its own system to accommodate WorldCom, nor must it act as WorldCom's construction department.[1693]

509. Verizon submits that WorldCom may permissibly seek to acquire a diverse route by ordering a second circuit and possibly turn that circuit into a diverse route within its collocation arrangement.[1694] Verizon also suggests that WorldCom could order special access or special construction as long as the new special access circuit does not "commingle" with UNEs.[1695] In addition, Verizon argues that diversity is a special service that Verizon provides to its own end users, but is under no obligation to provide to WorldCom.[1696]

[1687] *Id.*; WorldCom Reply at 110-11, referring to *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) and *UNE Remand Order*, 15 FCC Rcd 3696 (1999).

[1688] WorldCom Reply at 110.

[1689] WorldCom Brief at 138; WorldCom Reply at 111.

[1690] Verizon UNE Brief at 78.

[1691] *Id.*, citing *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813.

[1692] Verizon UNE Brief at 78-79, citing *UNE Remand Order*, 15 FCC Rcd at 3843, para. 324.

[1693] *Id.* at 78-79.

[1694] *Id.* at 79.

[1695] *Id.*.

[1696] *Id.*

(ii) Discussion

510. We adopt WorldCom's proposed language in section 10.2.2.[1697] We find that WorldCom's proposal, as clarified by WorldCom and as interpreted in the following discussion, is consistent with section 251 and the Commission's rules. In addition, we find that Verizon's objections are unfounded. First, we find that WorldCom's language, contrary to Verizon's assertion, does not require Verizon to construct a "superior" network. WorldCom's proposed language enables it only to request special construction as set forth in Verizon's special access tariffs – and Verizon does not suggest that such special construction is inconsistent with the Act or the Commission's rules. Second, we disagree with Verizon's argument that WorldCom's language is impermissible because it allows "commingling" of UNEs with a special access service. While the Commission's rules provide such a restriction with respect to EELs, this restriction does not apply generally to all UNEs.[1698]

511. We decline to elaborate further on the extent to which WorldCom may seek to engineer diverse routing in its network by using a combination of UNE transport and special access circuits. WorldCom has not explained whether it seeks to combine these circuits through a collocation cage, or whether it would require additional switching or other functionality from Verizon to engineer diversity in the event of a cable cut or other outage. WorldCom also does not explain whether it seeks any *guarantee* of diversity from Verizon. We limit its interpretation of WorldCom's language to the specifics mentioned above and, beyond that, we find that WorldCom's ability to engineer diversity using UNEs and special access circuits must be subject to the terms of Verizon's special access tariffs and applicable law.

14. Issue IV-23 (Line Information Database)

a. Introduction

512. Pursuant to Commission rules, Verizon is required to provide requesting carriers with nondiscriminatory access to its call-related databases, including its Line Information Database (LIDB).[1699] In its response to WorldCom's motion to strike certain Verizon contract language contained in the November JDPL, which includes language found in Issue IV-23, Verizon states that it modified its LIDB proposal to reflect its agreement in principle with WorldCom.[1700] Verizon further indicates that it continues to reject portions of WorldCom's

[1697] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 10.2.2.

[1698] *See Supplemental Order Clarification*, 15 FCC Rcd 9587 (2000).

[1699] 47 C.F.R. § 51.319(e)(2)(i).

[1700] *See* Verizon Response to WorldCom Motion to Strike, Ex. C at 2.

proposal and that the remaining substantive dispute was the subject of testimony.[1701] For reasons explained below, we adopt WorldCom's contract language.

b. Discussion

513. Based on our review of the contracts filed by the parties, it appears that only one section, WorldCom's proposed Attachment III, section 13.2.2, remains in dispute.[1702] This provision requires Verizon to provide physical interconnection to its databases through existing interfaces and industry standard interfaces and protocols.[1703] We note that this exact requirement is contained in the parties' current interconnection agreement.[1704] Verizon fails to indicate why it opposes this provision (*e.g.*, why this requirement is inconsistent with existing law, or how its current requirement has proven onerous or is unnecessary) and absent any record on this particular issue, we determine that this existing obligation is reasonable and should be included in the parties' contract.[1705]

514. Although the issue of what rate WorldCom should pay Verizon when it accesses Verizon's LIDB (*e.g.*, UNE rates or pursuant to a tariff) was discussed at the hearing and in the parties' briefs, Verizon's current contract proposal, which reflects its agreement in principle with WorldCom, is silent on this matter. Because Verizon has not presented us with any proposed contractual fix to address its complaint that WorldCom's long distance affiliate improperly gains access to the LIDB at UNE rates, we decline to rule on this dispute.[1706]

15. Issue IV-24 (Directory Assistance Database)

a. Introduction

515. WorldCom receives access to Verizon's directory assistance database pursuant to a directory assistance licensing (DAL) agreement that Bell Atlantic and WorldCom executed

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[1701] *Id.*

[1702] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 13.2.2; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 11.4.2.1 (Verizon's statement in bold type explaining that Verizon does not agree with the next subsection of WorldCom's proposal and, therefore, deleted it from its proposed contract).

[1703] WorldCom's November Proposed Agreement to Verizon, Attach. III, § 13.2.2.

[1704] *See* WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Attach. III, § 13.2.2.

[1705] Consequently, we determine that WorldCom's motion to strike is moot with respect to this issue because we adopt WorldCom's proposal. *See* WorldCom Motion to Strike, Ex. A at 29-33.

[1706] To the extent that Verizon alleges that WorldCom's access to the LIDB violates either the parties' agreed language, their current interconnection agreement, or a rule or order of the Commission, it may raise that issue in the appropriate forum.

during November 1998.[1707] WorldCom requests that the interconnection agreement incorporate this licensing agreement by reference.[1708] Verizon opposes this request, contending that a settlement agreement that the parties executed contemporaneously with their DAL agreement precludes WorldCom from making the terms and conditions of access to Verizon's directory assistance database the subject of this arbitration.[1709] As explained below, we adopt WorldCom's proposal.

b. Positions of the Parties

516. WorldCom states that it must continue to receive access to Verizon's directory assistance database in order to continue providing directory assistance to its customers and that the interconnection agreement therefore should incorporate by reference the parties' existing DAL agreement.[1710] WorldCom argues that incorporation by reference would not change the terms under which Verizon provides directory assistance or require arbitration of those terms.[1711] WorldCom states, however, that the DAL agreement may expire several months prior to the expiration of its interconnection agreement with Verizon. In WorldCom's view, incorporation by reference would merely ensure that WorldCom will continue to receive access to Verizon's directory assistance database after the licensing agreement expires.[1712]

517. Verizon maintains that WorldCom is contractually prohibited from making access to Verizon's directory assistance database an issue in this arbitration.[1713] Verizon asserts that WorldCom is attempting to use this arbitration to extend the term of the licensing agreement, which otherwise could expire as soon as November 30, 2004, beyond the time to which the parties previously agreed.[1714] Verizon contends that such an extension would effectively override

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[1707] *E.g.*, Verizon Ex. 8 (Direct Testimony M. Detch *et al.*), at 11; WorldCom Ex. 10 (Direct Testimony of E. Caputo), at 4.

[1708] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 6.1.7.1.

[1709] Verizon UNE Brief at 89; Verizon UNE Reply at 49. We note that Bell Atlantic Corporation (Bell Atlantic) and WorldCom signed this settlement agreement. On June 30, 2000, Bell Atlantic and GTE Corporation merged into one company, Verizon.

[1710] WorldCom Brief at 144.

[1711] WorldCom Reply at 120-21.

[1712] *Id.* at 121.

[1713] Verizon UNE Brief at 89-90. According to Verizon, the settlement agreement states that "[a]s long as Bell Atlantic complies with the obligations set forth in this Agreement and the License Agreement," WorldCom agrees "not to file any . . . arbitrations . . . against Bell Atlantic . . . arising under the Telecommunications Act of 1996 . . . or orders of any regulatory commission regarding Bell Atlantic's provision of directory assistance data to [WorldCom]." *Id.* at 90, citing Verizon Ex. 8, at 12.

[1714] Verizon UNE Brief at 90-91; *see* Tr. at 630-34 (testimony of WorldCom witness Caputo).

provisions of the licensing agreement, that WorldCom is acting in bad faith in seeking arbitration of this issue, and that the Commission should respond by rejecting WorldCom's position.[1715]

c. Discussion

518. We hold that the interconnection agreement should incorporate by reference the licensing agreement under which WorldCom receives access to Verizon's directory assistance database. We therefore accept WorldCom's proposed contract language on this issue.[1716] As an initial matter, we conclude that a LEC's request for nondiscriminatory access to another LEC's directory assistance database is an appropriate subject matter for an interconnection agreement pursuant to sections 251 and 252. Specifically, section 251(c)(1) imposes upon Verizon "[t]he duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill," among other statutory duties, Verizon's duties under section 251(b)(3).[1717] Because Verizon's duties under section 251(b)(3) include the duty to provide requesting carriers, such as WorldCom, with nondiscriminatory access to Verizon's directory assistance database,[1718] the statute contemplates that WorldCom can request arbitration on this issue.

519. We find WorldCom's language incorporating by reference the DAL agreement into the interconnection agreement consistent with section 251 and the Commission's rules.[1719] We note that Verizon does not challenge on substantive grounds the terms and conditions of the agreement that WorldCom seeks to incorporate by reference. Instead, Verizon proposes that the interconnection agreement state only that if either party requests access to the other party's directory assistance database, the parties shall enter into a mutually acceptable agreement for such access.[1720] Because this proposal is no more than a promise to negotiate, it does not meet Verizon's obligation to negotiate the actual terms and conditions under which WorldCom will obtain access to Verizon's directory assistance database.[1721] We find particularly unpersuasive Verizon's argument that the November 1998 settlement agreement precludes our consideration of this issue. We simply are not going to decline to consider an issue properly before us because

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[1715] Verizon UNE Brief at 90-91; Verizon UNE Reply at 49-50; Verizon Ex. 8, at 13.

[1716] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 6.1.7.1.

[1717] 47 U.S.C. § 251(c)(1). We note that section 251(c)(1) also provides that the "requesting carrier has the duty to negotiate in good faith the terms and conditions of such agreements." *Id.*

[1718] *See* 47 U.S.C. § 251(b)(3); *UNE Remand Order*, 15 FCC Rcd at 3899-90, para. 457, *remanded sub nom.United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

[1719] *See* 47 U.S.C. § 252(c)(1).

[1720] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 3.1.

[1721] *See* 47 U.S.C. §§ 251(b)(3), 251(c)(1).

of an alleged side agreement.[1722] We leave it to a court of competent jurisdiction to determine whether incorporating by reference the parties' DAL licensing agreement violates the parties' November 1998 settlement agreement.[1723]

16. Issue IV-25 (Calling Name Database)

a. Introduction

520. Verizon and WorldCom have agreed on language requiring that Verizon provide WorldCom with all subscriber records that Verizon uses to create and maintain its Calling Name (CNAM) database.[1724] These parties also have agreed on language requiring that Verizon provide WorldCom with access to the "subscriber records used by Verizon within its CNAM database in a nondiscriminatory manner."[1725] WorldCom requests additional language that would allow it to obtain "batch" access to Verizon's CNAM database in a bulk, downloadable format. WorldCom states that "batch" access would enable it to create its own CNAM database and use it to support innovative services for end users. Verizon opposes this request, contending that "per query" access is sufficient to meet its obligations under the Act and the Commission's rules. We rule for Verizon on this issue.

521. Verizon's CNAM database contains the names and telephone numbers of its own and its competitors' telephone exchange service subscribers, among other information.[1726] "Batch" access allows a carrier to download a copy of this entire database, or updates to it occurring during a specific period. "Per query" access requires a carrier to dip into the database each time it seeks information and allows a carrier to provide a caller ID subscriber with the name associated with the telephone number from which the subscriber receives a call, usually shortly after the first ring.[1727] Verizon provides "per query" access to its CNAM database

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[1722] We note that Verizon did not submit November 1998 settlement agreement for the record in this proceeding. Nor does Verizon claim that it filed that agreement with the Virginia Commission.

[1723] We note that WorldCom has moved to strike Verizon's most recent contractual proposal regarding this issue based on asserted differences between that proposal and Verizon's prior proposal. WorldCom Motion to Strike, Ex. A at 33. Verizon, however, has not modified its proposal on this issue. *Compare* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach, § 3.1, *with* Verizon's Answer to WorldCom's Request for Arbitration, Ex. C-1, Additional Services Attach., § 3.1. We therefore deny the portion of WorldCom's motion relating to this issue.

[1724] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 11.8.1; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 13.6.1.

[1725] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 11.8.2; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 13.6.2.

[1726] *See, e.g., UNE Remand Order*, 88 FCC Rcd at 3876, para. 406; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 11.8 (defining CNAM database).

[1727] *See Implementation of the Telecommunications Act 0f 1996: Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of* (continued….)

through its signaling system 7 (SS7) network. This network uses signaling links to transmit routing messages between switches, and between switches and call-related databases, such as Verizon's CNAM database. These links enable Verizon's and WorldCom's switches to send queries to Verizon's CNAM database and receive responses from that database. SS7 networks are accessed at high-capacity packet switches that are referred to as signaling transfer points.[1728] The Commission's rules classify CNAM as a UNE.[1729]

b. Positions of the Parties

522. WorldCom proposes language that would allow it to obtain, via electronic data transfer, the subscriber records contained in Verizon's CNAM database as well as daily updates to that information.[1730] WorldCom contends that the Act and Commission rule 51.319(e) entitle WorldCom to the same access to this database as Verizon enjoys.[1731] WorldCom states that Verizon has "batch" access to the database because it resides in Verizon's facilities.[1732] According to WorldCom, even if Verizon currently accesses its CNAM database on a "per query" basis through its SS7 network, Verizon nonetheless may choose to use the database in any manner it desires.[1733] WorldCom argues that limiting it to "per query" access though Verizon's SS7 network therefore would give WorldCom considerably less access and control of the database than Verizon enjoys, and therefore would be discriminatory.[1734] Finally, WorldCom argues that the Act's nondiscrimination provisions entitle it to obtain "batch" access to Verizon's CNAM database. While WorldCom does not fully articulate this argument or even cite any specific statutory provision in support, this argument appears to be based on the Commission's determination in the *Directory Assistance Order* that, under the nondiscrimination requirement

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the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, Notice of Proposed Rulemaking, FCC 99-227, n.369 (1999) (subsequent history omitted) (*1999 Directory Assistance Order*); *UNE Remand Order*, 88 FCC Rcd at 3876, para. 406.

[1728] *UNE Remand Order*, 88 FCC Rcd at 3866 n.746.

[1729] 47 C.F.R. § 51.319(e)

[1730] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, §§ 13.6.3-13.6.4, 13.6.6-13.6.7.5.

[1731] WorldCom Brief at 146.

[1732] WorldCom Reply at 125, citing WorldCom Ex. 17 (Direct Testimony of M. Lemkuhl), at 4.

[1733] WorldCom Reply at 125.

[1734] WorldCom Brief at 146-48, citing *1999 Directory Assistance Order*, at para. 152; WorldCom Reply at 124-25, 127.

in section 251(b)(3) of the Act, LECs must provide other LECs with electronic copies of their directory assistance databases upon request.[1735]

523. Verizon proposes language that would let WorldCom "transmit a query to Verizon's CNAM database for the purpose of obtaining the name associated with a line number for delivery to [WorldCom's] local exchange customers."[1736] Verizon contends that the Commission's rules do not entitle WorldCom to download a copy of Verizon's CNAM database.[1737] Verizon argues that Commission rule 51.319(e)(2)(i) makes clear that it is legally obligated only to provide WorldCom with "per query" access to that database.[1738] Verizon maintains that WorldCom obtains this access through Verizon's SS7 network in the same manner as Verizon itself obtains access.[1739] Verizon asserts that "per query" access works well and WorldCom has not claimed that this arrangement has harmed WorldCom or its customers.[1740]

c. Discussion

524. We agree with Verizon that the Act and the Commission's rules do not entitle WorldCom to download a copy of Verizon's CNAM database or otherwise obtain a copy of that database from Verizon. We therefore reject WorldCom's language that would create such an entitlement.[1741] We conclude that the language of Commission rule 51.319(e)(2)(i) and the underlying Commission precedent mandate this result. Rule 51.319(e)(2)(i) provides, in pertinent part, that "[f]or purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including . . . the Calling Name Database . . . by means of physical access at the signaling transfer point linked to the unbundled database[]."[1742] We find Verizon's proposal to be consistent with rule 51.319(e)(2)(i), and note that WorldCom makes no claim that Verizon's proposal fails to comply with this rule.

[1735] *See* WorldCom Brief at 146, citing *1999 Directory Assistance Order*, at para. 152; WorldCom Reply at 127, citing *1999 Directory Assistance Order*, at para. 152. Section 251(b)(3) requires, among other matters, that a LEC permit competing providers of telephone exchange and telephone toll service "to have nondiscriminatory access to… directory assistance." 47 U.S.C. § 251(b)(3).

[1736] Verizon UNE Brief at 107.

[1737] Verizon UNE Brief at 98; Verizon UNE Reply at 51.

[1738] Verizon UNE Brief at 98-100, citing *UNE Remand Order*, 88 FCC Rcd at 3874, para. 400, & *Local Competition First Report and Order*, 11 FCC Rcd at 15741-42, paras. 484-85.

[1739] Verizon UNE Brief at 103.

[1740] *Id.* at 99.

[1741] WorldCom's November Proposed Agreement to Verizon, Attach. III, §§ 13.6.3-13.6.4, 13.6.6-13.6.7.5.

[1742] 47 C.F.R. § 51.319(e)(2)(i).

525. We also reject WorldCom's argument that Commission rule 51.319(e) requires that Verizon provide access to its CNAM database beyond that provided for in rule 51.319(e)(2)(i). Rule 51.319(e) provides, in pertinent part, that "[a]n incumbent LEC shall provide nondiscriminatory access . . . to . . . call-related databases."[1743] Rules 51.319(e) and 51.319(e)(2)(i) are based on rules adopted in the *Local Competition First Report and Order*: both sets of rules require that an incumbent provide nondiscriminatory access to call-related databases and contain the language quoted above from rule 51.319(e)(2)(i).[1744] In adopting the original rules, the Commission stated that "[q]uery and response access to a call-related database," as provided for in rule 51.319(e)(2)(i), was "intended to require the incumbent LEC only to provide access to its call-related databases as is necessary to permit a competing provider's switch (including the use of unbundled switching) to access the call-related database functions supported by that database."[1745] This administrative history makes clear that the Commission did not intend, in the *Local Competition First Report and Order*, to enable competitive LECs to download or otherwise copy an incumbent's CNAM database.

526. Subsequently, in the *UNE Remand Order*, the Commission readopted rules 51.319 and 51.319(e)(2)(i), with an amendment to make clear that CNAM databases should be classified as call-related databases for purposes of these rules.[1746] In readopting these rules, the Commission did not suggest in any way that it was requiring that competitive LECs be allowed to download or otherwise copy an incumbent's CNAM database.[1747] We therefore find that rule 51.319(e)(2)(i) defines the terms of the nondiscriminatory access that competitive LECs are entitled to under rule 51.319(e). Since WorldCom is seeking access to Verizon's CNAM database beyond that provided for in rule 51.319(e)(2)(i), we find its argument inconsistent with the Commission's rules.

527. We reject, in addition, WorldCom's argument that the Act entitles it to receive "bulk" access to Verizon's CNAM database.[1748] The Commission classified CNAM databases as a network element pursuant to its authority under section 251(c)(3) of the Act. That provision does not mandate that an incumbent provide copies of its CNAM database to requesting carriers.

[1743] 47 C.F.R. § 51.319(e).

[1744] *Compare Local Competition First Report and Order*, 11 FCC Rcd at 16209-12, *with* 47 C.F.R. §§ 51.319(e), 51.319(e)(2)(i).

[1745] *Local Competition First Report and Order*, 11 FCC Rcd at 15741 n.1127.

[1746] *UNE Remand Order*, 88 FCC Rcd at 3947-48.

[1747] *See id.*, 88 FCC Rcd at 3974-82, paras. 400-20.

[1748] Although WorldCom cites no specific statutory provision in support of this argument, we assume WorldCom is relying on section 251(c)(3) of the Act, which requires that Verizon provide "nondiscriminatory access" to UNEs. 47 U.S.C. § 251(c)(3).

Nor has the Commission required such action.[1749] We therefore conclude that neither the Act nor the Commission's rules supports WorldCom's request for "batch" access to Verizon's CNAM database.

17. Issue IV-28 (Collocation of Advanced Services Equipment)

a. Introduction

528. WorldCom and Verizon disagree about whether to include language in the agreement that summarizes certain findings from the Commission's *Collocation Remand Order*[1750] or, instead, whether language requiring Verizon to comply with "applicable law" is sufficient. Among other things, the *Collocation Remand Order* requires Verizon to permit competitors to collocate equipment if the primary purpose and function of that equipment, as the requesting carrier seeks to deploy it, is to provide the requesting carrier with "equal in quality" interconnection or "nondiscriminatory access" to one or more UNEs.[1751] The Commission expressly declined to establish a "safe harbor" list of equipment that would be deemed necessary for interconnection or access to UNEs.[1752] We adopt Verizon's proposal and reject WorldCom's language.

b. Positions of the Parties

529. WorldCom argues that it is entitled to include specific language articulating Verizon's legal obligations in the interconnection agreement, including a provision requiring that Verizon permit the collocation of DSLAMs and splitters, rather than Verizon's statement that it will "meet the requirements of Applicable Law."[1753] According to WorldCom, the parties agree that the governing collocation requirements are those in the *Collocation Remand Order*. Moreover, WorldCom notes that Verizon does not dispute that WorldCom's proposal fairly characterizes this order and Verizon's legal obligations under it, including the particular

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[1749] Contrary to WorldCom's argument (*see* WorldCom Brief at 146; WorldCom Reply at 127), the *1999 Directory Assistance Order* does not entitle it to receive "bulk" access to Verizon's CNAM database. *See 1999 Directory Assistance Order*, at paras. 152-53 (requiring, pursuant to section 251(b)(3), that LECs must provide other LECs with electronic copies of their directory assistance databases upon request). That order does not address whether an incumbent must allow competitive LECs to access their CNAM databases.

[1750] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order 16 FCC Rcd 15435 (2001) (*Collocation Remand Order*), *aff'd sub nom. Verizon Telephone Cos. v. FCC*, D. C. Circuit Nos. 01-1371 *et al.* (June 18, 2002) (*Verizon*).

[1751] *Collocation Remand Order*, 16 FCC Rcd at 15454, para. 36.

[1752] *Id.*, 16 FCC Rcd at 15459-60, para. 44 (stating that it had been asked to include on such a list optical terminating equipment, fiber distribution frames, ATM multiplexers, concentration devices, DSLAMs, microwave transmission facilities, splitters, and equipment to light dark fiber).

[1753] WorldCom Brief at 159, citing Verizon's November Proposed Agreement to WorldCom, Part C, Collocation Attach. § 1.

language concerning the collocation of DSLAMs and splitters.[1754] WorldCom suggests that, since Verizon formally appealed the *Collocation Remand Order*, it has no intention of honoring the order until it has exhausted its opportunities for judicial review.[1755] WorldCom contends, however, that absent a stay or reversal, Verizon is bound to obey the order and Verizon can therefore have no legitimate objection to a contract that clearly specifies the "applicable law" for the parties' collocation arrangements.[1756] Finally, WorldCom argues that Verizon's refusal to reduce to writing the fact that currently "applicable law" is the *Collocation Remand Order* confirms the need for specific, as opposed to general, contract language.[1757]

530. Verizon states that while the parties have not agreed on specific contract language, they have agreed in principle that Verizon will permit collocation of advanced services equipment to the extent required by applicable law.[1758] Verizon argues that: its proposal provides for the collocation of advanced services equipment to the extent that such equipment satisfies the Commission's criteria established in its *Collocation Remand Order*; it amended its collocation tariffs last year to comply with the new rules; and no further contract language is required.[1759] Verizon also argues that since the Virginia Commission has a proceeding underway to address collocation issues, we should defer any collocation-related issue in this arbitration to that proceeding.[1760] Verizon disagrees with WorldCom's assertion that "lawlessness" will prevail if the we do not select WorldCom's language, because Verizon's proposal contractually binds it to provide collocation consistent with applicable law and this would include the *Collocation Remand Order* (unless and until those rules are stayed, overturned, or otherwise modified).[1761] Finally, Verizon argues that its proposal will permit the contract to incorporate any change in

[1754] WorldCom Brief at 159. According to WorldCom, Verizon initially accepted WorldCom's language in its rebuttal testimony but that it withdrew and substituted corrected testimony opposing WorldCom's proposal. *Id.* at 159-60.

[1755] WorldCom Brief at 160. WorldCom also asserts that Verizon has no intention of being bound by whatever "change of law" provisions the contract specifies "as they would apply to any changes the Court could conceivably require to the [*Collocation Remand Order*]." *Id.*

[1756] WorldCom Brief at 160.

[1757] WorldCom Reply at 142.

[1758] Verizon Advanced Services Brief at 32. Verizon argues that contrary to WorldCom's assertions, Verizon never agreed to WorldCom's proposal and that its originally filed rebuttal testimony contained an error, which Verizon later corrected. Verizon Advanced Services Reply at 7 n.8.

[1759] Verizon Advanced Services Brief at 32.

[1760] Verizon Advanced Services Reply at 6.

[1761] *Id.*

applicable law in the event the Commission's collocation rules are modified without resorting to a drawn-out contract amendment process.[1762]

c. Discussion

531. We reject WorldCom's proposal and direct the parties to include Verizon's proposed Collocation Attachment, section 1.[1763] We will not create a "safe harbor" list of equipment that Verizon is required to permit WorldCom to collocate.[1764] The Commission declined to establish such a list and, as we have stated earlier, we will not go beyond Commission precedent in resolving the parties' disputes.[1765] Moreover, we note that there is no disagreement between the parties about what is the applicable law or how it applies to the specific equipment WorldCom seeks to collocate. Also, we find that Verizon's proposal contractually binds it to comply with "applicable law." Unless and until the incumbents' obligations pursuant to the *Collocation Remand Order* are modified by the Commission or a court decision,[1766] Verizon is required to comply with those rules as they are the "applicable law" on the subject of collocation of advanced services equipment. WorldCom can avail itself of the agreement's dispute resolution process if it believes that Verizon is not adhering to those rules.

18. Issues IV-80/IV-81 (Customized Routing for Directory Assistance and Operator Services)

a. Introduction

532. Verizon and WorldCom agree regarding how Verizon should route WorldCom's operator services and directory assistance traffic, but they disagree regarding certain related issues that, WorldCom believes, will affect its ability to obtain nondiscriminatory access to operator services and directory assistance in accordance with the Commission's rules. Specifically, these parties agree that Verizon should provide customized routing for that traffic, that this routing should be to WorldCom's Feature Group D trunks, and that Verizon's advanced

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[1762] *Id.* at 6-7.

[1763] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Collocation Attach., § 1. We note that the substance of this proposal is identical to that contained in the November DPL, which Verizon labels its proposed section 13.0 to the Collocation Attachment. We further note that section 13 of the AT&T-Verizon Interconnection Agreement relates to collocation. The WorldCom proposal that we reject is found in section 4.2.3.1 of its Part C, Attachment III.

[1764] We note that WorldCom's proposal would expressly permit it to collocate DSLAMs and splitters in Verizon's premises. While we anticipate no dispute with regard to the collocation of this equipment, for reasons described below, we nonetheless determine that that Verizon's language is preferable.

[1765] *See Collocation Remand Order*, 16 FCC Rcd at 15459-60, para. 44.

[1766] We note that the Commission's order and rules were recently upheld by the D.C. Circuit in *Verizon*.

intelligent network (AIN) should provide this routing.[1767] They disagree, however, regarding whether the interconnection agreement should address this area and, if so, whether the agreement should contain contingency provisions in the event AIN routing does not work.[1768] We address these areas of disagreement in turn. For the reasons set forth below, we rule for WorldCom on these issues.

533. We note that Feature Group D is an access arrangement that allows end users reach their presubscribed interexchange carrier (IXC) through 1+ dialing. Feature Group D trunks, in turn, connect an incumbent LEC's and an IXC's offices with each other.[1769] Customized routing permits a requesting carrier to specify that the incumbent LEC route, over designated trunks that terminate in the requesting carrier's operator services and directory assistance platform, operator services and directory assistance calls that the requesting carrier's customers originate.[1770] AIN refers to a telecommunications network in which call processing, call routing, and network management are provided by means of centralized databases, rather than from comparable databases located at every switching system.[1771]

b. Routing Using AIN Architecture

(i) Positions of the Parties

534. WorldCom considers it critical that the interconnection agreement include terms setting forth Verizon's obligation to provide customized routing of WorldCom's operator services and directory assistance traffic. WorldCom states that otherwise it would have no means to enforce Verizon's commitment to provide that routing.[1772] Verizon maintains that the interconnection agreement need only require that, in the event either party requests nondiscriminatory access to the other party's directory assistance service, intraLATA operator call completion services, or directory assistance database, the parties shall enter into a mutually acceptable agreement for such access.[1773] Verizon maintains that this approach would address

[1767] *E.g.*, Verizon UNE Brief at 108; WorldCom Brief at 149.

[1768] *Compare, e.g.,* Verizon UNE Brief at 108-11 *with, e.g.,* WorldCom Brief at 149-50.

[1769] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1596, n.439 (1998) (subsequent history omitted).

[1770] *See UNE Remand Order*, 15 FCC Rcd at 3891, n.867.

[1771] *Access Charge Reform,* CC Docket No. 96-262, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21418, n.204 (1996) (subsequent history omitted).

[1772] WorldCom Brief at 149; WorldCom Reply at 132.

[1773] Verizon UNE Brief at 111.

Verizon's provision of operator services and directory assistance satisfactorily, in full compliance with current law.[1774]

(ii) Discussion

535. We agree with WorldCom that its interconnection agreement with Verizon should reflect Verizon's agreement to use its AIN architecture to provide customized routing for operator services and directory assistance calls to WorldCom's Feature Group D trunks. We thus accept WorldCom's contract language on this issue, which memorializes Verizon's commitment to deploy its AIN capability to provide that routing.[1775] As an initial matter, we conclude that a competitive LEC's request for customized routing for operator services and directory assistance traffic is an appropriate subject matter for an interconnection agreement pursuant to sections 251 and 252. Specifically, section 251(c)(1) imposes upon Verizon "[t]he duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill," among other statutory duties, Verizon's duties under section 251(c)(3).[1776] The Commission's rules implementing section 251(c)(3) require that Verizon must provide nondiscriminatory access to operator services and directory assistance as a UNE except where it provides requesting carriers with customized routing or a compatible signaling protocol for their customers' operator services and directory assistance traffic.[1777] Because Verizon proposes to comply with this rule by providing WorldCom with customized routing, we conclude that WorldCom can invoke the section 252 arbitration process to resolve its dispute with Verizon over the terms and conditions of this customized routing arrangement.[1778]

536. We find WorldCom's proposal that the interconnection agreement memorialize the agreement the parties have reached regarding customized routing to be consistent with section 251 and the Commission's rules.[1779] Instead of having the interconnection agreement reflect this substantive agreement, Verizon proposes that the interconnection agreement require

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[1774] *Id.*

[1775] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, §§ 6.1.3 (first sentence to the extent it discusses routing using AIN capability), 6.1.4 (first sentence to the extent it discusses routing using AIN capability).

[1776] 47 U.S.C. § 251(c)(1). We note that section 251(c)(1) also provides that the "requesting carrier has the duty to negotiate in good faith the terms and conditions of such agreements." 47 U.S.C. § 251(c)(1).

[1777] 47 C.F.R. § 51.319(f) (requiring that an incumbent LEC must provide nondiscriminatory access to operator services and directory assistance as a UNE "only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol" for operator services and directory assistance traffic).

[1778] *See* 47 C.F.R. § 51.807(c)(1) (requiring that we resolve any open issues in this proceeding in accordance with "the requirements of section 251, including the rules prescribed by the Commission pursuant to that section").

[1779] *See* 47 U.S.C. § 252(c)(1).

that WorldCom "arrange, at its own expense, the trunking and other facilities required to transport traffic to and from the designated [directory assistance] and [operator services] locations."[1780] Because this proposal would require that WorldCom arrange for the customized routing of its operator services and directory assistance traffic, it does not meet Verizon's obligation to negotiate the actual terms and conditions of that routing in good faith.[1781] We therefore reject Verizon's proposed contract language on this issue.

c. Contingency Provisions

(i) Positions of the Parties

537. WorldCom proposes that the interconnection agreement should define Verizon's operator services and directory assistance obligations in the event Verizon's AIN architecture fails to provide customized routing to WorldCom's Feature Group D trunks.[1782] WorldCom maintains that contingency provisions are particularly appropriate given Verizon's admission that it has not yet tested AIN routing to Feature Group D trunks.[1783] WorldCom also points out that Verizon has not explained how it proposes to provide WorldCom with nondiscriminatory access to operator services and directory assistance in the event AIN routing is unsuccessful.[1784] WorldCom argues that its proposed contractual language is reasonable and appropriate.[1785]

538. Verizon argues that contingency provisions are unnecessary even if the interconnection agreement addresses customized routing using AIN architecture. Verizon states that it has deployed AIN architecture throughout its Virginia service territory, that it has offered to prove to WorldCom through testing that its AIN network can provide customized routing to

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[1780] Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 3.2.

[1781] *See* 47 U.S.C. §§ 251(b)(4), 251(c)(1).

[1782] WorldCom Brief at 149-50; WorldCom Reply at 132-33.

[1783] WorldCom Brief at 150; WorldCom Reply at 133; *see* Tr. at 615-20, 651-53 (testimony of Verizon witness Woodbury).

[1784] WorldCom Brief at 150; *see* Tr. at 652-53 (testimony of Verizon witness Woodbury).

[1785] WorldCom Brief at 149-50. That language would specify that Verizon will use "existing switch features and functions" to route operator services and directory services calls to WorldCom's Feature Group D trunks in the event Verizon's AIN network is unable to provide that routing. WorldCom November Proposed Agreement with Verizon, Part C, Attach. VIII, §§ 6.1.3 & 6.1.4. WorldCom also would have the interconnection agreement state that where Verizon's AIN architecture and existing switches do not allow routing of operator services and directory assistance calls to Feature Group D trunks, the parties, at WorldCom's request, "shall negotiate the terms, conditions, and cost-based rates for providing [operator services and directory assistance] services as unbundled network elements." WorldCom November Proposed Agreement with Verizon, Part C, Attach. VIII, § 6.1.3 & 6.1.4. WorldCom proposes, in addition, specific requirements that would apply to Verizon's provision of operator services and directory assistance to WorldCom as UNEs. WorldCom November Proposed Agreement with Verizon, Part C, Attach. VIII, §§ 6.1.3.1 to 6.1.3.3.7.5 & 6.1.4.1 to 6.1.4.10.

WorldCom's Feature Group D trunks, and that WorldCom has not responded to Verizon's offer. Verizon asserts that only WorldCom's continued refusal to help test AIN routing prevents WorldCom from timely receiving that routing.[1786] Verizon states that WorldCom's proposed contract language is outdated and overly detailed. Verizon also states that inclusion of that language in the interconnection agreement "could hinder the progress of collaboratives and industry changes in [operator services and directory assistance] access."[1787]

(ii) Discussion

539. We agree with WorldCom that the interconnection agreement should contain provisions defining Verizon's operator services and directory assistance obligations in the event Verizon's AIN architecture does not work as the parties anticipate. We thus accept the contract language WorldCom proposes in this area, subject to the modifications discussed below.[1788] While Verizon has tested customized routing using AIN technology in the laboratory, Verizon makes no claim that it has tested whether its AIN architecture will successfully route operator services and directory assistance traffic to Feature Group D trunks.[1789] In these circumstances, we find that Verizon has not shown that it is presently able to provide customized routing to those trunks using AIN. Moreover, we find that there is at least a reasonable possibility that AIN routing will fail. Accordingly, consistent with our conclusion above that disputes regarding customized routing provide an appropriate subject matter for an interconnection agreement pursuant to section 251, we also conclude that the agreement should address what happens in the event AIN routing fails.[1790]

540. Despite its overall objection to the contingency provisions WorldCom proposes to include in the interconnection agreement, Verizon does not assert that any specific provision is inconsistent with section 251 of the Act or the Commission's rules implementing that provision. We find no such inconsistency. We therefore require that the parties use WorldCom's proposed language as a starting point for their final contract language.[1791] We anticipate that the parties'

[1786] Verizon UNE Brief at 108-09; Verizon UNE Reply at 55-56.

