performance, features, functions, capabilities and other characteristics."[1879] WorldCom's language also would require Verizon to provide certain engineering, design, performance and other network data.[1880] WorldCom argues that this language is necessary to ensure that WorldCom obtains data required by rule 51.307(e).[1881] WorldCom argues that the Commission should adopt its proposed language because Verizon has not identified any plausible basis for excluding the proposal and because Verizon has agreed to include this language in every contract in the former Bell Atlantic-South region.[1882] To address criticisms levied by Verizon, WorldCom has committed in its briefs to make two changes to its proposed language. First, WorldCom suggests that Verizon's objection to the use of the word "Parity" would be mooted by its agreement to replace it with the phrase "at least equal in quality to that which the incumbent LEC provides to itself."[1883] WorldCom also agrees to delete its proposed section 3.2.2.[1884]

569. Verizon contends that WorldCom's proposal creates ambiguities by using expansive and undefined terms, and goes well beyond requirements of the Commission's rules.[1885] For example, Verizon states that there is no requirement under rule 51.311 for Verizon to provide WorldCom with equivalent "levels and types of redundant equipment and facilities for power, diversity and security" as Verizon provides to itself, its affiliates or its subscribers.[1886] Verizon also argues that, through its proposal, WorldCom seeks information to which it is not entitled under rule 51.307(e). Verizon also argues that WorldCom's proposed section 3.3 (by using the phrase "Unless otherwise requested by [WorldCom]"), suggests that WorldCom believes it is entitled to that UNEs be provided in a manner superior to the way Verizon provides the network elements to its own customers.[1887] Finally, Verizon argues that its proposed section 1.1 of its UNE attachment, to comply with applicable law in the provision of UNEs to WorldCom, gives the Commission and WorldCom the assurance that UNEs will be provided in a nondiscriminatory manner[1888]

[1879] WorldCom November Proposed Agreement, Part C, Attach. III, § 3.2.

[1880] *Id.* at § 3.2.1.

[1881] WorldCom Brief at 155, citing WorldCom Ex. 52 (WorldCom's response to record requests), at 1-2.

[1882] *Id.* at 156.

[1883] *Id.* at 155, citing Tr. at 121-22, 147.

[1884] WorldCom Reply at 140.

[1885] Verizon UNE Brief at 129, citing 47 C.F.R. §§ 51.307(e) & 51.311.

[1886] *Id.* at 130.

[1887] *Id.* at 132, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 3.3.

[1888] *Id.*

c. Discussion

570. With certain modifications explained below, we adopt WorldCom's proposed language.[1889] First, we note that there is no disagreement between the parties that Verizon is required to make available to WorldCom certain technical information so that WorldCom can interconnect with Verizon's network elements. Verizon has failed to demonstrate that the information sought by WorldCom is inconsistent with its obligations in this regard. Indeed, Verizon's witness testified that, at least to a certain extent, WorldCom's proposal encompasses "technical information," to which, we note, it is entitled under the Commission's rules.[1890] Furthermore, we note that the contested language is contained in WorldCom's current contract with Verizon and, to the knowledge of Verizon's witnesses, there has not been any problem with this existing language in the past.[1891]

571. We also reject Verizon's contention that WorldCom's proposed language is inconsistent with rule 51.311. Once again, we find that Verizon has failed to demonstrate that this inconsistency exists or offer any examples of how this provision, which exists in the parties' current contracts, has been used in an unreasonable or unlawful manner. To the contrary, we find that WorldCom's proposal represents a reasonable application of this rule.

572. We further find that the two modifications agreed to by WorldCom (replacing the term "Parity" with language drawn directly from the Commission's rule, and deleting WorldCom's proposed section 3.2.2) would address concerns raised by Verizon.[1892] We direct WorldCom to make these changes and thus need not address the merits of these particular Verizon arguments. Finally, we direct the parties to modify the first sentence of WorldCom's proposed section 3.3. We agree with Verizon that this sentence, as currently written, could be interpreted as enabling WorldCom to request UNEs superior in quality to the level of service

[1889] Specifically, we adopt WorldCom's November Proposed Agreement, Part C, Attach. III, §§ 3.1, 3.2 and 3.2.1, and modify § 3.3 (as set forth in the text, below). Because we adopt WorldCom's proposal, we find that its motion to strike is moot with respect to this issue. *See* WorldCom Motion to Strike, Ex. A at 34.

[1890] Tr. at 147, 150. At the hearing, Verizon's witness expressed concerns about this language giving WorldCom "a license to go into our proprietary information and use that [information] in ways that perhaps go beyond what is the stated intent for its use here." Tr. at 146. We note that the agreement's dispute resolution process is the appropriate forum to address any concern Verizon may have about WorldCom misusing the technical information that it obtains from Verizon.

[1891] *See* Tr. at 142. Moreover, Verizon's concerns appear to be theoretical because as its witness testified, "no one has been interested in getting this sort of information." Tr. at 153. WorldCom also indicates that this language is contained in all of its Bell Atlantic-South interconnection agreements. WorldCom Ex. 52, at 2.

[1892] We thus direct WorldCom to replace the phrase "at Parity," appearing in WorldCom's November Proposed Agreement, Part C, Attach. III, § 3.2, with the phrase "at least equal in quality to that which Verizon provides to itself." We further decline to adopt WorldCom's proposed § 3.2.2. *See* WorldCom Brief at 155; WorldCom Reply at 140; Tr. at 151.

Verizon provides to itself, which it is not obligated to do.[1893] Accordingly, to be consistent with the Commission's rules, we direct the parties to modify this provision to begin: "Unless the Parties otherwise agree… ."

26. Issue VII-10 (IDLC Intervals)

a. Introduction

573. As noted in the Commission's *Line Sharing Order*, integrated digital loop carrier (IDLC) establishes a direct, digital interface with the LEC central office switch, which makes it "difficult, if not impossible, for requesting carriers to access individual loops at that location."[1894] Verizon and AT&T disagree about the process by which Verizon will inform AT&T whether the loop requested by AT&T is serviced by integrated digital loop carrier (IDLC), whether other facilities are available, and how long it should take Verizon to respond with this information. The parties also disagree about whether and when AT&T should be required to use the Bona Fide Request (BFR) process to order UNEs for use in providing service to an end user currently served by IDLC. We adopt Verizon's proposal.

b. Positions of the Parties

574. According to Verizon, in an IDLC architecture, it uses equipment at the customer's location or at a remote terminal to multiplex 24 voice channels onto a single DS1 facility, which terminates directly into the switch in a central office.[1895] Verizon states that, at the present time, it does not have equipment capable of extracting an individual voice channel from the DS1 facility. Accordingly, in order to provide AT&T with access to a single unbundled loop for one end user, Verizon must either "move the loop to a spare facility, or demultiplex at the loop."[1896] Verizon states that under its proposal to AT&T, if AT&T orders a loop provisioned over IDLC, Verizon would move the requested loop(s) to spare physical loops at no charge to AT&T, if spare loops exist and are available. If Verizon determines that a spare loop is not available, it must notify AT&T of this fact within three business days, at which time AT&T may submit a BFR asking that Verizon demultiplex the integrated digitized loop.[1897]

[1893] The Eighth Circuit vacated rule 51.311(c), which, absent a demonstration of technical infeasibility to a state commission, required Verizon to provide superior access to a UNE upon the request of a competing carrier if it was technically feasible. *See Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000).

[1894] *See Line Sharing Order*, 14 FCC Rcd 20912, 20945-46, para. 69 n.152.

[1895] Verizon UNE Brief at 133.

[1896] *Id.*.

[1897] *Id.* at 134-35. Verizon also states that AT&T may make a BFR for access to unbundled local loops and the loop concentration site point. *Id.* at 135, citing Verizon Ex. 16 (Rebuttal Testimony of R. Clayton *et al.*), at 57.

575. Verizon argues that the Commission did not mandate or prohibit a specific provisioning process or interval for accessing IDLC loops, but that in other arbitrations, AT&T has sought to require Verizon to notify it that facilities are unavailable within the firm order confirmation (FOC) notice.[1898] Verizon contends that it does not have this information when it sends AT&T a FOC. Rather, only after it sends the FOC does Verizon begin to evaluate and process AT&T's order.[1899] Moreover, Verizon argues that once it determines that IDLC is present, it requires additional time to determine if and where a spare physical loop is available.[1900] Additionally, Verizon disagrees with AT&T's claim that it must always resort to the BFR process to obtain a loop served by IDLC and argues that AT&T provides no evidence to support its statement that the BFR process is too open ended nor does it suggest an alternative for handling requests to demultiplex a loop.[1901] Finally, Verizon states that its proposed process is the one used in New York when the Commission granted it section 271 approval and found that Verizon "provides unbundled local loops in accordance with the requirements of section 271."[1902]

576. AT&T opposes Verizon's proposal requiring it to use the BFR process to obtain loops served by IDLC, arguing that the process is expensive and slow.[1903] According to AT&T, this process was designed for the provision of UNEs where one-of-a-kind work is involved or infrequent adjustment to existing routine processes is needed, whereas IDLC loop provisioning is neither new nor unusual in Verizon's network.[1904] AT&T asserts that Verizon's proposal allows it to provision an IDLC loop for its own customer almost while the customer is on the line placing the order, while AT&T could not determine whether facilities were available for at least three to five calendar days after placing the order.[1905] AT&T also argues that if spare copper is not available and AT&T is thrown into the BFR process, there is no way to know when, if ever, the loop will be provisioned.[1906]

[1898] Verizon UNE Brief at 134.

