states that its customers frequently experience performance problems with those loops.[318] Thus, Cavalier proposes language to require Verizon to provide loops with four wires end-to-end when Cavalier orders 4-wire DS1-compatible loops, rather than substituting 2-wire HDSL DS1s with 4-wire interfaces.[319] Cavalier states that ordering a 4-wire HDSL loop is not a desirable alternative because of lengthier maintenance and repair intervals associated with those loops.[320]

97. Verizon responds that, in some cases where Cavalier has ordered a 4-wire DS1-compatible loop, the deployed network configuration and technology does not allow for the provisioning of an end-to-end 4-wire DS1 loop without the addition of new electronics.[321] In those instances, Verizon substitutes a 2-wire HDSL DS1 loop with 4-wire interfaces, just as it would do for its own retail customer ordering a comparable product.[322] Verizon states that this network condition is not ascertainable until its employees are in the field actually seeking to provision the loop.[323] To provide an end-to-end 4-wire DS1 loop in those instances would require it to construct facilities, which is not required by the Act.[324] Verizon further notes that Cavalier has other options for providing DS1 service, including a 4-wire HDSL loop offerings, if Cavalier finds Verizon's 4-wire DS1-compatible loop offering inadequate.[325] Verizon explains that, in order to comply with Cavalier's proposed language, it would be required to construct new facilities in some instances, which is beyond what is required by the Act.[326]

(ii) Discussion

98. We adopt Verizon's language, modified as discussed below, because Cavalier's language would impose obligations beyond what is required by the Act or Commission rules. Verizon demonstrates that it only substitutes 2-wire HDSL DS1s with 4-wire interfaces when it is unable to provision an end-to-end 4-wire DS1 loop due to the existing network configuration and technology. Thus, because Verizon does not do so for its own retail customers at this time, Verizon's refusal to install new electronics to enable it to provide Cavalier an end-to-end 4-wire loop is consistent with the Commission's rules in this context.[327] Under the Commission's rules,

[318] *Id.* at 30-32.

[319] Final Proposed Language at 8-9 (Cavalier Proposed § 11.2.9).

[320] Cavalier Brief at 31.

[321] Verizon Reply Brief at 25; Tr. at 433. Thus, Cavalier mischaracterizes Verizon's position when it asserts that Verizon seeks the right to substitute 2-wire facilities "for no specific reason." Cavalier Brief at 32.

[322] Verizon Reply Brief at 25; Tr. at 434.

[323] Verizon Reply Brief at 25; Tr. at 430-31.

[324] Verizon Reply Brief at 26.

[325] Verizon Brief at 26-27; Verizon Rebuttal Testimony of Albert Panel at 9.

[326] Verizon Reply Brief at 26.

[327] Thus, we need not reach the parties' claims regarding the substitutability of 4-wire HDSL loops when a 4-wire end-to-end loop is desired. *See* Verizon Brief at 26-27; Cavalier Brief at 31.

Verizon need only perform network modifications if it routinely does so to serve its own customers.[328] Verizon states that, rather than installing new electronics, it makes the same substitution of a 2-wire HDSL DS1 loop with 4-wire interfaces to serve its own customers.[329] For clarity, however, we insert the phrase "unless Verizon routinely does so to serve its own customers" at the end of the sentence "Verizon will not install new electronics" in section 11.2.9.

(iii) Arbitrator's Adopted Contract Language

99. As discussed above, the Arbitrator adopts the following language:

> 11.2.9 "DS-1 Loops" provides a digital transmission channel suitable for the transport of 1.544 Mbps digital signals. This Loop type is more fully described in Verizon TR 72575, as revised from time to time. The DS-1 Loop includes the electronics necessary to provide the DS-1 transmission rate. A DS-1 Loop will be provided only where the electronics necessary to provide the DS-1 transmission rate are at the requested installation date currently available for the requested DS-1 Loop. Verizon will not install new electronics unless Verizon routinely does so to serve its own customers. If the electronics necessary to provide Clear Channel (B8ZS) signaling are at the requested installation date currently available for a requested DS-1 Loop, upon request by Cavalier, the DS-1 Loop will be furnished with Clear Channel (8ZS) signaling, Verizon will not install new electronics to furnish Clear Channel (B8ZS) signaling. Notwithstanding any other provision of this Agreement, Verizon will provide DS-1 Loops consistent with, but only to the extent required by any applicable order or decision of the FCC or the Commission.