[1787] Verizon UNE Brief at 110.

[1788] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, §§ 6.1.3 (first sentence to the extent it discusses routing using existing switch features and functions), 6.1.3 (second sentence) through 6.1.3.3.7.5, 6.1.4 (first sentence to the extent it discusses routing using existing switch features and functions), 6.1.4 (remaining sentences) through 6.1.4.10.

[1789] Tr. at 652-53 (testimony of Verizon witness Woodbury).

[1790] *Cf. Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4137-38, para. 366 (1999) (*Bell Atlantic New York Order*), *aff'd sub nom.*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

[1791] *See* 47 U.S.C. § 252(c)(1).

final language in this area will retain the substance of WorldCom's proposals while eliminating any cumbersome detail.

19. Issues V-3/V-4-A (UNE-Platform Traffic with Other LECs)

a. Introduction

541. AT&T can offer service to its customers by purchasing from Verizon a combination of unbundled loop, switching and transport elements known as a UNE-platform.[1792] When a third-party LEC terminates a call from, or originates a call to, an AT&T UNE-platform customer, however, the UNE-platform appears to the third-party LEC to be part of Verizon's network. This presents billing problems. When the third-party LEC terminates AT&T's UNE-platform traffic, it does not know that it should bill AT&T instead of Verizon. Conversely, when the third-party LEC originates a call to AT&T's UNE-platform, it does not know that it should pay AT&T instead of Verizon. With respect to calls that originate on AT&T's UNE-platforms, both parties agree to the status quo in Virginia: Verizon bills AT&T for unbundled switching and common transport, plus a termination charge to recover the third-party LEC's charges for termination.[1793] The parties differ, however, on the appropriate compensation mechanism for calls that originate on the network of a third-party LEC and terminate to an AT&T customer served over the UNE-platform.[1794] AT&T proposes that Verizon treat all such calls as Verizon's own traffic.[1795] Verizon argues that AT&T instead must establish interconnection agreements with third-party LECs for traffic that transits Verizon's network and terminates to AT&T UNE-platform customers. We rule for Verizon and reject AT&T's proposed language.

b. Positions of the Parties

542. Under AT&T's proposal, Verizon, rather than AT&T, would collect reciprocal compensation from the third-party LEC and Verizon would then forfeit its UNE charges.[1796] AT&T argues that its proposal would minimize the burden of negotiating interconnection agreements among LECs in Virginia, while also relieving Verizon of the responsibility to create

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[1792] *See, e.g., Local Competition Third Report and Order*, 15 FCC Rcd at 3702-03, para. 12.

[1793] AT&T Brief at 143-44; Tr. at 552; AT&T Reply at 82; Verizon Unbundled Network Elements (UNE) Reply at 57; *cf.* Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues, at 47-49 (issued July 30, 2001) (*New York Commission AT&T Arbitration Order*).

[1794] We note that the intercarrier compensation for calls between AT&T's UNE-platform customers and Verizon customers is not a point of disagreement in this arbitration.

[1795] AT&T Brief at 142.

[1796] *Id.* at 143; AT&T Reply at 82. AT&T's theory is that the reciprocal compensation payment Verizon receives for transport and termination of the third-party LEC's traffic would offset Verizon's UNE transport and switching charges.

and exchange message records identifying UNE-platform traffic.[1797] AT&T opposes Verizon's position because it would require AT&T to negotiate an interconnection rate for only one call direction -- from the third-party LEC to AT&T's UNE-platform. Negotiation of a rate for this one-way traffic is problematic because compensation in the other direction between Verizon and the third-party LEC is already governed by the interconnection agreement between those two parties.[1798] If AT&T is required to bill the third-party LECs directly, AT&T argues that it should be able to negotiate reciprocal compensation rates with third-party LECs for both directions of traffic that transits Verizon's network in both directions.[1799]

543. Verizon argues that for this traffic terminating to AT&T UNE-platform customers, AT&T should be responsible for billing the third-party LEC for termination costs.[1800] Verizon argues that AT&T cannot avoid its statutory obligation under section 251(b)(5) to negotiate a reciprocal compensation arrangement with the third-party LEC, even if such negotiation is only for traffic terminated by AT&T.[1801] This is the current billing arrangement in Virginia.[1802] Verizon also urges the Commission to reject AT&T's alternative argument concerning negotiation for both directions of traffic. According to Verizon, since the third-party LEC cannot determine whether a call originates from AT&T or Verizon, AT&T cannot feasibly negotiate an interconnection rate for traffic that is terminated by the third-party LEC.[1803]

c. Discussion

544. We rule for Verizon and therefore reject AT&T's contract proposal.[1804] Under Verizon's approach, when a third-party LEC places a call that terminates to an AT&T UNE-platform customer, AT&T must bill the third-party LEC directly.[1805] This result is consistent

[1797] AT&T Brief at 142-43.

[1798] AT&T Brief at 144.

[1799] *Id.* at 144-45.

[1800] Verizon UNE Reply at 58. In addition, Verizon would continue to charge AT&T for UNE switching and transport. *Id*.

[1801] *Id.* at 57-58, citing 47 U.S.C. § 251(b)(5).

[1802] *Id.* at 57.

[1803] *Id.* at 58-59, citing Tr. at 551-56.

[1804] Specifically, we reject AT&T's proposed section 5.7.7.1. We note that, although Verizon filed objections to AT&T's response to record requests concerning this issue, its objections are mooted by our rejection of AT&T's proposed language. *See* Verizon's Objection to AT&T Response to Record Requests at 1. *See also* Outstanding Procedural Motions *supra* (denying Verizon's objection).

[1805] Accordingly, Verizon shall not collect reciprocal compensation from the third-party LEC, and AT&T shall continue to pay for UNE switching and transport. By this ruling, we do not intend to prevent AT&T from (continued….)

with section 251(b)(5) of the Act, which requires all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[1806] In a similar context, the Commission has interpreted this provision to apply to reciprocal compensation arrangements between originating and terminating carriers when traffic transits the network of an incumbent or other carrier, such as Verizon.[1807]

545. AT&T does not demonstrate that it is entitled to an exemption from section 251(b)(5)'s requirements. Verizon is willing to continue to provide AT&T with message records so that AT&T can bill third-party LECs for terminating their calls on its UNE-platforms.[1808] We are also persuaded, as Verizon argues, that, because the technical limitations of UNE-platforms currently make them invisible to third-party LECs, AT&T cannot yet negotiate interconnection rates with these third parties for AT&T UNE-platform-originated traffic.[1809] Accordingly, AT&T's proposal to negotiate rates for traffic in both directions is not feasible at this time.[1810] We disagree with AT&T that having to negotiate "one-half" of an interconnection rate with third-party LECs is "untenable."[1811] We do not read section 251(b)(5)'s requirements, or anything in the Commission orders implementing that provision, to depend upon the direction of traffic flow.

20. Issue V-4 (LATA-Wide Reciprocal Compensation)

a. Introduction

546. As discussed in Issue I-6 above, calls between carriers that originate and terminate within a single LATA are subject to either reciprocal compensation or access charges.[1812] AT&T proposes contract language that would treat all traffic it exchanges with

(Continued from previous page)

contracting with another carrier, including Verizon, to bill, on AT&T's behalf, reciprocal compensation to those third-party LECs that terminate traffic to AT&T's UNE-platform customers.

[1806] 47 U.S.C. § 251(b)(5).

[1807] *See Texcom, Inc. v. Bell Atlantic Corp.,* Order on Reconsideration, 17 FCC Rcd 6275, 6276-77, para. 4 (2002), citing 47 U.S.C. § 251(b)(5), 47 C.F.R. §§ 51.701 *et seq* (transiting carrier may charge terminating carrier for cost of facilities used to transit traffic, and terminating carrier may seek reimbursement of these costs from originating carrier through reciprocal compensation).

[1808] *See* Verizon UNE Reply at 58.

[1809] Verizon's testimony was unrebutted that third-party LECs currently cannot distinguish an incumbent LEC's own customers from customers served by UNE-platforms that competitive LECs purchase from the incumbent LEC. Tr. at 556-57.

[1810] *See* AT&T Brief at 144-45.

[1811] *See id.* at 144.

[1812] *See supra*, Issue I-6 (accepting contract language establishing that originating and terminating NPA-NXXs of a call determine whether it is subject to reciprocal compensation or access charges).

Verizon that originates and terminates within a single LATA as subject to reciprocal compensation, not access charges.[1813] Verizon opposes AT&T's proposal. For the reasons provided below, we reject AT&T's proposal.

b. Positions of the Parties

547. AT&T argues that the distinction between "local" and "toll" calls is purely artificial, because both AT&T and Verizon deliver all intraLATA traffic to each other over the same trunk groups, whether they are rated as "local" or "toll."[1814] According to AT&T, the underlying costs of providing these different services are the same.[1815] AT&T asserts that a unified reciprocal compensation regime for all intraLATA calls would increase efficiency while reducing the administrative costs associated with tracking the originating point of every call.[1816] AT&T notes that its proposal would not be industry-wide, but rather between AT&T and Verizon.[1817]

548. Verizon argues that AT&T's proposal seeks to circumvent the Virginia Commission's regulated access structure.[1818] Verizon asserts that section 251(g) of the Act excludes access traffic from reciprocal compensation and makes clear that access tariffs continue to apply unless and until the Commission expressly supersedes them.[1819] According to Verizon, the Commission recently held that the prohibition in section 251(g) still applies to both interstate and intrastate access charge regimes.[1820] Verizon asserts that AT&T's proposal would have a major financial and operational impact on the entire telecommunications industry.[1821]

[1813] *See* AT&T's November Proposed Agreement to Verizon, §§ 5.7.1, 5.7.3.

[1814] AT&T Brief at 145.

[1815] *See id.* at 146.

[1816] *Id.* at 146-47; AT&T Reply at 85.

[1817] AT&T Reply at 84.

[1818] Verizon UNE Brief at 115. In its reply, Verizon argues that because the Virginia Commission's intrastate access tariffs continue to apply to intraLATA toll calls, AT&T cannot avoid paying them by inserting unlawful provisions into its interconnection agreement. Verizon UNE Reply at 62.

[1819] Verizon UNE Brief at 115-16; Verizon UNE Reply at 61, citing 47 U.S.C. § 251(g).

[1820] Verizon UNE Reply at 61, citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd. 9151, 9168, 9169, para. 37 & n.66, para. 39 (2001) (*ISP Intercarrier Compensation Order*), *remanded sub nom. WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); *Local Competition First Report and Order*, 12 FCC Rcd. at 16013, para. 1034.

[1821] Verizon UNE Brief at 116.

c. Discussion

549. We reject AT&T's proposed language.[1822] Telecommunications traffic subject to reciprocal compensation under section 251(b)(5) excludes, *inter alia*, "traffic that is interstate or intrastate exchange access."[1823] The Commission has previously held that state commissions have authority to determine whether calls passing between LECs should be subject to access charges or reciprocal compensation for those areas where the LECs' service areas do not overlap.[1824] Accordingly, we decline to disturb the existing distinction in Virginia between those calls subject to access charges and those subject to reciprocal compensation. To the extent that AT&T believes that the existing regime creates artificial discrepancies in compensation, is economically inefficient and adversely affects competition,[1825] it may advocate alternative payment regimes before the Commission in the pending *Intercarrier Compensation Rulemaking* docket.[1826]

21. Issue V-7 (Specific Porting Intervals for Large Business Customers)

a. Introduction

550. AT&T proposes language establishing a five-day interval for completing orders to port 200 or more lines.[1827] AT&T believes a standard interval is important to its ability to market it services to large business customers. Verizon opposes this proposal, claiming that it must individually assess the amount of work required for orders of that size. We reject AT&T's proposal.

b. Positions of the Parties

551. AT&T proposes a maximum five-day porting interval for all business customers. AT&T notes that there are no industry standard guidelines for porting large numbers of lines,[1828]

[1822] Accordingly, we strike the phrase "including IntraLATA Toll Traffic for the purposes of reciprocal compensation" from AT&T's November Proposed Agreement to Verizon, sections 5.7.1 and 5.7.3.

[1823] *See* 47 C.F.R. § 51.701(b)(1). Although the United States Court of Appeals for the District of Columbia Circuit recently remanded the Commission's *ISP Intercarrier Compensation Order*, which adopted the current text of Rule 701(b)(1), it did not vacate that order or Rule 701. *See WorldCom v. FCC*, 288 F.3d at 434. Moreover, the court's opinion addressed only the Commission's treatment of "the compensation between two LECs involved in delivering internet-bound traffic to an ISP." *Id* at 431.

[1824] *Local Competition First Report and Order*, 12 FCC Rcd. at 16013, para. 1035.

[1825] *See* AT&T Reply at 84-85.

[1826] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610 (2001) (*Intercarrier Compensation Rulemaking*).

[1827] *See* AT&T's November Proposed Agreement to Verizon, § 14.4.10.

[1828] AT&T Brief at 147-48, n.488.

but argues that a five-business day interval for orders of 200 or more lines is technically feasible.[1829] AT&T also argues that an established interval is necessary for AT&T to market its services effectively to prospective large business customers.[1830] Also, while AT&T believes it is rare for orders of this size to take longer than five days, it is willing to permit a longer interval if Verizon can demonstrate a specific need.[1831]

552. Verizon asserts that orders of 200 or more lines are complex, require additional work, and cannot necessarily be accomplished in five days.[1832] Verizon also contends that it is common practice for carriers to negotiate intervals for large-line orders.[1833] For example, Verizon pointed out during the hearing that Qwest negotiates an interval with AT&T for orders in excess of fifty lines, compared to Verizon's practice of doing this only for orders above 200 lines.[1834] Verizon also disputes the charge that AT&T's ability to provide services will be negatively affected if Verizon is permitted to assess the special circumstances of a large order before committing to a time for completing it; Verizon maintains that large business customers do not decide to switch carriers on the spur of the moment.[1835]

c. Discussion

553. We reject AT&T's proposed contract language.[1836] Verizon indicates that a negotiated interval is the standard practice for such large orders, an observation that AT&T does not dispute. In fact, AT&T effectively concedes, by recognizing the need for case-by-case consideration, that it may be impossible to complete all large orders within five days. We thus find it would be unreasonable, based on this record, to establish a five-day standard interval applicable to large orders.

[1829] *Id.* at 147-48. While AT&T argues, in its brief and testimony, in favor of a five-business day interval for 200+ orders, its actual proposed contract language calls for a "a five (5) *calendar* day maximum porting interval for all business customers." *See* AT&T's November Proposed Agreement to Verizon, §14.2.10 (emphasis added).

[1830] AT&T Brief at 147-48.

[1831] AT&T Reply at 85.

[1832] Verizon UNE Brief at 120-21; Verizon UNE Reply at 64.

[1833] Verizon UNE Reply at 64.

[1834] Tr. at 564-65.

[1835] Verizon UNE Brief at 121.

[1836] AT&T's November Proposed Agreement to Verizon, § 14.4.10.

22. Issue V-12 (Off-Hours Number Porting)

a. Introduction

554. This issue pertains to whether the interconnection agreement should contain AT&T's proposed language requiring Verizon to provide personnel support for number porting on weekends and during weekdays after business hours.[1837] The parties disagree whether AT&T's language will address double-billing and dial tone disruption problems. The parties also disagree whether Verizon's counter-proposal would adequately address these concerns.[1838] As set forth below, we adopt Verizon's language regarding weekend porting, but instruct Verizon to cease double billing AT&T's customers. Also, we adopt AT&T's language regarding "snap-back" protection and Service Order Administration (SOA) connectivity, with instructions for further modification to this language.

b. Positions of the Parties

555. AT&T proposes that Verizon provide after-hours personnel support for number porting. This would enable efficient after-hours operations, according to AT&T, because Verizon would be able to cease billing promptly after the number is ported.[1839] AT&T contends that this will prevent double billing, which it argues occurs because Verizon continues to bill newly-ported AT&T customers until Verizon's switch reflects the changeover.[1840] AT&T claims that Verizon's plan to assign weekend orders to the following Monday would not solve this problem, because Verizon would not cease billing a customer until it completes the porting process late Monday, potentially days after AT&T moved the customer to its own network.[1841] AT&T also contends that Verizon's proposed practice is discriminatory because Verizon ports phone numbers for its own retail customers on weekends and after business hours during the week.[1842]

[1837] *See* AT&T's November Proposed Agreement to Verizon, Schedule 14.2.9.1, §§ 1 and 2; Verizon's November Proposed Agreement to AT&T, §§ 14.2.4, 14.2.5, and 14.2.5.1.

[1838] *See* Verizon's November Proposed Agreement to AT&T, §§ 14.2.4, 14.2.5, and 14.2.5.1.

[1839] AT&T Brief at 150-51. *See* AT&T's proposed Schedule 14.2.9.1. The question of precisely what should trigger a billing change is addressed below in Issue V-13.

[1840] AT&T Brief at 150-51.

[1841] AT&T Brief at 149-50; AT&T Reply at 86. AT&T suggests that double billing under these circumstances would violate Verizon's tariffs, by billing end users for services Verizon no longer provides, and that this could even constitute "cramming" – that is, charging customers for services they no longer receive. AT&T Brief at 150-51.

[1842] AT&T Brief at 149-50, citing Tr. at 570; AT&T Reply at 86. AT&T indicates that while Verizon may not provide technical support specifically for porting its own customers over the weekend, Verizon does provide a tariffed offering for "Premium Installation Appointment Change," which permits installation of a residential or business line during non-business hours. AT&T Ex. 6 (Direct Testimony of Solis), at 6-15; AT&T Ex. 12 (Rebuttal (continued….)

556. AT&T also asserts that the agreement should explicitly require two additional types of operational support that the parties agree Verizon already provides. First, to avoid loss of dial tone, AT&T seeks an express agreement by Verizon to provide "snap-back" support, which refers to a situation where a Verizon technician will stop a port – or snap back the number – in case there is a problem, so that translations are not automatically removed from Verizon's switch.[1843] Second, AT&T seeks language mandating that Verizon connect its database (specifically, its SOA) to NPAC at all times, unless NPAC is unavailable.[1844]

557. Verizon proposes an alternative process that it contends will permit AT&T to port numbers over the weekend.[1845] According to Verizon's proposal, if AT&T notifies Verizon by close of business on a Friday of its intention to port a number over the weekend, AT&T could go forward with transferring the number to its network, and Verizon would complete the process in its switch by 11:59 p.m. on Monday to release the facilities and complete the changeover.[1846] Verizon contends that this process would present only a minimal risk of dial tone loss because AT&T would have all day Monday to alert Verizon to any technical problems that occurred over the weekend.[1847] Verizon indicates that this process is used in Pennsylvania, Massachusetts, and New York.[1848] Verizon also disputes AT&T's contention that double billing is a problem. Specifically, Verizon contends that AT&T's concerns are not a Verizon issue because Verizon follows standard industry practice and cannot change its billing records until the porting process is completed in the switch.[1849] Addressing snap-back protection, Verizon indicates that AT&T currently could contact the "hot cut" office after hours to delay completion of a porting order; therefore, there is no reason to include this standard operating procedure in the agreement.[1850] In addition, Verizon says it provides SOA connectivity to NPAC wherever NPAC is available.[1851]

(Continued from previous page)
Testimony of Solis), at 3-6. AT&T contends that this is the functional equivalent of porting for AT&T customers. *Id.*

[1843] AT&T Brief at 150 n.498.

[1844] *Id.* at 150.

[1845] Verizon UNE Brief at 122. *See* Verizon's November Proposed Agreement to AT&T, Schedule 14.

[1846] Verizon UNE Brief at 122.

[1847] *Id*.

[1848] *Id*. at 122-23, citing *New York Commission AT&T Arbitration Order* at 85.

[1849] Verizon Ex. 24 (Rebuttal Testimony of M. Detch *et al.*), at 25-28.

[1850] Verizon UNE Reply at 66.

[1851] *Id*.

This also is standard operating procedure, and therefore there is no reason to include SOA connectivity in the agreement.[1852]

c. Discussion

558. We adopt Verizon's language, with respect to its proposed weekend porting process, subject to the clarification below.[1853] We find that Verizon's process will permit AT&T to port numbers over the weekend without undue risk of dial tone loss, and AT&T has not shown that weekend porting staff is necessary to prevent dial tone loss. However, we acknowledge that double billing may still occur, which Verizon does not contest, and we find it untenable for Verizon knowingly to double bill customers who have switched their service to AT&T. Therefore, we instruct Verizon to cease billing a customer once AT&T has moved that customer to its network, or reach an alternate arrangement acceptable to AT&T.

559. We also adopt AT&T's language incorporating "snap-back" provisions and SOA connectivity requirements into the agreement.[1854] Verizon has indicated that it currently provides snap-back technical support and SOA connectivity. We agree with AT&T that snap-back protection is an important safeguard against dial tone loss for problems that arise during the week after normal business hours. Similarly, the parties do not dispute the value of SOA connectivity. Verizon raises no substantive objection to including either provision in the agreement. Therefore, based on the record, we adopt AT&T's language regarding SOA connectivity. However, because AT&T's proposed language appears not to distinguish between weekend porting personnel (which we do not require) and technical snap-back support (which we do require), we further instruct the parties to submit conforming language regarding snap-back protection.

23. Issue V-12-A (Three Calendar Day Porting Interval for Residential Orders)

a. Introduction

560. AT&T proposes language that would require Verizon to port the telephone number on a simple residential order in three calendar days.[1855] AT&T contends that this is a reasonable and technically feasible time-frame. Verizon opposes this proposal because industry guidelines permit Verizon's current practice, a four business day interval. We reject AT&T's proposal.

[1852] *Id*.

[1853] Verizon's November Proposed Agreement to AT&T, §§ 14.2.4, 14.2.5, and 14.2.5.1.

[1854] AT&T's November Proposed Agreement to Verizon, Schedule 14.2.9.1, §§ 1(5) and (6).

[1855] *See* AT&T's November Proposed Agreement to Verizon, § 14.2.10.

b. Positions of the Parties

561. AT&T contends that Verizon's own practice confirms the reasonableness of a three calendar day interval: in Pittsburgh, Pennsylvania, where AT&T ports numbers on a daily basis, Verizon is confirming port orders within three days.[1856] AT&T maintains that Verizon should commit to this technically feasible time-frame.[1857] AT&T also argues that because Verizon concedes it uses a three business day interval in Virginia for porting orders of up to 50 lines, Verizon should be required, at a minimum, to commit to a three business day interval.[1858] Verizon counters that the Local Number Portability Administration Working Group (Working Group) has specifically declined to shorten the interval for simple residential orders from a four business day interval, and Verizon's practices are within the guidelines established by that group.[1859]

c. Discussion

562. We reject AT&T's proposed language.[1860] The parties agree that Verizon follows the standards established by the Working Group. While the three calendar day interval may be Verizon's practice in one city in another state and for some orders in Virginia, AT&T gives no reason why the four business day interval sanctioned by the Working Group is unreasonable. Moreover, AT&T has not demonstrated that it has been harmed by that additional day or that Verizon's interval is discriminatory.

24. Issue V-13 (Port Confirmation)

a. Introduction

563. AT&T and Verizon disagree about the appropriate ordering process for porting telephone numbers. Specifically, AT&T proposes that Verizon obtain port-activation confirmation from the Number Portability Administration Center (NPAC) prior to completing a order for number portability.[1861] Verizon argues that awaiting NPAC confirmation would require

[1856] AT&T Brief at 151.

[1857] *Id.* at 151-52.

[1858] AT&T Reply at 87, citing Verizon UNE Brief at 119. AT&T points out that the three-business day interval begins with receipt of an accurate Local Service Request. *Id.*

[1859] Verizon UNE Brief at 119-20.

[1860] AT&T's November Proposed Agreement to Verizon, § 14.2.10.

[1861] *See* AT&T's November Proposed Agreement to Verizon, Schedule 14.2.9.1, § 4

expensive changes to its systems, and that its current process complies with industry standards. We adopt Verizon's proposal.[1862]

b. Positions of the Parties

564. AT&T argues that Verizon should not complete the porting process without confirmation from NPAC,[1863] contending that this is technically feasible and fairly distributes responsibility for the porting process between AT&T and Verizon.[1864] AT&T argues that it, and several other carriers, follow this procedure, and that the New York Commission has agreed that Verizon should cease billing when the port is completed.[1865] According to AT&T, without NPAC confirmation, customers could lose dial tone if the port does not occur when scheduled.[1866] Verizon's current practice – removing translations (completing an order) without receiving NPAC confirmation that the port was successful – provides no protection against loss of dial tone.[1867] AT&T further contends that Verizon's reliance on the current industry-sanctioned ordering process – that is, the Local Service Request (LSR) process – is misplaced, because the LSR (and supplemental LSR) merely provide dates on which porting work is to be completed, if all goes as planned.[1868] The LSR process provides no consumer protections against dial tone loss, according to AT&T, but NPAC confirmation would provide such protection.[1869]

565. Verizon opposes AT&T's proposal. First, Verizon maintains that NPAC confirmation is not part of Verizon's LSR porting procedures, which were established by the industry's Ordering and Billing Forum (OBF), and Verizon contends that AT&T should address its concerns to the OBF.[1870] Second, Verizon argues that AT&T's proposal could impair service quality if NPAC fails to send timely confirmation.[1871] Third, Verizon states that its ordering and provisioning systems do not currently interact with the system that receives NPAC "activate"

[1862] *See* Verizon's November Proposed Agreement to AT&T, § 14.2.4.

[1863] AT&T Brief at 153.

[1864] *Id.*

[1865] *Id.* at 151-153 (citing *New York Commission AT&T Arbitration Order* at 85 n.104).

[1866] *Id*.

[1867] *Id.* at 153 n.511.

[1868] *Id.* at 154. NPAC would not replace the LSR process, but would supplement it, argues AT&T. AT&T Reply at 89.

[1869] AT&T Brief at 154.

[1870] Verizon UNE Brief at 124.

[1871] *Id.* at 125.

messages.[1872] According to Verizon, AT&T's proposal would require Verizon to develop a mechanized process to query the NPAC database or to receive a data file that Verizon would match against pending orders.[1873] Alternately, Verizon asserts, this could be done manually, at the rate of nearly 1,000 orders a day.[1874] Thus, Verizon claims that either process would be expensive and would heavily tax its resources.[1875]

c. Discussion

566. We reject AT&T's proposal, and adopt Verizon's proposal.[1876] The process Verizon uses is consistent with industry guidelines, as established by the OBF. We conclude that it is reasonable for parties to adopt practices and standards that emerge from the OBF process. Furthermore, AT&T has not refuted Verizon's assertion that costly changes would be necessary to implement the requested functionality. We find that AT&T has not shown that such changes are warranted, or that the current process of competitive LECs sending supplemental LSRs is an unreasonable or unworkable method of ensuring that outages do not occur.

25. Issue VI-3-B (Technical Standards and Specifications)

a. Introduction

567. Pursuant to Commission rules, Verizon is required to provide technical information to a requesting carrier about its network facilities sufficient to allow that competing carrier access to Verizon's UNEs consistent with other Commission requirements.[1877] In addition, to the extent that it is technically feasible, the quality of the UNE, as well as the quality of the access to the UNE, that Verizon provides to a requesting carrier must be at least equal in quality to that which Verizon provides to itself.[1878] WorldCom and Verizon disagree about whether WorldCom's proposed language relating to technical specifications and "equal in quality" access is necessary to ensure WorldCom's rights, and consistent with Verizon's obligations. With modification, we adopt WorldCom's proposal.

[1872] *Id.*

[1873] *Id*.

[1874] *Id.* at 125-26.

[1875] *Id.* at 126; Verizon UNE Reply at 67.

[1876] Verizon's November Proposed Agreement to AT&T, § 14.2.4.

[1877] 47 C.F.R. § 51.307(e).

[1878] 47 C.F.R. § 51.311(b).

b. Positions of the Parties

568. WorldCom proposes language requiring Verizon to provide network elements "at Parity and in a Non-Discriminatory manner" with respect to, for example, "quality of design, performance, features, functions, capabilities and other characteristics."[1879] WorldCom's language also would require Verizon to provide certain engineering, design, performance and other network data.[1880] WorldCom argues that this language is necessary to ensure that WorldCom obtains data required by rule 51.307(e).[1881] WorldCom argues that the Commission should adopt its proposed language because Verizon has not identified any plausible basis for excluding the proposal and because Verizon has agreed to include this language in every contract in the former Bell Atlantic-South region.[1882] To address criticisms levied by Verizon, WorldCom has committed in its briefs to make two changes to its proposed language. First, WorldCom suggests that Verizon's objection to the use of the word "Parity" would be mooted by its agreement to replace it with the phrase "at least equal in quality to that which the incumbent LEC provides to itself."[1883] WorldCom also agrees to delete its proposed section 3.2.2.[1884]

569. Verizon contends that WorldCom's proposal creates ambiguities by using expansive and undefined terms, and goes well beyond requirements of the Commission's rules.[1885] For example, Verizon states that there is no requirement under rule 51.311 for Verizon to provide WorldCom with equivalent "levels and types of redundant equipment and facilities for power, diversity and security" as Verizon provides to itself, its affiliates or its subscribers.[1886] Verizon also argues that, through its proposal, WorldCom seeks information to which it is not entitled under rule 51.307(e). Verizon also argues that WorldCom's proposed section 3.3 (by using the phrase "Unless otherwise requested by [WorldCom]"), suggests that WorldCom believes it is entitled to that UNEs be provided in a manner superior to the way Verizon provides the network elements to its own customers.[1887] Finally, Verizon argues that its proposed section 1.1 of its UNE attachment, to comply with applicable law in the provision of UNEs to

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[1879] WorldCom November Proposed Agreement, Part C, Attach. III, § 3.2.

[1880] *Id.* at § 3.2.1.

[1881] WorldCom Brief at 155, citing WorldCom Ex. 52 (WorldCom's response to record requests), at 1-2.

[1882] *Id.* at 156.

[1883] *Id.* at 155, citing Tr. at 121-22, 147.

[1884] WorldCom Reply at 140.

[1885] Verizon UNE Brief at 129, citing 47 C.F.R. §§ 51.307(e) & 51.311.

[1886] *Id.* at 130.

[1887] *Id.* at 132, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 3.3.

WorldCom, gives the Commission and WorldCom the assurance that UNEs will be provided in a nondiscriminatory manner[1888]

c. Discussion

570. With certain modifications explained below, we adopt WorldCom's proposed language.[1889] First, we note that there is no disagreement between the parties that Verizon is required to make available to WorldCom certain technical information so that WorldCom can interconnect with Verizon's network elements. Verizon has failed to demonstrate that the information sought by WorldCom is inconsistent with its obligations in this regard. Indeed, Verizon's witness testified that, at least to a certain extent, WorldCom's proposal encompasses "technical information," to which, we note, it is entitled under the Commission's rules.[1890] Furthermore, we note that the contested language is contained in WorldCom's current contract with Verizon and, to the knowledge of Verizon's witnesses, there has not been any problem with this existing language in the past.[1891]

571. We also reject Verizon's contention that WorldCom's proposed language is inconsistent with rule 51.311. Once again, we find that Verizon has failed to demonstrate that this inconsistency exists or offer any examples of how this provision, which exists in the parties' current contracts, has been used in an unreasonable or unlawful manner. To the contrary, we find that WorldCom's proposal represents a reasonable application of this rule.

572. We further find that the two modifications agreed to by WorldCom (replacing the term "Parity" with language drawn directly from the Commission's rule, and deleting WorldCom's proposed section 3.2.2) would address concerns raised by Verizon.[1892] We direct WorldCom to make these changes and thus need not address the merits of these particular

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[1888] *Id.*

[1889] Specifically, we adopt WorldCom's November Proposed Agreement, Part C, Attach. III, §§ 3.1, 3.2 and 3.2.1, and modify § 3.3 (as set forth in the text, below). Because we adopt WorldCom's proposal, we find that its motion to strike is moot with respect to this issue. *See* WorldCom Motion to Strike, Ex. A at 34.

[1890] Tr. at 147, 150. At the hearing, Verizon's witness expressed concerns about this language giving WorldCom "a license to go into our proprietary information and use that [information] in ways that perhaps go beyond what is the stated intent for its use here." Tr. at 146. We note that the agreement's dispute resolution process is the appropriate forum to address any concern Verizon may have about WorldCom misusing the technical information that it obtains from Verizon.

[1891] *See* Tr. at 142. Moreover, Verizon's concerns appear to be theoretical because as its witness testified, "no one has been interested in getting this sort of information." Tr. at 153. WorldCom also indicates that this language is contained in all of its Bell Atlantic-South interconnection agreements. WorldCom Ex. 52, at 2.

[1892] We thus direct WorldCom to replace the phrase "at Parity," appearing in WorldCom's November Proposed Agreement, Part C, Attach. III, § 3.2, with the phrase "at least equal in quality to that which Verizon provides to itself." We further decline to adopt WorldCom's proposed § 3.2.2. *See* WorldCom Brief at 155; WorldCom Reply at 140; Tr. at 151.

Verizon arguments. Finally, we direct the parties to modify the first sentence of WorldCom's proposed section 3.3. We agree with Verizon that this sentence, as currently written, could be interpreted as enabling WorldCom to request UNEs superior in quality to the level of service Verizon provides to itself, which it is not obligated to do.[1893] Accordingly, to be consistent with the Commission's rules, we direct the parties to modify this provision to begin: "Unless the Parties otherwise agree… ."

26. Issue VII-10 (IDLC Intervals)

a. Introduction

573. As noted in the Commission's *Line Sharing Order*, integrated digital loop carrier (IDLC) establishes a direct, digital interface with the LEC central office switch, which makes it "difficult, if not impossible, for requesting carriers to access individual loops at that location."[1894] Verizon and AT&T disagree about the process by which Verizon will inform AT&T whether the loop requested by AT&T is serviced by integrated digital loop carrier (IDLC), whether other facilities are available, and how long it should take Verizon to respond with this information. The parties also disagree about whether and when AT&T should be required to use the Bona Fide Request (BFR) process to order UNEs for use in providing service to an end user currently served by IDLC. We adopt Verizon's proposal.

b. Positions of the Parties

574. According to Verizon, in an IDLC architecture, it uses equipment at the customer's location or at a remote terminal to multiplex 24 voice channels onto a single DS1 facility, which terminates directly into the switch in a central office.[1895] Verizon states that, at the present time, it does not have equipment capable of extracting an individual voice channel from the DS1 facility. Accordingly, in order to provide AT&T with access to a single unbundled loop for one end user, Verizon must either "move the loop to a spare facility, or demultiplex at the loop."[1896] Verizon states that under its proposal to AT&T, if AT&T orders a loop provisioned over IDLC, Verizon would move the requested loop(s) to spare physical loops at no charge to AT&T, if spare loops exist and are available. If Verizon determines that a spare loop is not

[1893] The Eighth Circuit vacated rule 51.311(c), which, absent a demonstration of technical infeasibility to a state commission, required Verizon to provide superior access to a UNE upon the request of a competing carrier if it was technically feasible. *See Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000).

[1894] *See Line Sharing Order*, 14 FCC Rcd 20912, 20945-46, para. 69 n.152.

[1895] Verizon UNE Brief at 133.

[1896] *Id.*.

available, it must notify AT&T of this fact within three business days, at which time AT&T may submit a BFR asking that Verizon demultiplex the integrated digitized loop.[1897]

575. Verizon argues that the Commission did not mandate or prohibit a specific provisioning process or interval for accessing IDLC loops, but that in other arbitrations, AT&T has sought to require Verizon to notify it that facilities are unavailable within the firm order confirmation (FOC) notice.[1898] Verizon contends that it does not have this information when it sends AT&T a FOC. Rather, only after it sends the FOC does Verizon begin to evaluate and process AT&T's order.[1899] Moreover, Verizon argues that once it determines that IDLC is present, it requires additional time to determine if and where a spare physical loop is available.[1900] Additionally, Verizon disagrees with AT&T's claim that it must always resort to the BFR process to obtain a loop served by IDLC and argues that AT&T provides no evidence to support its statement that the BFR process is too open ended nor does it suggest an alternative for handling requests to demultiplex a loop.[1901] Finally, Verizon states that its proposed process is the one used in New York when the Commission granted it section 271 approval and found that Verizon "provides unbundled local loops in accordance with the requirements of section 271."[1902]

576. AT&T opposes Verizon's proposal requiring it to use the BFR process to obtain loops served by IDLC, arguing that the process is expensive and slow.[1903] According to AT&T, this process was designed for the provision of UNEs where one-of-a-kind work is involved or infrequent adjustment to existing routine processes is needed, whereas IDLC loop provisioning is neither new nor unusual in Verizon's network.[1904] AT&T asserts that Verizon's proposal allows it to provision an IDLC loop for its own customer almost while the customer is on the line placing the order, while AT&T could not determine whether facilities were available for at least three to five calendar days after placing the order.[1905] AT&T also argues that if spare copper is

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[1897] *Id.* at 134-35. Verizon also states that AT&T may make a BFR for access to unbundled local loops and the loop concentration site point. *Id.* at 135, citing Verizon Ex. 16 (Rebuttal Testimony of R. Clayton *et al*.), at 57.