[1899] *Id.*

[1900] *Id.*

[1901] Verizon UNE Reply at 70, citing AT&T Brief at 184. According to Verizon, AT&T acknowledges that it takes time and additional steps to determine whether there are alternative ways to satisfy the competitor's order when IDLC is present. *Id.* at 71, citing AT&T Brief at 186.

[1902] Verizon UNE Reply at 71.

[1903] AT&T Brief at 184.

[1904] *Id.*

[1905] *Id.* at 184-85.

[1906] *Id.* at 185 (expressing concern that, in this situation, the customer might well give up on AT&T and order its service from Verizon).

577. According to AT&T, Verizon's loop qualification system enables it to identify IDLC loops for which spare copper facilities are unavailable."[1907] AT&T contends that Verizon has not argued that it is technically infeasible to provide the provisioning information AT&T seeks within a reasonable period of time, such as the FOC date.[1908] Additionally, AT&T states that, although it has no objection to Verizon taking additional steps to determine whether alternatives are available to satisfy AT&T's order, it opposes using the BFR process for the exploration of such alternatives, arguing that the legal standard is parity and that Verizon should be required to have a standardized process in place to address this situation.[1909]

c. Discussion

578. We adopt Verizon's proposed section 11.7.6, which reiterates the existing process between these parties.[1910] Verizon has explained persuasively why it requires up to three business days to determine whether spare facilities are available after AT&T orders a loop provisioned using IDLC. Among other things, Verizon's expert testified that the assignment process, by which Verizon would assign an IDLC loop to either a UDLC or copper loop, can be mechanized. However, if the database does not locate a spare pair to fill AT&T's order, Verizon's engineers will be required to review records to determine whether there is some other way to serve the customer in question.[1911] Indeed, AT&T states that it has no objection to these additional steps.[1912] It is unclear from our record how Verizon can shorten what is a manual process for these "exceptions," (*i.e.*, those instances where Verizon's computers cannot automatically locate a spare).[1913] Moreover, we note that, although provided the opportunity to do so, AT&T offered no alternative process to apply in this situation.[1914]

579. AT&T does not explain how the current process, under which it submits a BFR only when no spare loop (or pair swap) is available, has proven inadequate in practice. According to Verizon, its process for handling IDLC situations has been in place for years, but Verizon's

[1907] *Id.* Additionally, AT&T argues that Verizon concedes that its loop qualification systems are capable of identifying IDLC loops. *Id.*, citing Tr. at 282-84.

[1908] AT&T Reply at 104.

[1909] AT&T Brief at 185, 186.

[1910] *See* AT&T Ex. 1 (AT&T Pet.), Attach. D (Agreement with TCG), § 11.7.2; Attach. E (Agreement with ACC), § 11.7.2; Attach. F (Agreement with MediaOne), § 11.7.2.

[1911] *See* Tr. at 285-89. According to Verizon, three business days is the maximum amount of time required to determine whether spare facilities are available but that it will not wait until the end of that period to inform AT&T of the existence of spare facilities. *Id.* at 287-88.

[1912] AT&T Brief at 186.

[1913] *See* Tr. at 289.

[1914] *See, e.g., id.* at 289 (stating that AT&T's "concern is with the [BFR] process.")

expert was unaware of any competitor availing itself of the BFR process to demultiplex an integrated loop.[1915] Aside from generally criticizing the BFR process as open-ended and expensive, AT&T has not presented us with any alternative to Verizon's proposed BFR process to demultiplex such loops.[1916]

580. We also determine that AT&T's arguments, as expressed during the hearing and in its briefs, contain assumptions about Verizon's IDLC process that are inaccurate and, accordingly, we do not rely on them. For example, AT&T's witness testified that it cannot make customer commitments until it receives the FOC from Verizon, and that it does not receive this FOC until Verizon has effectively gone through the BFR process.[1917] AT&T also argues that Verizon's proposal "*only* allows AT&T to use the BFR process, leaving AT&T unsure if and when it can provide customers with service and at what expense."[1918] Such statements inaccurately characterize Verizon's proposal (and the existing process), which Verizon's witnesses explained clearly, and without disagreement from AT&T, at the hearing.[1919] Finally, we also note that AT&T has access to Verizon's loop qualification databases so that AT&T can determine at the pre-ordering stage whether a prospective customer is currently receiving service through IDLC.[1920] Verizon explained persuasively, again without objection from AT&T, that the search to determine whether spare facilities are available must be done at the ordering, not pre-ordering, stage due to the "tremendous amount of churn in activity," where "random checks" of the database could result in pre-assigned pairs.[1921]

[1915] *See id.* at 293.

[1916] *See id.* at 279 (AT&T's witness acknowledging that AT&T has not proposed a routinized process to handle these requests). *See also id.* at 292 (Verizon's witness stating that the UNE-platform is an alternative available to AT&T if its would-be customer is served by IDLC).

[1917] *See id.* at 286.

[1918] AT&T Brief at 184 (emphasis added).

[1919] *See* Tr. at 277-78, 282-89.

[1920] *See id.* at 282-83 (explaining that access to its Loop Facility Assignment Control System will be fully automated by October 2001, and that this database indicates whether a particular loop is served by IDLC).

[1921] *See id.* at 282-84. Verizon has testified that many, if not most, of the loop assignment occurs automatically but that when their computers fail to locate a spare pair, Verizon's engineers will manually pull records to determine whether it is possible to get another assignment to that terminal for AT&T. *See id.* at 283-89. As we discuss above, it is reasonable for Verizon to have up to three business days to make this determination. However, in those instances where Verizon's database has successfully located and assigned another pair for AT&T, it is unclear from our record why Verizon could not indicate that reassignment on the FOC. Unfortunately, it is equally unclear from the record whether adding this information to the FOC is possible. For example, such a ruling may require Verizon to redesign its FOC to add this field and including this information may delay issuance of Verizon's FOC, which could adversely affect Verizon's performance measurements. The record simply does not contain sufficient information on this point for us to make such a finding and, importantly, we note that AT&T has not requested this type of a ruling. In its brief, AT&T argued that Verizon should indicate on the FOC when "the loop is currently provisioned using IDLC and where no copper spare facilities are available." AT&T Brief at 185. This request is (continued....)

E. Pricing Terms and Conditions

1. Issue I-9 (Price Caps for Competitive LEC Services)

a. Introduction

581. Section 252(d) establishes pricing standards that state commissions must apply in conducting arbitrations under the Act. The petitioners provide certain services to Verizon. Verizon proposes language that would cap petitioners' rates for these services at the rates that Verizon charges for comparable services. Petitioners oppose this language.

b. Positions of the Parties

582. Petitioners argue that Verizon should not be allowed to control petitioners' charges in any way.[1922] AT&T argues that there is no basis in the Act for limiting a competitive LEC's pricing flexibility.[1923] Rather, Cox argues that, with the exception of the reciprocal compensation provisions, the only rate-setting provisions in the Act apply exclusively to incumbent LECs.[1924] WorldCom argues that the Act does not require it to provide the services at issue, and that the rates for these services are not typically included in interconnection agreements.[1925] Cox argues that the Commission has held that, although state commissions have authority to set incumbent LEC rates in arbitration proceedings, they do not have comparable authority to set competitive LEC rates.[1926]

583. All three carriers argue that Verizon's price cap proposal also is inconsistent with both state and federal law. They argue that Verizon's proposal would effect an improper, unilateral elimination of the authority of regulatory bodies over rates and charges.[1927] Cox argues that Verizon is already protected against high rates by regulatory mechanisms that exist at both

(Continued from previous page)
different from the scenario we describe immediately above (namely, where Verizon's database *has* successfully located and automatically reassigned a pair for AT&T's order).

[1922] *See* AT&T Brief at 189; Cox Brief at 47-48; WorldCom Reply at 143.

[1923] AT&T Brief at 189.

[1924] Cox Brief at 47-48, citing 47 U.S.C §§ 252(d), 251(c)(3), (4). In November, Verizon modified its proposed language to Cox. *See* Verizon's November Proposed Agreement to Cox, § 20.3. Cox filed an objection, arguing that this language introduces a new approval requirement. *See* Cox Objection and Request for Sanctions at 2, 11-12, Ex. 4.

[1925] WorldCom Reply at 143.

[1926] Cox Brief at 47-48, citing 47 C.F.R. § 51.223; *Local Competition First Report and Order*, 11 FCC Rcd at 16109, para. 1246.