7. Issue C10 (Dark Fiber)

a. Introduction

100. The Parties disagree about operational and informational issues associated with determining the location and availability of dark fiber. Dark fiber is "unused fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services."[330] Users of dark fiber loops and dark fiber interoffice facilities "provide the electronic equipment necessary to activate the dark fiber strands to provide services."[331] Cavalier proposes to expand the information Verizon provides in response to dark

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[328] 47 C.F.R. § 51.319(a)(8); *Triennial Review Order*, 18 FCC Rcd at 17371-78, paras. 632-41.

[329] Should Verizon's practices with respect to provisioning 4-wire DS1-compatible loops to its retail customers change, however, such that it routinely installs new electronics in such circumstances where the existing deployed network does not otherwise enable it, we would expect Verizon to do so for Cavalier, as well. *Id.*

[330] *Triennial Review Order*, 18 FCC Rcd at 17164-65, para. 311.

[331] *Id.*

fiber inquiries, particularly when dark fiber is reported as unavailable.[332] To help ensure the accuracy of the information it receives, Cavalier further requests changes to the dark fiber field survey process to enable Cavalier employees to attend the surveys and to limit the cost of the surveys.[333] In addition, Cavalier seeks to establish a queue for its dark fiber inquiries, giving Cavalier priority access to dark fiber on requested routes as it becomes available.[334] Verizon states that these additional procedures and processes are burdensome and unnecessary, particularly given its willingness to search for alternative routes through intermediate offices in order to fill Cavalier's dark fiber requests.[335]

b. Dark Fiber Inquiries

(i) Positions of the Parties

101. Cavalier seeks a variety of additional information about the availability of dark fiber in Virginia. Under Cavalier's proposal, Verizon would respond to dark fiber inquiries by indicating whether dark fiber is "(i) installed and available, (ii) installed but not available, or (iii) not installed."[336] Cavalier asserts that this would formalize a process similar to Verizon's current practice.[337] After a response that dark fiber is not available, Verizon would be required to explain why dark fiber is not available, including whether splicing or other work needs to be performed, or whether no fiber at all is present between the points specified by Cavalier.[338] In addition, when fiber is installed, regardless of availability, Verizon would be required to inform Cavalier of the locations of all "pedestals, vaults, [and] other intermediate points of connection," and which portions have available fiber.[339] Cavalier claims that it needs this additional information to guide its decision whether to continue pursuing dark fiber along particular routes or to particular locations, and to help resolve disputes regarding the availability of dark fiber.[340]

102. Verizon responds that additional information is not needed to resolve uncertainty about the availability of dark fiber, and that it never has provided the information sought by Cavalier in response to dark fiber inquiries.[341] According to Verizon, in the absence of evidence

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[332] Final Proposed Language at 15-17 (Cavalier Proposed § 11.2.15.4).

[333] *Id.* at 17-18 (Cavalier Proposed § 11.2.15.5(ii)).

[334] *Id.* at 17 (Cavalier Proposed § 11.2.15.4.1).

[335] Verizon Brief at 30-37.

[336] Final Proposed Language at 15-17 (Cavalier Proposed § 11.2.15.4).

[337] Cavalier Brief at 45; Cavalier Direct Testimony of Ashenden at 2.

[338] Final Proposed Language at 15-17 (Cavalier Proposed § 11.2.15.4).

[339] *Id.*

[340] Cavalier Brief at 45-46.