[1898] Verizon UNE Brief at 134.

[1899] *Id*.

[1900] *Id.*

[1901] Verizon UNE Reply at 70, citing AT&T Brief at 184. According to Verizon, AT&T acknowledges that it takes time and additional steps to determine whether there are alternative ways to satisfy the competitor's order when IDLC is present. *Id.* at 71, citing AT&T Brief at 186.

[1902] Verizon UNE Reply at 71.

[1903] AT&T Brief at 184.

[1904] *Id*.

[1905] *Id.* at 184-85.

not available and AT&T is thrown into the BFR process, there is no way to know when, if ever, the loop will be provisioned.[1906]

577. According to AT&T, Verizon's loop qualification system enables it to identify IDLC loops for which spare copper facilities are unavailable."[1907] AT&T contends that Verizon has not argued that it is technically infeasible to provide the provisioning information AT&T seeks within a reasonable period of time, such as the FOC date.[1908] Additionally, AT&T states that, although it has no objection to Verizon taking additional steps to determine whether alternatives are available to satisfy AT&T's order, it opposes using the BFR process for the exploration of such alternatives, arguing that the legal standard is parity and that Verizon should be required to have a standardized process in place to address this situation.[1909]

c. Discussion

578. We adopt Verizon's proposed section 11.7.6, which reiterates the existing process between these parties.[1910] Verizon has explained persuasively why it requires up to three business days to determine whether spare facilities are available after AT&T orders a loop provisioned using IDLC. Among other things, Verizon's expert testified that the assignment process, by which Verizon would assign an IDLC loop to either a UDLC or copper loop, can be mechanized. However, if the database does not locate a spare pair to fill AT&T's order, Verizon's engineers will be required to review records to determine whether there is some other way to serve the customer in question.[1911] Indeed, AT&T states that it has no objection to these additional steps.[1912] It is unclear from our record how Verizon can shorten what is a manual process for these "exceptions," (*i.e.,* those instances where Verizon's computers cannot

[1906] *Id.* at 185 (expressing concern that, in this situation, the customer might well give up on AT&T and order its service from Verizon).

[1907] *Id*. Additionally, AT&T argues that Verizon concedes that its loop qualification systems are capable of identifying IDLC loops. *Id.*, citing Tr. at 282-84.

[1908] AT&T Reply at 104.

[1909] AT&T Brief at 185, 186.

[1910] *See* AT&T Ex. 1 (AT&T Pet.), Attach. D (Agreement with TCG), § 11.7.2; Attach. E (Agreement with ACC), § 11.7.2; Attach. F (Agreement with MediaOne), § 11.7.2.

[1911] *See* Tr. at 285-89. According to Verizon, three business days is the maximum amount of time required to determine whether spare facilities are available but that it will not wait until the end of that period to inform AT&T of the existence of spare facilities. *Id.* at 287-88.

[1912] AT&T Brief at 186.

automatically locate a spare).[1913] Moreover, we note that, although provided the opportunity to do so, AT&T offered no alternative process to apply in this situation.[1914]

579. AT&T does not explain how the current process, under which it submits a BFR only when no spare loop (or pair swap) is available, has proven inadequate in practice. According to Verizon, its process for handling IDLC situations has been in place for years, but Verizon's expert was unaware of any competitor availing itself of the BFR process to demultiplex an integrated loop.[1915] Aside from generally criticizing the BFR process as open-ended and expensive, AT&T has not presented us with any alternative to Verizon's proposed BFR process to demultiplex such loops.[1916]

580. We also determine that AT&T's arguments, as expressed during the hearing and in its briefs, contain assumptions about Verizon's IDLC process that are inaccurate and, accordingly, we do not rely on them. For example, AT&T's witness testified that it cannot make customer commitments until it receives the FOC from Verizon, and that it does not receive this FOC until Verizon has effectively gone through the BFR process.[1917] AT&T also argues that Verizon's proposal "*only* allows AT&T to use the BFR process, leaving AT&T unsure if and when it can provide customers with service and at what expense."[1918] Such statements inaccurately characterize Verizon's proposal (and the existing process), which Verizon's witnesses explained clearly, and without disagreement from AT&T, at the hearing.[1919] Finally, we also note that AT&T has access to Verizon's loop qualification databases so that AT&T can determine at the pre-ordering stage whether a prospective customer is currently receiving service through IDLC.[1920] Verizon explained persuasively, again without objection from AT&T, that the search to determine whether spare facilities are available must be done at the ordering, not pre-

[1913] *See* Tr. at 289.

[1914] *See, e.g., id.* at 289 (stating that AT&T's "concern is with the [BFR] process.")

[1915] *See id.* at 293.

[1916] *See id.* at 279 (AT&T's witness acknowledging that AT&T has not proposed a routinized process to handle these requests). *See also id.* at 292 (Verizon's witness stating that the UNE-platform is an alternative available to AT&T if its would-be customer is served by IDLC).

[1917] *See id.* at 286.

[1918] AT&T Brief at 184 (emphasis added).

[1919] *See* Tr. at 277-78, 282-89.

[1920] *See id.* at 282-83 (explaining that access to its Loop Facility Assignment Control System will be fully automated by October 2001, and that this database indicates whether a particular loop is served by IDLC).

ordering, stage due to the "tremendous amount of churn in activity," where "random checks" of the database could result in pre-assigned pairs.[1921]

E. Pricing Terms and Conditions

1. Issue I-9 (Price Caps for Competitive LEC Services)

a. Introduction

581. Section 252(d) establishes pricing standards that state commissions must apply in conducting arbitrations under the Act. The petitioners provide certain services to Verizon. Verizon proposes language that would cap petitioners' rates for these services at the rates that Verizon charges for comparable services. Petitioners oppose this language.

b. Positions of the Parties

582. Petitioners argue that Verizon should not be allowed to control petitioners' charges in any way.[1922] AT&T argues that there is no basis in the Act for limiting a competitive LEC's pricing flexibility.[1923] Rather, Cox argues that, with the exception of the reciprocal compensation provisions, the only rate-setting provisions in the Act apply exclusively to incumbent LECs.[1924] WorldCom argues that the Act does not require it to provide the services at issue, and that the rates for these services are not typically included in interconnection

[1921] *See id.* at 282-84. Verizon has testified that many, if not most, of the loop assignment occurs automatically but that when their computers fail to locate a spare pair, Verizon's engineers will manually pull records to determine whether it is possible to get another assignment to that terminal for AT&T. *See id.* at 283-89. As we discuss above, it is reasonable for Verizon to have up to three business days to make this determination. However, in those instances where Verizon's database has successfully located and assigned another pair for AT&T, it is unclear from our record why Verizon could not indicate that reassignment on the FOC. Unfortunately, it is equally unclear from the record whether adding this information to the FOC is possible. For example, such a ruling may require Verizon to redesign its FOC to add this field and including this information may delay issuance of Verizon's FOC, which could adversely affect Verizon's performance measurements. The record simply does not contain sufficient information on this point for us to make such a finding and, importantly, we note that AT&T has not requested this type of a ruling. In its brief, AT&T argued that Verizon should indicate on the FOC when "the loop is currently provisioned using IDLC and where no copper spare facilities are available." AT&T Brief at 185. This request is different from the scenario we describe immediately above (namely, where Verizon's database *has* successfully located and automatically reassigned a pair for AT&T's order).

[1922] *See* AT&T Brief at 189; Cox Brief at 47-48; WorldCom Reply at 143.

[1923] AT&T Brief at 189.

[1924] Cox Brief at 47-48, citing 47 U.S.C §§ 252(d), 251(c)(3), (4). In November, Verizon modified its proposed language to Cox. *See* Verizon's November Proposed Agreement to Cox, § 20.3. Cox filed an objection, arguing that this language introduces a new approval requirement. *See* Cox Objection and Request for Sanctions at 2, 11-12, Ex. 4.

agreements.[1925] Cox argues that the Commission has held that, although state commissions have authority to set incumbent LEC rates in arbitration proceedings, they do not have comparable authority to set competitive LEC rates.[1926]

583. All three carriers argue that Verizon's price cap proposal also is inconsistent with both state and federal law. They argue that Verizon's proposal would effect an improper, unilateral elimination of the authority of regulatory bodies over rates and charges.[1927] Cox argues that Verizon is already protected against high rates by regulatory mechanisms that exist at both the state and federal level.[1928] AT&T and WorldCom argue that, to the extent that Verizon contends these rates need to be regulated, they are already subject to review by the state commission, which is the appropriate body to determine whether tariffed rates are reasonable or should be limited.[1929]

584. Finally, the petitioners argue that Verizon's proposed rule is unnecessary. WorldCom points out that it has separately agreed with Verizon that switched access rates are governed by the applicable tariffs and that Verizon has failed to provide any evidence that WorldCom is likely to overcharge it for relevant services.[1930] Cox cites to certain admissions made by Verizon that, although Verizon could have challenged Cox's existing rates under sections 29.8.3 and 29.8.5 of the parties' current agreement, it has never done so.[1931] Cox also cites to Verizon's admission that the only existing Cox rates that Verizon believes to be excessive are certain "late payment" charges that Cox has assessed notwithstanding payment by Verizon within a 30-day period and these late payments are not in dispute under Issue I-9.[1932]

585. Verizon argues that, since it is a "captive customer" for services that allow it to reach petitioner's end users, fairness dictates that it obtain fairly priced access to petitioners' respective networks and, thus, the interconnection agreement should reflect Verizon's proposed

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[1925] WorldCom Reply at 143.

[1926] Cox Brief at 47-48, citing 47 C.F.R. § 51.223; *Local Competition First Report and Order*, 11 FCC Rcd at 16109, para. 1246.

[1927] *See* AT&T Brief at 189; Cox Brief at 47; WorldCom Brief at 163, citing WorldCom Ex. 1 (Direct Testimony of M. Argenbright), at 6.

[1928] Cox Brief at 44, citing Cox Ex. 1 (Direct Testimony of F. Collins), at 32, Cox Ex. 2 (Rebuttal Testimony of F. Collins), at 47-48.

[1929] *See* WorldCom Brief at 163-64, citing WorldCom Ex. 1 (Direct Testimony of M. Argenbright), at 6; *see also* AT&T Brief at 190, citing Tr. at 2110-12, 2118-19.

[1930] WorldCom Brief at 162, 165 & n.96.

[1931] *See* Cox Exs. 23, 24 (Verizon Reply to Cox Data Request Nos. 1-37, 1-38); *see also* Cox Brief at 44; Cox Reply at 33.

[1932] *See* Cox Ex. 22 (Verizon Reply to Cox Data Request No. 1-36); *see also* Cox Brief at 44-45; Cox Reply at 33.

rate limit.[1933] Verizon states that, under Virginia law, competitive LEC rates must be "just and reasonable,"[1934] and that the Virginia Commission has statutory authority to "determine the reasonableness of any rate offered by 'any public entity' operating in Virginia."[1935] Verizon likens its situation to that of an interexchange carrier purchasing terminating or originating exchange access service from a competitive LEC with "bottleneck monopoly" control over each of its end users.[1936] Because it cannot stop delivering or accepting traffic, or stop paying petitioners, Verizon argues that the Commission should recognize, as the New York Commission recently did, that no market mechanism exists that would ensure that petitioners charge just and reasonable rates.[1937] Verizon argues that its proposal would permit petitioners to charge a rate higher than Verizon's rate for the same service should they demonstrate to Verizon, the Commission, or the Virginia Commission, that their costs are higher than Verizon's. Verizon argues that comparing competing LEC rates to Verizon's rates would provide "a specific standard by which to measure the reasonableness of the petitioners' rates, given the absence of effective market forces to govern the rates Verizon VA must pay petitioners."[1938]

586. In response to petitioners' argument that Verizon's proposed standard for rates is inconsistent with state and federal law, Verizon argues that the Commission in the *Access Charge Reform Seventh Report and Order* adopted a pricing regime in which competitive LEC access rates may not be tariffed higher than the equivalent switched access rate of the incumbent LEC in recognition that "certain CLECs have used the tariff system to set access rates that were subject neither to negotiation nor regulation designed to ensure their reasonableness."[1939] Verizon says, like users of these competitive LEC exchange access services, it has no "competitive alternative" to purchasing petitioners' services.[1940] Verizon also claims that its proposal is comparable to the way that the Virginia Commission regulates competitive LEC retail services, and that, under its proposal, the petitioners can resolve rate issues through the contract's dispute

[1933] *See* Verizon Pricing Terms and Conditions (PTC) Brief at 4-5, citing Verizon Ex. 7 (Direct Testimony of M. Daly, *et al.*), at 6-8; Verizon Ex. 21 (Rebuttal Testimony of M. Daly, *et al.*), at 2-7.

[1934] *See* Verizon PTC Brief at 5 & n.2, quoting Va. Code Ann. § 56-235.2.

[1935] *See id.*

[1936] *See* Verizon PTC Brief at 7, citing *Access Charge Reform,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9937, para. 36 (2001) (*Access Charge Reform Seventh Report and Order*).

[1937] *See* Verizon PTC Brief at 7-8, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9936, 9938, paras. 32, 38; *New York Commission AT&T Arbitration Order* at 85-86.

[1938] *See* Verizon PTC Brief at 3-4, 7.

[1939] *See* Verizon PTC Reply at 3, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9924-25, para. 2.

[1940] *See* Verizon PTC Reply at 4, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9938-39, para. 40.

resolution process or by filing a tariff with cost justification.[1941] Verizon further notes that the Commission has recognized that the complaint process alone may be insufficient to keep competitive LEC access rates within a zone of reasonableness.[1942] Verizon also cites the New York Commission's recent holding that AT&T may not charge Verizon higher rates than Verizon charges AT&T.[1943]

c. Discussion

587. We adopt AT&T and Cox's language and reject Verizon's proposed language to WorldCom.[1944] Even if Verizon were a "captive customer" with respect to the services at issue, a matter we do not decide, this is not the appropriate forum to address that argument. Verizon argues that price caps should be imposed on petitioners' services because permitting the petitioners to set their own rates would be unjust and unreasonable in violation of Virginia law.[1945] In this proceeding we apply federal law; Verizon's arguments about the dictates of Virginia law should be directed to the Virginia Commission.

588. The Commission took jurisdiction over this proceeding under section 252(e)(5) of the Act. That section provides that "[i]f a State commission fails to act to carry out its responsibility under this section … then the Commission … shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission."[1946] With the exception of section 252(d)(2), governing reciprocal compensation, which is not at issue here, the pricing provisions set forth in section 252 establish

[1941] *See* Verizon PTC Brief at 6; Verizon PTC Reply at 4.

[1942] *See* Verizon PTC Reply at 5, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9933, para. 25.

[1943] *See* Verizon PTC Reply at 3 n.4, citing Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order on Rehearing, at 15 (issued by New York Comm'n Dec. 5, 2001). Verizon also claims that that petitioners' advocacy cannot be squared with their advocacy on Issues I-3, III-3, III-18, and IV-85. *See* Verizon PTC Reply at 1-2 & nn.1, 2.

[1944] Thus, we adopt AT&T's and Cox's proposed language, which, without Verizon's proposed additions, has been agreed to by these parties. Accordingly we adopt AT&T's November Proposed Agreement to Verizon § 20.2; and we reject Verizon's November Proposed Agreement to AT&T, §§ 20.2, 20.3; Ex. A, Part 2, § III, final clause ("not to exceed …."). Further, we adopt Cox's November Proposed Agreement to Verizon, § 20.3; Ex. A, Part B, § X; and we reject Verizon's November Proposed Agreement to Cox, § 20.3; Ex. A, Part B, § IV; Ex. A, Part B, § X. WorldCom does not offer proposed language, it only objects to Verizon's language. Accordingly we reject Verizon's November Proposed Agreement to WorldCom, Part C, Pricing Attach., § 3. Because we find in favor of petitioners on this issue, we dismiss as moot Cox's Motion to Strike the language contained in Verizon's November JDPL filing. *See* Cox Objection and Request for Sanctions at 2, 11-12, Ex.4. Further, because of our statutory findings, we do not address all of the parties' arguments.

[1945] *See* Verizon PTC Brief at 5 & n.2, quoting Va. Code Ann. § 56-235.2.

[1946] 47 U.S.C. § 252(e)(5).

standards that state commissions must apply in determining "just and reasonable" rates under subsection (c) of section 251.[1947] As Cox points out, however, section 251(c) applies exclusively to *incumbent* LECs.[1948] Accordingly, the Bureau, acting as the Virginia Commission for purposes of this proceeding, is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners. As Cox points out, the Commission has ruled that it would be inconsistent with the Act for a state commission to impose section 251(c) obligations on competitive LECs.[1949] Accordingly, when we "assume the responsibility of the State commission" under section 252 and act for it, we do not determine the justness and reasonableness of petitioner's rates for the services at issue here.[1950]

589. Verizon's reliance on the Commission's *Access Charge Reform Seventh Report and Order* is likewise misplaced.[1951] That order concerned competitive LEC *interstate* access charges and arose before this Commission under section 201(b) of the Act.[1952] It is undisputed that petitioners provide all of the services at issue to Verizon pursuant to tariffs filed with the Virginia Commission.[1953] Verizon concedes that Virginia law requires that rates be just and reasonable.[1954] Accordingly, Verizon may challenge petitioners' rates before the Virginia

[1947] *See* 47 U.S.C. § 252(d)(1), (3).

[1948] Cox Brief at 47-48, citing 47 U.S.C §§ 252(d), 251(c)(3), (4)(emphasis added).

[1949] Cox Brief at 47-48, citing 47 C.F.R. § 51.223; *Local Competition First Report and Order*, 11 FCC Rcd at 16109, para. 1247.

[1950] 47 U.S.C. § 252(e)(5). Although section 252(e)(3) does permit a state commission to establish or enforce other requirements of state law in its review of an interconnection agreement, *see* 47 U.S.C. § 252(e)(3), that discretionary role is not part of the state commission's "responsibility" under section 252 and is inconsistent with the Commission's role when it exercises its authority under section 252(e)(5). *See Local Competition First Report and Order*, 11 FCC Rcd at 16130, para. 1291. The Commission is not bound by Virginia law and standards in a proceeding in which it has assumed such authority; indeed "the resources and time potentially needed to review adequately and interpret the different laws and standards of each state render this suggestion untenable." *Local Competition First Report and Order*, 11 FCC Rcd at 16130, para. 1291; *see* 47 C.F.R. § 51.807(b).

[1951] *See* Verizon PTC Reply at 3-5, 7, citing *Access Charge Reform Seventh Report and Order*.

[1952] *See Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9924, 9931, n.2, para. 21 (section 201 provides authority for the Commission to ensure that competitive LEC interstate access rates are just and reasonable); 47 U.S.C. § 201(b). We do not understand Verizon to be challenging petitioners' interstate access charges in this proceeding. *See* Verizon PTC Brief at 8. Such a challenge, which would be properly before the Commission under section 201, would be inappropriate in this proceeding where we act for the Virginia Commission under section 252.

[1953] *See* Tr. at 2110, 2118-19. The services that petitioners provide to Verizon are transport services, *see* AT&T Brief at 189-90; Cox Reply at 31; Verizon PTC Brief at 8; WorldCom Reply at 143, intrastate switched access, *see* WorldCom Brief at 163; WorldCom Reply at 143; *cf.* WorldCom Brief at 165 & n.96 (the parties have agreed that switched access charges will be governed by their respective tariffs), and may now, or at some time in the future, include collocation. *See* AT&T Brief at 189-90; Verizon PTC Brief at 8; WorldCom Reply at 143; Tr. at 2117-18.

[1954] *See* n.1934, *supra.*

Commission if and when it claims that they do not comply with Virginia law.[1955] Further, if Verizon continues to believe that Virginia's complaint process is insufficient to keep petitioners rates within a "zone of reasonableness,"[1956] it should bring its concerns to the Virginia Commission.

2. Issues III-18/IV-85 (Tariffs v. Interconnection Agreements)

a. Introduction

590. The parties disagree about when and how tariffed rates that the parties file with the Virginia Commission may replace the rates in the pricing schedule, which will be arbitrated in this proceeding. Verizon proposes language under which any applicable tariff rates would automatically supersede the pricing schedule rates.[1957] WorldCom proposes competing language, which would permit tariff revisions "materially and adversely" affecting the terms of the agreement to become effective only upon the parties' written consent or upon "affirmative order" of the Virginia Commission.[1958] AT&T opposes Verizon's language; while AT&T offers no competing language of its own, it argues that certain language that the parties have agreed to should govern but should not be construed to permit tariffed rates to supersede the arbitrated rates.[1959] We adopt WorldCom's language.

b. Positions of the Parties

591. WorldCom argues that, under its proposal, if a commission established new rates, the parties could incorporate them into the agreement under the change of law provision; the agreement explicitly provides for this means of modification.[1960] It claims, contrary to Verizon's

[1955] No evidence was presented at the hearing that any of petitioners are charging Verizon unjust and unreasonable rates. On the other hand, Cox demonstrated that Verizon never has challenged its rates under the existing agreement and that Verizon, in fact, does not currently contend that any of Cox's rates for the services at issue are unreasonable. *See* Cox Brief at 47-48, citing Cox Ex. 22, 23, 24; Cox Reply at 32-33.

[1956] *See* Verizon PTC Reply at 4-5.

[1957] *See* Verizon's November Proposed Agreement to AT&T, § 20.2; Ex. A, n.1; Verizon's November Proposed Agreement to WorldCom, § 1.2; Part C, Pricing Attach., § 1; *see also* Verizon's November Proposed Agreement to AT&T, Ex. A, nn. 3 & 5. Verizon says that the terms and conditions of the interconnection agreement, however, will prevail over any tariff that Verizon files during the term of the agreement. *See* Tr. at 2047-50; Verizon Pricing Terms and Conditions (PTC) Brief at 27.

[1958] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 1.3.

[1959] *See* AT&T's November Proposed Agreement to Verizon, § 20.2.

[1960] *See* WorldCom Brief at 170; WorldCom Reply at 147, citing WorldCom Ex. 32 (Rebuttal Testimony of M. Harthun *et al.*), at 9-10; *see also* AT&T Brief at 190-91, citing Tr. at 2046; AT&T's November Proposed Agreement to Verizon, § 20.2.

argument, that its language would not "lock in" rates that should be updated, but would ensure that the modification process is mutual and fair.[1961]

592. WorldCom criticizes Verizon's tariff proposal on the grounds that it would give Verizon unilateral authority to change the rates and would improperly shift the burden of proof. In a tariff proceeding, the burden would be on WorldCom to convince the state to reject Verizon's tariff. But in the arbitration regime, a carrier seeking to modify an arbitrated term bears the burden of demonstrating the change is warranted.[1962] WorldCom also argues that Verizon's proposal would circumvent the Act's approval and review process and violate federal law.[1963] WorldCom states that Congress chose not to rely on the historically tariffed regime with respect to interconnection and network element prices. Instead, it set up an alternative, detailed process, requiring negotiation, arbitration, approval, regulatory review, and federal court review, to ensure that the resulting agreement complies with federal law.[1964] Because tariffed rates filed with the Virginia Commission might exceed the cost-based rates that the Act requires, allowing tariffs to trump the agreement would enable Verizon to escape the pricing standards established in the Act, which would violate federal law.[1965] WorldCom argues that the Commission recognized in *Global NAPs* that "[u]sing the tariff process to circumvent the section 251 and 252 processes cannot be allowed," which is precisely what Verizon seeks to do.[1966] WorldCom also argues that it would be inefficient and disruptive to require the parties to litigate in a tariff proceeding rates that have been established in arbitration.[1967]

593. AT&T argues that the Commission should direct that, no rates, terms, or conditions of the interconnection agreement may be amended by tariff filing unless Verizon can demonstrate that AT&T had actual, direct, and meaningful notice of the filing, affording AT&T an opportunity to protect its interests.[1968] AT&T argues that Verizon's proposal effectively transforms the rates decided here into mere placeholders until Verizon decides to impose a new rate.[1969] But, AT&T argues, it must be able to rely on the rates established by the Commission in this proceeding and memorialized in the interconnection agreement, as well as upon Commission

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[1961] *See* WorldCom Reply at 149, citing WorldCom Brief at 166-70; *see also* AT&T Brief at 190-91.

[1962] *See* WorldCom Brief at 167, citing WorldCom Ex. 21 (Direct Testimony of M. Harthun *et al.*), at 10.

[1963] *See* WorldCom Brief at 168-69.

[1964] *See id.* at 167, citing 47 U.S.C. §§ 251(c)(1), 252(a), (b), (e)(6).

[1965] *See* WorldCom Brief at 169.

[1966] *Id.* at 166, quoting *Bell Atlantic-Delaware, Inc. v. Global NAPs, Inc.*, 15 FCC Rcd 12946, 12959, para. 23 (1999) (*Global NAPs*), *aff'd on reconsideration*, 15 FCC Rcd 5997 (2000), *aff'd*, 247 F.3d 252 (D.C. Cir. 2001).

[1967] *See* WorldCom Brief at 170, citing WorldCom Ex. 32, at 9.

[1968] AT&T Reply at 108.

[1969] AT&T Brief at 191.

oversight of any rate changes.[1970] Under Verizon's proposal, AT&T argues that tariffs could become effective as filed without any action by the Virginia Commission.[1971] Thus, Verizon's proposal is administratively burdensome and requires the petitioners to become the "tariff police" and to scour all of Verizon's tariff filings with the Virginia Commission.[1972]

594. Verizon argues that it seeks to establish tariffs as the primary, central source for applicable prices.[1973] Verizon claims that its proposed language, which incorporates applicable tariffs: (1) ensures that prices are consistent, fair, and non-discriminatory throughout the service area covered by the agreement; (2) avoids litigation by relying on the Virginia Commission's authority over rates; and (3) keeps the agreement up-to-date without the need for further amendment if a tariff rate is revised during the term of the agreement.[1974] Verizon argues that, when it files a proposed tariff rate with the Virginia Commission, "any interested person" is given ample opportunity to participate in a hearing.[1975]

595. Verizon objects to the petitioners' approach, suggesting that they seek to "lock" Verizon into "frozen contract rates," while allowing themselves the flexibility to purchase from tariffs containing more favorable rates.[1976] Thus, petitioners would not themselves be bound by contract rates higher than the tariffed rates approved or otherwise allowed to become legally effective by the appropriate commission.[1977] Further, Verizon complains that the tariff process could be rendered moot under the petitioners' approach because other parties could opt into the rates established in these parties' arbitrated agreement with Verizon.[1978] Verizon cites to the New York Commission's recent decision to conform the interconnection agreement at issue to Verizon's tariff "where it is possible to do so," based upon its finding that "as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship."[1979] Thus, Verizon argues, "as a general rule, [a state commission] should not have to expend

[1970] *Id.* at 192.

[1971] *See id.* at 191-92 & n.604.

[1972] *Id.* at 191.

[1973] *See* Verizon PTC Brief at 26.

[1974] *Id.* at 27, 29, citing Verizon Ex. 28 (Rebuttal Testimony of C. Antoniou *et al.*), at 2.

[1975] Verizon PTC Brief at 27.

[1976] *Id.* at 26.

[1977] *Id.* at 29.

[1978] *Id.*, citing Verizon Ex. 11 (Direct Testimony of C. Antoniou *et al.*), at 20.

[1979] Verizon PTC Brief at 30, quoting *New York Commission AT&T Arbitration Order*, at 4.

precious resources relitigating on a contract by contract basis, rates that it already has decided in a global proceeding."[1980]

596. Verizon distinguishes *Global NAPs*, arguing that it is not relying on a federal tariff to circumvent or supersede a determination under sections 251 and 252.[1981] Instead, Verizon emphasizes that it proposes that the interconnection agreement explicitly and directly refer to the tariff. Thus, Verizon claims that its proposal would provide the certainty that was lacking in *Global NAPs*.[1982]

597. In response to the argument that Verizon's proposal requires petitioners to become the "tariff police," Verizon argues that petitioners already monitor Verizon's tariff filings in Virginia for their impact on the contract's rates for related services.[1983] Verizon argues that the only difference between its proposal and WorldCom's is that WorldCom would force the parties to incorporate changed rates through the change in law provisions, rather than permit the "up front" approach proposed by Verizon.[1984] Thus, WorldCom's approach would only forestall incorporation of lawfully approved rates.[1985] Finally, Verizon argues that petitioners' position on this issue is inconsistent with their advocacy on Issue I-9, where they argue that the Virginia Commission's regulations ensure that petitioners' tariffed rates are fair and reasonable.[1986]

c. Discussion

598. We rule for petitioners on this issue. Accordingly, we adopt WorldCom's proposed language[1987] and reject Verizon's proposed language.[1988]

[1980] *See* Verizon PTC Brief at 30, citing *New York Commission AT&T Arbitration Order*.

[1981] Verizon PTC Brief at 31, citing *Global NAPs*.

[1982] Verizon PTC Brief at 31.

[1983] Verizon PTC Reply at 6-7.

[1984] *See id.* at 7.

[1985] *Id.*

[1986] *Id.* at 7-8.

[1987] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 1.3.

[1988] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 1.2; Part C, Pricing Attach., § 1. We also reject Verizon's proposed footnote 1 to its proposed pricing schedule with AT&T, as inconsistent with our determination here and on Issues V-1/V-8. *See* Verizon's November Proposed Agreement to AT&T, Ex. A, n.1; *see also supra,* Issues V-1/V-8. Further, we reject Verizon's proposed footnote 3 to its proposed pricing schedule with AT&T, as unnecessary, given the parties' agreed-upon change of law provision. *See* Verizon's November Proposed Agreement to AT&T, Ex. A, n.3; *see also* AT&T's November Proposed Agreement to Verizon, § 27.4; Verizon's November Proposed Agreement to AT&T, § 27.4. Finally, because we will set permanent rates in the (continued….)

599. We find WorldCom's language to be consistent with applicable law, and with the statutory construct that provides for federal court review of state commission determinations under section 252. In conjunction with other provisions of the contract that we adopt in this arbitration, section 1.3 of WorldCom's proposed contract preserves the parties' right to obtain review, under section 252(e), of any state commission determination that effects a change in the arbitrated rates.[1989] Thus, if a commission establishes new rates, that would constitute a change in law, which the parties would be able to incorporate into the agreement pursuant to the change of law provisions of the contract.[1990] Under this process, if the parties disagree as to the applicability of such new rates, they may invoke the contract's dispute resolution process, which ultimately will result in a determination subject to review in federal court under section 252(e).[1991]

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proceeding, we reject footnote 5 to Verizon's proposed pricing schedule to AT&T. *See* Verizon's November Proposed Agreement to AT&T, Ex. A, n.5.

[1989] *See* WorldCom's Proposed November Agreement to Verizon, Part A, § 1.3.3 (any tariff change "materially and adversely" affecting the terms of the agreement is effective only upon the parties' written consent or upon "affirmative order" of the Virginia Commission). We read the term "affirmative order" to include an order deciding, under the contract's Dispute Resolution provisions, whether rates ordered in a separate proceeding effect a change in law that must be reflected in the pricing schedule.

[1990] *See* Tr. at 2066; WorldCom Brief at 170; WorldCom Reply at 147-49; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, at § 1.1 (parties to incorporate newly ordered rates or discounts into the pricing schedule (Table I) within 30 days after the legal effectiveness of order establishing such rates); *infra*, Issue IV-30 (adopting WorldCom's proposed § 1.1); WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2 (in the event of a change of law materially altering the obligations set forth in Agreement, parties will promptly negotiate substitute contract provisions and, if they cannot do so within 30 days, will seek relief under the Dispute Resolution provisions of the contract); *infra*, Issues IV-113/VI-1-E (adopting WorldCom proposed § 25.2).

[1991] *See* Verizon's November Proposed Agreement to WorldCom, Part A, at § 14; WorldCom's November Proposed Agreement to Verizon, Part A, § 13; *infra*, Issue IV-101 (collectively constituting the Dispute Resolution provisions). A state commission determination setting prices under section 252 in an interconnection agreement, or determining whether to modify prices contained in such an agreement, would constitute state commission "determinations" appealable to federal court under section 252(e). While the courts have not spoken directly to such modifications, we note that Commission precedent and most federal courts of appeals addressing the issue have held that *enforcement* actions are subject to federal review. *Southwestern Bell Telephone Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493, 497 (10th Cir. 2000); *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, 208 F.3d 475, 479-80 (5th Cir. 2000); *Illinois Bell Telephone Co. v. WorldCom Technologies, Inc.*, 179 F.3d 566, 570-71(7th Cir. 1999), *cert. denied*, No. 00-921, 2002 WL 1050229 (U.S. May 28, 2002); *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 804 n.24 (8th Cir. 1997), *aff'd in part and rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *Starpower Communications, LLC, Petition for Preemption of Jurisdiction of the Virginia State Corporation Comm'n Pursuant to Section 252(e) of the Telecommunications Act of 1996*, CC Docket No. 00-52, Memorandum Opinion and Order, 15 F.C.C.R. 11277, 11279-80, para. 6 (2000). *But see Bell Atlantic Maryland, Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 297 (4th Cir. 2001) ("Section 252(e)(6) invokes federal court review only for State commission determinations made under § 252 to determine *whether* inter-connection agreements are in compliance with §§ 251 and 252") (emphasis added), *vacated and remanded on other grounds*, *Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, 122 S. Ct. 1753 (2002); *cf. BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services, Inc.,* 278 F.3d (continued….)

600. We reject Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding.[1992] Thus, rates approved or allowed to go into effect by the Virginia Commission would supersede rates arbitrated under the federal Act.[1993] This is troublesome, particularly given the Virginia Commission's stated refusal to apply federal law in this arbitration.[1994]

601. As WorldCom argues, Verizon's proposal could thwart petitioners' statutory right to ensure that the new rates comply with the requirements of sections 251 and 252.[1995] Under section 252(e)(6), "[i]n any case in which a State commission makes a determination *under this section*, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section."[1996] Under Verizon's proposal, the new tariffed rates would not be the subject of a determination under section 252, and, moreover, never would be incorporated into the agreement.[1997] Thus, they would not be the subject of a "determination" under section 252. Petitioners, accordingly, would be able to seek review under section 252(e)(6) of an initial determination regarding rates set forth in the arbitrated interconnection agreement but, under Verizon's approach, would be unable to seek review under this same provision if these arbitrated rates were superseded by a tariff change in the future.[1998]

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1223, 1243 (11th Cir. 2002) ("Telecommunications Act of 1996 does not provide a private right of action for interpretation of previously approved interconnection agreements.").

[1992] *See* Tr. at 2048; Verizon PTC Brief at 26-27; Verizon's November Proposed Agreement to AT&T, Ex. A, n.1; Verizon's November Proposed Agreement to WorldCom, Part C, Pricing Attach., § 1.5. The practical impact of Verizon's proposal is unclear because Verizon does not currently offer unbundled network elements in Virginia under a tariff, but we note that it nonetheless may choose to do so in the future. *See* Tr. at 2047; Verizon PTC Reply at 7.

[1993] *See* Verizon PTC Brief at 27.

[1994] *See, e.g., Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Comm'n Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224, 6226, para. 4 (2001).

[1995] *See* WorldCom Brief at 169, citing 47 U.S.C. §§ 251, 252(e)(6).

[1996] 47 U.S.C. § 252(e)(6)(emphasis added).

[1997] *See* Verizon PTC Brief at 22-23.

[1998] Ordinarily, appeal of any decision of the Virginia Commission would be to the Virginia Supreme Court. *See, e.g.,* Va. Code Ann. §§ 12.1-39; 56-8.2. The Communications Act, however, expressly prohibits state court review of state commission decisions approving or rejecting interconnection agreements. *See* 47 U.S.C. § 252(e)(4) ("No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section."). Although federal review of such tariffed rates might be possible under 28 U.S.C. § 1331, this is not the procedure set forth in section 252 for establishment and review of rates. *Cf. Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, 122 S. Ct. at 1759 (section 252(e)(6) does not divest federal courts of (continued….)