[1927] *See* AT&T Brief at 189; Cox Brief at 47; WorldCom Brief at 163, citing WorldCom Ex. 1 (Direct Testimony of M. Argenbright), at 6.

the state and federal level.[1928] AT&T and WorldCom argue that, to the extent that Verizon contends these rates need to be regulated, they are already subject to review by the state commission, which is the appropriate body to determine whether tariffed rates are reasonable or should be limited.[1929]

584. Finally, the petitioners argue that Verizon's proposed rule is unnecessary. WorldCom points out that it has separately agreed with Verizon that switched access rates are governed by the applicable tariffs and that Verizon has failed to provide any evidence that WorldCom is likely to overcharge it for relevant services.[1930] Cox cites to certain admissions made by Verizon that, although Verizon could have challenged Cox's existing rates under sections 29.8.3 and 29.8.5 of the parties' current agreement, it has never done so.[1931] Cox also cites to Verizon's admission that the only existing Cox rates that Verizon believes to be excessive are certain "late payment" charges that Cox has assessed notwithstanding payment by Verizon within a 30-day period and these late payments are not in dispute under Issue I-9.[1932]

585. Verizon argues that, since it is a "captive customer" for services that allow it to reach petitioner's end users, fairness dictates that it obtain fairly priced access to petitioners' respective networks and, thus, the interconnection agreement should reflect Verizon's proposed rate limit.[1933] Verizon states that, under Virginia law, competitive LEC rates must be "just and reasonable,"[1934] and that the Virginia Commission has statutory authority to "determine the reasonableness of any rate offered by 'any public entity' operating in Virginia."[1935] Verizon likens its situation to that of an interexchange carrier purchasing terminating or originating exchange access service from a competitive LEC with "bottleneck monopoly" control over each of its end users.[1936] Because it cannot stop delivering or accepting traffic, or stop paying

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[1928] Cox Brief at 44, citing Cox Ex. 1 (Direct Testimony of F. Collins), at 32, Cox Ex. 2 (Rebuttal Testimony of F. Collins), at 47-48.

[1929] *See* WorldCom Brief at 163-64, citing WorldCom Ex. 1 (Direct Testimony of M. Argenbright), at 6; *see also* AT&T Brief at 190, citing Tr. at 2110-12, 2118-19.

[1930] WorldCom Brief at 162, 165 & n.96.

[1931] *See* Cox Exs. 23, 24 (Verizon Reply to Cox Data Request Nos. 1-37, 1-38); *see also* Cox Brief at 44; Cox Reply at 33.

[1932] *See* Cox Ex. 22 (Verizon Reply to Cox Data Request No. 1-36); *see also* Cox Brief at 44-45; Cox Reply at 33.

[1933] *See* Verizon Pricing Terms and Conditions (PTC) Brief at 4-5, citing Verizon Ex. 7 (Direct Testimony of M. Daly, *et al.*), at 6-8; Verizon Ex. 21 (Rebuttal Testimony of M. Daly, *et al.*), at 2-7.

[1934] *See* Verizon PTC Brief at 5 & n.2, quoting Va. Code Ann. § 56-235.2.

[1935] *See id.*

[1936] *See* Verizon PTC Brief at 7, citing *Access Charge Reform,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9937, para. 36 (2001) (*Access Charge Reform Seventh Report and Order*).

petitioners, Verizon argues that the Commission should recognize, as the New York Commission recently did, that no market mechanism exists that would ensure that petitioners charge just and reasonable rates.[1937] Verizon argues that its proposal would permit petitioners to charge a rate higher than Verizon's rate for the same service should they demonstrate to Verizon, the Commission, or the Virginia Commission, that their costs are higher than Verizon's. Verizon argues that comparing competing LEC rates to Verizon's rates would provide "a specific standard by which to measure the reasonableness of the petitioners' rates, given the absence of effective market forces to govern the rates Verizon VA must pay petitioners."[1938]

586. In response to petitioners' argument that Verizon's proposed standard for rates is inconsistent with state and federal law, Verizon argues that the Commission in the *Access Charge Reform Seventh Report and Order* adopted a pricing regime in which competitive LEC access rates may not be tariffed higher than the equivalent switched access rate of the incumbent LEC in recognition that "certain CLECs have used the tariff system to set access rates that were subject neither to negotiation nor regulation designed to ensure their reasonableness."[1939] Verizon says, like users of these competitive LEC exchange access services, it has no "competitive alternative" to purchasing petitioners' services.[1940] Verizon also claims that its proposal is comparable to the way that the Virginia Commission regulates competitive LEC retail services, and that, under its proposal, the petitioners can resolve rate issues through the contract's dispute resolution process or by filing a tariff with cost justification.[1941] Verizon further notes that the Commission has recognized that the complaint process alone may be insufficient to keep competitive LEC access rates within a zone of reasonableness.[1942] Verizon also cites the New York Commission's recent holding that AT&T may not charge Verizon higher rates than Verizon charges AT&T.[1943]

[1937] *See* Verizon PTC Brief at 7-8, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9936, 9938, paras. 32, 38; *New York Commission AT&T Arbitration Order* at 85-86.

[1938] *See* Verizon PTC Brief at 3-4, 7.

[1939] *See* Verizon PTC Reply at 3, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9924-25, para. 2.

[1940] *See* Verizon PTC Reply at 4, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9938-39, para. 40.

[1941] *See* Verizon PTC Brief at 6; Verizon PTC Reply at 4.

[1942] *See* Verizon PTC Reply at 5, citing *Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9933, para. 25.

[1943] *See* Verizon PTC Reply at 3 n.4, citing Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order on Rehearing, at 15 (issued by New York Comm'n Dec. 5, 2001). Verizon also claims that that petitioners' advocacy cannot be squared with their advocacy on Issues I-3, III-3, III-18, and IV-85. *See* Verizon PTC Reply at 1-2 & nn.1, 2.

c. Discussion

587. We adopt AT&T and Cox's language and reject Verizon's proposed language to WorldCom.[1944] Even if Verizon were a "captive customer" with respect to the services at issue, a matter we do not decide, this is not the appropriate forum to address that argument. Verizon argues that price caps should be imposed on petitioners' services because permitting the petitioners to set their own rates would be unjust and unreasonable in violation of Virginia law.[1945] In this proceeding we apply federal law; Verizon's arguments about the dictates of Virginia law should be directed to the Virginia Commission.

588. The Commission took jurisdiction over this proceeding under section 252(e)(5) of the Act. That section provides that "[i]f a State commission fails to act to carry out its responsibility under this section ... then the Commission ... shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission."[1946] With the exception of section 252(d)(2), governing reciprocal compensation, which is not at issue here, the pricing provisions set forth in section 252 establish standards that state commissions must apply in determining "just and reasonable" rates under subsection (c) of section 251.[1947] As Cox points out, however, section 251(c) applies exclusively to *incumbent* LECs.[1948] Accordingly, the Bureau, acting as the Virginia Commission for purposes of this proceeding, is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners. As Cox points out, the Commission has ruled that it would be inconsistent with the Act for a state commission to impose section 251(c) obligations on competitive LECs.[1949] Accordingly, when we "assume the responsibility of the State

[1944] Thus, we adopt AT&T's and Cox's proposed language, which, without Verizon's proposed additions, has been agreed to by these parties. Accordingly we adopt AT&T's November Proposed Agreement to Verizon § 20.2; and we reject Verizon's November Proposed Agreement to AT&T, §§ 20.2, 20.3; Ex. A, Part 2, § III, final clause ("not to exceed ...."). Further, we adopt Cox's November Proposed Agreement to Verizon, § 20.3; Ex. A, Part B, § X; and we reject Verizon's November Proposed Agreement to Cox, § 20.3; Ex. A, Part B, § IV; Ex. A, Part B, § X. WorldCom does not offer proposed language, it only objects to Verizon's language. Accordingly we reject Verizon's November Proposed Agreement to WorldCom, Part C, Pricing Attach., § 3. Because we find in favor of petitioners on this issue, we dismiss as moot Cox's Motion to Strike the language contained in Verizon's November JDPL filing. *See* Cox Objection and Request for Sanctions at 2, 11-12, Ex.4. Further, because of our statutory findings, we do not address all of the parties' arguments.

[1945] *See* Verizon PTC Brief at 5 & n.2, quoting Va. Code Ann. § 56-235.2.

[1946] 47 U.S.C. § 252(e)(5).

[1947] *See* 47 U.S.C. § 252(d)(1), (3).

[1948] Cox Brief at 47-48, citing 47 U.S.C §§ 252(d), 251(c)(3), (4)(emphasis added).

[1949] Cox Brief at 47-48, citing 47 C.F.R. § 51.223; *Local Competition First Report and Order*, 11 FCC Rcd at 16109, para. 1247.

commission" under section 252 and act for it, we do not determine the justness and reasonableness of petitioner's rates for the services at issue here.[1950]

589. Verizon's reliance on the Commission's *Access Charge Reform Seventh Report and Order* is likewise misplaced.[1951] That order concerned competitive LEC *interstate* access charges and arose before this Commission under section 201(b) of the Act.[1952] It is undisputed that petitioners provide all of the services at issue to Verizon pursuant to tariffs filed with the Virginia Commission.[1953] Verizon concedes that Virginia law requires that rates be just and reasonable.[1954] Accordingly, Verizon may challenge petitioners' rates before the Virginia Commission if and when it claims that they do not comply with Virginia law.[1955] Further, if Verizon continues to believe that Virginia's complaint process is insufficient to keep petitioners rates within a "zone of reasonableness,"[1956] it should bring its concerns to the Virginia Commission.

[1950] 47 U.S.C. § 252(e)(5). Although section 252(e)(3) does permit a state commission to establish or enforce other requirements of state law in its review of an interconnection agreement, *see* 47 U.S.C. § 252(e)(3), that discretionary role is not part of the state commission's "responsibility" under section 252 and is inconsistent with the Commission's role when it exercises its authority under section 252(e)(5). *See Local Competition First Report and Order*, 11 FCC Rcd at 16130, para. 1291. The Commission is not bound by Virginia law and standards in a proceeding in which it has assumed such authority; indeed "the resources and time potentially needed to review adequately and interpret the different laws and standards of each state render this suggestion untenable." *Local Competition First Report and Order*, 11 FCC Rcd at 16130, para. 1291; *see* 47 C.F.R. § 51.807(b).

