

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

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 language¹²⁶¹ 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

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 an initial matter, both parties recognize that the area of advanced services is rapidly evolving and

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.

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 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

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).

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 context in which they were made.¹²⁸⁶ We note that adopting AT&T's approach actually is

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.

¹²⁸⁶ Verizon Advanced Services Reply at 3-4.

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-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

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.

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 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

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.

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

(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,

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.

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 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

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 made to its systems.").

¹³¹³ See Verizon Advanced Services Brief at 27-28.

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 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,

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.

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.

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.

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

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.

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 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

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.

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 (continued....)

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 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

(Continued from previous page) _____

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 prerequisite 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.

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.

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

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

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*.

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.

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

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.

¹³⁴⁹ *See* Tr. at 803.

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 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.

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.

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).

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 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

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.

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.

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.

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.

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.").

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, 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

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.*

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 Thus, according to Verizon, the amount of wire at issue is not substantial.¹³⁸⁵ Regarding this

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.

¹³⁸⁵ Verizon UNE Brief at 44.

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 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.

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.

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

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.

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.

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 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

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.

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.

(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 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

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.

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 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

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.

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."

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 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

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.*

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 (continued....)

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 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

(Continued from previous page) _____
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.

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

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 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,

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).

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).

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 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

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.

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 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

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.

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.*

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 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

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).

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).

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

(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

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.

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.

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), and is a good-faith and reasonable effort to apply the Commission's definition of the subloop to the agreement. By contrast, we 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

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.

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.

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 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

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; *see* Access to MTEs and MDUs, *supra*. paras. 416-22.

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.