602. We disagree with Verizon's assertion that a tariff is a necessary vehicle to achieve nondiscriminatory rates in the section 251-252 context.[1999] That is the purpose of section 252(i), which requires LECs to make available to any other requesting telecommunications carrier any interconnection, service, or network element provided under an agreement approved under section 252.[2000] Consistent with the statute's recognition of parties' right to negotiate interconnection agreements, the parties are certainly free to agree that services will be provided pursuant to tariffs filed with the appropriate commission, and they have done so with respect to certain services.[2001] Where the parties fail to agree, however, and ask a state commission to set rates or resolve other issues relating to the interconnection agreement, a carrier cannot use tariffs to circumvent the Commission's determinations under section 252 or the right to federal court review under section 252(e)(6).

603. With respect to AT&T, we note that both AT&T and Verizon have agreed to section 20.2.[2002] Although these parties apparently disagree on the interpretation of the language contained in that undisputed section, we are not called upon today to determine whether a particular set of facts falls within or without that undisputed language.[2003] We note that, in the event of a change in law, section 27.4 of AT&T and Verizon's agreed-upon language requires them to renegotiate mutually acceptable terms and, if that effort is unsuccessful, enables them to pursue appropriate regulatory and judicial relief.[2004]

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authority under 28 U.S.C. § 1331 to review actions to interpret or enforce interconnection agreements). We also note that Verizon's proposed language does not, itself, incorporate any specific requirement that its future tariffs comply with sections 251 and 252. *See, e.g.*, Verizon's November Proposed Agreement to AT&T, § 20.2, Ex. A, n.1; Verizon's November Proposed Agreement to WorldCom, Part C, Pricing Attach. § 1.5.

[1999] *See* Verizon PTC Brief at 26-27, 29, citing Verizon Ex. 28, at 2.

[2000] *See* 47 U.S.C. § 252(i); *Local Competition First Report and Order*, 11 FCC Rcd at 16139-40, paras. 1315-16 (primary purpose of section 251(i) is to prevent discrimination). Verizon also claims that rejection of its proposal would render the tariff process moot because other parties could opt into the rates established in these parties' arbitrated agreement with Verizon. Verizon PTC Brief at 29, citing Verizon Ex. 11, at 20. We agree but perceive no inconsistency with the Act arising from that result.

[2001] As we decide in Issue IV-30 below, a tariff revision does not require an amendment to the pricing schedule in the Verizon-WorldCom Agreement. Rather, we anticipate that, when the pricing schedule references a tariff, it will say "per applicable tariff" or equivalent language, rather than incorporate a specific rate. Verizon argues that permitting the parties to buy certain services out of a tariff instead of the interconnection agreement constitutes regulatory arbitrage. *See* Verizon PTC Brief at 29. We expect that whether a party may purchase a service out of a tariff when it is also offered in the interconnection agreement would depend on the language of the agreement. This is an issue we are not called upon to decide today.

[2002] *See* AT&T's November Proposed Agreement to Verizon, § 20.2; Verizon's November Proposed Agreement to AT&T, § 20.2.

[2003] *See* Second Revised Joint Decision Point List, Pricing Terms and Conditions (Nov. 2, 2001), at 6-7.

[2004] *See* AT&T's November Proposed Agreement to Verizon, § 27.4; Verizon's November Proposed Agreement to AT&T, § 27.4.

3. Issue IV-30 (Pricing Tables v. Tariffs)

a. Introduction

604. WorldCom proposes prefatory language to its pricing schedule, which would explain the circumstances under which the rates in the pricing schedule could be revised, specify when the revised rates would become effective, and establish a procedure for the parties to incorporate the new rates into the pricing schedule.[2005] Verizon opposes WorldCom's proposal in favor of its own language.

b. Positions of the Parties

605. WorldCom argues that its language is similar to that contained in the current agreement.[2006] It claims that its language is superior to Verizon's because Verizon's language does not: (1) define the term during which the rates contained in the pricing schedule will be effective; (2) clearly establish when changes to rates will become effective; and (3) provide a timeline for incorporating new rates into the pricing schedule.[2007] It argues that this type of specificity is necessary to prevent disputes and avoid litigation.[2008] It also argues that, when reference to a tariff is appropriate, amending the pricing schedule to correspond to tariff changes ensures that the agreement's pricing provisions remain up-to date.[2009]

606. Verizon states that the parties have agreed to all of Verizon's proposed contract language in the pricing attachment, except for section 1.[2010] Verizon argues that its language, which would give priority to tariffed rates, is superior to WorldCom's proposal, which would require constant updates.[2011] It argues that its pricing language should be adopted because it provides a simple, appropriate, and nondiscriminatory roadmap to applicable rates.[2012]

607. Verizon complains that WorldCom's language includes unfair provisions regarding the effective date of newly ordered rates.[2013] Under this language, Verizon asserts,

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[2005] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2006] WorldCom Brief at 172.

[2007] *See id.* at 173, citing WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 19-21.

[2008] *See* WorldCom Reply at 155.

[2009] *Id.*, citing WorldCom Ex. 8, at 19.

[2010] Verizon Pricing Terms and Conditions (PTC) Brief at 21.

[2011] *See id.* at 21-23; Verizon PTC Reply at 11.

[2012] Verizon PTC Brief at 21-22.

[2013] Verizon PTC Brief at 22-23. The objectionable language provides that:

(continued….)

commission-ordered rates would not be effective pending appeals, regardless of whether the rates had been stayed.[2014] Under Verizon's approach, if rates change as a result of a tariff filing or order, that document will determine the effective date.[2015] Next, Verizon complains about WorldCom's proposed "term" clause, which it argues is duplicative of the already agreed-to general "Term and Termination" clause that governs the contract as a whole.[2016] Verizon states that under its proposal the "effective term of the rates" is the effective term of the agreement. Verizon also argues that WorldCom's language requires the parties to revise the contract to reflect the newly ordered rates, which would delay the effective date of new rates.[2017] Verizon states that WorldCom's language also is onerous because it requires the parties to amend the pricing schedule constantly to correspond to tariff changes.[2018] Finally, Verizon claims that this clause is duplicative of the contract's change of law provision, and would, accordingly, introduce ambiguity.[2019]

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> The rates or discounts set forth in Table 1 below shall be replaced on a prospective basis (unless otherwise ordered by the FCC or the [Virginia] Commission) by rates or discounts as may be established and approved by the [Virginia] Commission or FCC and, if appealed, as may be ordered at the conclusion of such appeal. Such new rates or discounts shall be effective immediately upon the legal effectiveness of the court, FCC, or [Virginia] Commission order requiring such new rates or discounts.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2014] Verizon PTC Brief at 23.

[2015] Verizon PTC Reply at 11.

[2016] *See id.*, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 2. WorldCom's proposed "term" clause provides:

> Unless otherwise provided in this Agreement, all rates and discounts provided under this Agreement shall remain in effect for the term of this Agreement unless modified by order of the FCC, [Virginia] Commission, or a court of competent jurisdiction reviewing an order of the FCC or [Virginia] Commission, as the case may be.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2017] Verizon PTC Brief at 22-23. The WorldCom contract states:

> Within thirty (30) days after the legal effectiveness of the court, FCC, or Commission order establishing such new rates or discounts and regardless of any intention by any entity to further challenge such order, the Parties shall sign a document revising Table 1 and setting forth such new rates or discounts, which Revised Table 1 the Parties shall update as necessary in accordance with the terms of this Section.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1

[2018] Verizon PTC Brief at 22-23.

[2019] Verizon PTC Reply at 12, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 4.5.

c. Discussion

608. We find for WorldCom on this issue. We note that WorldCom's proposed language is similar to the existing agreement between the parties.[2020] Verizon's proposed language is unacceptable because it would make the rates contained in the pricing schedule secondary to any rates contained in a filed tariff. As discussed in connection with Issues III-18/IV-85, unless the parties agree otherwise, we will not permit a tariff to supersede an interconnection agreement; accordingly we reject Verizon's proposed language and adopt WorldCom's language.[2021] We address Verizon's remaining arguments regarding WorldCom's proposed language in turn.

609. First, Verizon argues that, under WorldCom's language, commission-ordered rates would not be effective pending appeal, regardless of whether the rates are stayed.[2022] We do not read WorldCom's language to stay the effectiveness of a rate automatically pending appeal absent a stay order. Rather, "new rates or discounts *shall be effective immediately upon the legal effectiveness* of" the order requiring new rates.[2023] If a superseding order such as a stay were entered, the rate ceases to be "legally effective." We believe that WorldCom's language merely tracks the enforceability of a rate under law.

610. Next, Verizon claims that WorldCom proposes a "term" clause that is duplicative of the already agreed-to "Term and Termination" clause.[2024] Verizon argues that, under its language, the "effective term of the rates" is the effective term of the agreement, but if rates change as a result of a tariff filing or order, that latter document will determine the effective date.[2025] WorldCom's language provides that the rates in the agreement will "remain in effect for

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[2020] *See* WorldCom Petition, Ex. D (Interconnection Agreement Governing Current Relations), at Part C, Attach. I, at § 1.1.

[2021] *See supra*, Issues III-18/IV-85 (rejecting Verizon's proposed language); WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2022] Verizon PTC Brief at 23.

[2023] See n.2013, *supra*. Orders of both the Commission and the Virginia Commission prescribing new rates would, absent a stay order, be effective pending appeal. Under section 408, orders of the Commission "take effect thirty calendar days from the date upon which public notice of the order is given" and "continue in force for the period of time specified in the order *or until the Commission or a court of competent jurisdiction issues a superseding order*." 47 U.S.C. § 408 (emphasis added). Similarly, final orders of the Virginia Commission prescribing rates are not stayed upon appeal in the absence of an affirmative order by the Virginia Supreme Court. *See* Va. Code Ann. § 56-239. We further note that the Seventh Circuit has ruled that a party seeking to stay, in federal appellate court, the effectiveness of a state commission order implementing the Act must demonstrate entitlement to injunctive relief, which, *inter alia*, requires a showing of probable success on the merits and irreparable injury. *Illinois Bell Telephone Company v. WorldCom Technologies, Inc.*, 157 F.3d 500, 503-04 (7th Cir. 1998).

[2024] Verizon PTC Reply at 11, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 2.

[2025] Verizon PTC Reply at 11.

the term of th[e] Agreement, unless modified by" regulatory or court order.[2026] The term of the agreement is, according to the agreed-upon "Term and Termination" clause, three years from the effective date (and thereafter until cancelled or terminated).[2027] These two provisions are harmonious rather than duplicative. The rates contained in the pricing schedule, which otherwise would be effective for three years, could be amended by regulatory or court order setting new rates, as set forth in section 1.1. We do not believe WorldCom's language stating the general rule that rates will be effective for the term of the agreement to be mere surplusage given Verizon's competing desire to effect rate changes through tariff filings.

611. Next, Verizon claims that WorldCom's language would delay the effective date of new rates because it requires the parties to revise the pricing schedule to reflect newly ordered rates and would require constant amendments to correspond to tariff changes.[2028] Verizon argues that, when new rates become generally applicable, the revision procedures in the interconnection agreement should not delay their effective date.[2029] We do not agree that the ministerial act of revising the pricing schedule to reflect the new rates should delay the effective date of those rates. Rather, WorldCom's proposed language provides that the "new rates or discounts shall be effective *immediately* upon the legal effectiveness" of the regulatory or court order, not on the date that those rates are incorporated into the pricing schedule.[2030] We also disagree that WorldCom's language requires the parties to amend the pricing schedule to correspond to tariff changes. Neither the testimony of WorldCom's witness nor its proposed section 1.1 supports a requirement to update the pricing schedule to reflect tariff changes, and we agree with Verizon that any such requirement would be onerous.[2031] Accordingly, we reject the argument that a tariff

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[2026] *See* n.2016, *supra,* quoting WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2027] The "Term and Termination" language, upon which the parties have agreed, provides in pertinent part:

> This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until [DATE THREE YEARS AFTER EFFECTIVE DATE] (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.

See Verizon's November Proposed Agreement to WorldCom, Part A, § 2.1. The remaining provisions of section 2 concern termination. *See id*.

[2028] Verizon PTC Brief at 22-23.

[2029] *Id.* at 23.

[2030] *See* nn. 2013 & 2017], *supra*.

[2031] *See* WorldCom Ex. 8, at 19 (absent a provision establishing a procedure under which the rates in the pricing schedule will be amended, it might not be clear "how the interconnection agreement's rates will be modified *in light of the relevant state commission or FCC orders*") (emphasis added). We do not understand the rates to which the following clause refers to include rates established by tariff filing: "The rates or discounts set forth in Table 1 below shall be replaced on a prospective basis … by rates or discounts *as may be established and approved* by the [Virginia] Commission or FCC." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1 (emphasis added). Any other interpretation would be inconsistent with the rule that tariff filings cannot modify (continued….)

filing would trigger an obligation to amend. As we discuss under Issue III-18, when the pricing schedule references a tariff, we expect it will say "per applicable tariff" or equivalent language, rather than incorporate a specific rate. That approach appears to be consistent with the parties' current agreement.[2032]

612. Finally, Verizon claims that WorldCom's language is duplicative of the contract's change of law provision, which is addressed in Issues IV-113/VI-1-E, and argues that it would introduce ambiguity.[2033] We agree with Verizon that duplicative provisions may cause interpretation problems, and can foster litigation. Nevertheless, we do not believe that WorldCom's section 1.1 language introduces ambiguity because it refers exclusively to the rates and discounts contained in the pricing schedule. WorldCom's proposed section 25.2 governing change of law, which we adopt under Issues IV-113/VI-1-E, addresses negotiation of substitute contract language in light of a change of rule, regulation, or order making any provision of the agreement unlawful or materially altering a party's obligation to provide services.[2034] Because revising the pricing schedule to reflect newly ordered rates usually should be a ministerial act, we do not believe that the negotiation process outlined in proposed section 25.2 generally will be necessary for rate changes. Indeed, Verizon agrees that the act of incorporating rates into the pricing schedule should not trigger negotiation obligations, such as those required under section 25.2.[2035] On the other hand, if the parties disagree as to whether a particular order effects a change to the contract rates, we would expect them to invoke the contract's dispute resolution procedure.[2036]

4. Issue IV-32 (Exclusivity of Rates and Electronic Pricing Table Updates)

a. Introduction

613. WorldCom proposes language reciting that: (1) the rates set forth in the pricing schedule are the exclusive rates for the services purchased under the agreement; (2) Verizon

(Continued from previous page)

the rates that are established in this arbitration. Accordingly, the requirement that the parties "sign a document revising Table 1 and setting forth *such* new rates or discounts" does not require the parties to update the pricing schedule to refer to rates or discounts established by tariff revision. *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1 (emphasis added).

[2032] *See generally* WorldCom Petition, Ex. D, at Part C, Attach. I, Table I (Detailed Schedule of Itemized Charges).

[2033] Verizon PTC Reply at 12, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 4.5.

[2034] *See infra* Issues IV-113/VI-1-E.

[2035] *See* Verizon PTC Brief at 23 ("a carrier should not have to go through any additional 'hoops' to obtain the legally effective rates").

[2036] *See* Verizon November Proposed Agreement to WorldCom, Part A, at § 14; WorldCom November Proposed Agreement to Verizon, Part A, § 13; *infra*, Issue IV-101 (collectively constituting the Dispute Resolution provisions).

shall be restricted to the rates itemized in the pricing schedule for recovery of the costs of development, modification, technical installation, and maintenance of systems it requires to provide the services set forth in the agreement; (3) rates for services not identified in the pricing schedule shall be added when agreed between the parties; and (4) Verizon shall provide WorldCom with an updated electronic copy of the pricing schedule on a periodic basis. Verizon proposes alternative language, incorporating its proposal that subsequently filed tariff rates supersede the rates established in this arbitration.

b. Positions of the Parties

614. WorldCom argues that the rates in the pricing schedule should be the exclusive means of assessing charges for services covered in the agreement, absent other agreement between the parties.[2037] It claims that Verizon's attempt to levy additional charges on WorldCom for services offered and priced under the agreement amounts to an anticompetitive unilateral modification in the form of hidden charges.[2038] WorldCom also claims that, because Verizon is legally required to provide the services covered in the agreement, its development of additional systems or infrastructure is simply the cost of doing business in a competitive environment.[2039] WorldCom argues that, since new entrants must bear their own development costs, Verizon should not receive preferential treatment and be permitted to impose its development costs on other parties.[2040] Section 1.3 of WorldCom's proposed contract restricts Verizon's recovery of these development costs to the rates in the pricing table.[2041]

615. WorldCom also claims that, contrary to Verizon's argument, its proposed language would neither impede the parties from incorporating new rates into the pricing schedule nor prevent them from agreeing to charge different rates.[2042] WorldCom's argues that its language would make clear that, when new services are developed or existing services are modified during the agreement, these would be added to the pricing schedule.[2043]

616. WorldCom's proposed section 1.4 would require Verizon to provide WorldCom with an updated copy of the pricing schedule in an electronic format, on a monthly or other

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[2037] WorldCom Brief at 175; WorldCom Reply at 156.

[2038] WorldCom Brief at 176, citing Tr. at 2074; WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 27-28; WorldCom Reply at 157, citing WorldCom Ex. 8, at 25-26.

[2039] *See* WorldCom Brief at 176, citing WorldCom Ex. 8, at 25.

[2040] *See* WorldCom Brief at 176, citing WorldCom Ex. 24 (Rebuttal Testimony of M. Argenbright), at 20-21; WorldCom Reply at 157.

[2041] WorldCom Reply at 157, citing Verizon Pricing Terms and Conditions (PTC) Brief at 24.

[2042] WorldCom Brief at 175-76, citing Tr. at 2066-67; WorldCom Ex. 24, at 20.

[2043] WorldCom Brief at 177, citing WorldCom Ex. 8, at 26.

mutually agreeable timetable.[2044] WorldCom argues that it needs a current and accurate price list and this requirement promotes efficiency and facilitates auditing of bills, thus achieving greater accuracy and minimizing disputes.[2045] Further, given the complexity of services for which WorldCom will be billed, the electronic format is appropriate.[2046] WorldCom notes that Verizon agreed to provide Uniform Service Order Code (USOC) codes.[2047] Thus, according to WorldCom, Verizon should also be willing to provide USOC codes in the pricing schedule.[2048]

617. As with Issues III-18/IV-85 and IV-30, Verizon argues that its language, which would allow the rates in the pricing schedule to be superseded by tariffed rates, is superior to WorldCom's proposal, which would require constant updates.[2049] In response to WorldCom's argument about hidden charges, Verizon states that WorldCom may address any such charges through the dispute resolution process.[2050] Verizon complains that, under WorldCom's proposed section 1.3, Verizon would be responsible for costs incurred for systems or infrastructure necessary to provide services covered by the agreement.[2051] If the Commission or the Virginia Commission recognizes Verizon's right to recover costs outside the interconnection rates, Verizon contends that it should not be required to bargain away its right to be compensated at the legally effective rate.[2052] It argues that the Commission has specifically recognized an incumbent LEC's right to cost recovery for items such as development of future OSS and third-party intellectual property licensing rights on behalf of competitive LECs.[2053] Verizon also cites the decisions of several district courts and state commissions finding that incumbent LECs may

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[2044] *See* WorldCom's Proposed November Agreement to Verizon, Part C, Attach. I, § 1.4.

[2045] WorldCom Brief at 176-77, citing WorldCom Ex. 8, at 26.

[2046] WorldCom Brief at 177, citing WorldCom Ex. 23, at 21.

[2047] WorldCom Brief at 177; *see also* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 2.1.8 (resolved Issue IV-59).

[2048] WorldCom Brief at 177.

[2049] *See* Verizon PTC Brief at 22-23.

[2050] *See* Verizon PTC Reply at 13.

[2051] Verizon PTC Brief at 23.

[2052] Verizon PTC Brief at 24, citing Verizon Ex. 11 (Direct Testimony of C. Antoniou, *et al.*), at 12.

[2053] *See* Verizon PTC Reply at 13-14, citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, 20977, para. 144 (1999) (*Line Sharing Order*), *remanded on other grounds sub nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (additional citations omitted); *see also* Tr. at 2062.

recover certain OSS costs from new entrants.[2054] It argues that WorldCom's language would improperly circumscribe this right.[2055] According to Verizon, the development costs that WorldCom seeks to preclude Verizon from recovering are not *Verizon's* cost of doing business in a competitive environment but instead result from a *competitive LEC's* decision to use Verizon's network rather than investing in its own network.[2056] Precluding Verizon from recovering those costs would subsidize the competitive LEC, which the Commission should not allow.[2057]

618. Verizon claims that WorldCom's proposed language concerning subsequently developed services or services modified by regulatory requirement is redundant because the agreement will contain BFR[2058] and change of law provisions.[2059] Finally, Verizon argues that requiring it to provide WorldCom with an updated electronic pricing table is another attempt to shift costs to Verizon.[2060] WorldCom can create and maintain its own electronically formatted pricing table.[2061] Moreover, given the number of competitive LECs with which Verizon has interconnection agreements, WorldCom's proposal would be overly burdensome.[2062]

[2054] *See* Verizon PTC Reply at 14-16 & n.13, citing, *inter alia*, *Bell Atlantic-Delaware v. McMahon*, 80 F. Supp. 2d 218, 248 (D. Del. 2000); *AT&T Communications of the South Central States v. BellSouth Telecommunications*, 20 F. Supp. 2d 1097, 1104-05 (E.D. Ky. 1998) (additional citations omitted).

[2055] *See* Verizon PTC Reply at 13.

[2056] *See id.* at 17.

[2057] *See id.*

[2058] *See id.* (cross-referencing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 13 (resolved Issue IV-17)); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 6 (resolved Issue IV-17).

[2059] Verizon PTC Reply at 17, citing Verizon's November Proposed Agreement to WorldCom, Part A, §§ 4.5, 4.6 (Issues IV-113/VI-1-E); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2 (Issues IV-113/VI-1-E).

[2060] Verizon PTC Reply at 17.

[2061] *Id.*

[2062] Verizon PTC Brief at 24. Verizon notes that it has proposed to provide a copy of its then current model interconnection agreement to WorldCom, upon reasonable request, which includes the pricing schedule. Verizon PTC Brief at 24, citing Verizon Ex. 11, at 13.

c. Discussion

619. We adopt WorldCom's proposed section 1.3.[2063] We note that language is identical to the existing agreement between the parties.[2064] For reasons we provide above, we reject Verizon's proposed language.[2065]

620. We agree with WorldCom that, to the extent allowed by applicable law, the rates contained in the pricing schedule should be the exclusive means of assessing charges for the services listed in the pricing schedule, absent agreement between the parties or superseding order.[2066] Although the Commission has specifically recognized an incumbent LEC's right to pursue cost recovery for items such as obtaining extended intellectual property licensing rights to benefit competitive LECs[2067] and OSS modifications,[2068] we do not believe that WorldCom's language improperly circumscribes this right.[2069] It does, however, appropriately restrict Verizon to charging no more than the rates in the pricing schedule (as they may change over time) for the services enumerated there.

621. Section 1.3 of WorldCom's proposed contract allows Verizon to recover its development costs through rates in the pricing table. Accordingly, we disagree with Verizon that it is foreclosed from recovering such costs. Services that are not itemized would be covered under the final sentence which provides that "[r]ates for services not yet identified in Table 1, but subsequently developed pursuant to the BFR process or services identified in Table 1, but modified by regulatory requirements, shall be added as revisions to Table 1 when agreed between the Parties." Verizon argues that this language is redundant because the final agreement

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[2063] WorldCom's Proposed November Agreement to Verizon, Part C, Attach. I, § 1.3.

[2064] *See* WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Part C, Attach. I, at § 1.1.

[2065] *See supra* Issues III-18/IV-85.

[2066] WorldCom Brief at 175.

[2067] *See Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements*, CC Docket No. 96-98, Memorandum Opinion and Order, 15 FCC Rcd 13896, 13903, para. 11 (2000) (*UNE Licensing Order*) (incumbent LECs must recover the reasonable cost associated with renegotiating and extending rights to use intellectual property rights from all carriers, including themselves).

[2068] *See Line Sharing Order*, 14 FCC Rcd at 20977, para. 144 (incumbent LECs should recover in their line sharing charges those reasonably incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element).

[2069] *See* Verizon PTC Reply at 13-14.

will contain bona fide request[2070] and change of law provisions.[2071] We find, instead, that this language must be read in context with these two contract provisions. For example, if a new service is developed under the bona fide request process, the parties must follow the procedure outlined in that section of the contract to arrive at the rate "agreed between the Parties." If, on the other hand, a service identified in Table 1 is "modified by regulatory requirement," that would trigger the change of law provision, and the parties would follow the procedure outlined in section 25.2 to arrive at the rate "agreed between the Parties." We read the terms "service" and "modified by regulatory requirement" broadly in this context and would view, for example, the identification of a new UNE to fall within this final sentence of section 1.3.

622. Finally, we reject WorldCom's proposed section 1.4, which would require Verizon to provide WorldCom with updated electronic copies of Table 1 on a periodic basis.[2072] As an initial matter, we note that Verizon is not required, under the current agreement, to provide periodic electronic updates of the pricing schedule.[2073] WorldCom has not demonstrated why this is an expense that Verizon, rather than WorldCom, must bear. Section 1.1, which we adopt under Issue IV-30, already requires the parties to revise Table 1 to reflect newly ordered rates or discounts. This should ensure that the pricing schedule remains updated. Although we agree with WorldCom that use of an accurate price list promotes efficiency, facilitates auditing of bills, and minimizes disputes,[2074] we do not believe that Verizon is uniquely situated to monitor rate changes or to memorialize them in electronic format. We agree with Verizon that WorldCom can create and maintain its own electronically formatted pricing table[2075] and, indeed, we believe it has every incentive to ensure that Verizon bills the correct rates. We encourage the parties to exchange information in an electronic format, but we will not order them to do so in this context.

[2070] *See id.* at 17 (cross-referencing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 13 (resolved Issue IV-17)); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 6 (resolved Issue IV-17).

[2071] Verizon PTC Reply at 17, citing Verizon's November Proposed Agreement to WorldCom, Part A, §§ 4.5, 4.6 (Issues IV-113/VI-1-E); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2 (Issues IV-113/VI-1-E).

[2072] WorldCom's Proposed November Agreement to Verizon, Part C, Attach. I, § 1.4.

[2073] *See* WorldCom Pet., Ex. D, Part C, Attach. I.

[2074] *See* WorldCom Brief at 176-77.

[2075] Verizon PTC Reply at 17. Further, since Verizon apparently will be providing WorldCom with an electronic copy of the USOC codes that Verizon uses for the provision of services under the agreement, *see* WorldCom Brief at 13, WorldCom can incorporate the USOC codes in its own electronically formatted pricing table.

5. Issue IV-36 (Detailed Schedule of Itemized Charges)

623. In this proceeding, both parties agree that the contract should contain a pricing schedule and that the rates contained in the pricing schedule will result from the cost phase of this proceeding.[2076] We will issue a second order on these issues at a later date.

6. Issue VII-12 (Reference to Industry Billing Forums)

a. Introduction

624. Verizon and AT&T disagree about the level of calling information detail for billing purposes to be contained in the interconnection agreement, the amount of deference to be afforded to Ordering and Billing Forum (OBF) standards, and whether and how changes in those standards should be implemented in the contract. Verizon generally supports deferring to OBF guidelines while AT&T prefers a greater level of "exchange of call detail" in the contract. For reasons provided below, we reject AT&T's proposed language.

b. Positions of the Parties

625. Verizon argues that, elsewhere in the contract, the parties have already reached agreement on the exchange of "call detail" that adequately and appropriately addresses the parties' obligations to exchange this information.[2077] According to Verizon, despite the agreed-upon language, AT&T insists on requiring the parties to exchange call detail for billing purposes in a manner that may be, or may soon become, either inconsistent with OBF guidelines or obsolete.[2078] Because Verizon must exchange call detail with a great number of carriers, it contends that it must be able to rely on a uniform, industry forum that ensures carriers exchanging information can process, exchange, and read the same records.[2079] Verizon states that it commits to providing Exchange Message Interface (EMI) records in accordance with industry standards but that if those standards evolve or are abandoned, Verizon should not be locked into an outdated practice for one carrier.[2080]

626. Verizon rejects AT&T's claim that AT&T's proposed additional contractual detail is needed to ensure enforceable billing requirements and to prevent Verizon from unilaterally imposing new requirements or system upgrades.[2081] In response, Verizon argues that it has

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[2076] *See* WorldCom Reply at 161; Verizon PTC Reply at 19.

[2077] Verizon Pricing Terms and Conditions (PTC) Brief at 11-12, citing Verizon's November Proposed Agreement to AT&T, §§ 5.8, 6.3.7.

[2078] *Id.* at 12, citing Verizon Ex. 7 (Direct Testimony of M. Daly *et al.*), at 8-9.

[2079] *Id.* at 13.

[2080] *Id.*

[2081] *Id.* at 14.

contractually committed to follow the OBF guidelines, supports deferring to a uniform industry practice, and is subject to performance plans that provide it with the incentive to abide by those industry practices.[2082] In addition, Verizon expresses specific concerns with AT&T's proposed sections 5.8.4 through 5.8.7, including: uncertainty about what is a "valid" carrier identification code (CIC) list and Verizon's responsibility to provide it[2083]; the requirement to provide the other party with a CIC on each EMI record[2084]; the obligation that each party assist a LEC, competitive LEC or IXC in obtaining a CIC[2085]; and, among others, the suggestion that each party provide a pseudo-CIC for a party that has not yet obtained a CIC.[2086] According to Verizon, AT&T fails to address Verizon's specific concerns with AT&T's language, and Verizon concludes that AT&T wants to reserve the right to insist on inconsistent practices in the event that AT&T does not like the outcome of OBF issue resolutions.[2087]

627. AT&T states that, as a general matter, it does not dispute that OBF guidelines serve to resolve industry-wide billing concerns but notes that there are certain billing issues that can be the appropriate subject of contract terms.[2088] AT&T argues that the provision of CICs and the obligation to provide pseudo-CICs in the absence of a CIC are two such examples and that it needs the assurance through contract terms that Verizon will implement certain obligations concerning the exchange of CICs for billing purposes.[2089] According to AT&T, the OBF guidelines are not contractual obligations and, while it is in the interest of all parties to abide by these guidelines, there is no obligation for a party that opposes a particular guideline to do so.[2090] Finally, AT&T contends that if both parties were to support new guidelines issued by the OBF in the future, there is nothing to prohibit the amendment of the contract to implement these changes.[2091]

[2082] *Id.*

[2083] *Id.* at 15-16, citing AT&T's November Proposed Agreement to Verizon, § 5.8.4.

[2084] *Id.* at 16 (arguing that this proposal is already outdated), citing AT&T's November Proposed Agreement to Verizon, § 5.8.5.

[2085] *Id.* at 17, citing AT&T's November Proposed Agreement to Verizon, §§ 5.8.6, 5.8.7.

[2086] *Id.* at 18, citing AT&T's November Proposed Agreement to Verizon, §§ 5.8.6, 5.8.7.

[2087] Verizon PTC Reply at 9-10.

[2088] AT&T Brief at 193.

[2089] *Id.* at 193, 194.

[2090] *Id.* at 193-94.

[2091] AT&T Reply at 109.

c. Discussion

628. We agree with Verizon and reject AT&T's proposed sections 5.8.4 through 5.8.7. Though afforded the opportunity to do so, AT&T repeatedly failed to respond to Verizon's substantive concerns with AT&T's proposed language. Verizon's criticisms were expressed clearly in both its direct testimony and brief and, absent any response by AT&T, are persuasive.[2092] Importantly, AT&T has neither disputed Verizon's assertion that it is contractually committed to follow the OBF guidelines nor explained why it requires additional billing information beyond that already agreed to in the contract.[2093] We find that Verizon's concerns about having to juggle varying degrees of call detail for multiple and separate interconnection agreements are legitimate and that it is in the interest of all carriers to be able to rely on "an industry forum that ensures carriers exchanging information can process, exchange, and read the same records."[2094] Although AT&T is correct that the parties can modify the contract to reflect changed OBF guidelines, we determine that Verizon's approach is more efficient and reasonable. It makes little sense to include language in the contract that the parties agree should be replaced if and when industry standards evolve. For the above-mentioned reasons, we agree with Verizon.

F. Resale

1. Issues V-9/IV-84 (Resale of Advanced Services)[2095]

a. Introduction

629. AT&T and WorldCom disagree with Verizon about whether it is required to resell its digital subscriber line (xDSL) service to carriers that provide voice service using the UNE-platform or UNE loop architecture.[2096] Section 251(c)(4)(A) requires incumbent LECs to offer for resale at wholesale rates any telecommunications service that the incumbent provides at retail

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[2092] *See* Verizon Ex. 7, at 13-17; Verizon PTC Brief at 15-19.

[2093] *See* Verizon Ex. 7, at 8-9; Verizon PTC Brief at 11-12. AT&T's argument that OBF guidelines are not contractual obligations ignores Verizon's proposal that requires each party to provide the other with EMI records formatted in accordance with guidelines adopted by the OBF. *See* Verizon's November Proposed Agreement to AT&T, § 5.8.3.

[2094] Verizon PTC Brief at 13.

[2095] For reasons of administrative efficiency, we address here WorldCom's Issue IV-84, which concerns resold xDSL service and combining UNEs with any resold service.

[2096] AT&T's proposal requires Verizon to resell its advanced services without any "unreasonable or discriminatory limitations or restrictions" and WorldCom's language would require Verizon to provide resold xDSL service over the UNE-platform. *See* AT&T's November Proposed Agreement to Verizon, § 12.1.1; WorldCom's November Proposed Agreement to Verizon, Part A, § 1.2. Verizon opposes both parties' proposals.

to subscribers who are not telecommunications carriers.[2097] In various section 271 orders, the Commission has declined to find that an incumbent must provide resale of xDSL service in conjunction with voice service provided using the UNE loop or UNE-platform in order to demonstrate compliance with the incumbent's competitive checklist obligations.[2098] In addition, the Commission's *Line Sharing Reconsideration Order* clarified that its *Line Sharing Order* did not require incumbent LECs to continue to provide xDSL services after a customer chose to obtain voice service from a competing carrier on the same line.[2099] Finally, WorldCom and Verizon disagree about whether to include language in the contract obligating Verizon to provide services in any technically feasible arrangement of resale services and UNEs requested by WorldCom.[2100] We adopt Verizon's proposal to AT&T and reject WorldCom's proposed language.

b. Positions of the Parties

630. AT&T argues that Verizon should be required to make its advanced services available for resale over a customer's existing loop facilities, regardless of the service

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[2097] 47 U.S.C. § 251(c)(4)(A).

[2098] *Id.* § 271. *See Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14161, para. 30 (2001) (*Verizon Connecticut Order*). In this order, the Commission stated that the request made by AT&T and others to require Verizon to permit this arrangement raised significant additional issues concerning the precise extent of an incumbent's resale obligations under the Act, which the Commission decided not to reach in that proceeding. *Id.* at 14162-63, para. 33. In addition, in the *Verizon Pennsylvania Order*, the Commission indicated that the issues raised about this arrangement would require additional proceedings to resolve. *See Application of Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17472, para. 97 (2001) (*Verizon Pennsylvania Order*).

[2099] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 16 FCC Rcd 2101, 2109-10, 2114, paras. 16, 26 (2001) (*Line Sharing Reconsideration Order*), citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*), *remanded sub nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*").