[1951] *See* Verizon PTC Reply at 3-5, 7, citing *Access Charge Reform Seventh Report and Order*.

[1952] *See Access Charge Reform Seventh Report and Order*, 16 FCC Rcd at 9924, 9931, n.2, para. 21 (section 201 provides authority for the Commission to ensure that competitive LEC interstate access rates are just and reasonable); 47 U.S.C. § 201(b). We do not understand Verizon to be challenging petitioners' interstate access charges in this proceeding. *See* Verizon PTC Brief at 8. Such a challenge, which would be properly before the Commission under section 201, would be inappropriate in this proceeding where we act for the Virginia Commission under section 252.

[1953] *See* Tr. at 2110, 2118-19. The services that petitioners provide to Verizon are transport services, *see* AT&T Brief at 189-90; Cox Reply at 31; Verizon PTC Brief at 8; WorldCom Reply at 143, intrastate switched access, *see* WorldCom Brief at 163; WorldCom Reply at 143; *cf.* WorldCom Brief at 165 & n.96 (the parties have agreed that switched access charges will be governed by their respective tariffs), and may now, or at some time in the future, include collocation. *See* AT&T Brief at 189-90; Verizon PTC Brief at 8; WorldCom Reply at 143; Tr. at 2117-18.

[1954] *See* n.1934, *supra*.

[1955] No evidence was presented at the hearing that any of petitioners are charging Verizon unjust and unreasonable rates. On the other hand, Cox demonstrated that Verizon never has challenged its rates under the existing agreement and that Verizon, in fact, does not currently contend that any of Cox's rates for the services at issue are unreasonable. *See* Cox Brief at 47-48, citing Cox Ex. 22, 23, 24; Cox Reply at 32-33.

[1956] *See* Verizon PTC Reply at 4-5.

2. Issues III-18/IV-85 (Tariffs v. Interconnection Agreements)

a. Introduction

590. The parties disagree about when and how tariffed rates that the parties file with the Virginia Commission may replace the rates in the pricing schedule, which will be arbitrated in this proceeding. Verizon proposes language under which any applicable tariff rates would automatically supersede the pricing schedule rates.[1957] WorldCom proposes competing language, which would permit tariff revisions "materially and adversely" affecting the terms of the agreement to become effective only upon the parties' written consent or upon "affirmative order" of the Virginia Commission.[1958] AT&T opposes Verizon's language; while AT&T offers no competing language of its own, it argues that certain language that the parties have agreed to should govern but should not be construed to permit tariffed rates to supersede the arbitrated rates.[1959] We adopt WorldCom's language.

b. Positions of the Parties

591. WorldCom argues that, under its proposal, if a commission established new rates, the parties could incorporate them into the agreement under the change of law provision; the agreement explicitly provides for this means of modification.[1960] It claims, contrary to Verizon's argument, that its language would not "lock in" rates that should be updated, but would ensure that the modification process is mutual and fair.[1961]

592. WorldCom criticizes Verizon's tariff proposal on the grounds that it would give Verizon unilateral authority to change the rates and would improperly shift the burden of proof. In a tariff proceeding, the burden would be on WorldCom to convince the state to reject Verizon's tariff. But in the arbitration regime, a carrier seeking to modify an arbitrated term bears the burden of demonstrating the change is warranted.[1962] WorldCom also argues that Verizon's proposal would circumvent the Act's approval and review process and violate federal

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[1957] *See* Verizon's November Proposed Agreement to AT&T, § 20.2; Ex. A, n.1; Verizon's November Proposed Agreement to WorldCom, § 1.2; Part C, Pricing Attach., § 1; *see also* Verizon's November Proposed Agreement to AT&T, Ex. A, nn. 3 & 5. Verizon says that the terms and conditions of the interconnection agreement, however, will prevail over any tariff that Verizon files during the term of the agreement. *See* Tr. at 2047-50; Verizon Pricing Terms and Conditions (PTC) Brief at 27.

[1958] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 1.3.

[1959] *See* AT&T's November Proposed Agreement to Verizon, § 20.2.

[1960] *See* WorldCom Brief at 170; WorldCom Reply at 147, citing WorldCom Ex. 32 (Rebuttal Testimony of M. Harthun *et al.*), at 9-10; *see also* AT&T Brief at 190-91, citing Tr. at 2046; AT&T's November Proposed Agreement to Verizon, § 20.2.

[1961] *See* WorldCom Reply at 149, citing WorldCom Brief at 166-70; *see also* AT&T Brief at 190-91.

[1962] *See* WorldCom Brief at 167, citing WorldCom Ex. 21 (Direct Testimony of M. Harthun *et al.*), at 10.

law.[1963] WorldCom states that Congress chose not to rely on the historically tariffed regime with respect to interconnection and network element prices. Instead, it set up an alternative, detailed process, requiring negotiation, arbitration, approval, regulatory review, and federal court review, to ensure that the resulting agreement complies with federal law.[1964] Because tariffed rates filed with the Virginia Commission might exceed the cost-based rates that the Act requires, allowing tariffs to trump the agreement would enable Verizon to escape the pricing standards established in the Act, which would violate federal law.[1965] WorldCom argues that the Commission recognized in *Global NAPs* that "[u]sing the tariff process to circumvent the section 251 and 252 processes cannot be allowed," which is precisely what Verizon seeks to do.[1966] WorldCom also argues that it would be inefficient and disruptive to require the parties to litigate in a tariff proceeding rates that have been established in arbitration.[1967]

593. AT&T argues that the Commission should direct that, no rates, terms, or conditions of the interconnection agreement may be amended by tariff filing unless Verizon can demonstrate that AT&T had actual, direct, and meaningful notice of the filing, affording AT&T an opportunity to protect its interests.[1968] AT&T argues that Verizon's proposal effectively transforms the rates decided here into mere placeholders until Verizon decides to impose a new rate.[1969] But, AT&T argues, it must be able to rely on the rates established by the Commission in this proceeding and memorialized in the interconnection agreement, as well as upon Commission oversight of any rate changes.[1970] Under Verizon's proposal, AT&T argues that tariffs could become effective as filed without any action by the Virginia Commission.[1971] Thus, Verizon's proposal is administratively burdensome and requires the petitioners to become the "tariff police" and to scour all of Verizon's tariff filings with the Virginia Commission.[1972]

594. Verizon argues that it seeks to establish tariffs as the primary, central source for applicable prices.[1973] Verizon claims that its proposed language, which incorporates applicable

[1963] *See* WorldCom Brief at 168-69.

[1964] *See id.* at 167, citing 47 U.S.C. §§ 251(c)(1), 252(a), (b), (e)(6).

[1965] *See* WorldCom Brief at 169.

[1966] *Id.* at 166, quoting *Bell Atlantic-Delaware, Inc. v. Global NAPs, Inc.*, 15 FCC Rcd 12946, 12959, para. 23 (1999) (*Global NAPs*), *aff'd on reconsideration*, 15 FCC Rcd 5997 (2000), *aff'd*, 247 F.3d 252 (D.C. Cir. 2001).

[1967] *See* WorldCom Brief at 170, citing WorldCom Ex. 32, at 9.

[1968] AT&T Reply at 108.

[1969] AT&T Brief at 191.

[1970] *Id.* at 192.

[1971] *See id.* at 191-92 & n.604.

[1972] *Id.* at 191.

[1973] *See* Verizon PTC Brief at 26.

tariffs: (1) ensures that prices are consistent, fair, and non-discriminatory throughout the service area covered by the agreement; (2) avoids litigation by relying on the Virginia Commission's authority over rates; and (3) keeps the agreement up-to-date without the need for further amendment if a tariff rate is revised during the term of the agreement.[1974] Verizon argues that, when it files a proposed tariff rate with the Virginia Commission, "any interested person" is given ample opportunity to participate in a hearing.[1975]

595. Verizon objects to the petitioners' approach, suggesting that they seek to "lock" Verizon into "frozen contract rates," while allowing themselves the flexibility to purchase from tariffs containing more favorable rates.[1976] Thus, petitioners would not themselves be bound by contract rates higher than the tariffed rates approved or otherwise allowed to become legally effective by the appropriate commission.[1977] Further, Verizon complains that the tariff process could be rendered moot under the petitioners' approach because other parties could opt into the rates established in these parties' arbitrated agreement with Verizon.[1978] Verizon cites to the New York Commission's recent decision to conform the interconnection agreement at issue to Verizon's tariff "where it is possible to do so," based upon its finding that "as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship."[1979] Thus, Verizon argues, "as a general rule, [a state commission] should not have to expend precious resources relitigating on a contract by contract basis, rates that it already has decided in a global proceeding."[1980]

596. Verizon distinguishes *Global NAPs*, arguing that it is not relying on a federal tariff to circumvent or supersede a determination under sections 251 and 252.[1981] Instead, Verizon emphasizes that it proposes that the interconnection agreement explicitly and directly refer to the tariff. Thus, Verizon claims that its proposal would provide the certainty that was lacking in *Global NAPs*.[1982]

597. In response to the argument that Verizon's proposal requires petitioners to become the "tariff police," Verizon argues that petitioners already monitor Verizon's tariff filings in

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[1974] *Id.* at 27, 29, citing Verizon Ex. 28 (Rebuttal Testimony of C. Antoniou *et al.*), at 2.