[341] Verizon Brief at 37.

of discrimination, there is no need for changes to its dark fiber processes.[342] Verizon claims that Cavalier's proposal simply would impose expensive new obligations on Verizon without good reason.[343] For example, Verizon asserts that information regarding whether "fiber is present but needs to be spliced" is unnecessary, because Cavalier is not entitled to access dark fiber at splice points.[344] Verizon likewise states that the information it provides in response to dark fiber inquiries has been held to be sufficient in other Commission proceedings.[345] Verizon also asserts that Cavalier should request a field survey if it seeks additional information about a dark fiber inquiry.[346] Moreover, Verizon notes that it already searches for alternative routes to meet Cavalier's requests for dark fiber, rendering the detailed information sought by Cavalier unnecessary.[347] Verizon also states that the cost of providing the information sought by Cavalier is not included in its rates.[348]

(ii) Discussion

103. Section 51.307(e) of the Commission's rules requires incumbent LECs to "provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section."[349] We adopt Cavalier's proposed section 11.2.15.4, modified as discussed below, to require Verizon to provide additional information in response to dark fiber inquiries, pursuant to this rule. We agree with Cavalier that much of the technical information about Verizon's network that it seeks in response to dark fiber inquiries is needed for Cavalier to have meaningful and nondiscriminatory access to unbundled dark fiber. We find persuasive Cavalier's claim that it needs additional information as a basis for its decision whether to continue pursuing dark fiber along particular routes or to particular locations, and to help resolve disputes regarding the availability of dark fiber.[350]

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[342] Verizon Reply Brief at 31.

[343] Verizon Brief at 36.

[344] *Id.*

[345] *Id.* at 36-37 (citing *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21960-62, paras. 145-47; *Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, Memorandum Opinion and Order, WC Docket No. 02-384, 18 FCC Rcd 5212, 5286-87, paras. 123-26 (2003)).

[346] Verizon Reply Brief at 35-36.

[347] Verizon Brief at 33; Verizon Direct Testimony of Albert Panel at 24; Final Proposed Language at 15-16 (Verizon Proposed § 11.2.15.4).

[348] Verizon Brief at 37.

[349] 47 C.F.R. § 51.307(e).

[350] Cavalier Brief at 45-46.

Verizon concedes that the availability of dark fiber has been a subject of dispute both between Cavalier and Verizon specifically, and among other carriers more generally.[351] Further, as Cavalier states, a response that merely indicates that fiber is or is not available is "too nebulous to [Cavalier] to know whether that means the fiber between point A and point B doesn't exist, has never been put in the ground, or whether there is fiber available between the two points and maybe some capacity will become available in the distant future."[352]

104. We also find that additional information sought by Cavalier is needed to ensure access to unbundled dark fiber consistent with the Commission's rules regarding routine network modifications. The Commission's rules require incumbent LECs to "make all routine network modifications" to unbundled loops or transport facilities.[353] The *Triennial Review Order* provides that "[t]he requirement we establish for incumbent LECs to modify their networks on a nondiscriminatory basis is not limited to copper loops, but applies to all transmission facilities, including dark fiber facilities."[354] We find that requiring Verizon to provide Cavalier an explanation of why dark fiber is not available in response to dark fiber inquiries will allow Cavalier a meaningful opportunity to enforce its right to routine network modifications to unbundled dark fiber. Although Verizon asserts that it should not have to provide additional information in response to a dark fiber inquiry when Cavalier instead could request a field survey, we note that, to provide the more limited information we require here, Verizon need not conduct a full field survey by dispatching technicians to the field to acquire new information, but rather need only provide the information already in its records. To the extent that Cavalier requires still further information, it then may seek a field survey, if it so chooses.

105. We reject Verizon's claim that Cavalier does not need information about whether fiber needs to be spliced. Providing Cavalier access to information regarding the need for dark fiber to be spliced allows Cavalier to enforce its right to routine network modifications. Verizon must splice dark fiber to make it available to Cavalier on an unbundled basis to the extent required by the Commission's routine network modification rules. Although Verizon is correct that Cavalier is not entitled to access dark fiber at splice points, Verizon must perform routine network modifications to dark fiber sought by Cavalier, including "rearranging or splicing cable."[355] The *Triennial Review Order* states that this obligation requires incumbent LECs to

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[351] Tr. at 245-46.

[352] *Id.* at 255.

[353] 47 C.F.R. §§ 51.309(a)(8)(i), (e)(5)(i).

[354] *Triennial Review Order*, 18 FCC Rcd at 17375, para. 638.