[2100] Although the parties include brief arguments related to the contract's change of law provision and Verizon's notification of network alternation, we determine that these arguments are not relevant to the actual contract language proposed by WorldCom for Issue IV-84. *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 1.2. *See also* Verizon General Terms and Conditions Brief at 10-11; WorldCom Reply at 171-72. Although WorldCom urges us not to delete its second and third sentences on discontinuance or refusal of a service and notification of network alteration, we determine that these "sentences" are located in the text of Issue IV-84, not in the contract language WorldCom has proposed for this Issue.

architecture AT&T employs to provide voice service to that customer.[2101] According to AT&T, Verizon's obligations under section 251(c)(4) attach to the service, itself, and not to the technology through which it is delivered.[2102] AT&T also asserts that, as articulated in its *Verizon Connecticut Order*, the Commission's rationale for rejecting Verizon's contention that it is not required to offer resale of xDSL unless it is also the voice provider is equally applicable to the instant dispute involving the UNE-platform or UNE loops.[2103] In either case, AT&T argues, the competitor is using loops provided by Verizon -- the very same loops Verizon would use to provide voice and xDSL service to those same customers. According to AT&T, Verizon's restriction would have the effect of denying competitive LECs that use the UNE-platform and UNE loops the ability to offer the same services over the same type of facilities that Verizon uses in its retail operations.[2104]

631. According to AT&T, the mere fact that the Commission declined to require Verizon to provide resold xDSL when AT&T uses the UNE-platform or UNE loops as a precondition for a Bell Operating Company's (BOC's) section 271 entry does not mean that such requirements cannot be ordered in an arbitration proceeding.[2105] Moreover, to the extent the Commission declines to address these proposed requirements at this time because there is no federal order in place mandating them, AT&T requests that these issues be deferred for future consideration, as it has done with other advanced services issues.[2106]

632. WorldCom argues that Verizon has a statutory obligation to offer xDSL service for resale at wholesale rates to all competitors, including those that provide voice service over loops leased from Verizon.[2107] Specifically, WorldCom requests that we clarify that section 251(c)(4) requires incumbents to offer xDSL service for resale regardless of how it is packaged at retail or marketed by the incumbent.[2108] WorldCom also argues that an incumbent LEC's attempt to limit its wholesale xDSL offering to carriers reselling the incumbent's own voice service would run afoul of section 251(c)(4)(B)'s prohibition against imposing "unreasonable or discriminatory conditions or limitations on the resale" of a telecommunications service offered at

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[2101] AT&T Brief at 179.

[2102] *Id.* at 180.

[2103] *Id.* at 181, citing *Verizon Connecticut Order*, 16 FCC Rcd at 14162, para. 32.

[2104] *Id.* at 181.

[2105] AT&T Reply at 103.

[2106] *Id.*

[2107] WorldCom Brief at 187 (arguing that it is well established that xDSL service is a "telecommunications service" within the meaning of the Act and that it is undisputed that Verizon offers xDSL service at retail to its end-user customers).

[2108] *Id.* at 191, 192.

retail to end users.[2109] According to WorldCom, although the Commission clarified in the *Verizon Connecticut Order* that an incumbent must resell xDSL service to carriers that resell the incumbent's voice service, it expressly left open the issue of whether the incumbent must resell xDSL to carriers that provide voice over a local loop leased from the incumbent.[2110] WorldCom urges us to resolve this open issue in this arbitration.[2111]

633. WorldCom's proposed language would require Verizon to "provide services in any technically feasible combination requested by WorldCom."[2112] WorldCom argues that, according to the needs of each customer, it should have the right to provide service using a combination of the three entry methods available under the 1996 Act (resale, UNEs and its own facilities). For example, WorldCom wishes to combine UNEs with resale, such as the ability to provide resold xDSL in conjunction with voice service provided using a UNE-platform or loop arrangement.[2113] Verizon opposes this provision, arguing that it goes beyond the requirements of applicable law.[2114] Furthermore, Verizon argues that the parties' UNE attachment is the appropriate place to address the issue of combinations.[2115]

634. Verizon observes that AT&T seeks to compel Verizon to provide advanced services for resale over (i) resold lines, (ii) UNE-platform, and (iii) UNE loops.[2116] For the first scenario, Verizon argues that contract language is unnecessary because Verizon's "DSL Over Resold Lines" service will be available in Virginia through a federal tariff offering.[2117] For the latter two scenarios, Verizon disagrees that it should be required to make xDSL service available for resale on UNE loops and UNE-platforms when it is not required to provide xDSL service on these UNEs in the first place.[2118] Verizon contends that because the Commission has already

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[2109] *Id.* at 193.

[2110] *Id.* at 189, citing *Verizon Connecticut Order*, 16 FCC Rcd at 14162-63, para. 33.

[2111] *Id.* at 189.

[2112] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 1.2

[2113] WorldCom Brief at 191-94.

[2114] Verizon General Terms and Conditions (GTC) Brief at 10.

[2115] *Id.*

[2116] Verizon Resale Brief at 2.

[2117] *Id.* at 2-3. Verizon also argues that contractual language is unnecessary because under Verizon's proposed section 12.1.1, Verizon and AT&T have already agreed that Verizon shall provide to AT&T for resale Verizon's telecommunications services to the extent required by applicable law and subject to and in accordance with the terms and conditions set forth in Verizon's tariffs. *Id.* at 5.

[2118] *Id.* at 3, citing *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18517-18, para. 330 (2000) (*SWBT Texas Order*).

rejected AT&T's request to extend Verizon's obligations to provide resale on UNEs in the *Verizon Connecticut Order*, the Commission has, therefore, declined to require Verizon to permit resale of xDSL service over lines on which a competitive LEC provides voice service using a UNE loop or UNE-platform.[2119] Verizon also argues that since the industry has not had an opportunity to evaluate or address the technical or operational feasibility of such a service, there is no basis for imposing new requirements on Verizon in the context of an isolated interconnection agreement.[2120]

c. Discussion

635. We adopt Verizon's proposed section 12.1.1 to AT&T and reject AT&T's competing proposal for the reasons set forth below.[2121] For similar reasons, we reject WorldCom's proposed section 1.2.[2122] Underlying both decisions is our rejection of language that would require Verizon to make available for resale its xDSL service to competitive LECs providing voice service using the UNE-platform or UNE loops. As we have stated repeatedly in this Order, we are resolving the parties' disputes based on existing law and Commission precedent, and will not extend those rules to resolve a dispute in this arbitration. The Commission was clear in its *Verizon Pennsylvania Order* that additional proceedings were necessary to resolve the "significant" issues concerning the precise extent of an incumbent LEC's xDSL resale obligations when the competitive carrier provides voice service using the UNE loop or UNE-platform.[2123]

636. We also decline AT&T's request to defer this matter for future consideration.[2124] Should the Commission determine that incumbent LECs are required to provide their xDSL service for resale to competitive LECs that provide voice service using the UNE-platform or UNE loops, the parties' change of law provisions would apply. Accordingly, there would be no

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[2119] Verizon Resale Brief at 3, citing *Verizon Connecticut Order*, 16 FCC Rcd at 14162, para. 33. In addition, Verizon states that, most recently in its *SBC Arkansas/Missouri Order*, the Commission stated that "because Commission precedent does not address the specific facts or legal issues raised here, we decline to reach a conclusion in the context of this 271 proceeding." Verizon Resale Reply at 2, citing *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20759-60, para. 82 (2001) (*SWBT Arkansas/Missouri Order*).

[2120] Verizon Resale Brief at 4.

[2121] *See* Verizon's November Proposed Agreement to AT&T, § 12.1.1. *See also*, AT&T's November Proposed Agreement to Verizon, § 12.1.1.

[2122] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 1.2.

[2123] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17472, para. 97; *see also Verizon Connecticut Order*, 16 FCC Rcd at 14162-63, para. 33.

[2124] AT&T Reply at 103.

need for us to revisit this issue at a later date. Since we find for Verizon on these issues based on a review of existing law, we determine that it is unnecessary to address issues of technical and operational feasibility, and "exclusive use" and "exclusive control," which were raised by the parties.

637. Finally, we also reject WorldCom's language because we find that WorldCom has not explained why it is entitled to this provision under applicable law. We note that in its brief and reply, WorldCom's arguments only concerned resold xDSL over the UNE-platform or UNE loops. We have considered and rejected those WorldCom arguments above. Since WorldCom has failed to explain, other than in the resold xDSL context, how it requires or even intends to implement this proposal, it has failed to provide us with sufficient information to determine the reasonableness of this language. In the absence of such a showing, we are reluctant to direct Verizon to comply with the novel requirement of combining its resold services with UNEs on behalf of WorldCom.

2. Issue V-10 (Resale of Vertical Features)

a. Introduction

638. AT&T and Verizon disagree about Verizon's obligation to offer vertical features for resale on a stand-alone basis (that is, without requiring AT&T to purchase Verizon's dial tone). Specifically, Verizon's proposal would exclude certain services and products (e.g., voice mail) from the parties' resale agreement.[2125] As explained below, Verizon argues that since it does not make available on a retail basis the services and products that are in dispute in this issue, AT&T should not be permitted to purchase them at the discounted wholesale rate. AT&T urges us to strike some, but not all, services and products from a provision of the contract that expressly excludes listed items from the resale provisions of the agreement.

639. Section 251(c)(4)(A) of the Act requires incumbent LECs to offer for resale at wholesale rates any telecommunications service that the incumbent provides at retail to subscribers who are not telecommunications carriers.[2126] In the *Local Competition First Report and Order*, the Commission ruled that the Act does not require incumbents to make a wholesale offering of any service that they do not offer to retail customers.[2127] This order also provides that section 251(c)(4)(A) does not require an incumbent LEC to disaggregate a retail service into more discrete retail offerings.[2128] We adopt Verizon's proposal.

[2125] *See* Verizon's November Proposed Agreement to AT&T, § 12.8.2.

[2126] 47 U.S.C. § 251(c)(4)(A).

[2127] *Local Competition First Report and Order*, 11 FCC Rcd at 15924, para. 872 (1996). This paragraph also provides that state commissions may have the power to require incumbents to offer specific, intrastate services. *Id.*

[2128] *Id.* at 15936, para. 877.

b. Positions of the Parties

640. AT&T argues that it is unreasonable -- both under general competitive principles and section 251(c)(4) -- for Verizon to require AT&T to purchase for resale services that AT&T does not want (*e.g.,* dial tone) in order to purchase services that AT&T does want (*e.g.,* vertical features).[2129] According to AT&T, Verizon bears the burden of demonstrating that tying the purchase of Verizon's vertical features with the purchase of its dial tone is both reasonable and narrowly tailored, and Verizon has failed to make such a demonstration.[2130] Moreover, AT&T argues that Verizon acknowledges that it offers its vertical features to Enhanced Service Providers (ESPs) for resale and such features are separately tariffed by Verizon.[2131]

641. Verizon argues that the issue is not whether AT&T may purchase vertical features for resale without purchasing Verizon's dial tone -- it can. The issue, according to Verizon, is how much AT&T must pay when it purchases vertical features on a stand-alone basis (*i.e.,* whether it is entitled to a wholesale discount under section 252(d)(3)).[2132] Verizon argues that the *Local Competition First Report and Order* does not require it to "make a wholesale offering of any service that [it] does not offer to retail customers," and "disaggregate a retail service into more discrete retail services."[2133] Accordingly, Verizon argues that AT&T is not entitled to a wholesale discount on the services at issue because it does not offer them to retail customers. Verizon states that AT&T may purchase these resale custom calling features on a stand-alone basis on the same terms and conditions as Verizon currently offers to ESPs.[2134] Finally, Verizon argues that we should approve its proposed section 12.8.5, which it suggests simply clarifies an already agreed-to provision by making clear that "those services that are not available as a stand alone service do not have to be provided if a carrier ceases to purchase for resale the underlying dial tone line from Verizon VA."[2135]

[2129] AT&T Brief at 188 (both California and Texas Commissions reached this conclusion).

[2130] *Id.* Among other things, AT&T also contends that Verizon has conceded it is technically feasible to resell vertical features and, thus, technical feasibility cannot be a reason for failing to resell a service. AT&T Brief at 187, citing Tr. at 934-35; *New York Commission AT&T Arbitration Order*, at 21.

[2131] AT&T Brief at 188-89.

[2132] Verizon Resale Brief at 6.

[2133] *Id.* at 7, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15924, 15936, paras. 872, 877.

[2134] Verizon Resale Brief at 6. Verizon argues that it is not offering vertical features to ESPs on a stand-alone basis at retail but rather that ESPs are purchasing the features for resale to end users and, therefore, are operating as wholesalers. *Id.* at 8.

[2135] *See id.* at 11, citing Verizon's November Proposed Agreement to AT&T, § 12.8.5.

c. Discussion

642. We adopt Verizon's proposed language.[2136] The Act and the Commission's precedent are clear: Verizon is not obligated to disaggregate a retail service into more discrete services if it does not offer those more discrete services to its retail customers.[2137] As we have indicated earlier in this Order, we will only apply existing Commission precedent in this proceeding. AT&T has not challenged Verizon's statements that ESPs are not retail customers and, thus, has failed to rebut Verizon's assertion that it does not offer its vertical features on a stand-alone basis to its retail customers. Based on the record before us, we agree with Verizon and determine that there is no reason to address the parties' statements on technical feasibility, Verizon's argument about the applicability of the *Advanced Services Second Report and Order*, or the calculation of the section 252(d)(3) wholesale discount.[2138] Finally, we direct the parties to include in the agreement Verizon's proposed section 12.8.5. As described by Verizon, this provision appears reasonable and we note that AT&T did not expressly comment on this subsection.

G. Business Process Requirements

1. Issues I-8/IV-97[2139] (Access to CPNI)

a. Introduction

643. Section 222 of the Act requires every telecommunications carrier to protect the confidentiality of customer proprietary network information (CPNI).[2140] Verizon proposes language it would enable it to monitor the petitioners' access to CPNI.[2141] Cox and WorldCom argue that Verizon's language would permit it to access sensitive competitor information, which Verizon's concerns do not justify. Verizon disagrees with Cox and WorldCom as to whether the Act permits Verizon to audit or monitor competitive LEC access to CPNI. We reject Verizon's proposed language.

[2136] *See* Verizon's November Proposed Agreement to AT&T, §§ 12.8.2, 12.8.5.

[2137] *See Local Competition First Report and Order*, 11 FCC Rcd at 15924, 15936, paras. 872, 877.

[2138] *See, e.g.,* AT&T Brief at 187; AT&T Reply at 105; Verizon Resale Brief at 9; Verizon Resale Reply at 5.

[2139] WorldCom indicates that the only remaining dispute in IV-97 is identical to Issue I-8, and Verizon's treatment of Issue IV-97 is consistent with WorldCom's assessment. *See* WorldCom Brief at 243; Verizon Business Process (BP) Brief at 3.

[2140] 47 U.S.C. § 222.

[2141] Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., §§ 8.1.4, 8.5.1-8.5.3.3; Verizon's November Proposed Agreement to Cox, § 18.4.4.

b. Positions of the Parties

644. WorldCom argues that permitting Verizon to monitor WorldCom's access to customers' CPNI would give Verizon access to sensitive WorldCom marketing information.[2142] For example, Verizon could learn which customers are interested in switching to WorldCom and therefore could try to retain these specific customers.[2143] WorldCom also argues that enforcing section 222's prohibitions on misuse of CPNI is a role for the Commission and state agencies, not for Verizon.[2144] WorldCom argues that Verizon's concerns are not well-founded because Verizon has no reason to suspect WorldCom of misusing the Web-based Graphical User Interface (Web GUI), WorldCom does not access CPNI without customer permission, and WorldCom employs an internal system of third-party confirmation to prevent employee abuse of CPNI.[2145] WorldCom contends that isolated abuse by other carriers is insufficient justification for giving Verizon sweeping rights to monitor electronically WorldCom's access to or use of CPNI.[2146]

645. Cox also opposes Verizon's proposed language authorizing electronic monitoring of CPNI access because it would permit Verizon to learn sensitive information.[2147] Cox says Verizon has shown no need to monitor CPNI usage, nor has Verizon presented evidence that Cox has abused CPNI in the past.[2148] Cox disputes Verizon's contention that it would be liable if Cox abused CPNI, arguing that Cox has an independent duty to safeguard CPNI, under both section 222 and the interconnection agreement, and any liability would be Cox's.[2149] Like WorldCom, Cox also accuses Verizon of seeking an inappropriate enforcement role.[2150]

646. Verizon argues that, in order to comply with its statutory obligation to protect its customers' CPNI, it must be permitted to monitor electronically competitive LECs' access to CPNI to ensure that this is being done in a manner consistent with the Commission's rules.[2151] Verizon also argues that its proposed language is necessary to protect the integrity of its Web

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[2142] WorldCom Brief at 243.

[2143] *Id.* at 244.

[2144] *Id.*

[2145] *Id.* at 243, 245.

[2146] *Id.* at 245.

[2147] Cox Brief at v, 42-44.

[2148] *Id.* at 42.

[2149] *Id.* at iv-v, 42-43.

[2150] *Id.* at 43.

[2151] Verizon Ex. 6 (Direct Testimony of Langstine), at 2-3.

GUI operations support systems (OSS).[2152] Verizon also argues that it would only monitor the volumes of OSS usage, not its content.[2153] Verizon testified that real-time monitoring is necessary to prevent abusive behavior from crippling the Web GUI, and that reviewing usage after the fact via the contract's audit provision would not permit sufficiently prompt action.[2154]

c. Discussion

647. We agree with Cox and WorldCom and rejects Verizon's proposed language.[2155] While section 222 of the Act imposes upon all telecommunications carriers the obligation to safeguard CPNI, it neither authorizes nor requires Verizon to enforce competitive LEC obligations to protect CPNI. Furthermore, we agree that permitting Verizon to monitor electronically CPNI use may allow Verizon access to competitively sensitive information and therefore creates at least the potential for an inappropriate competitive advantage for Verizon.

2. Issues IV-7/IV-79 (911 and E911)[2156]

a. Introduction

648. Verizon and WorldCom agree that their interconnection agreement should contain terms to facilitate the prompt, reliable, and efficient interconnection of WorldCom's network to Verizon's 911/E911 platform.[2157] They disagree, however, regarding the steps Verizon must take to ensure that emergency calls from WorldCom subscribers are routed properly. They also disagree regarding the specific contractual terms that would govern Verizon's provision of 911

[2152] Verizon BP Brief at 3-4. Verizon contends that the Web GUI is designed for use by human operators sitting at computer terminals, and large-volume use associated with an electronic (or "robot") interface may overwhelm the Web GUI. Verizon Business Processes Brief at 4-5. We address, in the context of Issue I-11, the parties' arguments regarding protecting the Web GUI from abusive behavior, such as access by a "robot" user. *See supra* Issue I-11.

[2153] Verizon BP Brief at 3.

[2154] Verizon BP Brief at 6.

[2155] Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 8.5.3.2; Verizon's November Proposed Agreement to Cox, § 18.4.4.

[2156] The parties agree that the matters in dispute under Issues IV-7 and IV-79 are identical and should be considered together.

[2157] Verizon Business Process (BP) Brief at 14; *see also* WorldCom Reply at 208-09. Both 911 and E911 services transmit emergency calls from end users to public service answering points (PSAPs) for forwarding to police, fire, and other emergency service providers. Unlike 911 service, E911 service allows the PSAP attendant and emergency service provider to identify the calling party's location, among other enhancements. *See Bell Operating Cos., Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, Memorandum Opinion and Order, 13 FCC Rcd 2627, 2633, para. 7 (1998) (*Section 272 Forbearance Order*). A PSAP is "a facility that has been designated to receive emergency calls and route them to emergency service personnel." 47 U.S.C. § 222(h)(4).

and E911 services to WorldCom. WorldCom considers these issues important because their resolution will affect the provision of critical emergency services to WorldCom's customers. For the reasons set forth below, we rule for WorldCom on the first issue and for Verizon on the second.

649. Verizon routes 911/E911 traffic using a three-tiered system. The first two tiers rely on dual 911/E911 tandems and trunks going out to each of the tandems.[2158] Verizon has agreed to provide WorldCom with nondiscriminatory access to these tandems and trunks.[2159] The third tier consists of sending blocked 911/E911 calls through a Verizon traffic operator position system (TOPS) switch and back to Verizon's 911/E911 tandems to see if they go through to the PSAP.[2160] This process is known as a "TOPS pass-through."[2161]

b. Routing of Emergency Calls

(i) Positions of the Parties

650. WorldCom contends that if Verizon employs a TOPS pass-through to route emergency calls from its customers to PSAPs in the event 911 or E911 trunks fail, Verizon should provide WorldCom with access to its TOPS switch for the same purpose.[2162] WorldCom points out that Verizon concedes that it is technically feasible for Verizon to provide WorldCom with a TOPS pass-through.[2163] WorldCom asserts that access to Verizon's TOPS pass-through is a matter of public safety, and that the interest of preventing of 911 outages plainly overrides any hypothetical concerns about potential abuse of the TOPS switch and possible demands on Verizon's staff.[2164] Finally, WorldCom maintains that Verizon's concern about potential abuse is unfounded and promises to use that access only for emergency traffic.[2165]

651. Verizon argues that it need not provide a "TOPS pass-through" to WorldCom or to any other competitive LEC that does not purchase operator services from Verizon. According to Verizon, this pass-through capability would enable the competitive LEC to route non-emergency traffic through Verizon's TOPS switch.[2166] Verizon states, in addition, that a

[2158] Tr. at 2656-57 (testimony of Verizon witness Green).

[2159] *Id*. at 2657 (testimony of Verizon witness Green).

[2160] *Id.* at 2656-57 (testimony of Verizon witness Green).

[2161] *Id.* at 2657.

[2162] WorldCom Brief at 254-55.

[2163] *Id.,* citing Tr. at 2658-59 (testimony of Verizon witness Green).

[2164] WorldCom Reply at 208.

[2165] Tr. at 2661 (testimony of WorldCom witness Sigua).

[2166] Verizon BP Brief at 15; Tr. at 2656-57 (testimony of Verizon witness Green).

competitive LEC's use of the TOPS switch as a 911 overflow could interfere with system capacity loads and already stretched staffing.[2167]

(ii) Discussion

652. We conclude that Verizon must provide WorldCom with access to its TOPS switch for purposes of routing blocked 911 and E911 calls, as WorldCom urges. We therefore adopt the language WorldCom proposes in this area, subject to the modification discussed below.[2168] Verizon admits that it interconnects with its TOPS switch for purposes of routing its own blocked 911 and E911 calls, and that it is technically feasible for it to provide WorldCom with access to that switch for purposes of routing WorldCom's blocked 911 and E911 calls.[2169] Under section 251(c)(2), Verizon must provide WorldCom interconnection with that switch "at least equal in quality" to the interconnection Verizon provides itself for routing 911 and E911 calls.[2170] We therefore require that the interconnection agreement between Verizon and WorldCom provide for such interconnection.

653. Unlike Verizon, WorldCom proposes interconnection agreement language that would give WorldCom access to Verizon's TOPS switch for purposes of routing blocked 911 and E911 calls.[2171] We find that WorldCom's language provides the appropriate starting point for final contract language in this area. Consistent with WorldCom's representation,[2172] however, the final language shall preclude WorldCom from routing non-emergency calls through Verizon's TOPS switch unless WorldCom purchases operator services from Verizon. We find that this condition appropriately addresses Verizon's concern that a TOPS pass-through would allow a competitive LEC that does not Verizon purchase operator services to route non-emergency traffic through Verizon's TOPS switch.[2173] Verizon's own witness stated that failure of both of its primary 911/E911 routes "is very, very unusual" so any impermissible use of the TOPS pass-through should be readily detectable.[2174] Verizon may use the contract's dispute resolution process if it believes that WorldCom is routing non-emergency traffic to the TOPS switch in circumstances where WorldCom does not purchase operator services from Verizon.

[2167] Verizon BP Brief at 15.

[2168] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 1.5.6.

[2169] Tr. at 2656-59 (testimony of Verizon witness Green).

[2170] 47 U.S.C. § 251(c)(2)(C).

[2171] *Compare* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, § 1.5.6, *with* Verizon's November Proposed Agreement to WorldCom, Part C, 911 Attach., §§ 1.1-9.

[2172] Tr. at 2661 (testimony of WorldCom witness Sigua).

[2173] Verizon BP Brief at 15; Tr. at 2659-60 (testimony of Verizon witness Green).

[2174] Tr. at 2656.

654. We reject Verizon's argument that a competitive LEC's use of the TOPS switch as a 911/E911 overflow could interfere with system capacity loads and already stretched staffing.[2175] Verizon's sole support for this argument is a reference to testimony in which a Verizon witness expressed concern regarding WorldCom's using a TOPS pass-through to route non-emergency traffic.[2176] Neither that witness nor any other witness in this proceeding expressed any concern regarding using a TOPS pass-through to route emergency traffic.

c. PSAP Codes

(i) Positions of the Parties

655. When Verizon's 911/E911 tandem routes are congested or out-of-service, a carrier may still route emergency calls to a PSAP using the PSAP's 10-digit telephone number. WorldCom requests that we require Verizon to provide WorldCom with these alternative routing numbers. WorldCom states that many PSAP employees do not know the alternative routing numbers for their center and that, because those numbers are in Verizon's system, it is simplest and most efficient for WorldCom to obtain them from Verizon. WorldCom also states that because of its day-to-day operation of the 911 system, Verizon is in the best position to provide the alternative routing numbers to WorldCom.[2177]

656. Verizon maintains that it does not use the alternative routing numbers to route its own emergency traffic in Virginia and suggests that WorldCom should get them from the PSAP coordinators. Verizon states that those numbers are available to WorldCom from the PSAP coordinators in the same manner that they are available to Verizon, that Verizon has not obtained those numbers for any other competitive LEC, and that WorldCom has failed to explain why it cannot obtain those numbers for itself.[2178]

(ii) Discussion

657. We decline to require Verizon to provide WorldCom with alternative routing numbers for PSAPs, as WorldCom proposes. We therefore adopt the language Verizon proposes in this area.[2179] Because Verizon does not use these numbers to route its own emergency traffic or obtain these numbers for any other carrier, Verizon's refusal to obtain them for WorldCom is not discriminatory. WorldCom, of course, is free to rely on these numbers as a fourth routing

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[2175] Verizon BP Brief at 15.

[2176] *Id.*, citing Tr. at 2659.

[2177] WorldCom Brief at 254.

[2178] Verizon BP Brief at 14; Verizon BP Reply at 9.

[2179] Verizon's November Proposed Agreement to WorldCom, Part C, 911 Attach., § 6 (requiring that the parties "work cooperatively to arrange meetings with PSAPs to answer any technical questions the PSAPs, or county or municipal coordinators may have regarding the 911/E-911 arrangements").

alternative for emergency calls. In that event, however, direct contact between WorldCom and the PSAP coordinators would best ensure that WorldCom knows the alternative routing numbers assigned to its traffic and otherwise minimize the possibility of lost or misrouted emergency calls.

d. Interconnection Agreement Language

(i) Positions of the Parties

658. Although Verizon and WorldCom state that they have resolved many sub-issues relating to 911 and E911 services, they propose markedly different overall contract language regarding those services. WorldCom's proposal addresses, among other matters, how the parties would interconnect for purposes of 911 and E911 services,[2180] how they will ensure that Verizon's E911 database includes accurate information on WorldCom's subscribers,[2181] and how the parties will ensure reliable 911 and E911 services on an ongoing basis.[2182] WorldCom's language, however, is not restricted to the provision of 911 and E911 services in Virginia.[2183] WorldCom contends that its proposed contract language is more detailed than Verizon's language and that detailed specification of the parties' rights and obligations is particularly important in an area affecting public safety.[2184]

659. Like WorldCom, Verizon proposes contract language that addresses, among other areas, 911 and E911 interconnection arrangements,[2185] processes WorldCom would use to update Verizon's 911 and E911 database,[2186] and overall 911 and E911 reliability.[2187] Verizon states that its proposal is based on agreements that it has negotiated with other carriers.[2188] Verizon maintains that because Verizon provides 911 and E911 services to hundreds of competitive LECs in Virginia, it is important to have consistent processes and procedures for 911 and E911

[2180] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 6.1.1.6.1.

[2181] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, §§ 6.1.1.6.2.2, 6.1.1.9.2-6.1.1.9.7.

[2182] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, §§ 1.5-1.5.14, & Attach. VIII, §§ 6.1.2.2-6.1.2.4.

[2183] *See, e.g.,* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 6.1.1.6.2.

[2184] WorldCom Ex. 20 (Direct Testimony of A. Sigua), at 3; WorldCom Ex. 35 (Rebuttal Testimony of A. Sigua), at 6.

[2185] Verizon's November Proposed Agreement to WorldCom, Part C, 911 Attach., §§ 1.1-1.2, 3.

[2186] Verizon's November Proposed Agreement to WorldCom, Part C, 911 Attach., § 2.

[2187] *E.g.,* Verizon's November Proposed Agreement to WorldCom, Part C, 911 Attach., §§ 4.1, 4.2, 9.

[2188] Verizon Ex. 9 (Direct Testimony of D. Albert and P. D'Amico), at 18-19.

to give Verizon, competitive LECs, and emergency safety officials a clear and uniform understanding of their responsibilities.[2189]

(ii) Discussion

660. Because WorldCom's language is significantly more detailed than Verizon's language, we conclude that WorldCom's language provides a better starting point for final contract language.[2190] We therefore adopt WorldCom's language in this area, subject to the modification discussed below.[2191] We find that this additional detail would result in more reasonable overall contract language, particularly since 911 and E911 services affect public safety.[2192] We note that Verizon makes no substantive objection to WorldCom's proposed language.[2193] Instead, Verizon relies on the similarity between its proposed language and the language in interconnection agreements it has negotiated with other carriers. Verizon admits, however, that in the course of negotiations it and other competitive LECs have deviated from prior agreements.[2194] Given the importance of 911 and E911 services to overall public safety, we find that the need for greater detail overrides any benefits the parties, other carriers, and public safety officials might derive from more uniform agreements.

661. The parties shall conform WorldCom's language with our determinations regarding the routing of emergency calls and the provision of PSAP codes. To the extent, however, that WorldCom proposes language that purports to address the provision of 911 or

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[2189] *Id.* at 18.

[2190] *See* WorldCom Ex. 20, at 3. For instance, both proposals would require WorldCom to provide Verizon with 911 and E911 database information regarding WorldCom's subscribers. WorldCom's proposal would require that Verizon notify WorldCom within one business day if it detects an error in this information and give WorldCom two business days to correct the error. WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 6.1.1.9.3.1. Verizon's agreement does not provide any time-frame for these activities. *See* Verizon's November Proposed Agreement to WorldCom, Part C, 911 Attach., §§ 1.1-9; *see also* WorldCom Reply at 209 (pointing out that, unlike WorldCom's proposal, Verizon's language would not require Verizon to provide geographic information sufficient to let WorldCom associate locations with specific 911 tandems).

[2191] Specifically, we adopt WorldCom's November Proposed Agreement to Verizon, Part C, Attach. IV, §§ 1.5-1.5.5, & Attach. IV, §§ 1.5.7-1.5.14, and Attach. VIII, §§ 6.1-6.1.2.8, subject to the elimination of language that purports to address the provision of 911 and E911 services outside Virginia.

[2192] WorldCom Ex. 36, at 6.

[2193] *See* Verizon BP Brief at 13-15; Verizon BP Reply at 9.

[2194] Verizon Ex. 7, at 19.

E911 services in jurisdictions other than Virginia,[2195] that language goes beyond the scope of this proceeding. The parties may exclude this language from their interconnection agreement.

3. Issue IV-56 (Subscriber Payment History)

a. Introduction

662. The National Consumers Telecommunications Data Exchange (NCTDE) is a database that allows subscribing carriers to share information about consumers who have failed to make payment on residential telecommunications accounts.[2196] WorldCom proposes language requiring Verizon to join the NCTDE, and to provide WorldCom with payment delinquency and other information regarding former Verizon customers.[2197] Verizon opposes these proposals. The parties consider this issue important because access to the requested information would reduce WorldCom's costs of checking the creditworthiness of potential subscribers.[2198] As explained below, we rule for Verizon.

b. Positions of the Parties

663. WorldCom contends that Verizon's status as an incumbent LEC gives it access to unpaid customer account information for the vast majority of telephone subscribers in Virginia, that Verizon uses this information to assess the creditworthiness of potential customers, and that WorldCom needs access to the same information to perform the same function.[2199] WorldCom suggests that in refusing to provide this information, Verizon is attempting to retain a

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[2195] *See, e.g.,* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 6.1.1.6.2 (setting forth requirements "[i]n jurisdictions where Verizon has obligations under existing agreements as the primary provider of the 911 Service to a government agency").

[2196] *See* WorldCom Ex. 7 (Direct Testimony of S. Lichtenberg), at 4; *DOJ Approves NCTDE Proposal*, NCTDE Press Release (Sept. 3, 1997), *available at* http://www.nctde.com/pr03.htm (visited July 1, 2002).

[2197] The information WorldCom seeks would consist of:

> Applicant's name; Applicant's address; Applicant's previous phone number, if any; Amount, if any, of unpaid balance in the applicant's name; Whether applicant is delinquent on payments; Length of service with prior local or intraLATA toll provider; Whether applicant had local or intraLATA toll service terminated or suspended within the last six (6) months with an explanation of the reason therefor; and Whether applicant was required by prior local or intraLATA toll provider to pay a deposit or make an advance payment, including the amount of each.

WorldCom's November Proposed Agreement to Verizon, Attach. VIII, § 2.1.4 (subsection numbers omitted).

[2198] *See, e.g.*, WorldCom Ex. 7, at 4-6.

[2199] WorldCom Ex. 7, at 5; WorldCom Ex. 31 (Rebuttal Testimony of S. Lichtenberg & M. Daniels), at 5; WorldCom Brief at 246-48; WorldCom Reply at 205-06.

competitive advantage resulting from longstanding monopolization of local telephone markets.[2200] WorldCom contends that Verizon's participation in the NCTDE actually would benefit Verizon because, as new entrants gain market share, Verizon would be able to obtain increasing amounts of payment history information from other carriers.[2201] WorldCom asserts that the information it seeks is largely consistent with the NCTDE's requirements and that any additional information sought would assist NCTDE participants in assessing credit risks.[2202]

664. Verizon counters that it should not be required to provide WorldCom with subscriber payment histories or to participate in the NCTDE.[2203] Verizon points out that WorldCom cites no authority for its requests that the Commission impose such requirements.[2204] Verizon states that it is not a credit-reporting agency and does not desire to take on the legal liabilities and responsibilities involved with that line of business.[2205] Verizon also states that WorldCom may obtain information to assess the creditworthiness of new customers from credit-reporting agencies.[2206]

c. Discussion

665. We find for Verizon on this issue and therefore reject WorldCom's proposed contract language regarding this issue.[2207] As an initial matter, we reject WorldCom's request for blanket disclosure of the information described in its proposed contract. The information WorldCom seeks falls, to some extent, within the statutory definition of customer proprietary network information (CPNI): "information contained in . . . bills pertaining to telephone exchange service . . . received by a customer of a carrier."[2208] Verizon's obligation to disclose this information is governed by the Act and the Commission's rules, which require Verizon to disclose CPNI to WorldCom in only two circumstances. First, under section 222(c)(2) of the Act, Verizon must disclose CPNI to WorldCom upon the customer's "affirmative written

[2200] WorldCom Ex. 31, at 5; WorldCom Brief at 248.

[2201] WorldCom Ex. 31, at 6; WorldCom Brief at 249.

[2202] WorldCom Ex. 7, at 7; WorldCom Brief at 246-50.

[2203] Verizon Business Process (BP) Brief at 9.

[2204] Verizon BP Brief at 9; Verizon BP Reply at 5.

[2205] Verizon BP Brief at 10.

[2206] Verizon BP Reply at 5.

[2207] Specifically, we reject the second sentence of section 2.1.4.1, and all of sections 2.1.4.1.1 through 2.1.4.2, of WorldCom's November Proposed Agreement to Verizon, Attachment VIII.

[2208] *See* 47 U.S.C. § 222(f)(1)(B). For instance, a bill for telephone exchange service typically would include the amount of the unpaid balance the customer owes. *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 2.1.4.1.4 (requesting the "[a]mount, if any, of unpaid balance in applicant's name").

request" for such disclosure.[2209] WorldCom states, however, that it does not intend to secure such requests before obtaining this information from Verizon.[2210] Second, the Commission requires that a LEC "disclose a customer's service record upon the oral approval of the customer to a competing carrier prior to its commencement of service" to the extent "necessary for the provisioning of service" by the competing carrier.[2211] WorldCom concedes, however, that it does not need any of the requested information to provision service for a new customer.[2212] We therefore reject WorldCom's proposed language because it would require the routine disclosure of CPNI in a manner inconsistent with the Act and the Commission's rules.

666. We also decline to adopt WorldCom's language to the extent it would require the disclosure of information that is not CPNI. WorldCom admits that it does not need this information to provision any service for its new customers,[2213] and WorldCom cites no statutory provision or Commission order requiring the release of this information to competitive LECs. For the same reason, we reject WorldCom's request that we require Verizon to participate in the NCTDE. Verizon need only disclose customer payment information to WorldCom upon the customer's affirmative written request for disclosure of information that is classified as CPNI. In the event Verizon receives such a request, Verizon may disclose the information without participating in the NCTDE. Finally, we note that Verizon and WorldCom have agreed on language regarding the migration of customers having delinquent accounts.[2214] In view of this agreement, we reject WorldCom's motion to strike this language from Verizon's contract proposal.[2215]

[2209] *See* 47 U.S.C. § 222(c)(2).