[1975] Verizon PTC Brief at 27.

[1976] *Id.* at 26.

[1977] *Id.* at 29.

[1978] *Id.*, citing Verizon Ex. 11 (Direct Testimony of C. Antoniou *et al.*), at 20.

[1979] Verizon PTC Brief at 30, quoting *New York Commission AT&T Arbitration Order*, at 4.

[1980] *See* Verizon PTC Brief at 30, citing *New York Commission AT&T Arbitration Order.*

[1981] Verizon PTC Brief at 31, citing *Global NAPs.*

[1982] Verizon PTC Brief at 31.

Virginia for their impact on the contract's rates for related services.[1983] Verizon argues that the only difference between its proposal and WorldCom's is that WorldCom would force the parties to incorporate changed rates through the change in law provisions, rather than permit the "up front" approach proposed by Verizon.[1984] Thus, WorldCom's approach would only forestall incorporation of lawfully approved rates.[1985] Finally, Verizon argues that petitioners' position on this issue is inconsistent with their advocacy on Issue I-9, where they argue that the Virginia Commission's regulations ensure that petitioners' tariffed rates are fair and reasonable.[1986]

c. Discussion

598. We rule for petitioners on this issue. Accordingly, we adopt WorldCom's proposed language[1987] and reject Verizon's proposed language.[1988]

599. We find WorldCom's language to be consistent with applicable law, and with the statutory construct that provides for federal court review of state commission determinations under section 252. In conjunction with other provisions of the contract that we adopt in this arbitration, section 1.3 of WorldCom's proposed contract preserves the parties' right to obtain review, under section 252(e), of any state commission determination that effects a change in the arbitrated rates.[1989] Thus, if a commission establishes new rates, that would constitute a change in law, which the parties would be able to incorporate into the agreement pursuant to the change of

[1983] Verizon PTC Reply at 6-7.

[1984] *See id.* at 7.

[1985] *Id.*

[1986] *Id.* at 7-8.

[1987] *See* WorldCom's November Proposed Agreement to Verizon, Part A, § 1.3.

[1988] *See* Verizon's November Proposed Agreement to WorldCom, Part A, § 1.2; Part C, Pricing Attach., § 1. We also reject Verizon's proposed footnote 1 to its proposed pricing schedule with AT&T, as inconsistent with our determination here and on Issues V-1/V-8. *See* Verizon's November Proposed Agreement to AT&T, Ex. A, n.1; *see also supra,* Issues V-1/V-8. Further, we reject Verizon's proposed footnote 3 to its proposed pricing schedule with AT&T, as unnecessary, given the parties' agreed-upon change of law provision. *See* Verizon's November Proposed Agreement to AT&T, Ex. A, n.3; *see also* AT&T's November Proposed Agreement to Verizon, § 27.4; Verizon's November Proposed Agreement to AT&T, § 27.4. Finally, because we will set permanent rates in the proceeding, we reject footnote 5 to Verizon's proposed pricing schedule to AT&T. *See* Verizon's November Proposed Agreement to AT&T, Ex. A, n.5.

[1989] *See* WorldCom's Proposed November Agreement to Verizon, Part A, § 1.3.3 (any tariff change "materially and adversely" affecting the terms of the agreement is effective only upon the parties' written consent or upon "affirmative order" of the Virginia Commission). We read the term "affirmative order" to include an order deciding, under the contract's Dispute Resolution provisions, whether rates ordered in a separate proceeding effect a change in law that must be reflected in the pricing schedule.

law provisions of the contract.[1990] Under this process, if the parties disagree as to the applicability of such new rates, they may invoke the contract's dispute resolution process, which ultimately will result in a determination subject to review in federal court under section 252(e).[1991]

600. We reject Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding.[1992] Thus, rates approved or allowed to go into effect by the Virginia Commission would supersede rates arbitrated under the federal

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[1990] *See* Tr. at 2066; WorldCom Brief at 170; WorldCom Reply at 147-49; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, at § 1.1 (parties to incorporate newly ordered rates or discounts into the pricing schedule (Table I) within 30 days after the legal effectiveness of order establishing such rates); *infra*, Issue IV-30 (adopting WorldCom's proposed § 1.1); WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2 (in the event of a change of law materially altering the obligations set forth in Agreement, parties will promptly negotiate substitute contract provisions and, if they cannot do so within 30 days, will seek relief under the Dispute Resolution provisions of the contract); *infra*, Issues IV-113/VI-1-E (adopting WorldCom proposed § 25.2).

[1991] *See* Verizon's November Proposed Agreement to WorldCom, Part A, at § 14; WorldCom's November Proposed Agreement to Verizon, Part A, § 13; *infra*, Issue IV-101 (collectively constituting the Dispute Resolution provisions). A state commission determination setting prices under section 252 in an interconnection agreement, or determining whether to modify prices contained in such an agreement, would constitute state commission "determinations" appealable to federal court under section 252(e). While the courts have not spoken directly to such modifications, we note that Commission precedent and most federal courts of appeals addressing the issue have held that *enforcement* actions are subject to federal review. *Southwestern Bell Telephone Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493, 497 (10th Cir. 2000); *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, 208 F.3d 475, 479-80 (5th Cir. 2000); *Illinois Bell Telephone Co. v. WorldCom Technologies, Inc.*, 179 F.3d 566, 570-71(7th Cir. 1999), *cert. denied*, No. 00-921, 2002 WL 1050229 (U.S. May 28, 2002); *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 804 n.24 (8th Cir. 1997), *aff'd in part and rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *Starpower Communications, LLC, Petition for Preemption of Jurisdiction of the Virginia State Corporation Comm'n Pursuant to Section 252(e) of the Telecommunications Act of 1996*, CC Docket No. 00-52, Memorandum Opinion and Order, 15 F.C.C.R. 11277, 11279-80, para. 6 (2000). *But see Bell Atlantic Maryland, Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 297 (4th Cir. 2001) ("Section 252(e)(6) invokes federal court review only for State commission determinations made under § 252 to determine *whether* inter-connection agreements are in compliance with §§ 251 and 252") (emphasis added), *vacated and remanded on other grounds*, *Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, 122 S. Ct. 1753 (2002); *cf. BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services, Inc.*, 278 F.3d 1223, 1243 (11th Cir. 2002) ("Telecommunications Act of 1996 does not provide a private right of action for interpretation of previously approved interconnection agreements.").

[1992] *See* Tr. at 2048; Verizon PTC Brief at 26-27; Verizon's November Proposed Agreement to AT&T, Ex. A, n.1; Verizon's November Proposed Agreement to WorldCom, Part C, Pricing Attach., § 1.5. The practical impact of Verizon's proposal is unclear because Verizon does not currently offer unbundled network elements in Virginia under a tariff, but we note that it nonetheless may choose to do so in the future. *See* Tr. at 2047; Verizon PTC Reply at 7.

Act.[1993] This is troublesome, particularly given the Virginia Commission's stated refusal to apply federal law in this arbitration.[1994]

601. As WorldCom argues, Verizon's proposal could thwart petitioners' statutory right to ensure that the new rates comply with the requirements of sections 251 and 252.[1995] Under section 252(e)(6), "[i]n any case in which a State commission makes a determination *under this section*, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section."[1996] Under Verizon's proposal, the new tariffed rates would not be the subject of a determination under section 252, and, moreover, never would be incorporated into the agreement.[1997] Thus, they would not be the subject of a "determination" under section 252. Petitioners, accordingly, would be able to seek review under section 252(e)(6) of an initial determination regarding rates set forth in the arbitrated interconnection agreement but, under Verizon's approach, would be unable to seek review under this same provision if these arbitrated rates were superseded by a tariff change in the future.[1998]

602. We disagree with Verizon's assertion that a tariff is a necessary vehicle to achieve nondiscriminatory rates in the section 251-252 context.[1999] That is the purpose of section 252(i), which requires LECs to make available to any other requesting telecommunications carrier any interconnection, service, or network element provided under an agreement approved under

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[1993] *See* Verizon PTC Brief at 27.

[1994] *See, e.g., Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Comm'n Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224, 6226, para. 4 (2001).

[1995] *See* WorldCom Brief at 169, citing 47 U.S.C. §§ 251, 252(e)(6).

[1996] 47 U.S.C. § 252(e)(6)(emphasis added).

[1997] *See* Verizon PTC Brief at 22-23.

[1998] Ordinarily, appeal of any decision of the Virginia Commission would be to the Virginia Supreme Court. *See, e.g.,* Va. Code Ann. §§ 12.1-39; 56-8.2. The Communications Act, however, expressly prohibits state court review of state commission decisions approving or rejecting interconnection agreements. *See* 47 U.S.C. § 252(e)(4) ("No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section."). Although federal review of such tariffed rates might be possible under 28 U.S.C. § 1331, this is not the procedure set forth in section 252 for establishment and review of rates. *Cf. Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, 122 S. Ct. at 1759 (section 252(e)(6) does not divest federal courts of authority under 28 U.S.C. § 1331 to review actions to interpret or enforce interconnection agreements). We also note that Verizon's proposed language does not, itself, incorporate any specific requirement that its future tariffs comply with sections 251 and 252. *See, e.g.*, Verizon's November Proposed Agreement to AT&T, § 20.2, Ex. A, n.1; Verizon's November Proposed Agreement to WorldCom, Part C, Pricing Attach. § 1.5.