[355] 47 C.F.R. §§ 51.309(a)(8)(ii), (e)(5)(ii). In light of these newly-adopted rules, Cavalier's need for information thus differs from what it would have needed solely under the *Virginia Arbitration Order*, contrary to Verizon's claims. Verizon Reply Brief at 30. In that *Order*, we held that competitive LECs do not have the right to access dark fiber at splice points, and Verizon is never required to splice new dark fiber routes or add electronics to make available dark fiber. *Virginia Arbitration Order*, 17 FCC Rcd at 27260-61, 27263-64, 27269-70, paras. 451, 457, 467. While competitive LECs still do not have the right to access dark fiber at splice points, the routine network modification rules give them the right to have dark fiber spliced, or electronics added, to the extent that such (continued....)

"make the same routine modifications to their existing dark fiber facilities for competitors as they make for their own customers – including work done on dark fiber to provision lit capacity to end users."[356] As a result, to the extent that Verizon would splice cable in order to provide a lit service to a retail customer, it likewise must do so at any point throughout its network to provide dark fiber to Cavalier. According to testimony, Verizon routinely splices fiber for purposes of providing service to retail customers.[357] Although language not disputed by the Parties states that "Verizon shall not be required to perform splicing to provide fiber continuity between two locations," it goes on to state that "Notwithstanding anything else set forth in this Agreement, Verizon shall provide Cavalier with access to Dark Fiber Loops and Dark Fiber IOF in accordance with, but only to the extent required by, Applicable Law."[358] We thus direct the Parties to strike the sentence "Verizon shall not be required to perform splicing to provide fiber continuity between two locations" to eliminate ambiguity regarding Verizon's obligation with respect to splicing pursuant to the Commission's routine network modifications rules as is addressed in section 11.2.15.1 of the Agreement.[359]

106. As noted in the *Triennial Review Order*, "[a]lthough the record before us does not support the enumeration of these activities in the same detail as we do for lit DS1 loops, we encourage state commissions to identify and require such modifications to ensure nondiscriminatory access."[360] Similarly, the record here does not allow us to identify other modifications, beyond splicing, which would constitute "routine network modifications" that must be performed by Verizon. However, we encourage the Virginia Commission to undertake a proceeding "to make dark fiber meaningfully available" as other states have done.[361]

107. For these reasons, we find that Cavalier is entitled to information about "whether fiber is: (i) installed and available, (ii) installed but not available, or (iii) not installed," as well as a description "in reasonable detail the reason why fiber is not available, including, but not limited to, specifying whether fiber is present but needs to be spliced, whether no fiber at all is present between the two points specified by Cavalier, whether further work other than splicing needs to be performed, and the nature of any such further work other than splicing," when a request for dark fiber is denied.[362]

(Continued from previous page)
activities fall within the scope of those rules. 47 C.F.R. §§ 51.309(a)(8)(ii), (e)(5)(ii). As we discuss below, the record in this proceeding is inadequate to fully enumerate what such activities include.

[356] *Triennial Review Order*, 18 FCC Rcd at 17375, para. 638.

[357] Tr. at 267-75.

[358] Aug. 1 Draft Agreement § 11.2.15.1.

[359] Aug. 1 Draft Agreement § 11.2.15.1.

[360] *Triennial Review Order*, 18 FCC Rcd at 17375, para. 638.

[361] *See, e g., id.* at 17216-17, para. 385.

[362] Final Proposed Language at 15-17 (Cavalier Proposed § 11.2.15.4).

108. We reject Verizon's claim that the dark fiber information it provides is adequate because it was accepted for purposes of prior section 271 proceedings.[363] The section 271 proceedings utilized were completed prior to the effective date of the *Triennial Review Order*. Thus, the Commission's rules regarding the availability of unbundled dark fiber generally, and with respect to routine network modifications specifically, have changed since Verizon's section 271 approvals were granted.[364] We find that, as discussed above, additional information is required for Cavalier to enforce its rights under rules that were not in place at the time of those prior proceedings.