[2210] Tr. at 1952-53 (testimony of WorldCom witness Lichtenberg).

[2211] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information: Implementation of the Non- Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 & 96-149, 13 FCC Rcd 8061, 8126, para. 84 (1998) (*CPNI Order*), *vacated in part on other grounds sub nom. U S West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 530 U.S. 1213 (2000).

[2212] Tr. at 1951-52 (testimony of WorldCom witness Lichtenberg).

[2213] *Id.*

[2214] The agreed-upon language specifies that "[n]either Party shall refuse to migrate one of its Customers to receive service from the other Party (including disconnecting its Customer from service and porting its Customer's telephone number(s)) on the basis of its Customer owing it unpaid amounts." *Compare* WorldCom Reply at 206 n.75 (accepting Verizon's modification to the first sentence of WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 2.1.4.1), *with* Verizon BP Brief at 10.

[2215] *See* WorldCom Motion to Strike, Ex. C at 37.

4. Issue IV-74 (Billing Procedures)

a. Introduction

667. WorldCom and Verizon recognize that it is in both parties' interests to use electronic bills, in lieu of paper bills. However, the carriers disagree about whether: (1) Verizon's obligation to provide electronic bills should be qualified as "part of an operations trial" or whether the contract should, instead, state that Verizon will provide electronic bills to WorldCom and will make them the bill of record once the final product is available; (2) the providing party will transmit invoices within ten calendar or business days; and (3) the due date is defined by reference to the bill date or the date the bill is loaded or received by the parties.[2216] As described below, we adopt parts of both parties' proposals. Specifically, we adopt Verizon's operational trial and collocation billing language and WorldCom's provisions on billing due dates.

b. Positions of the Parties

668. WorldCom contends that its language should be adopted because Verizon's proposal, qualified by the operational trial, creates ambiguity and suggests that Verizon's obligation to perform commercially reasonable efforts might be conditional.[2217] According to WorldCom, requiring transmission of the bill within ten calendar days, as opposed to ten business days, ensures that the purchasing party will receive bills in a timely fashion. It further asserts that defining the bill due date as the date the bill is received or loaded ensures that this party will have the full 30, and not 20, days in which to process and pay bills.[2218] WorldCom denies that its language would require Verizon to prematurely implement electronic billing; instead, WorldCom argues that its proposal simply removes ambiguity regarding Verizon's obligation to move toward an electronic billing format and makes clear that the Billing Output Specification (BOS) Bill Data Type (BDT) formatted bill will become the bill of record once it becomes available.[2219]

669. Verizon argues it has offered to provide WorldCom, on a trial basis, a BOS BDT formatted electronic bill at no charge.[2220] According to Verizon, WorldCom would use this bill to pay and dispute charges for UNE-platform and UNE services and this electronic bill would become the bill of record for WorldCom at the same time Verizon offers it as the bill of record in Virginia generally.[2221] Verizon contends that an immediate change in practice, as contemplated

[2216] WorldCom Brief at 251.

[2217] *Id.* at 251-52.

[2218] *Id.* at 252.

[2219] WorldCom Reply at 207, citing Verizon Business Process Brief at 12.

[2220] Verizon Business Process (BP) Brief at 11.

[2221] *Id.*

by WorldCom's proposal, would prevent Verizon from ensuring that its billing methods remain accurate.[2222] Finally, we note that, in contrast to WorldCom's proposal, Verizon's language allows the providing party ten business days to transmit the invoice and defines the payment due date as 30 calendar days after the "bill date."[2223]

c. Discussion

670. We adopt Verizon's "operational trial" language found in its proposed section 9.1.1 on an interim basis until Verizon completes its trials and electronic billing is rolled out in Virginia, at which time Verizon will be required to submit a compliance filing deleting references to trials and making clear that the BOS BDT bill is the bill of record.[2224] We share Verizon's concerns about implementing its BOS BDT billing format before completion of its operational trials and we agree that it is in Verizon's interest to complete this trial without delay but not at the expense of accuracy.[2225] Directing Verizon to submit a compliance filing to make the BOS BDT bill the bill of record once the final product is available should address WorldCom's concerns about Verizon's commitment to provide accurate and auditable electronic bills.[2226]

671. We also adopt WorldCom's proposed Attachment VIII, section 3.1.2.3, which requires transmission of all invoices to the purchasing party within ten calendar days after the bill date. Additionally, this section provides that payment of amounts billed is due 30 calendar

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[2222] *Id.*, citing Tr. at 2602-03.

[2223] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 9.1.3.

[2224] This compliance filing should be made within 30 days of designating the BOS BDT bill as "available for election as the bill of record in Virginia through Change Management." *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 9.1.1.

[2225] *See, e.g., Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17429-45, paras. 19-42 (2001) (*Verizon Pennsylvania Order*) (discussing the difficulties experienced by Verizon in implementing its BOS BDT bill in Pennsylvania). As is apparent from the discussion in this order, the process of rolling out electronic billing is an involved one and we are concerned about including language in the parties' contract that would cause Verizon to rush its quality assurance trials for BOS BDT bills.

[2226] Additionally, we note that the Virginia Commission adopted three billing measurements and standards that Verizon is required to report, including a billing accuracy metric, thus providing an incentive to Verizon to issue accurate bills. *See Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change Metrics, issued January 4, 2002 (*Virginia Commission Performance Metrics and Standards Order*) *adopting Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Staff Motion to Establish Carrier Performance Standards for Verizon Virginia Inc. and for Order Prescribing Notice and Providing for Comment or Request Hearing, Attach. A, at 99, issued Oct. 10, 2001 (*Virginia Commission Staff Motion on Metrics and Standards*).

days after the date on which the bill is loaded and/or received by the purchasing party (*i.e.,* the "payment due date"). In the absence of any objection from Verizon, we find WorldCom's arguments about affording the parties additional time to receive and pay bills to be reasonable.

672. Finally, we adopt Verizon's proposed section 9.2 on collocation billing and reject WorldCom's section 3.1.4.1. While the substance of both parties' language is identical, WorldCom's proposal refers to nonrecurring costs associated with building collocation cages as "collocation capital expenditures," whereas Verizon chooses not to use that term. We understand that this term is in the current contract; however, since it appears superfluous and Verizon expressed related concerns with an earlier version of WorldCom's proposal, we adopt Verizon's proposal.[2227]

H. General Terms and Conditions

1. Issue I-11 (Termination of OSS Access)

a. Introduction

673. The parties disagree whether and when Verizon may terminate competing carriers' access to Verizon's operations support systems (OSS). Concerned about misuse of its Web Graphical User Interface (Web GUI) OSS, Verizon proposes language authorizing it to terminate competitive LEC access to all OSS in case of abuse of any OSS.[2228] AT&T, Cox, and WorldCom oppose this language, contending it permits an extreme remedy which is not justified by any past abuse of the Web GUI. Cox proposes alternate language governing disputes over OSS use,[2229] and AT&T and WorldCom simply request that we reject Verizon's proposal. We agree with AT&T, Cox, and WorldCom, and reject Verizon's proposed language. We adopt Cox's proposed language for its contract with Verizon.

b. Positions of the Parties

674. AT&T argues that Verizon has presented no adequate justification for terminating access to OSS, and suggests that it would be draconian for Verizon to terminate AT&T's access to all OSS because of a problem with only one system.[2230] In addition, AT&T asserts that

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[2227] *See* Verizon Ex. 27 (Rebuttal Testimony of K. Schneider, *et al.*), at 9 (indicating that Verizon's system does not allow it to bill separately for capital costs).

[2228] *See* Verizon's November Proposed Agreement to AT&T, Schedule 11, § 5.1; Verizon's Proposed November Agreement to Cox, Schedule 11.7, §§ 1.6.5.1-1.6.5.3; Verizon's Proposed November Agreement to WorldCom, Part C, Additional Services Attach., §§ 8.1-8.10.

[2229] *See* Cox's November Proposed Agreement to Verizon, Schedule 11.7, § 1.7.1.

[2230] AT&T Brief at 195-96.

competitive LECs have an incentive to protect Verizon's OSS, because the systems are just as critical to competitive LECs' businesses as they are to Verizon's business.[2231]

675. Cox maintains that the termination rights are unnecessary because of other contractual protections, and that Verizon has failed to justify them.[2232] Specifically, Cox notes that Verizon is empowered to suspend the contract for material breach by a competitive LEC, and Cox has agreed that misuse of OSS would be deemed a material breach.[2233] Cox points out that none of the past problems Verizon discussed during this proceeding would warrant termination; while these problems may have caused system slowdowns, they have not damaged the Web GUI.[2234] According to Cox, Verizon has other protections as well: software changes, standards for use of OSS, and a competitive LEC's incentive to protect OSS which is important to its own business.[2235] In addition, Cox argues that Verizon could easily abuse its termination right to affect a competitive LEC's use of OSS or to spy on proprietary competitive LEC information.[2236] Cox does not oppose Verizon's monitoring OSS usage, but Cox points out that this is different from monitoring customer proprietary network information (CPNI).[2237]

676. WorldCom also opposes Verizon's proposed language. Although Verizon "promised" during the hearings in this proceeding only to exercise its termination right as a last resort, according to WorldCom, the proposed contract language does not impose this limitation on Verizon.[2238] WorldCom also contends that Verizon's remedy is unnecessary, because Verizon has identified no past instances of abuse where Verizon would have terminated a competitive LEC's access to all OSS.[2239] WorldCom argues that lesser remedies exist, including remedies Verizon has used effectively in the past when it suspected competitive LECs were using robots to access the Web GUI.[2240] WorldCom also charges that Verizon improperly added to its November proposal additional and irrelevant contract language which pertains to OSS questions

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[2231] *Id.* at 196.

[2232] Cox Brief at 48-49.

[2233] *Id.*

[2234] *Id.* at 49.

[2235] *Id.* at 49-50.

[2236] *Id.* at 50.

[2237] Cox Reply at 33-34. We discuss this CPNI issue above with Issues I-8/IV-97.

[2238] WorldCom Brief at 181, citing Tr. at 2570-71, 2579.

[2239] WorldCom Brief at 182-83; WorldCom Reply at 162-63

[2240] WorldCom Brief at 182-83. WorldCom indicates that disputes over OSS use are normally resolved through negotiated solutions or, failing that, review or enforcement by the state commission that arbitrated the parties' contract. *Id.* at 182.

unrelated to Issue I-11 and which would grant Verizon broad rights to alter competitive LEC access to OSS.[2241]

677. Verizon is concerned about the misuse of its Web GUI OSS, which is designed solely for use by human operators at computer terminals, and was not designed to handle the large volumes of orders associated with an electronic (or "robot") interface.[2242] However, on occasion, Verizon has detected competitive LECs' using the Web GUI through an electronic interface, which permits large volumes of information requests to be sent in a short period of time.[2243] Verizon states that it can tell when a competitive LEC is using a robot to access the Web GUI, because a single human user could not initiate queries at the same quick rate.[2244] Verizon argues that a competitive LEC's robot use of the Web GUI constitutes a misuse of Verizon's system, which the petitioners have admitted can cripple the Web GUI OSS.[2245] Verizon testified at the hearing that it would exercise its proposed right of termination only on extraordinary occasions,[2246] involving "serious interference with [Verizon's] OSS [such] that either no other CLEC could use it, or [Verizon VA's] back-end systems would . . . be seriously impaired, such as the loss of database records."[2247] Verizon would only terminate access to OSS, it says, after giving the offending competitive LEC ten days' notice, and only if the competitive LEC failed to cure its misuse within those ten days.[2248] In addition, while AT&T, Cox, and WorldCom have not abused the Web GUI in the past, Verizon says this provision is necessary to protect against the conduct of competitive LECs that may choose to opt-in to this agreement in the future.[2249]

[2241] WorldCom Reply at 163-67. WorldCom has substantive objections to the new language as well. For example, WorldCom asserts that, contrary to the ordinary collaborative and change management processes, the language grants Verizon the sole discretion both to determine how competitive LECs may access OSS and to change OSS. *Id.* at 164, 166. In addition, WorldCom argues that the language provides for overly broad cooperative testing, and would require WorldCom to submit a business plan to Verizon. *Id.* at 165- 66.

[2242] Verizon Business Process (BP) Brief at 5.

[2243] *Id.* at 5-6.

[2244] *Id.* at 5 (stating that robots have previously initiated tens of thousands of queries in an eight-hour period).

[2245] Verizon BP Reply at 2.

[2246] Tr. at 2569-71.

[2247] Verizon BP Brief at 7, quoting Tr. at 2570.

[2248] Verizon BP Brief at 7. Verizon also points out that in all incidents of past abuse, the offending competitive LEC was able to cure its misuse within ten days. *Id.*

[2249] Verizon BP Reply at 3.

c. Discussion

678. We agree with the petitioners and reject Verizon's proposed language.[2250] The record does not support Verizon's assertions that a competitive LEC could likely disable the Web GUI or any other OSS.[2251] Verizon has testified that no event has occurred to date that would justify termination of access to OSS.[2252] While some competitive LECs may have used a robot interface with Verizon's Web GUI in the past, causing a system slowdown,[2253] Verizon has not shown that such misuse has resulted in anything more than a temporary system slowdown.[2254] Moreover, in the past, Verizon has chosen effective remedies, short of termination, to deal with the few instances of abuse that have occurred.[2255] In each instance, Verizon suspended system access for the offending individual user and alerted the competitive LEC to the misuse,[2256] and in no case did Verizon suspend the competitive LEC's access to all OSS.[2257]

679. Nevertheless, Verizon proposes a powerful remedy that, if exercised, would have a serious adverse impact on the offending competitive LEC, dramatically restricting its ability to do business. Verizon's proposed contract language neither confines termination to a particular type of abuse nor limits Verizon's termination rights to instances of actual damage to the Web GUI or other OSS. Other than committing Verizon to giving ten days' notice of its intention to terminate a competitive LEC's access to OSS, the contract language contains no limitations on the exercise of this termination right.[2258] In fact, Verizon's language provides no guidance on the

[2250] Because we reject Verizon's proposed language for this issue on the merits, WorldCom's motion is moot as it relates to Issue I-11. *See* WorldCom Motion to Strike, Ex. E at 55-65.

[2251] While Verizon asserts that damage to the Web GUI would have adverse effects on Verizon and all other competitive LECs that access Verizon's Web GUI, Verizon has not demonstrated that such damage is as severe as it claims. *See* Verizon BP Reply at 3.

[2252] Tr. at 2586.

[2253] Verizon BP Brief at 5-6; *Id.* at 3, citing Tr. at 2044.

[2254] Verizon's own witness indicated at the hearing that "Volumes in and of themselves do not harm our systems." Tr. at 2569. *See also* Tr. at 2578-80.

[2255] Tr. at 2575-79, 2585-86.

[2256] Tr. at 2578. Verizon has not indicated that these problems have recurred. Tr. at 2585-86; Verizon BP Brief at 7.

[2257] *Id.* at 7, Tr. at 2585-86.

[2258] Verizon's proposed language states that Verizon has sole discretion to terminate OSS: the proposed contract language grants competitive LECs neither the specific opportunity to dispute the alleged abuse within the ten days, nor any opportunity to influence Verizon's judgment of what would constitute terminable OSS abuse. For example, Verizon's language does not anticipate that it will reach any collaborative agreement with its requesting carriers as to what level of abuse justifies termination. *See also* Tr. at 2540-2544 (regarding competitive LEC influence on Verizon's decision to terminate OSS).

type or level of OSS abuse that would justify termination.[2259] Verizon has failed to establish that the other, less draconian, remedies the petitioners suggest are insufficient for Verizon to maintain its OSS in working order.

680. For these reasons, we reject Verizon's proposed Issue I-11 language for its contracts with AT&T, Cox, and WorldCom.[2260] We conclude that Verizon's proposed remedy is disproportionate to any OSS harm that it has experienced, or is likely to experience. We adopt Cox's proposed language for its contract with Verizon.[2261] Verizon has not suggested that it has any problems with Cox's proposed language, other than to insist on its own proposal.[2262]

2. Issue III-15 (Intellectual Property of Third Parties)

a. Introduction

681. WorldCom and Verizon disagree about how to ensure that Verizon will use its "best efforts" to obtain intellectual property licensing rights from third parties on behalf of WorldCom so that WorldCom may use the intellectual property embedded in Verizon's network. WorldCom seeks to include, among other things, indemnification language that would apply if Verizon fails to use its best efforts. Verizon opposes WorldCom's proposal, arguing that applicable law and the contract's general enforcement provisions provide WorldCom with adequate remedial protection.[2263] Section 251(c)(3) of the Act requires incumbent LECs to provide nondiscriminatory access to UNEs.[2264] The Commission's *UNE Licensing Order* clarified an incumbent's obligations under this section, stating that "it is reasonable to require incumbent LECs to use their best efforts to obtain coextensive intellectual property rights from the vendor on terms and conditions that are equal in quality to the terms and conditions under which the incumbent LEC has obtained these rights."[2265] Additionally, the Fourth Circuit held

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[2259] Even in its testimony and pleadings in this proceeding, Verizon has not clearly established which sorts of extraordinary abuse would justify termination. *See* Tr. at 2579-2582.

[2260] Verizon's November Proposed Agreement to AT&T, Schedule 11, § 5.1 [we note that AT&T refers to this same language as "Schedule 11.6, § 5.1"] ; Verizon's Proposed November Agreement to Cox, Schedule 11.7, §§ 1.6.5.1-1.6.5.3; Verizon's Proposed November Agreement to WorldCom, Part C, Additional Services Attach., §§ 8.1-8.10.

[2261] *See* Cox's November Proposed Agreement to Verizon, Schedule 11.7, § 1.7.1.

[2262] Neither AT&T nor WorldCom propose alternate language. WorldCom prefers to rely on the contract's general remedy provisions.

[2263] We note that AT&T and Verizon reached agreement on this issue after Verizon revised its proposal. *See* Verizon General Terms and Conditions (GTC) Brief at 3.

[2264] 47 U.S.C. § 251(c)(3).

[2265] *Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements*, CC Docket No. 96-98, Memorandum Opinion and Order, 15 FCC Rcd 13896, 13908, para. 21 (2000) (*UNE Licensing Order*).

that Verizon was required to "attempt to renegotiate its existing intellectual property licenses to cover use by" the competitive LEC but that if negotiations fail, it does not interpret section 251(c)(3) to impose an absolute duty to provide identical licensing terms in the case of existing agreements.[2266] For reasons we explain below, we adopt Verizon's proposal.

b. Positions of the Parties

682. WorldCom argues that it must rely on Verizon's relationships and negotiations with the vendors whose intellectual property is used in Verizon's network.[2267] For this reason, WorldCom contends that Verizon is best positioned to determine whether its existing contracts with third-party vendors would permit WorldCom to use UNEs without modification, to renegotiate the contracts if necessary, and to negotiate future contracts to ensure that they contemplate WorldCom's use of the intellectual property present in a UNE.[2268] According to WorldCom, its proposed indemnification, warranty and notification clauses are a commercially reasonable means of implementing the Commission's *UNE Licensing Order* and the Fourth Circuit's decision.[2269] Specifically, WorldCom asserts that when a party is obligated to negotiate certain license terms under a best efforts test, it is standard business and legal practice to require indemnification for a failure to use best efforts.[2270] WorldCom argues that Verizon's proposal would delay negotiations over license rights until a point at which the breach is pending or threatened and that such a position is inconsistent with the *UNE Licensing Order* and the Fourth Circuit's decision.[2271] WorldCom also claims that its proposed warranty language ensures that Verizon does not intentionally modify existing licensing agreements in a manner detrimental to WorldCom.[2272] Furthermore, WorldCom contends that its notification language, which requires Verizon to inform it of any pending or threatened intellectual property claims by third-party licensors, is customary and sensibly implements the *UNE Licensing Order* and the Fourth Circuit's decision.[2273] Finally, WorldCom argues that its proposal is consistent with that proposed by Verizon elsewhere in the contract (*e.g.*, indemnifying Verizon if WorldCom fails to comply

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[2266] *See AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc.*, 197 F.3d 663, 671 (4th Cir. 1999).

[2267] WorldCom Brief at 234, citing WorldCom Ex. 31 (Rebuttal Testimony of R. Peterson and M. Harthun), at 2-3.

[2268] *Id.*, citing *UNE Licensing Order*, 15 FCC Rcd at 13902, para. 10.

[2269] *Id.* at 234-35.

[2270] *Id.* at 235, citing WorldCom Ex. 16 (Direct Testimony of R. Peterson and M. Harthun), at 8.

[2271] *Id.* at 238.

[2272] *Id.* at 235-36.

[2273] *Id.* at 236.

with its regulatory obligation to examine the eligibility of WorldCom's customers for Lifeline/Link-Up services).[2274]

683. Verizon states that the *UNE Licensing Order* requires it to: (1) make UNEs available; (2) provide notification of any restrictions in third-party licensing agreements that affect the competitive LEC's use of the UNEs; (3) use best efforts to procure rights or licenses that allow the competitive LEC coextensive usage of UNEs; and (4) recover costs from the competitive LEC to the extent permitted under applicable law.[2275] Verizon argues that WorldCom's proposal seeks to replace the best efforts standard with a strict liability standard by "illegitimately injecting warranty and indemnification obligations not required" by either the *UNE Licensing Order* or the Fourth Circuit ruling.[2276] According to Verizon, the Fourth Circuit and the Commission merely require Verizon to use its best efforts and not to guarantee the procurement of intellectual property rights, nor do they require Verizon to indemnify WorldCom for what may be an impermissible use of third-party intellectual property.[2277] Verizon contends that under WorldCom's proposal, either WorldCom would receive the intellectual property rights it seeks or Verizon would be required to pay it for being unsuccessful in negotiating those rights.[2278]

684. Verizon states that, in a recent arbitration order, the New York Commission rejected an identical proposal made by AT&T, finding that AT&T's proposal "would, in effect, have Verizon guarantee the performance of third-party vendors to AT&T."[2279] Instead, Verizon notes, the New York Commission ordered Verizon to provide notice to AT&T if and when it is unsuccessful in negotiating co-extensive terms for AT&T, and held that this notice, together with the general enforcement provisions of the agreement, give AT&T sufficient remedies.[2280] According to Verizon, WorldCom has offered no viable reason why it cannot agree to the Verizon-AT&T language, which memorializes Verizon's obligation to use its best efforts to negotiate with third parties so that AT&T will have the right to use the intellectual property embedded in Verizon's network.[2281]

[2274] *Id.* at 237-38.

[2275] Verizon General Terms and Conditions (GTC) Brief at 3-4.

[2276] *Id.* at 4.

[2277] *Id.*

[2278] *Id*.

[2279] *Id.* at 4-5, citing Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues, at 23 (issued by New York Comm'n July 30, 2001) (*New York Commission AT&T Arbitration Order*).

[2280] *Id.* at 5, citing *New York Commission AT&T Arbitration Order* at 23.

[2281] *Id.* at 3, 5, citing Verizon's November Proposed Agreement to AT&T, § 28.16.4.

c. Discussion

685. We adopt Verizon proposal because we find that it appears to be a fair interpretation of the Commission's directives set forth in its *UNE Licensing Order*.[2282] Accordingly, we direct the parties to include language requiring Verizon to notify WorldCom of any restrictions preventing it from providing particular UNEs to WorldCom, absent additional action or cost, and to use its best efforts, as commercially practical, to procure rights or licenses so that it may provide to WorldCom the particular UNE(s).[2283] If Verizon is unsuccessful in obtaining a right or license for WorldCom, it shall promptly notify WorldCom of the specific facilities or equipment at issue as well as the specific circumstances that prevented it from obtaining the revised provisions.[2284]

686. In addition, we deny WorldCom's motion to strike Verizon's revisions reflected in its November proposal to WorldCom.[2285] We find that Verizon's modification benefits WorldCom by providing it with additional information about Verizon's inability to procure a right or license for WorldCom. Specifically, Verizon proposes to provide WorldCom with the following information:

> the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as any and all related facilities or equipment; the extent to which it asserts MCIm's use has exceeded (or will exceed) the scope of the license; and the specific circumstances that prevented it from obtaining the revised provisions.[2286]

Verizon's earlier proposal merely obligated it to notify WorldCom of its inability to procure a right or license for WorldCom. Since we find for Verizon on the merits of this issue and on other grounds, we determine that WorldCom should benefit from Verizon's revision, which it made in response to concerns raised by AT&T. We also conclude that Verizon's new language is consistent with the level of detail required by the Commission's *UNE Licensing Order*.[2287]

[2282] In this order, the Commission expressly declined to mandate a particular method by which the incumbent could satisfy its obligations but did list a minimum amount of information that it expected the incumbent to share with the affected competitive LEC. *See UNE Licensing Order*, 15 FCC Rcd at 13902, 13906, paras. 9, 17. Specifically, we adopt Verizon's proposed Part A, section 22.4.

[2283] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 22.4. We note that, although Verizon cites to its proposed agreement with AT&T (section 28.16.4) in its brief and DPL, it incorporated this same language in its proposed contract to WorldCom at section 22.4.

[2284] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 22.4.

[2285] *See* WorldCom Motion to Strike, Ex. E at 65-66.

[2286] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 22.4(b).

[2287] *See, e.g., UNE Licensing Order*, 15 FCC Rcd at 13906, para. 17.

Finally, we do not have procedural concerns with Verizon's revised proposal. The parties agreed to waive cross examination on this issue and, instead, brief their dispute. Since Verizon filed its revision prior to the post-hearing briefs, we find that WorldCom had adequate opportunity to explain why it opposes this particular modification.

687. We recognize WorldCom's concerns about having to rely on the best efforts of Verizon to ensure its ability to obtain UNEs that Verizon is otherwise required to provide pursuant to the contract or applicable law. In the *UNE Licensing Order*, the Commission, too, understood this concern and noted that incumbents are under a "rigorous and continuing obligation to negotiate in good faith" and that this good faith obligation is violated if, for example, the incumbent "frustrates the ability of a requesting carrier to obtain co-extensive rights to use [UNEs]."[2288] If WorldCom believes that Verizon failed to use its best efforts in negotiating on WorldCom's behalf, it may, of course, use the contract's dispute resolution process. We would expect that through this process, WorldCom would obtain the necessary information for it to confirm whether Verizon had, in fact, used its best efforts on WorldCom's behalf.

3. Issue IV-45 (Fraud Prevention)

a. Introduction

688. WorldCom and Verizon disagree about how to address losses caused by fraud on either party's network. WorldCom proposes that each party indemnify and hold the other harmless for any losses payable to interexchange carriers (IXCs) caused by "clip-on" fraud.[2289] Verizon opposes this proposal and argues that each party should bear the responsibility for all fraud associated with its customers and accounts. As described below, we adopt portions of each party's proposal.

b. Positions of the Parties

689. WorldCom argues that Verizon should be responsible for clip-on fraud because it controls the facilities where this fraud occurs and, therefore, is in the best position to prevent this

[2288] *Id.*, para. 18. *See also id.* at 13902, para. 10:

> If incumbent LECs were not required to obtain the right [to use intellectual property] for requesting carriers to use the network elements, they would likely have an incentive to interpret their licenses with these [third-party] providers as narrowly as possible to make it more difficult for competing carriers to obtain access to the elements.

[2289] As described by the parties' witnesses, "clip-on" fraud, which the parties agree is the type of fraud at issue in this proceeding, occurs when an unauthorized person physically attaches a device to a carrier's phone line in its outside plant, typically at the demarcation point and in facilities such as "closets" located in the basement of large buildings or in other out-of-the-way places. *See* Tr. at 1925-27; WorldCom Ex. 22 (Direct Testimony of R. Zimmerman), at 4; Verizon General Terms and Conditions (GTC) Brief at 7.

type of loss.[2290] WorldCom contends that its proposal is consistent with the current interconnection agreement, as well as Verizon's historic practice of investigating instances of fraud.[2291] According to WorldCom, Verizon holds WorldCom responsible for the costs of fraud committed against Verizon customers in the long-distance context when the fraud occurs on WorldCom's network; therefore, WorldCom argues that Verizon seeks to impose costs on WorldCom in the local arena that it refuses to bear in the long-distance context.[2292] In responding to Verizon's argument that it can only monitor and protect against clip-on fraud by "sheer luck," WorldCom contends that there is no reason to believe that WorldCom could perform that task at all.[2293] Finally, WorldCom disagrees that the Commission orders cited to by Verizon apply to the question of financial responsibility for clip-on fraud.[2294]

690. According to Verizon, the parties have agreed to contract language that memorializes their commitment to work cooperatively to minimize various types of fraud and that Verizon will make available fraud prevention features embedded in its network.[2295] Verizon rejects WorldCom's suggestion that Verizon is in any better position than WorldCom to deter or prevent clip-on fraud[2296] and that, like any other type of LEC, WorldCom must accept the day-to-day risks of doing business.[2297] Verizon states that, because it is willing to provide WorldCom

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[2290] WorldCom Brief at 184-85. WorldCom also argues that the burden of bearing the cost of clip-on fraud should not turn on the identity of the customer but, rather, the carrier in the best position to deter the fraud. WorldCom Reply at 168.

[2291] WorldCom Brief at 185, citing WorldCom Ex. 36 (Rebuttal Testimony of R. Zimmerman), at 3-4.

[2292] WorldCom Brief at 185-86, citing Tr. at 1928; WorldCom Ex. 36, at 4. *See also* WorldCom Reply at 169.

[2293] WorldCom Reply at 168, citing Verizon GTC Brief at 8.

[2294] WorldCom Reply at 169-70. According to WorldCom, the *Advanced Services Order II* provides that incumbents may impose security arrangements that are as stringent as those that the incumbent maintains at its own premises, and the *Local Competition First Report and Order* permits incumbents to require reasonable security arrangements to separate the competitive LEC's collocation space from the incumbent's facilities. *Id.*, citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4787, para. 47 (1999) (*Advanced Services Order II*), *aff'd in part, and vacated and remanded in part sub nom GTE Service Corp. v. F.C.C.*, 205 F.3d 416 (D.C. Cir. 2000); *Local Competition First Report and Order*, 11 FCC Rcd at 15803, para. 598.

[2295] Verizon GTC Brief at 7, citing Verizon's November Proposed Contract to WorldCom, sections 17.1 and 17.2.

[2296] Verizon contends that clip-on fraud occurs for a limited period of time and, typically, is perpetrated in basement closets and other out-of-the-way places; therefore, even if Verizon hired additional employees to patrol its network, Verizon asserts that it would only be by sheer luck that Verizon would catch someone in the act of clip-on fraud. Verizon GTC Reply at 3.

[2297] Verizon GTC Brief at 8 (arguing that, in essence, WorldCom is seeking free insurance against the criminal acts of third parties). Verizon also argues that requiring it to insure against loss due to fraud exceeds its obligation to implement reasonable security procedures. *Id.*, citing *Advanced Services Order II*, 14 FCC Rcd at 4787-88, paras. 46-48; *Local Competition First Report and Order*, 11 FCC Rcd at 15803, para. 598.

with nondiscriminatory access to Verizon's fraud detection information, the only dispute involves WorldCom's indemnity proposal.[2298] Verizon also contends that WorldCom's proposal ignores the fact that it is not possible to prevent every possible instance of this particular type of fraud, which has occurred only twice in Virginia since 1999.[2299]

c. Discussion

691. We adopt Attachment IX, sections 3.1 and 3.2 of WorldCom's proposal to Verizon and sections 17.1 and 17.3 of Verizon's proposal to WorldCom.[2300] Although we recognize that WorldCom's proposed section 3.3 is in the parties' current interconnection agreement, we agree with Verizon that each party should bear the financial responsibility for clip-on fraud associated with its customers and accounts and, thus, we adopt Verizon's section 17.3 instead.[2301] The record indicates that this fraud is an uncommon problem in Virginia,[2302] but that preventing it poses substantial logistical challenges to Verizon.[2303] Requiring the parties to cooperate in a commercially reasonable manner and share the fraud prevention features embedded in their networks offers a more practical solution to this crime than simply requiring each party to indemnify the other for its losses. Accordingly, we would expect Verizon to investigate complaints made by WorldCom in a reasonable and timely manner, including, if appropriate, performing a site check.[2304] Should WorldCom believe that Verizon has not acted in a reasonable manner, it may use the agreement's dispute resolution process.[2305] Finally, we note

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[2298] Verizon GTC Reply at 2.

[2299] *Id.* at 3.

[2300] We deny, with respect to this issue, WorldCom's motion to strike Verizon's revised language in its November contract proposal. *See* WorldCom Motion to Strike, Ex. E at 66. A comparison of Verizon's sections 17.1 and 17.3, which we adopt herein, and its previously proposed language reveals no legally or operationally significant difference. *See id.* (setting out previously proposed sections 17 and 26.1).

[2301] In reaching this conclusion, however, we do not agree with Verizon that the Commission's findings on security at Verizon's facilities with respect to collocating competitive LECs are applicable to the instant dispute. *See* WorldCom Reply at 169-70.

[2302] *See* Tr. at 1931 (Verizon's witness testifying that in the past three years, there were two cases of clip-on fraud in Virginia).

[2303] *See, e.g.,* WorldCom Ex. 22, at 4 (stating that clip-on fraud typically does not occur in areas open to the public but that it tends to occur in facilities such as telephone closets in the basements of large apartment buildings); Verizon GTC Reply at 3 (asserting that this crime occurs for a limited period of time, usually ending before the fraudulent calls are noted on the customer's bill).

[2304] *See* Tr. at 1932 (Verizon's witness testifying that after receiving a signal from WorldCom that fraud may be occurring, Verizon will work with WorldCom to perform a site check).

[2305] During the hearing, Verizon's witnesses testified that three to four years ago a dispute involving clip-on fraud was arbitrated in New York and, due to Verizon's actions or inaction, Verizon was directed to indemnify MCI. *See* Tr. at 1929-30. We note that nothing in this Order would prevent a subsequent finding that Verizon acted (continued….)

that the record is unclear about the circumstances under which Verizon demands indemnification from WorldCom for fraud by Verizon customers on WorldCom's long distance network. Consequently, we reject the argument that Verizon's position in that context requires a ruling for WorldCom here.[2306]

692. Although there was much discussion in our record about WorldCom's proposed section 3.3, there was none about section 3.2, which provides that uncollectible and unbillable revenues from fraud and resulting from error shall be the responsibility of the party causing such error. Given the lack of a record on this section and the fact that this section is in the existing contract, we find that its inclusion is reasonable.[2307] We also find reasonable Verizon's proposed section 17.1, which requires the parties to work cooperatively in a commercially reasonable manner to minimize fraud.[2308]

4. Issue IV-95 (Costs of Compliance)

a. Introduction

693. WorldCom and Verizon disagree about what language should be included to address costs incurred in complying with the terms of the interconnection agreement. WorldCom explains that its language is necessary to make clear that, subject to certain specified exceptions, each party is responsible for all costs and expenses incurred in complying with its obligations under the interconnection agreement. WorldCom's proposed language states that, except as otherwise specified in the interconnection agreement, each party shall be responsible for all costs and expenses incurred in complying with its obligations under the agreement, and for the development, modification, technical installation and maintenance of any systems which are required for compliance. While Verizon argues that we should exclude this WorldCom proposal from the contract, in the alternative, Verizon has offered to accept this proposal if it is modified to include an exception for when the agreement's obligations to which this provision refers are

(Continued from previous page)
unreasonably in a particular situation and should be directed to indemnify WorldCom for that specific incident. We simply disagree that the contract should contain a blanket indemnification clause for clip-on fraud.

[2306] *See* Tr. at 1927-28. For the reasons provided above, however, we would maintain our findings regardless of what requirements Verizon makes of WorldCom in the long distance context.

[2307] We note that this finding is not inconsistent with our determinations about WorldCom's proposed indemnification clause, below, because we assume that in section 3.2 some showing must be made by the contesting party that the other party erred or was at fault in permitting the fraud to occur. WorldCom's section 3.2 thus differs from its proposed section 3.3, which requires no showing of fault.

[2308] Although Verizon indicates that WorldCom has agreed to Verizon's proposed section 17.1, WorldCom's proposal does not contain this language and its briefs are silent on this point. Even without WorldCom's express agreement, we still direct the parties to include this section because we support the policy of encouraging the parties to work cooperatively to minimize fraud.