[1999] *See* Verizon PTC Brief at 26-27, 29, citing Verizon Ex. 28, at 2.

section 252.[2000] Consistent with the statute's recognition of parties' right to negotiate interconnection agreements, the parties are certainly free to agree that services will be provided pursuant to tariffs filed with the appropriate commission, and they have done so with respect to certain services.[2001] Where the parties fail to agree, however, and ask a state commission to set rates or resolve other issues relating to the interconnection agreement, a carrier cannot use tariffs to circumvent the Commission's determinations under section 252 or the right to federal court review under section 252(e)(6).

603. With respect to AT&T, we note that both AT&T and Verizon have agreed to section 20.2.[2002] Although these parties apparently disagree on the interpretation of the language contained in that undisputed section, we are not called upon today to determine whether a particular set of facts falls within or without that undisputed language.[2003] We note that, in the event of a change in law, section 27.4 of AT&T and Verizon's agreed-upon language requires them to renegotiate mutually acceptable terms and, if that effort is unsuccessful, enables them to pursue appropriate regulatory and judicial relief.[2004]

3. Issue IV-30 (Pricing Tables v. Tariffs)

a. Introduction

604. WorldCom proposes prefatory language to its pricing schedule, which would explain the circumstances under which the rates in the pricing schedule could be revised, specify when the revised rates would become effective, and establish a procedure for the parties to

[2000] *See* 47 U.S.C. § 252(i); *Local Competition First Report and Order*, 11 FCC Rcd at 16139-40, paras. 1315-16 (primary purpose of section 251(i) is to prevent discrimination). Verizon also claims that rejection of its proposal would render the tariff process moot because other parties could opt into the rates established in these parties' arbitrated agreement with Verizon. Verizon PTC Brief at 29, citing Verizon Ex. 11, at 20. We agree but perceive no inconsistency with the Act arising from that result.

[2001] As we decide in Issue IV-30 below, a tariff revision does not require an amendment to the pricing schedule in the Verizon-WorldCom Agreement. Rather, we anticipate that, when the pricing schedule references a tariff, it will say "per applicable tariff" or equivalent language, rather than incorporate a specific rate. Verizon argues that permitting the parties to buy certain services out of a tariff instead of the interconnection agreement constitutes regulatory arbitrage. *See* Verizon PTC Brief at 29. We expect that whether a party may purchase a service out of a tariff when it is also offered in the interconnection agreement would depend on the language of the agreement. This is an issue we are not called upon to decide today.

[2002] *See* AT&T's November Proposed Agreement to Verizon, § 20.2; Verizon's November Proposed Agreement to AT&T, § 20.2.

[2003] *See* Second Revised Joint Decision Point List, Pricing Terms and Conditions (Nov. 2, 2001), at 6-7.

[2004] *See* AT&T's November Proposed Agreement to Verizon, § 27.4; Verizon's November Proposed Agreement to AT&T, § 27.4.

incorporate the new rates into the pricing schedule.[2005] Verizon opposes WorldCom's proposal in favor of its own language.

b. Positions of the Parties

605. WorldCom argues that its language is similar to that contained in the current agreement.[2006] It claims that its language is superior to Verizon's because Verizon's language does not: (1) define the term during which the rates contained in the pricing schedule will be effective; (2) clearly establish when changes to rates will become effective; and (3) provide a timeline for incorporating new rates into the pricing schedule.[2007] It argues that this type of specificity is necessary to prevent disputes and avoid litigation.[2008] It also argues that, when reference to a tariff is appropriate, amending the pricing schedule to correspond to tariff changes ensures that the agreement's pricing provisions remain up-to date.[2009]

606. Verizon states that the parties have agreed to all of Verizon's proposed contract language in the pricing attachment, except for section 1.[2010] Verizon argues that its language, which would give priority to tariffed rates, is superior to WorldCom's proposal, which would require constant updates.[2011] It argues that its pricing language should be adopted because it provides a simple, appropriate, and nondiscriminatory roadmap to applicable rates.[2012]

607. Verizon complains that WorldCom's language includes unfair provisions regarding the effective date of newly ordered rates.[2013] Under this language, Verizon asserts,

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[2005] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2006] WorldCom Brief at 172.

[2007] *See id.* at 173, citing WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 19-21.

[2008] *See* WorldCom Reply at 155.

[2009] *Id.*, citing WorldCom Ex. 8, at 19.

[2010] Verizon Pricing Terms and Conditions (PTC) Brief at 21.

[2011] *See id.* at 21-23; Verizon PTC Reply at 11.

[2012] Verizon PTC Brief at 21-22.

[2013] Verizon PTC Brief at 22-23. The objectionable language provides that:

> The rates or discounts set forth in Table 1 below shall be replaced on a prospective basis (unless otherwise ordered by the FCC or the [Virginia] Commission) by rates or discounts as may be established and approved by the [Virginia] Commission or FCC and, if appealed, as may be ordered at the conclusion of such appeal. Such new rates or discounts shall be effective immediately upon the legal effectiveness of the court, FCC, or [Virginia] Commission order requiring such new rates or discounts.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

commission-ordered rates would not be effective pending appeals, regardless of whether the rates had been stayed.[2014] Under Verizon's approach, if rates change as a result of a tariff filing or order, that document will determine the effective date.[2015] Next, Verizon complains about WorldCom's proposed "term" clause, which it argues is duplicative of the already agreed-to general "Term and Termination" clause that governs the contract as a whole.[2016] Verizon states that under its proposal the "effective term of the rates" is the effective term of the agreement. Verizon also argues that WorldCom's language requires the parties to revise the contract to reflect the newly ordered rates, which would delay the effective date of new rates.[2017] Verizon states that WorldCom's language also is onerous because it requires the parties to amend the pricing schedule constantly to correspond to tariff changes.[2018] Finally, Verizon claims that this clause is duplicative of the contract's change of law provision, and would, accordingly, introduce ambiguity.[2019]

c. Discussion

608. We find for WorldCom on this issue. We note that WorldCom's proposed language is similar to the existing agreement between the parties.[2020] Verizon's proposed language is unacceptable because it would make the rates contained in the pricing schedule

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[2014] Verizon PTC Brief at 23.

[2015] Verizon PTC Reply at 11.

[2016] *See id.*, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 2. WorldCom's proposed "term" clause provides:

> Unless otherwise provided in this Agreement, all rates and discounts provided under this Agreement shall remain in effect for the term of this Agreement unless modified by order of the FCC, [Virginia] Commission, or a court of competent jurisdiction reviewing an order of the FCC or [Virginia] Commission, as the case may be.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2017] Verizon PTC Brief at 22-23. The WorldCom contract states:

> Within thirty (30) days after the legal effectiveness of the court, FCC, or Commission order establishing such new rates or discounts and regardless of any intention by any entity to further challenge such order, the Parties shall sign a document revising Table 1 and setting forth such new rates or discounts, which Revised Table 1 the Parties shall update as necessary in accordance with the terms of this Section.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1

[2018] Verizon PTC Brief at 22-23.

[2019] Verizon PTC Reply at 12, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 4.5.

[2020] *See* WorldCom Petition, Ex. D (Interconnection Agreement Governing Current Relations), at Part C, Attach. I, at § 1.1.

secondary to any rates contained in a filed tariff. As discussed in connection with Issues III-18/IV-85, unless the parties agree otherwise, we will not permit a tariff to supersede an interconnection agreement; accordingly we reject Verizon's proposed language and adopt WorldCom's language.[2021] We address Verizon's remaining arguments regarding WorldCom's proposed language in turn.

609. First, Verizon argues that, under WorldCom's language, commission-ordered rates would not be effective pending appeal, regardless of whether the rates are stayed.[2022] We do not read WorldCom's language to stay the effectiveness of a rate automatically pending appeal absent a stay order. Rather, "new rates or discounts *shall be effective immediately upon the legal effectiveness* of" the order requiring new rates.[2023] If a superseding order such as a stay were entered, the rate ceases to be "legally effective." We believe that WorldCom's language merely tracks the enforceability of a rate under law.

610. Next, Verizon claims that WorldCom proposes a "term" clause that is duplicative of the already agreed-to "Term and Termination" clause.[2024] Verizon argues that, under its language, the "effective term of the rates" is the effective term of the agreement, but if rates change as a result of a tariff filing or order, that latter document will determine the effective date.[2025] WorldCom's language provides that the rates in the agreement will "remain in effect for the term of th[e] Agreement, unless modified by" regulatory or court order.[2026] The term of the agreement is, according to the agreed-upon "Term and Termination" clause, three years from the effective date (and thereafter until cancelled or terminated).[2027] These two provisions are

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[2021] *See supra*, Issues III-18/IV-85 (rejecting Verizon's proposed language); WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2022] Verizon PTC Brief at 23.