109. We do not adopt Cavalier's proposed language seeking information about "pedestals, vaults, other intermediate points of connection." To the extent that that information is needed to explain why a request for dark fiber is denied, Verizon is required to provide that explanation pursuant to other language in this provision. Cavalier is not entitled to access to dark fiber at intermediate points of connection, nor has it otherwise explained why this specific information is needed. We therefore decline to adopt that language from Cavalier's proposed section 11.2.15.4.

110. We also do not adopt the last sentence of Cavalier's proposed section 11.2.15.4, which states: "This provision is intended to reduce uncertainty about whether or not dark fiber is 'terminated' or not.'" As Cavalier itself concedes, this is not the sole purpose of the provision.[365] Therefore, deleting that sentence will avoid confusion regarding the scope of the provision.

111. We also reject Verizon's claim that the information requirements should not be adopted because their cost is not included in its current rates.[366] Verizon has submitted no evidence that the information needed to respond to Cavalier would not readily be available, nor has it provided any evidence regarding the costs it would incur to respond. Further, as discussed above, Verizon need only provide the information already in its records. Moreover, the pricing of the dark fiber inquiry process was not properly raised, having not been addressed in either Cavalier's petition[367] or Verizon's reply,[368] and thus we do not address it here. We thus adopt Cavalier's proposed section 11.2.15.4, modified as discussed above.

(iii) Arbitrator's Adopted Contract Language

112. As discussed above, the Arbitrator adopts the following language:

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[363] Verizon Brief at 36-37.

[364] *See generally Triennial Review Order*, 18 FCC Rcd at 17164-67, 17213-17, 17371-78, paras. 311-14, 381-85, 632-41; 47 C.F.R. §§ 51.309(a)(6), (a)(8)(i), (e)(3), (e)(5)(i).

[365] Cavalier Direct Testimony of Ashenden at 2.

[366] Verizon Brief at 37.

[367] *See generally* Cavalier Petition.

[368] *See generally* Verizon Answer/Response.

11.2.15.4 – A Dark Fiber Inquiry Form must be submitted prior to submitting an ASR. Upon receipt of Cavalier's completed Dark Fiber Inquiry Form, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop(s) or Dark Fiber IOF may be available between the locations and in the quantities specified. Verizon will respond within fifteen (15) Business Days from receipt of the Cavalier's Dark Fiber Inquiry Form, indicating whether Dark Fiber Loop(s) or Dark Fiber IOF may be available (if so available, an "Acknowledgement") based on the records search except that for ten (10) or more requests per LATA or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loop(s) or Dark Fiber IOF. Where a direct Dark Fiber IOF route is not available, Verizon will provide, where available, Dark Fiber IOF via a reasonable indirect route that passes through intermediate Verizon Central Offices at the rates set forth in Exhibit A. Any limitations on the number of intermediate Verizon Central Offices will be discussed with Cavalier. If access to Dark Fiber IOF is not available, Verizon will notify Cavalier, within fifteen (15) Business Days, that no spare Dark Fiber IOF is available over the direct route nor any reasonable alternate indirect route, except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. Where no available route was found during the record review, Verizon will identify the first blocked segment on each alternate indirect route and which segment(s) in the alternate indirect route are available prior to encountering a blockage on that route, at the rates set forth in Exhibit A. In responding to Dark Fiber Inquiries from Cavalier, Verizon will identify whether fiber is: (i) installed and available, (ii) installed but not available, or (iii) not installed. Where fiber is not available, Verizon shall describe in reasonable detail the reason why fiber is not available, including, but not limited to, specifying whether fiber is present but needs to be spliced, whether no fiber at all is present between the two points specified by Cavalier, whether further work other than splicing needs to be performed, and the nature of any such further work other than splicing. Use of information provided by Verizon pursuant to this provision shall be limited to Cavalier's engineering and operations personnel. Cavalier's marketing personnel shall not be permitted access to, or use of, this information.

c. Field Survey

(i) Positions of the Parties

113. Cavalier states that, in the past, the surveys performed by Verizon to verify the availability of dark fiber yielded different results than Verizon's original records, resulting in disagreements between Cavalier and Verizon regarding dark fiber access.[369] Thus, Cavalier proposes that its employees would accompany the Verizon employees conducting the field

[369] Cavalier Brief at 42-43 & Exs. C10-3, C10-5.