"otherwise provided for under Applicable Law."[2309] Without the addition of this phrase, Verizon opposes WorldCom's language. We adopt WorldCom's proposed language, with the modification proposed by Verizon.

b. Positions of the Parties

694. WorldCom argues that the interconnection agreement should contain its proposed section 8.2, because it would clarify that neither party should be financially responsible for the other party's compliance with the terms of the agreement.[2310] WorldCom states that the additional clause proposed by Verizon is unnecessary and should be rejected for several reasons.[2311] First, WorldCom argues that changes in law are already addressed in the interconnection agreement's pricing attachment, which provides that the rates will change if there is a change in the law governing those rates.[2312] Second, WorldCom asserts that the undefined nature and breadth of Verizon's "applicable law" clause will permit Verizon to attempt to foist charges on it that WorldCom does not agree are required under any existing law.[2313] According to WorldCom, if Verizon desires to change its rates to cover additional costs, it may seek an order from a state commission; absent such an order, however, the parties should be required to bear their own costs and charge only those rates articulated in the pricing attachment.[2314]

695. Verizon asserts that the additional phrase is needed to clarify that Verizon must be compensated for its costs in providing services to WorldCom, even if those costs are not contained in the parties' pricing schedule.[2315] Verizon is concerned that if WorldCom's proposal is adopted, WorldCom or another competitive LEC opting into the agreement may later argue that Verizon is estopped from recovering future costs associated with complying with this agreement. Furthermore, Verizon maintains that without its proposed addition, WorldCom may try to use this provision to avoid or delay legitimate charges that arise as a result of changes in applicable law.[2316] As an example, Verizon asserts that if a competitive LEC desired a particular costly modification to Verizon's OSS, under WorldCom's proposed language on this issue, WorldCom or a competitive LEC opting into the agreement might argue that Verizon bears the

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[2309] As modified by Verizon, section 8.2 would state, "Except as otherwise specified in this Agreement, or otherwise provided for under Applicable Law, each Party shall be responsible for" various costs of compliance. *See* Verizon General Terms and Conditions (GTC) Brief at 14.

[2310] *See* WorldCom Pet. at 175; WorldCom Ex. 21 (Direct Testimony of J. Trofimuk, *et al.*), at 30-32; WorldCom Ex. 32 (Rebuttal Testimony of J. Trofimuk, *et al.*), at 21-22.

[2311] WorldCom Brief at 197.

[2312] *Id.*

[2313] *Id.,* citing WorldCom Ex. 32, at 22.

[2314] *Id.* at 197-98; WorldCom Reply at 175.

[2315] Verizon GTC Brief at 14; Verizon GTC Reply at 5.

[2316] *Id.*

total responsibility for this cost, even if the Commission had already issued an order setting forth how the costs for the modification should be allocated.[2317] Through its proposed additional language, Verizon believes that such future Commission orders will be given their appropriate intended effect.[2318]

c. Discussion

696. We adopt WorldCom's proposed Part A, section 8.2, with Verizon's proposed modification. We agree with Verizon that, under the example it provided in both of its post-hearing briefs, it should be permitted to recover its costs as set forth in a Commission order. We thus adopt Verizon's proposed language to the extent it is necessary to give Commission orders their appropriate intended effect. We also note, as does WorldCom, that the adopted language does not preclude Verizon from seeking to recover costs incurred in the future, through rates approved by a commission of competent jurisdiction. We do not credit WorldCom's argument that the "applicable law" clause is unnecessary because changes in law are already addressed in the agreement's pricing attachment. Even if true, the clause is not inconsistent with the change in law provision, and benefits the parties by clarifying their rights and responsibilities under the agreement.

5. Issue IV-101 (Alternative Dispute Resolution)

a. Introduction

697. Alternative dispute resolution procedures, such as arbitration, allow the parties to resolve disputes under the interconnection agreement without litigation. WorldCom and Verizon disagree about whether the contract's arbitration provisions should make clear that an arbitrator's award is final and binding, and should permit WorldCom to maintain its right to use the alternative dispute resolution process set forth in the merger conditions of the *Bell Atlantic-GTE Merger Order*.[2319] We adopt Verizon's proposal, with one modification.

b. Positions of the Parties

698. WorldCom contends that it should not be required, as it would have to do under Verizon's proposed language, to waive its rights to use the alternative dispute resolution process set forth in the Bell Atlantic-GTE merger conditions, which were explicitly "designed to . . . enhance competition in the local exchange and exchange access markets in which Bell Atlantic or

[2317] Verizon GTC Brief at 14-15; Verizon GTC Reply at 5.

[2318] Verizon GTC Brief at 15.

[2319] *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (*Bell Atlantic-GTE Merger Order*).

GTE is the incumbent local exchange carrier."[2320] According to WorldCom, contractually binding WorldCom to waive its rights under the merger order would frustrate the goals of the merger conditions.[2321] WorldCom also disagrees with Verizon's contention that we lack the authority to order that the interconnection agreement's binding arbitration provisions be modified as WorldCom suggests.[2322] According to WorldCom, it does not matter that parties to an ordinary contract could not be compelled to accept a provision that has been designated for arbitration under the Act; interconnection agreements created under the section 252 process contain terms and conditions that ordinary contracting parties could not be compelled to accept.[2323] Finally, WorldCom argues that, although it believes that any award under the contract's dispute resolution process should be final, it is willing to accept a provision that provides for limited review, such as under an "arbitrary and capricious" standard.[2324]

699. Verizon argues that any arbitration award should not be enforceable until the Virginia Commission has the opportunity to review the award.[2325] Verizon contends that allowing an arbitration to become effective prior to review "could lead to a situation where a party is forced to implement some change in practice pursuant to an arbitration award, only to have to try to undo that change when the Commission sets the arbitration award aside or otherwise modifies the award."[2326] Under Verizon's proposal, within 30 days of the arbitrator's opinion, the parties shall submit the decision to the Commission for review. Within 30 days of receipt of the decision, the Commission shall accept or modify the decision; failure to issue an order within 30 days would be deemed to be acceptance of the order. Thus, an arbitration award would become final or set aside within 60 days.[2327] Verizon also argues that we should reject WorldCom's proposal that allows it to pursue disputes both under the agreement's alternative dispute resolution procedures and under the dispute resolution procedures in the *Bell Atlantic-GTE Merger Order*.[2328] According to Verizon, "[s]uch forum shopping is inconsistent with the notion that, when parties have agreed to binding arbitration as the exclusive remedy to resolve disputes, they should be held to their agreement."[2329]

700. In addition, Verizon argues that because the Act does not require parties to include arbitration clauses in their interconnection agreements, we cannot require the inclusion of

[2320] WorldCom Brief at 201-202, quoting *Bell Atlantic-GTE Merger Order*, 15 FCC Rcd at 14036, para. 4. *See also* WorldCom Ex. 21 (Direct Testimony of M. Harthun, *et al.*), at 50.

[2321] WorldCom Brief at 202.

[2322] *Id. at 199-200*; WorldCom Reply at 176-77.

[2323] WorldCom Brief at 200.

[2324] *Id.* at 201 n.107, citing Tr. at 2087-88.

[2325] Verizon General Terms and Conditions (GTC) Brief at 17; Verizon GTC Reply at 6.

[2326] Verizon GTC Brief at 17. *See also* Verizon GTC Reply at 6-7.

[2327] Verizon GTC Brief at 17.

[2328] *Id.*

[2329] Verizon GTC Reply at 7.

such provisions in the parties' agreement.[2330] According to Verizon, arbitration of disputes is a matter of contract, not statute, and as such, no party can be required to arbitrate any dispute that it has not agreed to submit to arbitration.[2331]

c. Discussion

701. We adopt Verizon's proposal that any arbitration award not be effective until the Virginia Commission has had the opportunity to review the decision.[2332] We find that a maximum of 60 days is not an unreasonable amount of time before an arbitration award becomes effective. This period of review is appropriate in light of the substantial costs that a party might face to reverse any changes ordered by the arbitrator and subsequently set aside or modified by subsequent Commission action.

702. We agree with WorldCom, however, that it should not be required under this contract to give up its rights to seek dispute resolution under the terms of the *Bell Atlantic-GTE Merger Order*. Consequently, we strike the last sentence of Verizon's proposed section 14.2 so that it is clear that WorldCom may avail itself of the alternative dispute resolution procedure in the *Bell Atlantic-GTE Merger Order*, as appropriate. A contrary ruling would essentially modify that Commission order, which we cannot do, because we are acting on delegated authority in this proceeding.

703. We disagree with Verizon that we lack authority to require the inclusion of an alternative dispute resolution provision in this agreement. The Act gives us broad authority, standing in the shoes of a state commission, to resolve issues raised in this proceeding. The only limitations that section 252(b)(4)(C) and (c) place upon any individual issue addressed during arbitration are that the issue must be an "open issue," and that resolution of the issue does not violate or conflict with section 251.[2333] In this particular case, we find that an alternative dispute resolution procedure is integral to the smooth operation of this agreement, and will lead to the speedy and cost-efficient resolution of disputes.

704. Finally, we determine that WorldCom's motion to strike is moot because we are adopting Verizon's language with the noted modification above, proposed by WorldCom in the September JDPL and in Verizon's November Proposed Agreement to WorldCom, Part A, section 14.[2334] Verizon apparently offered alternative language to WorldCom in the November JDPL; however, since we are not considering that new proposal but, rather, adopting language, with one

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[2330] Verizon GTC Brief at 18-19; Verizon GTC Reply at 7.

[2331] Verizon GTC Brief at 18.

[2332] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 14.2.2. We note that only the last sentence of this section was disputed by the parties.

[2333] *Cf. USWest v. Minnesota Pub. Utils. Comm'n*, 55 F.Supp. 2d 968, 986 (D.Minn. 1999).

[2334] *See* WorldCom Motion to Strike, Ex. E at 67-70.

modification noted above, proposed by WorldCom in September, we do not need to address WorldCom's motion with respect to this issue.

6. Issue IV-106 (Indemnification)

a. Introduction

705. WorldCom and Verizon disagree about what language should be included in the contract to address indemnification. WorldCom explains that its proposal is necessary to establish that Verizon and WorldCom each would indemnify the other party for certain specified liability arising from the interconnection agreement. Verizon opposes this provision unless language contained in the parties' 1997 interconnection agreement is reinstated. This language would limit indemnification to losses "suffered, made, instituted, or asserted by the indemnifying Party's own customers against the indemnifying Party," except to the extent that the loss arises from a breach by the indemnified party.[2335] We adopt Verizon's proposal.

b. Positions of the Parties

706. WorldCom argues that each party should be required to indemnify the other for third-party claims that arise out of the indemnifying party's breach of the agreement.[2336] WorldCom maintains that its proposed language accomplishes this goal by "equitably allocat[ing] responsibility for damages and injury to the appropriate carrier, and prevent[ing] a carrier from being held financially responsible for costs and liabilities that are outside its control."[2337] WorldCom states that its provision confers reciprocal duties on the parties by applying to *all losses* arising from the indemnifying party breach of the agreement.[2338] WorldCom argues that Verizon's proposed language would unfairly apportion liability based solely on whose customer raises the third-party claim, and not on which party caused the harm.[2339] According to WorldCom, this approach would give Verizon a disincentive to perform its obligations under the agreement because Verizon would know that WorldCom, its competitor, would bear the costs of any customer claims arising from Verizon's failure to perform its duties.[2340] WorldCom asserts that such a result is anticompetitive.[2341]

[2335] *See* Verizon General Terms and Conditions (GTC) Brief at 20; WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Part A, 11.1(b).

[2336] WorldCom Brief at 207.

[2337] *Id.* at 205.

[2338] *Id.* at 208. WorldCom characterizes its proposed provision as "simply mak[ing] the parties responsible for their own mistakes." *Id*.

[2339] *Id.* at 208; WorldCom Reply at 180.

[2340] WorldCom Brief at 208-09.

[2341] *Id.* at 209.

707. Furthermore, WorldCom states that, contrary to Verizon's characterization, WorldCom does not ask Verizon to serve as a guarantor of third-party claims; rather, it seeks indemnification only when Verizon has breached the agreement and caused damage to a third party.[2342] WorldCom recognizes that mistakes will happen, and simply requests that Verizon bear the costs of those mistakes in the event that they rise to the level of a breach of the interconnection agreement and that an end-user brings a claim.[2343]

708. Verizon states that it cannot agree to include WorldCom's proposed section 19.1 unless the agreement incorporates a clause in the parties' 1997 interconnection agreement.[2344] According to Verizon, this language "provides an important incentive for each party to place in its tariffs and customer contracts limitations on the liability of its suppliers on account of the supplier's provision of services."[2345] In contrast, Verizon argues that WorldCom's proposal would make Verizon a guarantor, by requiring Verizon to indemnify WorldCom for any claims that WorldCom's customers make against WorldCom on account of Verizon's provision of services to WorldCom.[2346] Verizon states that, as a result, any time that Verizon does not provide perfect service (such as not performing a hot cut at the specified time), Verizon would be required to indemnify WorldCom if WorldCom's customer brings a claim against WorldCom.[2347] Verizon argues that instead, each party's liability under the interconnection agreement should generally be limited to the value of the services provided to the other party that are the subject of the claim.[2348] Verizon further states that, under its retail tariffs, Verizon's liability to its own end user customers for less than perfect service is generally limited to the amount of the charge for which Verizon billed, and the same should be true for WorldCom as a customer of Verizon.[2349] Finally, Verizon states that the Act requires that Verizon provide competitive LECs with nondiscriminatory service, not perfect service, and that WorldCom has no right to demand service from Verizon that is superior to that which Verizon provides to its own end user customers.[2350]

c. Discussion

709. We adopt Verizon's proposal to delete WorldCom's proposed section 19.2 and reinsert section 11.1(b) from the parties' 1997 agreement.[2351] WorldCom has failed to convince

[2342] WorldCom Reply at 181.

[2343] *Id.*

[2344] Verizon GTC Brief at 20.

[2345] *Id.*

[2346] *Id.*

[2347] *Id.* at 21; Verizon GTC Reply at 9.

[2348] Verizon GTC Brief at 21.

[2349] *Id.* at 22.

[2350] Verizon GTC Reply at 8.

[2351] *See* WorldCom Pet., Ex. D, Part A, § 11.1(b).

us that this provision is unreasonable or unnecessary. Specifically, we find that, in determining the scope of Verizon's liability, it is appropriate for Verizon to treat WorldCom in the same manner as it treats its own customers. Verizon has no duty to provide perfect service to its own customers; therefore, it is unreasonable to place that duty on Verizon to provide perfect service to WorldCom. In addition, we are not convinced that Verizon should indemnify WorldCom for all claims made by WorldCom's customers against WorldCom. Verizon has no contractual relationship with WorldCom's customers, and therefore lacks the ability to limit its liability in such instances, as it may with its own customers. As the carrier with a contractual relationship with its own customers, WorldCom is in the best position to limit its own liability against its customers in a manner that conforms with this provision.

7. Issue IV-107 (Intellectual Property of the Parties)

a. Introduction

710. WorldCom proposes language that would give each party a limited right to use the other's intellectual property that is embedded in, or reasonably appropriate to the use of, the facilities, equipment or services provided under the contract. Verizon opposes WorldCom's proposal for the reasons it provided in response to Issue III-15 above.[2352] We adopt WorldCom's proposed language.

b. Positions of the Parties

711. WorldCom argues that its proposal makes clear that the agreement does not itself create or modify the parties' intellectual property rights and provides that when one party interconnects with the other or leases a portion of the network from the other, the lessee only obtains a limited right to use the intellectual property owned by the lessor.[2353] WorldCom contends that its current proposal is "typical of agreements involving the use of technology."[2354] By contrast, WorldCom notes in opposition that the agreement reached between AT&T and Verizon requires those carriers to enter a separate agreement in order to use each other's intellectual property.[2355] Moreover, WorldCom argues that Verizon's section 28.16.1 strips WorldCom of any right to use Verizon's intellectual property, even if such use is consistent with

[2352] *See supra* Issue III-15.

[2353] WorldCom Brief at 239.

[2354] *Id*. at 239, citing WorldCom Ex. 19 (Direct Testimony of R. Peterson and M. Harthun), at 15.

[2355] *Id.* at 240 (arguing that the separate agreement is contrary to standard practice), citing AT&T-Verizon Interconnection Agreement, § 28.16.1. We note that in its November JDPL, Verizon proposes to use the same language for WorldCom as that to which AT&T and Verizon have agreed. *See, e.g.,* Second Revised Joint Decision Point List XI, General Terms and Conditions, at 36-37.

the contract.[2356] Finally, WorldCom asserts that, by failing to identify any substantive deficiencies with WorldCom's proposal, Verizon has waived any objections to it.[2357]

712. Verizon makes no mention of Issue IV-107 in its brief and reply. In pre-filed testimony, Verizon seeks protection against the unrestricted or unauthorized use of its intellectual property.[2358] Verizon also argues that this issue is related to Issue III-15 and that Verizon cannot be forced to obligate itself, through this contract, beyond the requirements of applicable law.[2359]

c. Discussion

713. We adopt WorldCom's proposed language.[2360] WorldCom is correct that, although afforded the opportunity to do so, Verizon does not respond substantively to WorldCom's proposed language. We find that WorldCom fairly characterized its proposal in both its pre-filed testimony and its brief, and absent any expressed concerns from Verizon, we determine that this proposal is reasonable. For example, Verizon does not explain why WorldCom's proposed language, which appears only to recognize a limited license to use the other party's intellectual property, would lead to unrestricted or unauthorized usage. Indeed, we note that the existing contract between the parties similarly provides for a limited license to use the other party's patents or copyrights to the extent necessary to use any facilities or equipment, or to receive any service, as provided under the contract.[2361] Since Verizon has not argued that the current language in its contract imposes obligations beyond its requirements under current law, we have no basis to conclude that WorldCom's proposed language would cause that result, as Verizon vaguely alleges in its pre-filed testimony.

[2356] WorldCom Brief at 240.

[2357] WorldCom Reply at 200.

[2358] Verizon Ex. 13 (Direct Testimony of C. Antoniou *et al.*), at 27.

[2359] *Id.* at 28 (repeating arguments made in Issue III-15).

[2360] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 20.1.

[2361] *See* WorldCom Petition, Ex. D (Interconnection Agreement Governing Current Relations), at Part A, § 10.

8. Issues IV-113/VI-1-E (Application of General Change of Law Provisions and UNE-Specific Change of Law Rules)[2362]

a. Introduction

714. WorldCom and Verizon disagree over whether *all* changes in law that materially affect the parties' obligations should be governed by the same change of law provisions, regardless of whether the change increases or decreases Verizon's UNE obligations. While Verizon accepts WorldCom's language with respect to new obligations, it proposes a 45-day negotiation and transition period that applies only when a change in law releases it from an obligation to provide a UNE. According to WorldCom, prevailing on this issue is important to prevent an unreasonable and anticompetitive limitation on the availability of UNEs. We agree with WorldCom that the change of law process should not vary depending on whether the change adds or removes obligations, and instead adopt its single change of law provision.

b. Positions of the Parties

715. WorldCom proposes a change of law provision requiring the parties to "negotiate promptly" to amend the agreement if there are changes in law that materially affect the parties' obligations with respect to the provision of services, or any other terms of the agreement.[2363] Furthermore, WorldCom proposes that "if the parties cannot reach agreement through good faith negotiation, the issue should be decided through a dispute resolution process."[2364] According to WorldCom, this process is a "critical issue because WorldCom and Verizon frequently cannot agree on the impact or implementation of court decisions or Commission orders."[2365] WorldCom opposes Verizon's proposed language, which contains separate provisions for when a change of law releases Verizon from an obligation to provide a UNE.[2366] WorldCom contends that Verizon's proposed rule would have an anticompetitive result because Verizon would unilaterally determine whether a change of law should be interpreted to permit Verizon to stop providing service. Moreover, WorldCom contends the proposed 45-day notice period is unreasonably short; if WorldCom disagrees with any aspect of Verizon's implementation of a UNE-related change in law, it would not permit sufficient time to negotiate with Verizon,

[2362] Because we adopt a single change of law provision in this section, we address both Issues IV-113 and VI-1-E here.

[2363] *See* WorldCom Brief at 213; WorldCom Reply at 184; WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2.

[2364] *See* WorldCom Brief at 213, citing WorldCom Ex. 16 (Direct Testimony of M. Harthun *et al.*), at 52.

[2365] *See* WorldCom Brief at 213, citing WorldCom Ex. 16 (Direct Testimony of M. Harthun *et al.*), at 52.

[2366] *See* WorldCom Brief at 152.

petition the Commission or the Virginia Commission, or transition customers to a new provider.[2367]

716. While Verizon agrees that the parties generally should meet and negotiate in good faith over changes in law, and that any remaining disagreements should be settled through the contract's dispute resolution procedure, Verizon proposes an additional paragraph stating that if "it is determined that Verizon is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to WorldCom hereunder, then . . . Verizon may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted . . . by providing forty-five days prior written notice."[2368] Verizon suggests that this 45-day notice period would apply only "if the new law does not state the date on which the obligation to provide the service ends."[2369] Verizon argues that changes releasing it from an obligation to provide a UNE should become effective within a short period of time, otherwise Verizon would be "held hostage" in negotiations with WorldCom. Verizon justifies its two-part change of law approach, arguing that changes relieving Verizon of a UNE obligation are "fundamentally different" from changes that add obligations, because the latter may involve the creation of new ordering systems, operational procedures, and "very specific implementation mechanics."[2370] Moreover, Verizon states that the process cannot be viewed as an unchecked, unilateral right to terminate service because WorldCom may file a complaint anytime within the 45-day notice period if it feels that Verizon's announced action is unlawful.[2371]

c. Discussion

717. Based upon the record in this proceeding, we agree with WorldCom that *all* changes in law that materially affect the parties' obligations should be governed by a single change of law provision, regardless of whether the change increases or decreases Verizon's UNE obligations. We thus adopt the language proposed by WorldCom with respect to this issue, and reject Verizon's language.[2372] We find that Verizon has failed to justify the special treatment of changes in law that relieve it of obligations regarding network elements. We find that Verizon's concern that the Commission would issue rules that create new obligations or terminate existing obligations without specifying the effective date of such rules is unfounded. Commission orders adopting rules routinely specify effective dates. If, however, after the issuance of any particular

[2367] *See* Verizon UNE Brief at 70.

[2368] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 4.6.

[2369] *See* Verizon GTC Brief at 27.

[2370] *See* Verizon GTC Brief at 27; Verizon GTC Reply at 12 (citing, as an example, the detailed operational procedures necessary to implement the Commission's subloop unbundling requirements in the *UNE Remand Order*).

[2371] *See* Verizon UNE Reply at 40, citing Tr. at 673; Verizon Ex. 13, at 47-49.

[2372] We adopt WorldCom's proposed section 25.2, and reject Verizon's proposed sections 4.5 and 4.6.

Commission order, Verizon identifies operational concerns about the general applicability of a Commission decision, then Verizon should address those specific concerns with the Commission at that time.

9. Issue IV-129 (Definitions)

718. As framed by WorldCom, Issue IV-129 asks whether the interconnection agreement between WorldCom and Verizon should contain a "Part B," which provides definitions of certain capitalized terms and words used throughout the contract. The existing agreement between the carriers contains such a section.[2373] On June 14, 2002, WorldCom and Verizon jointly submitted revised definitions, highlighting almost 40 definitions that remain in dispute between the parties. Neither party chose to brief the substance of their dispute with respect to these definitions. Other than indicating in a few words what the dispute concerns, we have no record upon which to base any conclusions about which of the competing definitions is more consistent with the Act and the Commission's rules. Accordingly, where the parties have not agreed on a definition, we decline to adopt either party's proposed language. To be clear, our resolution of the substantive issues in this proceeding will effectively decide which party's position will be included in this contract for the majority of these contested definitions. For example, we adopted language regarding access to the FDI, which included a definition of "subloop" under Issue III-11, an issue that was subject to extensive cross-examination and argument by the parties. Including a separate definition of "subloop" in "Part B" would, at best, duplicate the language adopted in Issue III-11 and, at worst, could contradict our findings in Issue III-11 if we were to adopt Verizon's proposal. Consequently, we direct the parties to review our findings provided elsewhere in this Order to determine which definitions to incorporate in the contract.

10. Issue V-11 (Indemnification for Directory Listings)

a. Introduction

719. Verizon explains that it is important to be protected from claims resulting from its publication of erroneous directory information listings, if such listings are published as provided by WorldCom. WorldCom and Verizon disagree about whether the contract should include language on indemnification standards and procedures for when WorldCom provides Verizon with inaccurate directory listing information. Verizon proposes a provision requiring WorldCom to "release, defend, hold harmless and indemnify" Verizon from claims and losses arising from Verizon's publication of directory listing information, if such information is printed as provided by WorldCom. WorldCom opposes this indemnification proposal. We adopt Verizon's proposal.

[2373] *See* WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Part B.

b. Positions of the Parties

720. WorldCom argues that we should reject the last sentence of Verizon's proposed section 4.7. This sentence reads: "[WorldCom] agrees to release, defend, hold harmless and indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's publication or dissemination of the Listing Information as provided by [WorldCom] hereunder."[2374] WorldCom concedes that if it gave Verizon an inaccurate listing and Verizon received a third-party claim, WorldCom should indemnify Verizon because WorldCom caused the harm.[2375] However, WorldCom argues that Verizon should be subject to a reciprocal obligation. Specifically, WorldCom maintains that if WorldCom gives Verizon an accurate directory listing but Verizon inaccurately publishes or disseminates that listing, and therefore exposes WorldCom to liability to that customer, Verizon should indemnify WorldCom to the extent of that liability.[2376]

721. WorldCom contends that its position -- which is addressed in language that WorldCom proposed with respect to Issue IV-106 -- rests on the principle that if a party fails to live up to its commitments, that party should bear the costs that arise from third-party claims arising from that breach.[2377] Although WorldCom admits that it has a more direct relationship with its customers than does Verizon, WorldCom asserts that this relationship does not justify imposing liability on it for Verizon's mistakes in directory listings.[2378] According to WorldCom, there is nothing that it can do to protect its customers from errors that Verizon makes when publishing or disseminating that information.[2379]

722. Verizon characterizes this dispute as whether WorldCom should indemnify it in cases where Verizon prints directory listing information about a WorldCom customer in precisely the manner that WorldCom provided the information to Verizon, and WorldCom's customer subsequently brings a claim against Verizon.[2380] Verizon argues that such a provision is appropriate, because Verizon is relying on the accuracy of information provided by WorldCom.[2381] Verizon asserts that since it has no involvement in obtaining that information, WorldCom should bear full responsibility for its inaccuracy.[2382] According to Verizon, it has

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[2374] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 4.7.

[2375] WorldCom Brief at 210.

[2376] *Id.*

[2377] *Id. See also supra* Issue IV-106.

[2378] *Id.* at 210-11.

[2379] *Id.* at 211.

[2380] Verizon General Terms and Conditions (GTC) Brief at 23; Verizon GTC Reply at 11.

[2381] Verizon GTC Reply at 11.

[2382] *Id.*

already agreed to similar language with AT&T, and asks that this language be incorporated into the agreement with WorldCom.[2383]

c. Discussion

723. We adopt Verizon's proposal, and reject WorldCom's request to delete the last sentence of Verizon's proposed section 4.7. We agree that it is appropriate for WorldCom to indemnify Verizon in the event that WorldCom provides erroneous directory listing information to Verizon about its customers. For reasons provided above in our discussion of indemnification, we reject WorldCom's proposed section 19.2.[2384] We note that WorldCom failed to offer language specific to the instant dispute on directory listings. Specifically, WorldCom's argument that Verizon should indemnify WorldCom for inaccurately printing a directory listing that was correctly provided by WorldCom is not addressed by its suggestion to delete the last sentence of Verizon's proposed section 4.7. As noted above, that sentence only addresses the situation when Verizon prints directory listing information *as provided by WorldCom*. Since we determine that Verizon's proposal is reasonable, we do not direct the parties to submit conforming language making Verizon's language reciprocal. Thus, this issue must be governed by the general indemnification provisions addressed in Issue IV-106.

11. Issue VI-1-N (Assurance of Payment)

a. Introduction

724. WorldCom and Verizon disagree about whether to include language that establishes Verizon's right to receive assurances of payment of amounts due, or to become due, under certain circumstances, such as if WorldCom admits its inability to pay its future debts. Verizon's proposed provision would give Verizon the right to suspend its performance obligations under the agreement if WorldCom fails to fulfill the precise assurance of payment measures set forth in the relevant section. WorldCom opposes this proposal and argues that the provision is unnecessary, and therefore should be excluded from the agreement. We adopt Verizon's proposal, with modifications.

b. Positions of the Parties

725. Verizon argues that it must protect itself against the risk of nonpayment by non-creditworthy entities.[2385] Verizon asserts that this language is necessary to address the risk of non-payment in the event that WorldCom's financial situation were to deteriorate substantially, or if WorldCom were to refuse to pay bills that it undisputedly owed, and also to protect against non-payment by other competitive LECs that may opt into the agreement in the future.[2386]

[2383] Verizon GTC Brief at 23.

[2384] *See also supra*, Issue IV-106.

[2385] Verizon General Terms and Conditions (GTC) Brief at 31; Verizon GTC Reply at 15, 18.

[2386] Verizon GTC Reply at 18.

Verizon argues that, in such circumstances, it must be entitled to request reasonable assurance that amounts owed by these entities would be paid.[2387] Verizon conceded in its briefs it would not, at that time, require an assurance of payment from WorldCom, and offered to sign a letter to that effect.[2388] Notwithstanding the letter, Verizon argues that, under its proposed language, WorldCom would have to follow the assurance of payment procedures only in the event of a material adverse change in its creditworthiness, or if it refused to pay bills that are not subject to a bona fide billing dispute.[2389]

726. WorldCom responds that the "assurance of payment" provision proposed by Verizon is unnecessary for several independent reasons. First, WorldCom argues that Verizon has conceded in this proceeding that the "assurance of payment" provision addresses its concerns with other, less financially-stable competitive LECs that might opt in to the agreement, and not with WorldCom itself.[2390] Thus, WorldCom maintains that such a provision is inappropriate for an agreement between itself and Verizon. Second, WorldCom maintains that nothing in the Act requires competitive LECs to provide the demonstration of financial stability that Verizon seeks here.[2391] Third, WorldCom is concerned that the prescribed steps for adequate assurance of payment are onerous and could be triggered by "minor occurrences" such as a failure to pay a single bill.[2392] Fourth, WorldCom argues that Verizon's proposal is unnecessarily draconian, as it could disrupt service to WorldCom customers, and irreparably damage customers' goodwill towards WorldCom.[2393] Finally, WorldCom argues that even if such a provision were appropriate, the provision should give competitive LECs a reciprocal right to request assurances from Verizon.[2394]

c. Discussion

727. We grant Verizon's request to include the disputed provision, with changes as indicated below. We find that Verizon has a legitimate business interest in receiving assurances of payment, where warranted, from its competitive LEC customers. Although Verizon has admitted that its primary concern lies not with WorldCom, but with other competitive LECs that may opt into the interconnection agreement, we are convinced that Verizon has legitimate independent bases for requiring such assurances from WorldCom under certain circumstances (*i.e.*, if WorldCom were to refuse to pay bills that it undisputedly owed). WorldCom has not

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[2387] *Id.*

[2388] Verizon GTC Brief at 31.

[2389] Verizon GTC Reply at 18.

[2390] WorldCom Brief at 217; WorldCom Reply at 186.

[2391] WorldCom Brief at 218; WorldCom Reply at 186.

[2392] WorldCom Brief at 218.

[2393] *Id.*

[2394] *Id.* at 219.

shown that the protection sought by Verizon in this instance is unreasonable, or inconsistent with industry practice with respect to other carriers in Virginia, or in other states.

728. In other contexts in this proceeding, Verizon concedes that WorldCom may be exempted from certain financial obligations so long as its net worth exceeds $100 million.[2395] We believe that a similar approach is appropriate in resolving this issue. A threshold based upon net worth would establish Verizon's right to request assurances of payment from smaller or less-stable competitive LECs that may opt into the agreement, while recognizing the parties' intent to exempt WorldCom from the provision at the present time. Rather than address this "exemption" through a side agreement, as suggested by Verizon, we find that it is more appropriate to address it through contract language. Moreover, the exemption would lapse in the event that WorldCom's financial net worth should decrease below the $100 million level. Accordingly, we require Verizon to modify its proposed "assurance of payment" provision to exempt WorldCom from the assurance of payment requirements as long as WorldCom sustains a net worth above $100 million.[2396]

12. Issue VI-1-O (Default)

a. Introduction

729. Verizon explains that a default provision is important to establish procedures to follow in the event that one party fails to comply with the terms of the interconnection agreement. WorldCom and Verizon disagree about what remedies should be available in the event that either party fails to make a payment required by the agreement, or materially breaches a material provision of the agreement. Verizon has proposed language that establishes that, in such circumstances, either party may, upon written notice, suspend the provision of service, or cancel and terminate the agreement in its entirety. WorldCom opposes this proposal. We adopt the language that Verizon has agreed to with AT&T.

b. Positions of the Parties

730. Verizon states that the purpose of its proposed default provision is to ensure that it is not required to continue providing service indefinitely to a competitive LEC that refuses to pay for service it takes under the interconnection agreement.[2397] Verizon argues that if a competitive LEC refuses to pay undisputed amounts due under the agreement for a particular service, Verizon must be permitted to suspend such service after it has presented adequate notice

[2395] *See, e.g.*, Verizon GTC Brief at 31-32 (offering to permit WorldCom to self-insure if its net worth surpasses $100 million).

[2396] We thus instruct the parties to modify Verizon's proposed language to make it consistent with the "$100 million net worth" language addressed below under Issue IV-1-Q, which includes language addressing WorldCom's affiliates and subsidiaries.

[2397] Verizon General Terms and Conditions (GTC) Brief at 34, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 12; Verizon GTC Reply at 19-20.

to both the competitive LEC and the state commission.[2398] As an alternative to its proposed language, Verizon has offered to WorldCom the language it agreed to with AT&T.[2399] Under this alternative provision, Verizon could suspend or terminate service, after giving notice and allowing WorldCom to cure the default, if WorldCom is overdue in making payments that are not subject to a *bona fide* billing dispute, or if WorldCom is in default of a material provision of the contract.[2400] Under this alternate proposal, any dispute over whether a default is material would be resolved by the agreement's dispute resolution procedures, and, in the meantime, Verizon could not suspend or terminate service.[2401]

731. WorldCom argues that the "unilateral right to suspend or terminate service" contemplated in the proposed provisions would be contrary to the Act and, if utilized, would adversely affect WorldCom and its customers.[2402] Specifically, WorldCom contends that no section of the Act suspends Verizon's obligations to provide certain services in the event that Verizon believes WorldCom has breached the agreement.[2403] WorldCom argues that instead of incorporating Verizon's proposed provision into the agreement, the parties should resolve all contractual disputes and situations of alleged uncured default on a case-by-case basis pursuant to the dispute resolution processes proposed by WorldCom elsewhere in this proceeding.[2404] WorldCom argues that its proposed procedures are more reasonable than permitting Verizon to use a default concerning one service as justification to terminate the entire agreement.[2405] WorldCom maintains that third-party resolution of disputes regarding default are particularly appropriate here, given that Verizon has incentive to disrupt WorldCom's relationships with its customers.[2406] As an alternative, WorldCom proposes using the contract's general dispute resolution process, as opposed to allowing Verizon to terminate or suspend service unilaterally.[2407]

[2398] Verizon GTC Brief at 34.

[2399] *Id.* at 35.

[2400] Verizon GTC Reply at 20.

[2401] *Id.* Additionally, Verizon disputes WorldCom's assertion that Verizon is willing to use alternative dispute resolution in place of its right to terminate or suspend service with carriers of a certain size. Verizon responds that it merely proposes that alternative dispute resolution be used to determine whether a default is material. Verizon GTC Reply at 20, citing WorldCom Brief at 220.

[2402] WorldCom Reply at 188.

[2403] WorldCom Brief at 221.

[2404] *Id.*; WorldCom Reply at 189.

[2405] WorldCom Brief at 221.

[2406] *Id.* at 221-22; WorldCom Reply at 189.