[2023] See n.2013, *supra*. Orders of both the Commission and the Virginia Commission prescribing new rates would, absent a stay order, be effective pending appeal. Under section 408, orders of the Commission "take effect thirty calendar days from the date upon which public notice of the order is given" and "continue in force for the period of time specified in the order *or until the Commission or a court of competent jurisdiction issues a superseding order*." 47 U.S.C. § 408 (emphasis added). Similarly, final orders of the Virginia Commission prescribing rates are not stayed upon appeal in the absence of an affirmative order by the Virginia Supreme Court. *See* Va. Code Ann. § 56-239. We further note that the Seventh Circuit has ruled that a party seeking to stay, in federal appellate court, the effectiveness of a state commission order implementing the Act must demonstrate entitlement to injunctive relief, which, *inter alia*, requires a showing of probable success on the merits and irreparable injury. *Illinois Bell Telephone Company v. WorldCom Technologies, Inc.*, 157 F.3d 500, 503-04 (7th Cir. 1998).

[2024] Verizon PTC Reply at 11, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 2.

[2025] Verizon PTC Reply at 11.

[2026] *See* n.2016, *supra*, quoting WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1.

[2027] The "Term and Termination" language, upon which the parties have agreed, provides in pertinent part:

> This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until [DATE THREE YEARS

(continued....)

harmonious rather than duplicative. The rates contained in the pricing schedule, which otherwise would be effective for three years, could be amended by regulatory or court order setting new rates, as set forth in section 1.1. We do not believe WorldCom's language stating the general rule that rates will be effective for the term of the agreement to be mere surplusage given Verizon's competing desire to effect rate changes through tariff filings.

611. Next, Verizon claims that WorldCom's language would delay the effective date of new rates because it requires the parties to revise the pricing schedule to reflect newly ordered rates and would require constant amendments to correspond to tariff changes.[2028] Verizon argues that, when new rates become generally applicable, the revision procedures in the interconnection agreement should not delay their effective date.[2029] We do not agree that the ministerial act of revising the pricing schedule to reflect the new rates should delay the effective date of those rates. Rather, WorldCom's proposed language provides that the "new rates or discounts shall be effective *immediately* upon the legal effectiveness" of the regulatory or court order, not on the date that those rates are incorporated into the pricing schedule.[2030] We also disagree that WorldCom's language requires the parties to amend the pricing schedule to correspond to tariff changes. Neither the testimony of WorldCom's witness nor its proposed section 1.1 supports a requirement to update the pricing schedule to reflect tariff changes, and we agree with Verizon that any such requirement would be onerous.[2031] Accordingly, we reject the argument that a tariff filing would trigger an obligation to amend. As we discuss under Issue III-18, when the pricing schedule references a tariff, we expect it will say "per applicable tariff" or equivalent language,

(Continued from previous page)

AFTER EFFECTIVE DATE] (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.

See Verizon's November Proposed Agreement to WorldCom, Part A, § 2.1. The remaining provisions of section 2 concern termination. *See id.*

[2028] Verizon PTC Brief at 22-23.

[2029] *Id.* at 23.

[2030] *See* nn. 2013 & 2017], *supra.*

[2031] *See* WorldCom Ex. 8, at 19 (absent a provision establishing a procedure under which the rates in the pricing schedule will be amended, it might not be clear "how the interconnection agreement's rates will be modified *in light of the relevant state commission or FCC orders*") (emphasis added). We do not understand the rates to which the following clause refers to include rates established by tariff filing: "The rates or discounts set forth in Table 1 below shall be replaced on a prospective basis ... by rates or discounts *as may be established and approved* by the [Virginia] Commission or FCC." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1 (emphasis added). Any other interpretation would be inconsistent with the rule that tariff filings cannot modify the rates that are established in this arbitration. Accordingly, the requirement that the parties "sign a document revising Table 1 and setting forth *such* new rates or discounts" does not require the parties to update the pricing schedule to refer to rates or discounts established by tariff revision. *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 1.1 (emphasis added).

rather than incorporate a specific rate. That approach appears to be consistent with the parties' current agreement.[2032]

612. Finally, Verizon claims that WorldCom's language is duplicative of the contract's change of law provision, which is addressed in Issues IV-113/VI-1-E, and argues that it would introduce ambiguity.[2033] We agree with Verizon that duplicative provisions may cause interpretation problems, and can foster litigation. Nevertheless, we do not believe that WorldCom's section 1.1 language introduces ambiguity because it refers exclusively to the rates and discounts contained in the pricing schedule. WorldCom's proposed section 25.2 governing change of law, which we adopt under Issues IV-113/VI-1-E, addresses negotiation of substitute contract language in light of a change of rule, regulation, or order making any provision of the agreement unlawful or materially altering a party's obligation to provide services.[2034] Because revising the pricing schedule to reflect newly ordered rates usually should be a ministerial act, we do not believe that the negotiation process outlined in proposed section 25.2 generally will be necessary for rate changes. Indeed, Verizon agrees that the act of incorporating rates into the pricing schedule should not trigger negotiation obligations, such as those required under section 25.2.[2035] On the other hand, if the parties disagree as to whether a particular order effects a change to the contract rates, we would expect them to invoke the contract's dispute resolution procedure.[2036]

4. Issue IV-32 (Exclusivity of Rates and Electronic Pricing Table Updates)

a. Introduction

613. WorldCom proposes language reciting that: (1) the rates set forth in the pricing schedule are the exclusive rates for the services purchased under the agreement; (2) Verizon shall be restricted to the rates itemized in the pricing schedule for recovery of the costs of development, modification, technical installation, and maintenance of systems it requires to provide the services set forth in the agreement; (3) rates for services not identified in the pricing schedule shall be added when agreed between the parties; and (4) Verizon shall provide WorldCom with an updated electronic copy of the pricing schedule on a periodic basis. Verizon

[2032] *See generally* WorldCom Petition, Ex. D, at Part C, Attach. I, Table I (Detailed Schedule of Itemized Charges).

[2033] Verizon PTC Reply at 12, citing Verizon's November Proposed Agreement to WorldCom, Part A, § 4.5.

[2034] *See infra* Issues IV-113/VI-1-E.

[2035] *See* Verizon PTC Brief at 23 ("a carrier should not have to go through any additional 'hoops' to obtain the legally effective rates").

[2036] *See* Verizon November Proposed Agreement to WorldCom, Part A, at § 14; WorldCom November Proposed Agreement to Verizon, Part A, § 13; *infra*, Issue IV-101 (collectively constituting the Dispute Resolution provisions).

proposes alternative language, incorporating its proposal that subsequently filed tariff rates supersede the rates established in this arbitration.

b. Positions of the Parties

614. WorldCom argues that the rates in the pricing schedule should be the exclusive means of assessing charges for services covered in the agreement, absent other agreement between the parties.[2037] It claims that Verizon's attempt to levy additional charges on WorldCom for services offered and priced under the agreement amounts to an anticompetitive unilateral modification in the form of hidden charges.[2038] WorldCom also claims that, because Verizon is legally required to provide the services covered in the agreement, its development of additional systems or infrastructure is simply the cost of doing business in a competitive environment.[2039] WorldCom argues that, since new entrants must bear their own development costs, Verizon should not receive preferential treatment and be permitted to impose its development costs on other parties.[2040] Section 1.3 of WorldCom's proposed contract restricts Verizon's recovery of these development costs to the rates in the pricing table.[2041]

615. WorldCom also claims that, contrary to Verizon's argument, its proposed language would neither impede the parties from incorporating new rates into the pricing schedule nor prevent them from agreeing to charge different rates.[2042] WorldCom's argues that its language would make clear that, when new services are developed or existing services are modified during the agreement, these would be added to the pricing schedule.[2043]

616. WorldCom's proposed section 1.4 would require Verizon to provide WorldCom with an updated copy of the pricing schedule in an electronic format, on a monthly or other mutually agreeable timetable.[2044] WorldCom argues that it needs a current and accurate price list and this requirement promotes efficiency and facilitates auditing of bills, thus achieving greater accuracy and minimizing disputes.[2045] Further, given the complexity of services for which

[2037] WorldCom Brief at 175; WorldCom Reply at 156.

[2038] WorldCom Brief at 176, citing Tr. at 2074; WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 27-28; WorldCom Reply at 157, citing WorldCom Ex. 8, at 25-26.

[2039] *See* WorldCom Brief at 176, citing WorldCom Ex. 8, at 25.

[2040] *See* WorldCom Brief at 176, citing WorldCom Ex. 24 (Rebuttal Testimony of M. Argenbright), at 20-21; WorldCom Reply at 157.

[2041] WorldCom Reply at 157, citing Verizon Pricing Terms and Conditions (PTC) Brief at 24.

[2042] WorldCom Brief at 175-76, citing Tr. at 2066-67; WorldCom Ex. 24, at 20.

[2043] WorldCom Brief at 177, citing WorldCom Ex. 8, at 26.

[2044] *See* WorldCom's Proposed November Agreement to Verizon, Part C, Attach. I, § 1.4.

[2045] WorldCom Brief at 176-77, citing WorldCom Ex. 8, at 26.