survey.[370] Cavalier asserts that this would allow it to verify Verizon's determinations regarding dark fiber availability, and to pose questions about the particular dark fiber at issue.[371] Joint dark fiber field surveys would be no more difficult than the vendor meets that Verizon conducts for DS0 circuits, Cavalier claims, and would be a substantial improvement over the burdensome process that has sometimes resulted when the Parties disagree about the results of a field survey conducted solely by Verizon.[372]

114. According to Cavalier, the uncertain cost of a field survey also is a deterrent to its use of the process.[373] Thus, Cavalier proposes language placing limits on what it could be charged for the field survey.[374] Specifically, Verizon would provide an up-front budget estimate, and could only charge Cavalier beyond that amount for unforeseeable expenses that arose in conducting the field survey.[375]

115. Cavalier also proposes that the Parties negotiate a separate means of resolving dark fiber disputes.[376] Cavalier claims that in situations such as disagreements between Verizon's records and the results of a field survey, the Agreement should provide an opportunity for further discussion to help resolve disputes.[377] Cavalier, however, asserts that while it "seeks both a joint field survey and a dispute resolution mechanism," at a minimum we should "at least award Cavalier one or the other."[378]

116. Verizon maintains that the need to coordinate with Cavalier employees to schedule and conduct the field survey would add significant complexity and bureaucracy to the process, and limit Verizon's ability to schedule the remainder of its work efficiently.[379] Further, Verizon states that the employees that conduct the field survey likely would not be able to answer many of the questions that Cavalier would likely pose.[380] These requirements, Verizon claims, would actually add cost and uncertainty to the field survey process.[381] Verizon asserts that the

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[370] Final Proposed Language at 17-18 (Cavalier Proposed § 11.2.15.5(ii)).

[371] Cavalier Direct Testimony of Ashenden at 4.

[372] Cavalier Brief at 41-44; Cavalier Direct Testimony of Ashenden at 4.

[373] Cavalier Direct Testimony of Ashenden at 3-4.

[374] Final Proposed Language at 17-18 (Cavalier Proposed § 11.2.15.5(ii)).

[375] *Id.*

[376] *Id.*

[377] Cavalier Brief at 43-44.

[378] Cavalier Reply Brief at 21.

[379] Verizon Brief at 34; Verizon Direct Testimony of Albert Panel at 21.

[380] Verizon Rebuttal Testimony of Albert Panel at 13.

[381] *Id.*

field survey disputes cited by Cavalier do not demonstrate problems with Verizon's existing process, which has been revised since they occurred.[382] Verizon also asserts that Cavalier has not demonstrated that the Agreement's general dispute resolution process would be inadequate for addressing dark fiber disputes.[383]

(ii) Discussion

117. We adopt Verizon's proposed section 11.2.15.5(ii), modified to allow Cavalier personnel to attend the field surveys. As an initial matter, we reject Cavalier's proposed language that would limit its obligation to pay the full costs of the field survey.[384] We dealt with this issue squarely in the prior *Virginia Arbitration Order*, and found that when a competitor requests "a field survey to confirm the viability of a fiber path, it is reasonable for [the competitor] to bear the expense of that survey, regardless of the result, just as Verizon must do when it performs such surveys for itself."[385] Indeed, to the extent that Cavalier personnel are able to attend the field survey, Cavalier does not object to paying its cost.[386] We thus apply our prior holding that it is reasonable for the competitive LEC bear the cost of the field survey.

118. Given that Cavalier is paying the cost of the field survey, however, we find it reasonable for Cavalier to have the option of having its personnel accompany Verizon personnel when the field survey is conducted. Verizon notes that the employees it sends to conduct the field surveys may not be able to answer all of Cavalier's questions.[387] We find, however, that Cavalier should have the option to choose whether to observe the field survey for which it is paying, notwithstanding the fact that all its questions may not be answered by the Verizon personnel conducting the field survey. We agree with Cavalier that this could help resolve some uncertainty regarding the availability of dark fiber that can remain in some cases even after the completion of a field survey.[388] As noted above, Cavalier also states that this would help allay its concern about the cost of the field survey process. We reject Verizon's concern that its need to coordinate with Cavalier will create significant administrative burdens.[389] Under this provision,

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[382] Verizon Reply Brief at 34.