[2407] WorldCom Brief at 222, citing WorldCom Ex. 21 (Direct Testimony of J. Trofimuk, *et al.*), at 65.

c. Discussion

732. We adopt the language that Verizon agreed to with AT&T pertaining to this issue.[2408] As an initial matter, we find that Verizon has a legitimate business interest in incorporating a default provision into the agreement. We agree with Verizon that it is unreasonable for it to be required to provide service indefinitely to a carrier that is withholding payment of amounts due for no *bona fide* reason.[2409] In any commercial arrangement, a party has the right to cease provision of service for nonpayment. Contrary to this basic business principle, WorldCom's position could require Verizon to provide services to carriers that have no intention of paying for them.[2410] We are not persuaded by WorldCom that a default provision is unlawful because the Act does not explicitly establish a carrier's right to withhold service due to the failure by a competitive LEC to pay past due bills. We find that the language that AT&T reached with Verizon adequately balances the interests of both parties. Accordingly, we grant Verizon's request for a provision giving it the right to terminate or suspend service when a competitive LEC withholds payments for service of facilities without a *bona fide* reason, or otherwise materially breaches the agreement.[2411]

13. Issue VI-1-P (Discontinuance of Service)

a. Introduction

733. Verizon proposes language that would require a competitive LEC to notify Verizon, the appropriate state commission, and customers, in advance of discontinuing service.[2412] Verizon is concerned that absent such notification, as the carrier of last resort, Verizon would bear unforeseen costs associated with discontinuance of service by competitors. WorldCom argues that this notice requirement would give Verizon an unfair competitive advantage over other LECs. We reject Verizon's proposal.

b. Positions of the Parties

734. Verizon argues that it needs advance notice of a discontinuance in order to minimize disruption to customers and give itself sufficient warning to respond to sudden increased demands on its facilities and employees if it must acquire customers due to a

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[2408] *See* Verizon's November Proposed Agreement to WorldCom, Part A, §§ 12.1, 12.2 (we note that this proposal was offered as an alternative to Verizon's proposed section 12, also found in Verizon's full contract proposal).

[2409] *See* Verizon GTC Reply at 19.

[2410] *Id.* at 19-20.

[2411] Verizon's proposed section 22.5 to AT&T, which we adopt as section 12.2 in Verizon's contract to WorldCom, addresses the procedure for resolving disputes as to whether the breaching party has materially violated a material provision of the interconnection agreement.

[2412] *See* Verizon November Proposed Agreement to WorldCom, Part A, § 13.

competitive LEC's bankruptcy or other service discontinuance.[2413] Verizon contends that, absent this advance warning, it would bear unrecoverable costs when it acquires customers in these circumstances.[2414]

735. WorldCom opposes inclusion of Verizon's proposed language, which would require specific notice to Verizon of WorldCom's intention to discontinue service, as well as disclosure of customer billing, service, and other information.[2415] WorldCom maintains that this language would give Verizon an unfair competitive advantage over other prospective carriers.[2416] WorldCom also identifies language in Verizon's proposal preserving its right to suspend service, and argues that this language inappropriately permits Verizon to nullify unilaterally the interconnection agreement.[2417]

c. Discussion

736. We reject Verizon's proposed language.[2418] The Virginia Commission has recently amended its rules governing LEC petitions for approval to discontinue service in order to address disruptions that can result from carrier bankruptcy.[2419] The Virginia Commission noted that increasing financial problems have caused some competitive LECs to withdraw service in some markets, and recognized the impact this trend was having on consumers.[2420] The new rules require competitive LECs to notify customers 30 days in advance of a proposed discontinuance and to outline any plan to transfer customers to another carrier.[2421] The Virginia Commission declined to require incumbent LECs to take back the customers of competitive

[2413] Verizon General Terms and Conditions (GTC) Brief at 36.

[2414] *Id.*

[2415] WorldCom Reply at 190.

[2416] *Id.*

[2417] *Id.*

[2418] Verizon's November Proposed Agreement to WorldCom, Part A, § 13.

[2419] *In the Matter of Establishing Rules Governing Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers*, Order Promulgating Rules Governing the Discontinuance of Local Exchange Telecommunications Services by Competitive Local Exchange Carriers and Requesting Further Comments, Case No. PUC010128 (issued March 5, 2002) (*Virginia Commission Rules Governing Discontinuance of Service*).

[2420] *Virginia Rules Governing Discontinuance of Service,* 1-2.

[2421] 20 Va. Admin. Code §§ 5-423-20, 5-423-30. The new rules also provide procedures for notifying customers and the Virginia Commission if a competitive LEC plans to withdraw particular tariffed service offerings. *Id.* § 5-423-40.

LECs, preferring to permit these customers to move their service to the LEC of their choice.[2422] The Virginia Commission also sought additional comment on related matters that it had not addressed in its proposed discontinuance rules. For example, the Virginia Commission recognized that many customers would have a short period of time to choose a new carrier, and sought comment on ways to effect a seamless transfer of customers from one LEC to another.[2423] The Virginia Commission also sought further comment on how to handle the circumstance where a LEC's discontinuance of service to customer/LECs causes these customer/LECs in turn to discontinue their own service to customers.[2424] In this circumstance, the customer/LEC may have little time to notify its own customers of the impending discontinuance.[2425]

737. We find that the Virginia Commission has taken appropriate steps to safeguard consumers, and that the Virginia Commission considered, and continues to consider, relevant factors similar to those raised by the parties here. We find that the Virginia Commission has sufficiently addressed Verizon's concerns. Therefore, we decline to adopt Verizon's proposed language. Alternately, the parties may submit agreed-upon language to include in the interconnection agreement that reflects or incorporates the Virginia Commission's new requirements.

14. Issue VI-1-Q (Insurance)

a. Introduction

738. WorldCom and Verizon disagree about whether to incorporate language into the agreement that requires WorldCom to maintain a particular level of insurance coverage. Verizon explains that an insurance provision is necessary to protect it against the risk that WorldCom may not have adequate insurance to cover damage that it causes to Verizon.[2426] Verizon's provision specifies the minimum permitted levels of several separate types of liability coverage.[2427] In addition, it would require, *inter alia*, that WorldCom's contractors maintain the same levels of insurance, and that WorldCom notify Verizon of any cancellation or material change in the insurance. WorldCom opposes this proposal and argues that the provision is unnecessary, and therefore should be excluded from the agreement. We adopt Verizon's proposal.

[2422] *Virginia Rules Governing Discontinuance of Service,* 4-5. The Virginia Commission also declined to apply its new rules to discontinuance of service by incumbent LECs. *Id.,* 3-4.

[2423] *Id.,* 5.

[2424] *Id.*

[2425] *Id.*

[2426] Verizon General Terms and Conditions (GTC) Reply at 15.

[2427] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 21.

b. Positions of the Parties

739. To support its claim that it has a legitimate interest in requiring particular levels of insurance coverage, Verizon cites a prior Commission order that indicates that "LECs are justified in requiring . . . interconnectors to carry a reasonable amount of liability insurance coverage."[2428] Again, as with other issues in this section, Verizon admits that its primary concern relates to other competitive LECs that may opt into the agreement, and then cause damage to Verizon's network and facilities. To exempt WorldCom from this requirement, Verizon has proposed to exempt any competitive LEC from the insurance requirements so long as it maintains a net worth in excess of $100 million.[2429] Pursuant to this carve-out language, a competitive LEC such as WorldCom would be permitted to self-insure so long as it had a net worth that surpasses the $100 million threshold.[2430] In response to WorldCom's argument that some of its subsidiaries and affiliates may fall below this threshold, Verizon states that if WorldCom would be willing to guarantee the obligations of such affiliates, Verizon would permit the insurance requirements of the contract to be fulfilled via self-insurance by the guarantor.[2431]

740. WorldCom urges us to reject Verizon's proposal.[2432] First, WorldCom argues that the insurance proposal should be excluded from the interconnection agreement because the agreement between WorldCom and Verizon should not contain terms that are aimed at other carriers and are unnecessary for WorldCom.[2433] Second, WorldCom argues that Verizon's proposal creates one-sided insurance obligations, and asserts that we should adopt an insurance provision only if it applies to both WorldCom and Verizon.[2434] Furthermore, WorldCom complains that several of the insurance coverage limits are excessive; the requirement for disclosure of deductibles, self-insured retentions or loss limits is not justified and, regardless, the two-week period for disclosure is too short; and if WorldCom's contractors fail to maintain insurance and Verizon purchases it, Verizon should seek reimbursement from the contractors, not from WorldCom.[2435] WorldCom objects to language requiring it to provide Verizon with notice of any material change in its insurance coverage, and argues that Verizon should receive written notice only if WorldCom's coverage is reduced.[2436] Furthermore, WorldCom is

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[2428] Verizon GTC Brief at 32, citing *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, 12 FCC Rcd 18730, 18871, para. 345 (1997) ("*Special Access Expanded Interconnection Order*").

[2429] Verizon GTC Brief at 31-32; Verizon GTC Reply at 16-17.

[2430] Verizon GTC Brief at 31-32.

[2431] Verizon GTC Reply at 17-18.

[2432] WorldCom Brief at 227.

[2433] *Id.*; WorldCom Reply at 193.

[2434] WorldCom Brief at 227; WorldCom Reply at 193.

[2435] WorldCom Brief at 228; WorldCom Reply at 193-94.

[2436] WorldCom Brief at 228-29.

concerned that Verizon's proposed carve-out exemption permitting carriers with net worth surpassing $100 million to self-insure will not apply to WorldCom's subsidiaries and affiliates.[2437] Finally, WorldCom objects to the exemption because it desires the flexibility to choose not to self-insure.[2438]

c. Discussion

741. We agree with Verizon and adopt its proposal to incorporate the insurance provision, with the changes indicated below.[2439] As an initial matter, we find that Verizon has a legitimate and material business interest in requiring competitive LECs to maintain adequate levels of insurance. Although Verizon's provision may be primarily aimed at other competitive LECs, Verizon has the same interest with respect to WorldCom and its contractors. We do not credit WorldCom's general argument that the insurance coverage levels proposed by Verizon are excessive. Verizon asserts that the insurance limits it proposes do not exceed levels that the Commission has found that incumbent LECs may require,[2440] and WorldCom has presented no evidence that shows that any lesser amount of insurance is more appropriate to protect Verizon against the types of harms that might occur as a result of interconnection.[2441] Accordingly, because we have seen no evidence to the contrary, we accept Verizon's proposed coverage levels as reasonable.

742. We also find reasonable the proposed language requiring WorldCom to reimburse Verizon for insurance it buys for WorldCom's contractors. WorldCom has an ongoing relationship with its contractors; it is therefore reasonable that WorldCom reimburse Verizon for any insurance that it purchases for such contractors; WorldCom may seek reimbursement itself from its contractors at its discretion. Moreover, we adopt Verizon's proposal that WorldCom provide it with notice of any material change in insurance coverage. We reject WorldCom's argument that this language should be revised to reflect that WorldCom is required to notify Verizon only when insurance coverage has been cancelled or its coverage has been decreased. However, because Verizon has not sought to define the phrase "material change" as it appears in its proposed language, we expect the parties to reach an understanding about the meaning of this phrase in this context.

743. We also adopt Verizon's proposal to allow carriers with net worth greater than $100 million to self-insure. We find that this proposal fairly balances the interests of Verizon to

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[2437] WorldCom Brief at 226-28; WorldCom Reply at 193.

[2438] WorldCom Brief at 227.

[2439] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 21.

[2440] Verizon GTC Brief at 17. *See Special Access Expanded Interconnection Order*, 12 FCC Rcd at 18871-72, paras. 346-348 (establishing a range of reasonableness for insurance levels of LECs that provide physical collocation).

[2441] WorldCom argues that a lower coverage limit is appropriate because Verizon can recover additional amounts through its own umbrella policy. See WorldCom Brief at 228.

protect its network with WorldCom's concerns. To ensure that this "carve-out" is available to WorldCom's affiliates and subsidiaries, we adopt Verizon's proposal to make self-insurance available to any entity with a parent or otherwise affiliated corporation that has a net worth exceeding $100 million and that is willing to serve as guarantor for the potential liability of the competitive LEC. Accordingly, we direct the parties to file language that conforms to this holding.

744. Finally, we reject WorldCom's argument that the parties' insurance obligations should be reciprocal. We recognize that, as the incumbent LEC, Verizon has interconnection, collocation and unbundling obligations that open its network to competing carriers, including WorldCom. These obligations, which are not reciprocal, carry with them a degree of risk that competing carriers or their contractors could damage Verizon's network. While there may be some risk that Verizon's actions could cause harm to WorldCom's network, WorldCom simply has not established that this risk warrants extending the same insurance provision to Verizon.

15. Issue VI-1-R (References)

a. Introduction

745. WorldCom and Verizon disagree about what language should be included in the contract to define references to other documents. There are approximately two dozen references to other documents in Verizon's proposed interconnection agreement.[2442] These include technical reference manuals, Verizon's competitive LEC handbook, Verizon's customer guide, and Verizon's general procedures, among others.[2443] WorldCom proposes that the agreement refer to the specific documents that are in effect at the time the interconnection agreement becomes effective (*i.e.,* to "freeze" the documents). Verizon opposes this proposal, and would have the agreements refer to other documents as those documents change over time.[2444] We adopt Verizon's proposal.

b. Positions of the Parties

746. Verizon argues that the other documents to which the agreement refers should be treated as "dynamic documents that evolve in conjunction with changes in the marketplace and applicable law."[2445] Verizon states that WorldCom's proposal to freeze these documents could

[2442] Verizon General Terms and Conditions (GTC) Brief at Attach. A-1.

[2443] *See id.*

[2444] WorldCom's counter-proposal consists of the deletion of one phrase in Verizon's proposed language, which indicates that the references to other documents are not to static manuals, but to those documents as they may change over the term of the agreement. *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 38. The disputed phrase is: "as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision)." *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 35.2.

[2445] Verizon GTC Brief at 38; Verizon GTC Reply at 23.

quickly lead to parts of the agreement becoming outdated.[2446] Moreover, according to Verizon, neither Verizon nor WorldCom has authority to ignore changes to documents promulgated by state commissions or third-party vendors.[2447] Verizon notes that WorldCom and other competitive LECs are active participants in the change management process that affects changes to many internal Verizon policies and practices contained in referenced documents at issue here. Thus, WorldCom has a chance to voice its objection before these documents are changed in a manner that may affect its rights under this agreement. Similarly, WorldCom may voice its opposition to a state commission when faced with a proposed tariff change.[2448]

747. WorldCom argues that allowing these other documents to change over time would "allow the specific terms over which the parties have negotiated (or have been ordered by a commission) to be materially altered by future changes" to other documents, and "would improperly allow Verizon to change unilaterally the terms of the agreement without reconciling those changes with the terms and provisions over which the parties have deliberated, negotiated and compromised."[2449] By allowing this type of change, WorldCom alleges that Verizon's proposal would introduce "an unworkable degree of uncertainty into the Interconnection Agreement" and improperly supplants the agreement's change of law provisions.[2450] WorldCom asserts that the change of law process is efficient and allows the parties to incorporate changes in law into the agreement "mutually and promptly."[2451]

c. Discussion

748. We adopt Verizon's proposed version of section 35.2.[2452] We agree with Verizon that references in the interconnection agreement to outside documents should be to the versions of such documents that are effective, as amended and supplanted from time to time in the future, and not to the versions that are operative at the time the interconnection agreement initially goes into effect. We recognize that, as Verizon explains, some of the referenced documents can be changed only with the approval of the Virginia Commission, while others reflect procedures that may be changed only through Verizon's change management process. WorldCom may choose to oppose changes to these documents through these contexts. Even for those documents that do not have an explicit change process, however, we are not convinced that the best result is to "freeze" the versions in place when this agreement becomes effective. If WorldCom is concerned that Verizon may unilaterally change these documents in a manner that will materially affect WorldCom's rights, WorldCom can negotiate for the insertion of language or requirements

[2446] Verizon GTC Brief at 38-39.

[2447] *Id.* at 39.

[2448] *Id.*.

[2449] WorldCom Brief at 231.

[2450] *Id.*, citing WorldCom Ex. 21 (Direct Testimony of M. Harthun, *et al.*), at 67.

[2451] WorldCom Reply at 196.

[2452] *See* Verizon's November Proposed Agreement to WorldCom, Part A, §35.2.

contained in documents into the interconnection agreement, instead of using references to these documents. In this way, WorldCom has the ability effectively to "freeze" these documents as they currently exist. We also believe that WorldCom overstates the problem. While Verizon may have the ability to change unilaterally a referenced document, it could not undermine or cancel out a specific contract term in this manner.

I. Miscellaneous and Rights of Way

1. Issue VI-1-AA (Information Services Traffic)

a. Introduction

749. Information services traffic consists of recorded time, weather information and other non-data, voice traffic. WorldCom and Verizon agree that this category of traffic currently does not exist within Virginia, and neither party intends to carry it absent a change in Virginia law.[2453] However, Verizon proposes contract language that would require further negotiations if information services were made available in Virginia, or if, pursuant to the *Bell Atlantic-GTE Merger Order*,[2454] a competitive LEC adopted this interconnection agreement for use in another state.[2455] WorldCom opposes the inclusion of this language in its agreement with Verizon.

b. Positions of the Parties

750. Verizon recognizes that neither party offers in Virginia the type of information services at issue here, but argues that its language is necessary because the contract resulting from this arbitration could be adopted for use in a state where such services are offered.[2456] According to Verizon, its proposed contract language is concerned neither with the appropriate compensation mechanism for information services traffic, nor with who should bear the risk that a customer may refuse to pay for information services.[2457] Rather, Verizon argues, its proposal

[2453] Tr. at 1985, 1996; Verizon Miscellaneous (Misc.) Brief at 4; WorldCom Brief at 257.

[2454] *See Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, 14172-73, para. 301 (2000) (*Bell Atlantic-GTE Merger Order*) (interconnection agreement or UNE available to carrier in any of the former Bell Atlantic and GTE states if negotiated voluntarily); *see also id.* at paras. 302-03 (discussion on arbitrated agreements).

[2455] Tr. at 1984-85, 1995-96; Verizon Misc. Brief at 4-6; Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 5.

[2456] Verizon Misc. Brief at 4-5.

[2457] Verizon Misc. Reply at 2.

merely flags the issue of information services for fuller and prompt consideration when circumstances in Virginia change.[2458]

751. WorldCom argues that its interconnection agreement with Verizon does not need to address information services because they are not allowed in Virginia.[2459] According to WorldCom, Verizon acknowledges that such information services are not permitted in Virginia, and that, if information services became legal in Virginia, the contract's general change of law provision could be used to address information services.[2460] WorldCom rejects Verizon's concern about other LECs opting into this agreement in other states, noting that this "opt in" merger condition applies only to sections of an agreement that are voluntarily negotiated by the parties (and not to those that are the subject of an arbitration ruling).[2461]

c. Discussion

752. We reject Verizon's proposal because we find it unnecessary.[2462] Verizon's proposed language acknowledges that neither party supports this type of information services traffic in Virginia.[2463] In addition, as WorldCom notes, Verizon's concern about the impact in other states is misplaced, because the *Bell Atlantic-GTE Merger Order* would enable competitive LECs to adopt this interconnection agreement for use in another state only to the extent that its provisions are voluntarily negotiated.[2464] Moreover, as WorldCom notes, Verizon has agreed that its general change of law provision could incorporate information services into the interconnection agreement if information services became available in Virginia.[2465]

[2458] *Id.* at 1.

[2459] WorldCom Brief at 257. WorldCom also argued in its brief that Verizon's proposal is unnecessary because there is no reason to create a separate information services traffic category, since information services are simply subject to either reciprocal compensation or access charges. *Id.* at 258. Additionally, WorldCom argued that Verizon's difficulties in collecting information services charges from end users does not justify including information services in the agreement, asserting that Verizon is solely responsible for collecting information services charges from WorldCom's end users, and that WorldCom should not be held responsible for guaranteeing its customers' payments to Verizon or the information services providers on Verizon's network. *Id.* at 258-59. However, Verizon addressed WorldCom's concerns by redrafting its proposal to eliminate these issues of intercarrier compensation, and billing and collection. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 5.

[2460] WorldCom Brief at 257, citing Tr. at 1983-85.

[2461] *Id.* at 257-58, citing Tr. at 1986.

[2462] Accordingly, we reject Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 5.

[2463] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 5.2.

[2464] *See Bell Atlantic-GTE Merger Order,* 15 FCC Rcd. at 14172-73, para. 301.

[2465] WorldCom Brief at 257, citing Tr. at 1985.

2. Issues III-13 and III-13-H (Rights-of-Way)

a. Introduction

753. Section 224(f)(1) of the Act requires public utilities, such as Verizon, to provide telecommunications carriers and cable television providers with nondiscriminatory access to their poles, ducts, conduits, and rights-of-way.[2466] Section 224(b)(1) directs that the Commission shall regulate the rates, terms, and conditions for pole attachments, except where a state regulates those matters.[2467] The Virginia Commission does not regulate pole attachment rates, terms, and conditions.[2468] As a consequence, the Commission, rather than the Virginia Commission, would have jurisdiction over any section 224 complaint WorldCom might bring regarding those rates, terms, and conditions.[2469]

754. WorldCom and Verizon have agreed on contract language for virtually all of the terms and conditions under which WorldCom will access Verizon's poles, ducts, conduits, and rights-of-way. The parties disagree, however, as to whether those terms and conditions should be part of their interconnection agreement, as WorldCom contends,[2470] or in a separate licensing agreement, as Verizon urges.[2471] They also disagree regarding the terms and conditions under which Verizon would perform "make-ready work," *e.g.,* modifications to poles, lines, or conduits, to accommodate additional facilities.[2472] WorldCom believes that our resolution of these issues will affect its ability to obtain nondiscriminatory access to Verizon's poles, ducts, conduits, and rights-of-way. We rule for WorldCom on the first issue and, subject to implementation of compromises reached at the hearing, for Verizon on the second.

[2466] 47 U.S.C. § 224(f)(1). For convenience, we use the term "pole attachments" to refer collectively to attachments to, within, or on poles, ducts, conduits, and rights-of-way.

[2467] 47 U.S.C. § 224(b).

[2468] Virginia has not certified that it regulates pole attachment rates, terms, and conditions. *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (Com. Car. Bur. 1992).

[2469] *See* 47 U.S.C. § 224(c).

[2470] WorldCom Brief at 259; WorldCom Reply at 215.

[2471] Verizon Rights of Way (ROW) Brief at 2; Verizon ROW Reply at 1.

[2472] Verizon ROW Brief at 6-8; WorldCom Brief at 263-65; *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-98, 14 FCC Rcd 18049, 18056 n.50 (1999) (subsequent history omitted) (defining make-ready work).

b. Inclusion in Interconnection Agreement

(i) Positions of the Parties

755. WorldCom argues that it is entitled under the Act to an interconnection agreement that includes the terms and conditions under which Verizon provides WorldCom with access to poles, ducts, conduits, and rights-of-way, and that simply noting that a separate licensing agreement sets forth those terms and conditions is not enough.[2473] WorldCom contends that a separate agreement would create logistical difficulties and contradict industry practice.[2474] It further contends that including pole attachment terms and conditions in the interconnection agreement would not burden Verizon.[2475]

756. Verizon maintains that neither the Act nor any Commission order mandates that an interconnection agreement include pole attachment terms and conditions.[2476] Verizon asserts that it is common practice to relegate pole attachment terms and conditions to separate licensing agreements, that such treatment is consistent with the prevailing practice in Virginia, and that the Virginia Commission has consistently approved Verizon interconnection agreements that refer to a separate pole attachment licensing agreement.[2477] Verizon argues that separate licensing agreements are particularly appropriate because there are generally significant differences between pole attachment terms and conditions among states.[2478] Verizon contends that it provides pole attachments to numerous cable television companies and competitive LECs in Virginia, that cable television companies obtain pole attachments through separate licensing agreements, and that it would be less burdensome to follow this same model for competitive LECs.[2479]

(ii) Discussion

757. We conclude that the interconnection agreement should include the terms and conditions under which WorldCom receives access to Verizon's poles, ducts, conduits, and rights-of-way. We therefore accept WorldCom's proposal that the interconnection agreement include the parties' pole attachment licensing agreement as an attachment, subject to the

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[2473] WorldCom Brief at 259; WorldCom Reply at 215.

[2474] WorldCom Brief at 260; WorldCom Reply at 215-16.

[2475] WorldCom Brief at 260-62; WorldCom Reply at 216-17.

[2476] Verizon ROW Brief at 2-3; Verizon ROW Reply at 1.

[2477] Verizon ROW Brief at 3; Verizon ROW Reply at 1-2.

[2478] Verizon ROW Brief at 3-4.

[2479] *Id.* at 4-5.

modifications specified below regarding make-ready work.[2480] As an initial matter, we conclude that a LEC's request for nondiscriminatory access to an incumbent LEC's poles, ducts, conduits, and rights-of-way is an appropriate subject matter for an interconnection agreement pursuant to sections 251 and 252. Specifically, section 251(c)(1) imposes upon Verizon "[t]he duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill," among other statutory duties, Verizon's duties under section 251(b)(4).[2481] Because section 251(b)(4) requires Verizon to provide requesting carriers, such as WorldCom, with access to its poles, ducts, conduits, and rights-of-way in accordance with section 224,[2482] the statute contemplates that WorldCom can invoke the section 252 arbitration process to establish contract language governing pole attachments.[2483]

758. We find WorldCom's proposal to include the parties' pole attachment licensing agreement in the interconnection agreement consistent with section 251 and the Commission's rules.[2484] We note that, except with regard to make-ready work, the parties have reached substantive agreement regarding pole attachment terms and conditions. Instead of having the interconnection agreement reflect this general agreement, Verizon proposes in effect that the interconnection agreement simply require that Verizon provide WorldCom with access to its poles, ducts, conduits, and rights-of-way "in accordance with [a]pplicable [l]aw" and pursuant to the pole attachment license agreement Verizon generally offers third parties.[2485] Because this

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[2480] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VI.

[2481] 47 U.S.C. § 251(c)(1). We note that section 251(c)(1) also provides that the "requesting carrier has the duty to negotiate in good faith the terms and conditions of such agreements." 47 U.S.C. § 251(c)(1).

[2482] *See* 47 U.S.C. § 251(b)(4).

[2483] *Local Competition First Report and Order*, 11 FCC Rcd at 16102, para. 1227 (determining that a telecommunications carrier seeking access to an incumbent LEC's poles, ducts, conduits, and rights-of-way shall have the option of invoking the section 252 arbitration process in lieu of filing a section 224 complaint).

[2484] *See* 47 U.S.C. § 252(c)(1).

[2485] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 9. Specifically, Verizon proposes that the interconnection agreement state:

> To the extent required by Applicable Law (including, but not limited to, Sections 224, 251(b)(4) and 271(c)(2)(B)(iii) of the Act), each Party ("Providing Party") shall afford the other Party non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by the Providing Party. Such access shall be provided in accordance with Applicable Law pursuant to the Providing Party's applicable Tariffs, or, in the absence of an applicable Providing Party Tariff, the Providing Party's generally offered form of license agreement, or, in the absence of such a Tariff and license agreement, a mutually acceptable agreement to be negotiated by the Parties.

Id. We note that Verizon has no pole attachment tariff in Virginia, but does generally offer a standard pole attachment licensing agreement throughout that state. Verizon Ex. 14 (Direct Testimony of A. Young), at 3.

proposal would let Verizon unilaterally change the terms and conditions under which WorldCom accesses Verizon's poles, ducts, conduits, and rights-of-way, it does not meet Verizon's obligation to negotiate the actual terms and conditions of that access in good faith.[2486] We therefore reject Verizon's proposed contract language on this issue.

759. We also reject Verizon's suggestion that administrative convenience should dictate whether the terms and conditions of pole attachment access are included in an interconnection agreement. While we are not convinced on this record that the resolution of this issue will have any significant impact on the parties' respective administrative burdens,[2487] administrative convenience cannot override relevant provisions of the Act, which entitle WorldCom to have the interconnection agreement include those terms and conditions.

c. Issue III-13-H (Make-Ready Work)

(i) Description of Make-Ready Work

(a) Positions of the Parties

760. Verizon and WorldCom agree that, in the event Verizon determines that a pole or conduit that WorldCom wishes to use is inadequate or otherwise needs rearrangement, modification, or expansion to accommodate WorldCom's facilities, Verizon will advise WorldCom via e-mail of the estimated charges for the necessary make-ready work.[2488] WorldCom requests that the interconnection agreement require Verizon to provide WorldCom with sufficient detail for it to evaluate the accuracy of any invoices it receives from Verizon for this make-ready work.[2489] Under WorldCom's proposed contract language, WorldCom would not have to pay Verizon for make-ready work until 30 days after receiving a "detailed, itemized invoice" from Verizon.[2490] While Verizon has proposed to include the necessary information in the cost-estimate e-mail it sends WorldCom,[2491] its proposed pole attachment licensing agreement does not reflect this proposal.[2492]

[2486] *See* 47 U.S.C. §§ 251(b)(4), 251(c)(1). For instance, under its proposal, Verizon could change the terms and conditions under which Verizon accesses poles simply by offering different terms and conditions to all attachees in Virginia. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 9.

[2487] *Compare*, *e.g.*, WorldCom Ex. 11 (Direct Testimony of L. Carson), at 3-4 (asserting that separate agreements would be "utterly unmanageable") *with* Verizon Ex. 14, at 5-7 (claiming that separate agreements would reduce administrative burdens).

[2488] *E.g.*, WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VI, § 8.3; Tr. at 2149-51.

[2489] Tr. at 2149-51 (testimony of Verizon witness Young); WorldCom Brief at 263; WorldCom Reply at 218.

[2490] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VI, § 8.5.

[2491] Verizon ROW Brief at 6; Verizon ROW Reply at 5.

[2492] Verizon's Proposed Pole Attachment Licensing Agreement with WorldCom, §§ 8.3 & 8.5.

(b) Discussion

761. We direct Verizon to provide WorldCom with its requested level of detail, consistent with the mutually acceptable compromise on this issue the parties reached at the hearing. Specifically, WorldCom's witness testified that it would suffice if, in the cost-estimate e-mail sent to WorldCom, Verizon were to describe the make-ready work Verizon would perform for WorldCom, where it would be performed, and what other companies, if any, would be involved with the work.[2493] Verizon's witness agreed to this process.[2494] We find this approach reasonable, and therefore direct the parties to submit a compliance filing memorializing their agreement on this issue. While we expect Verizon to provide this information in its cost-estimate e-mail, we do not preclude other mutually agreed upon forms of notification.[2495] In addition, consistent with WorldCom's proposal, we hold that WorldCom shall have 30 days after receiving the required information from Verizon to pay any invoice for make-ready work.[2496]

(ii) Use of Contractors Proposed by WorldCom

(a) Positions of the Parties

762. Verizon and WorldCom agree that Verizon generally will schedule make-ready work for WorldCom in the same manner as Verizon schedules make-ready work for its own operations.[2497] WorldCom proposes, however, that Verizon be required to use any contractor selected by WorldCom who agrees to complete make-ready work at a cost or within a period of time that is "materially less than" that estimated by Verizon.[2498] Under WorldCom's proposal, this contractor would have to meet Verizon's training and safety requirements and otherwise be in good standing with Verizon.[2499] WorldCom states that its proposal would ensure that the contractor would be approved by Verizon, working for Verizon, and subject to Verizon's supervision.[2500] WorldCom points out that Verizon's rights-of-way witness indicated that WorldCom's cost-reduction proposal would be acceptable to Verizon if "materiality" were

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[2493] Tr. at 2150-51 (testimony of WorldCom witness Carson).

[2494] Tr. at 2149-51 (testimony of Verizon witness Young).

[2495] *See* Verizon's Proposed Pole Attachment Licensing Agreement with WorldCom, § 8.3 (proposing written notice to WorldCom of charges for proposed make-ready work).

[2496] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VI, § 8.5.

[2497] *See, e.g. id.*

[2498] *Id*.

[2499] *Id*.

[2500] Tr. at 2153-54 (testimony of WorldCom witness Carson); WorldCom Brief at 264; WorldCom Reply at 219.

defined as a cost reduction of 25 percent or more.[2501] WorldCom also argues that it is critical that make-ready work be completed in a timely fashion and that delays in completing make-ready work have caused WorldCom to miss in-service dates with customers.[2502]

763. Verizon states that it schedules make-ready work for itself and all users of its poles, ducts, conduits, and rights-of-way on a first-come, first-served basis.[2503] Verizon maintains that there are only a limited number of contractors in Virginia that are qualified to do make-ready work.[2504] Verizon asserts that WorldCom's approach likely would cause contractors to postpone other work in order to complete WorldCom's make-ready requests.[2505] Acceptance of WorldCom's proposal, in Verizon's view, therefore would result in delays for other competitive LECs, cable providers, and Verizon.[2506] Verizon also states that although WorldCom has agreed in principle to Verizon's right to supervise any make-ready work contractor, WorldCom's proposed contract language is unclear on this point.[2507] Verizon proposes that its contract with WorldCom specify that "[i]f WorldCom presents [Verizon] with a contractor who meets [Verizon's] requirements the contractor will be directed to [Verizon] contract services for consideration."[2508]

(b) Discussion

764. We accept Verizon's contract language on this issue, subject to a modification memorializing a partial compromise the parties reached at the hearing.[2509] The parties agreed that as long as Verizon retained control over the hiring and supervision of contractors, it should hire any otherwise qualified contractor whose hiring would reduce make-ready costs by 25 percent or more.[2510] We find this compromise reasonable, and therefore direct the parties to submit corresponding contract language. We decline, however, to adopt WorldCom's language regarding a "material" reduction in time because WorldCom's witness was unable to articulate a

[2501] WorldCom Brief at 264, citing Tr. at 2152-53 (testimony of Verizon witness Young).

[2502] *Id.* at 263-64.

[2503] Verizon ROW Brief at 6, citing Tr. at 2155.

[2504] *Id.*, citing Tr. at 2156-57.

[2505] *Id.* at 6-7, citing Tr. at 2158; Verizon ROW Reply at 5-6.

[2506] Verizon ROW Brief at 6-7, citing Tr. at 2158.

[2507] *Id.* at 7.

[2508] *Id.* at 8 (proposing an amendment to Verizon's Pole Attachment Licensing Agreement with WorldCom).

[2509] Verizon's Proposed Pole Attachment Licensing Agreement with WorldCom, § 8.5.

[2510] Tr. at 2152-54.

clear standard of materiality in this context.[2511] Finally, we note that the absence of this particular provision does not leave WorldCom without protection. Consistent with its obligation to provide access to its poles, ducts, conduits, and rights-of-way under reasonable terms and conditions,[2512] Verizon must act reasonably in deciding whether or not to hire any contractor proposed by WorldCom that meets Verizon's qualifications for performing make-ready work.

V. ORDERING CLAUSES

765. Accordingly, IT IS ORDERED that, pursuant to Section 252 of the Communications Act of 1934, as amended, and Sections 0.91, 0.291 and 51.807 of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291, 51.807, the issues presented for arbitration are determined as set forth in this Order.

766. IT IS FURTHER ORDERED that Verizon's Renewed Motion to Dismiss Consideration of Performance Measures and Assurance Plan is hereby GRANTED; Verizon's Objection to AT&T's Response to Record Requests is hereby DENIED; WorldCom's Objection and Response to Verizon's Corrections to WorldCom Responses to Record Requests is hereby DENIED; Cox's Objection and Request for Sanctions is hereby DENIED; and WorldCom's Motion to Strike is hereby DENIED.

767. IT IS FURTHER ORDERED that AT&T Communications of Virginia Inc. and Verizon Virginia Inc. SHALL INCORPORATE the above determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Commission, pursuant to Section 252(e)(1) of the Communications Act of 1934, 47 U.S.C. § 252(e)(1), within 45 days from the date of this Order.

768. IT IS FURTHER ORDERED that Cox Virginia Telcom, Inc. and Verizon Virginia Inc. SHALL INCORPORATE the above determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Commission, pursuant to Section 252(e)(1) of the Communications Act of 1934, 47 U.S.C. § 252(e)(1), within 45 days from the date of this Order; and it is

769. IT IS FURTHER ORDERED that WorldCom, Inc. and Verizon Virginia Inc. SHALL INCORPORATE the above determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the

[2511] *See, e.g. id.* at 2154-55 (testimony of WorldCom witness Carson).

[2512] 47 U.S.C. §§ 224(b)(1), 251(b)(4).

Commission, pursuant to Section 252(e)(1) of the Communications Act of 1934, 47 U.S.C. § 252(e)(1), within 45 days from the date of this Order.

By Order of the Bureau,

_____
Dorothy T. Attwood,
Chief, Wireline Competition Bureau