WorldCom will be billed, the electronic format is appropriate.[2046] WorldCom notes that Verizon agreed to provide Uniform Service Order Code (USOC) codes.[2047] Thus, according to WorldCom, Verizon should also be willing to provide USOC codes in the pricing schedule.[2048]

617. As with Issues III-18/IV-85 and IV-30, Verizon argues that its language, which would allow the rates in the pricing schedule to be superseded by tariffed rates, is superior to WorldCom's proposal, which would require constant updates.[2049] In response to WorldCom's argument about hidden charges, Verizon states that WorldCom may address any such charges through the dispute resolution process.[2050] Verizon complains that, under WorldCom's proposed section 1.3, Verizon would be responsible for costs incurred for systems or infrastructure necessary to provide services covered by the agreement.[2051] If the Commission or the Virginia Commission recognizes Verizon's right to recover costs outside the interconnection rates, Verizon contends that it should not be required to bargain away its right to be compensated at the legally effective rate.[2052] It argues that the Commission has specifically recognized an incumbent LEC's right to cost recovery for items such as development of future OSS and third-party intellectual property licensing rights on behalf of competitive LECs.[2053] Verizon also cites the decisions of several district courts and state commissions finding that incumbent LECs may recover certain OSS costs from new entrants.[2054] It argues that WorldCom's language would improperly circumscribe this right.[2055] According to Verizon, the development costs that WorldCom seeks to preclude Verizon from recovering are not *Verizon's* cost of doing business in

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[2046] WorldCom Brief at 177, citing WorldCom Ex. 23, at 21.

[2047] WorldCom Brief at 177; *see also* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, § 2.1.8 (resolved Issue IV-59).

[2048] WorldCom Brief at 177.

[2049] *See* Verizon PTC Brief at 22-23.

[2050] *See* Verizon PTC Reply at 13.

[2051] Verizon PTC Brief at 23.

[2052] Verizon PTC Brief at 24, citing Verizon Ex. 11 (Direct Testimony of C. Antoniou, *et al.*), at 12.

[2053] *See* Verizon PTC Reply at 13-14, citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, 20977, para. 144 (1999) (*Line Sharing Order*), *remanded on other grounds sub nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (additional citations omitted); *see also* Tr. at 2062.

[2054] *See* Verizon PTC Reply at 14-16 & n.13, citing, *inter alia*, *Bell Atlantic-Delaware v. McMahon*, 80 F. Supp. 2d 218, 248 (D. Del. 2000); *AT&T Communications of the South Central States v. BellSouth Telecommunications*, 20 F. Supp. 2d 1097, 1104-05 (E.D. Ky. 1998) (additional citations omitted).

[2055] *See* Verizon PTC Reply at 13.

a competitive environment but instead result from a *competitive LEC's* decision to use Verizon's network rather than investing in its own network.[2056] Precluding Verizon from recovering those costs would subsidize the competitive LEC, which the Commission should not allow.[2057]

618. Verizon claims that WorldCom's proposed language concerning subsequently developed services or services modified by regulatory requirement is redundant because the agreement will contain BFR[2058] and change of law provisions.[2059] Finally, Verizon argues that requiring it to provide WorldCom with an updated electronic pricing table is another attempt to shift costs to Verizon.[2060] WorldCom can create and maintain its own electronically formatted pricing table.[2061] Moreover, given the number of competitive LECs with which Verizon has interconnection agreements, WorldCom's proposal would be overly burdensome.[2062]

c. Discussion

619. We adopt WorldCom's proposed section 1.3.[2063] We note that language is identical to the existing agreement between the parties.[2064] For reasons we provide above, we reject Verizon's proposed language.[2065]

620. We agree with WorldCom that, to the extent allowed by applicable law, the rates contained in the pricing schedule should be the exclusive means of assessing charges for the services listed in the pricing schedule, absent agreement between the parties or superseding

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[2056] *See id.* at 17.

[2057] *See id.*

[2058] *See id.* (cross-referencing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 13 (resolved Issue IV-17)); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 6 (resolved Issue IV-17).

[2059] Verizon PTC Reply at 17, citing Verizon's November Proposed Agreement to WorldCom, Part A, §§ 4.5, 4.6 (Issues IV-113/VI-1-E); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2 (Issues IV-113/VI-1-E).

[2060] Verizon PTC Reply at 17.

[2061] *Id.*

[2062] Verizon PTC Brief at 24. Verizon notes that it has proposed to provide a copy of its then current model interconnection agreement to WorldCom, upon reasonable request, which includes the pricing schedule. Verizon PTC Brief at 24, citing Verizon Ex. 11, at 13.

[2063] WorldCom's Proposed November Agreement to Verizon, Part C, Attach. I, § 1.3.

[2064] *See* WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Part C, Attach. I, at § 1.1.

[2065] *See supra* Issues III-18/IV-85.

order.[2066] Although the Commission has specifically recognized an incumbent LEC's right to pursue cost recovery for items such as obtaining extended intellectual property licensing rights to benefit competitive LECs[2067] and OSS modifications,[2068] we do not believe that WorldCom's language improperly circumscribes this right.[2069] It does, however, appropriately restrict Verizon to charging no more than the rates in the pricing schedule (as they may change over time) for the services enumerated there.

621. Section 1.3 of WorldCom's proposed contract allows Verizon to recover its development costs through rates in the pricing table. Accordingly, we disagree with Verizon that it is foreclosed from recovering such costs. Services that are not itemized would be covered under the final sentence which provides that "[r]ates for services not yet identified in Table 1, but subsequently developed pursuant to the BFR process or services identified in Table 1, but modified by regulatory requirements, shall be added as revisions to Table 1 when agreed between the Parties." Verizon argues that this language is redundant because the final agreement will contain bona fide request[2070] and change of law provisions.[2071] We find, instead, that this language must be read in context with these two contract provisions. For example, if a new service is developed under the bona fide request process, the parties must follow the procedure outlined in that section of the contract to arrive at the rate "agreed between the Parties." If, on the other hand, a service identified in Table 1 is "modified by regulatory requirement," that would trigger the change of law provision, and the parties would follow the procedure outlined in section 25.2 to arrive at the rate "agreed between the Parties." We read the terms "service" and "modified by regulatory requirement" broadly in this context and would view, for example, the identification of a new UNE to fall within this final sentence of section 1.3.

[2066] WorldCom Brief at 175.

[2067] *See Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements*, CC Docket No. 96-98, Memorandum Opinion and Order, 15 FCC Rcd 13896, 13903, para. 11 (2000) (*UNE Licensing Order*) (incumbent LECs must recover the reasonable cost associated with renegotiating and extending rights to use intellectual property rights from all carriers, including themselves).

[2068] *See Line Sharing Order*, 14 FCC Rcd at 20977, para. 144 (incumbent LECs should recover in their line sharing charges those reasonably incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element).

[2069] *See* Verizon PTC Reply at 13-14.

[2070] *See id.* at 17 (cross-referencing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 13 (resolved Issue IV-17)); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 6 (resolved Issue IV-17).

[2071] Verizon PTC Reply at 17, citing Verizon's November Proposed Agreement to WorldCom, Part A, §§ 4.5, 4.6 (Issues IV-113/VI-1-E); *see also* WorldCom's November Proposed Agreement to Verizon, Part A, § 25.2 (Issues IV-113/VI-1-E).

622. Finally, we reject WorldCom's proposed section 1.4, which would require Verizon to provide WorldCom with updated electronic copies of Table 1 on a periodic basis.[2072] As an initial matter, we note that Verizon is not required, under the current agreement, to provide periodic electronic updates of the pricing schedule.[2073] WorldCom has not demonstrated why this is an expense that Verizon, rather than WorldCom, must bear. Section 1.1, which we adopt under Issue IV-30, already requires the parties to revise Table 1 to reflect newly ordered rates or discounts. This should ensure that the pricing schedule remains updated. Although we agree with WorldCom that use of an accurate price list promotes efficiency, facilitates auditing of bills, and minimizes disputes,[2074] we do not believe that Verizon is uniquely situated to monitor rate changes or to memorialize them in electronic format. We agree with Verizon that WorldCom can create and maintain its own electronically formatted pricing table[2075] and, indeed, we believe it has every incentive to ensure that Verizon bills the correct rates. We encourage the parties to exchange information in an electronic format, but we will not order them to do so in this context.

5. Issue IV-36 (Detailed Schedule of Itemized Charges)

623. In this proceeding, both parties agree that the contract should contain a pricing schedule and that the rates contained in the pricing schedule will result from the cost phase of this proceeding.[2076] We will issue a second order on these issues at a later date.

6. Issue VII-12 (Reference to Industry Billing Forums)

a. Introduction

624. Verizon and AT&T disagree about the level of calling information detail for billing purposes to be contained in the interconnection agreement, the amount of deference to be afforded to Ordering and Billing Forum (OBF) standards, and whether and how changes in those standards should be implemented in the contract. Verizon generally supports deferring to OBF guidelines while AT&T prefers a greater level of "exchange of call detail" in the contract. For reasons provided below, we reject AT&T's proposed language.

[2072] WorldCom's Proposed November Agreement to Verizon, Part C, Attach. I, § 1.4.

[2073] *See* WorldCom Pet., Ex. D, Part C, Attach. I.

[2074] *See* WorldCom Brief at 176-77.

[2075] Verizon PTC Reply at 17. Further, since Verizon apparently will be providing WorldCom with an electronic copy of the USOC codes that Verizon uses for the provision of services under the agreement, *see* WorldCom Brief at 13, WorldCom can incorporate the USOC codes in its own electronically formatted pricing table.

[2076] *See* WorldCom Reply at 161; Verizon PTC Reply at 19.