[383] Verizon Brief at 35.

[384] Final Proposed Language at 17-18 (Cavalier Proposed § 11.2.15.5(ii)).

[385] *Verizon Arbitration Order*, 17 FCC Rcd at 27271, para. 471.

[386] Tr. at 277.

[387] Verizon Brief at 34-35.

[388] We thus reject Verizon's assertion that Cavalier's cited problems with delay and uncertain results from prior field surveys are inadequate to justify changes to Verizon's current field survey process, which was revised following the *Virginia Arbitration Order*, and accepted for purposes of demonstrating checklist compliance in the *Verizon Virginia Section 271 Order*. Verizon Reply Brief at 34. Verizon has not demonstrated how the changes to its process would have resolved the concerns raised by Cavalier, nor has it shown that Cavalier's precise concerns were raised and rejected in the *Verizon Virginia Section 271 Order*.

[389] Verizon Brief at 34.

Verizon need not modify the schedule it ordinarily would employ when conducting a field survey, but must inform Cavalier of that schedule and allow Cavalier to send its employees to observe the field survey pursuant to that schedule.

119. We do not adopt Cavalier's proposed language that would require the Parties to negotiate a new means of dispute resolution specific to dark fiber disputes.[390] As Verizon notes, the Agreement already contains a provision providing for the resolution of disputes related to the Agreement, including dark fiber disputes.[391] Cavalier has not provided any evidence why this existing mechanism is inadequate in the case of dark fiber disputes. Thus, we reject Cavalier's proposal to establish a dark fiber dispute resolution mechanism as duplicative and unnecessary.

120. Although we grant Cavalier's request to allow it to participate in field surveys, because we do not adopt Cavalier's proposed cost limitations and new dispute resolution process, we find that Verizon's proposed section 11.2.15.5(ii) provides a better starting point.[392] We thus modify Verizon's proposed section 11.2.15.5(ii) by adding the sentence "At Cavalier's option, its personnel may observe the conducting of the field survey." before the sentence "Verizon shall perform a field survey subject to a negotiated interval." Observation by Cavalier includes the right to ask questions, although we recognize that the Verizon personnel conducting the field survey may not always have the information needed to answer Cavalier's questions.

(iii) Arbitrator's Adopted Contract Language

121. As discussed above, the Arbitrator adopts the following language:

> (ii) A field survey that shows the availability of dark fiber pairs between two or more Verizon central offices, a Verizon central office and a Cavalier central office or a Verizon end office and the premises of a Customer, shows whether or not such pairs are defective, shows whether or not such pairs have been used by Verizon for emergency restoration activity and tests the transmission characteristics of Verizon dark fiber pairs. If a field survey shows that a Dark Fiber Loop or Dark Fiber IOF is available, Cavalier may reserve the Dark Fiber Loop or Dark Fiber IOF, as applicable, for ten (10) Business Days from receipt of Verizon's field survey results. If Cavalier submits an order for access to such Dark Fiber Loop or Dark Fiber IOF after passage of the foregoing ten (10) Business Day reservation period, Verizon does not guarantee or warrant the Dark Fiber Loop or Dark Fiber IOF will be available when Verizon receives such order, and Cavalier assumes all risk that the Dark Fiber Loop or Dark Fiber

[390] Final Proposed Language at 17-18 (Cavalier Proposed § 11.2.15.5(ii)).

[391] Verizon Brief at 35; Aug. 1 Draft Agreement § 28.11.

[392] Final Proposed Language at 17 (Verizon Proposed § 11.2.15.5(ii)).

IOF will not be available. At Cavalier's option, its personnel may observe the conducting of the field survey. Verizon shall perform a field survey subject to a negotiated interval. If Cavalier submits an order for a dark fiber pair without first obtaining the results of a field survey of such pair, Cavalier assumes all risk that the pair will not be compatible with Cavalier's equipment, including, but not limited to, order cancellation charges.

d. Queue Provisions

(i) Positions of the Parties

122. Cavalier notes that when Verizon denies a request for dark fiber, Cavalier has no idea when such dark fiber might become available.[393] Cavalier must re-submit a request for dark fiber at just the right time once dark fiber does become available, or another carrier might get the dark fiber first.[394] Alternatively, Cavalier must constantly re-submit dark fiber inquiries, incurring a dark fiber inquiry fee in each instance, to avoid missing out on newly-available dark fiber.[395] To address this situation, Cavalier proposes a dark fiber "queue," similar to the queue Verizon uses in making available collocation space.[396] Under Cavalier's proposed language, up to four years after Cavalier inquires about the availability of dark fiber along a route or to a location, Verizon would hold the request in queue, giving Cavalier the first opportunity to obtain dark fiber when it becomes available.[397] Cavalier agrees to respond promptly when dark fiber becomes available to avoid delay in the assignment of the dark fiber.[398] According to Cavalier, there is no support for Verizon's claims that the queue process would be unworkable and burdensome.[399]

123. Verizon maintains that the creation and operation of the proposed queue would impose significant economic and operational burdens.[400] According to Verizon, the proposal calls for it to create a queue system that is far more burdensome and difficult to maintain than the queue for collocation, given the vastly greater numbers of fiber routes than collocation spaces, and the greater turnover in available dark fiber.[401] Verizon asserts that its current process of

[393] Cavalier Brief at 38-39.

[394] *Id.* at 38.

[395] *Id.*

[396] Final Proposed Language at 17 (Cavalier Proposed § 11.2.15.4.1).

[397] *Id.*

[398] Cavalier Rebuttal Testimony of Ashenden at 1-2.

[399] Cavalier Brief at 39.

[400] Verizon Brief at 31-32.

[401] *Id.* at 32.

providing available dark fiber only in response to dark fiber inquiries is "fair, well understood and applied uniformly to all carriers."[402] Verizon also notes that there is no guarantee that Cavalier still would want the dark fiber if it becomes available years down the road, wasting Verizon's time and effort in maintaining the queue.[403] Ultimately, Verizon claims that the proposed queue goes beyond anything required by the Act.[404]

(ii) Discussion

124. We do not adopt Cavalier's proposed section 11.2.15.4.1, which would require a dark fiber queue. Verizon demonstrates that the queue proposed by Cavalier would increase its administrative burdens, particularly under the language proposed by Cavalier, which would require daily, manual dark fiber inquiries for two to four years.[405] Although Cavalier states that it is willing to accept a different duration for the queue, it provides no evidence that could form the basis either for its proposed two-to-four year queue or for some alternative interval. We agree with Verizon that comparisons to its collocation queue are not relevant, because of the significantly larger numbers of dark fibers in Virginia than collocation spaces.[406] Nor has Cavalier demonstrated that its queue is required by the Act or Commission rules. As we discuss above, the additional information we require in response to dark fiber inquiries should help Cavalier better plan its activities and ensure compliance with the dark fiber unbundling rules. Further, as Verizon states, its current process for assigning dark fiber is understood by and applies equally to all competitive LECs.[407] We are concerned that Cavalier's ability to place its requests in queue would place it in a superior position to other competitive LECs with respect to access to unbundled dark fiber. Although Verizon speculates that other competitive LECs could opt into such a provision as well, they may not be able to do so quickly, if in fact they are able to do so at all.[408]

(iii) Arbitrator's Adopted Contract Language

125. As discussed above, the Arbitrator does not adopt any language regarding this aspect of issue C10.

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[402] Verizon Rebuttal Testimony of Albert Panel at 11-12.

[403] Verizon Brief at 32; Verizon Direct Testimony of Albert Panel at 18; Verizon Rebuttal Testimony of Albert Panel at 11.

[404] Verizon Brief at 32; Verizon Direct Testimony of Albert Panel at 19.

[405] Verizon Brief at 31.

[406] *Id.* at 32.

[407] Verizon Rebuttal Testimony of Albert Panel at 11-12.

[408] In particular, the Commission currently is evaluating whether to retain the "pick-and-choose" rule. *Triennial Review Order*, 18 FCC Rcd at 17409-10, 17412-16, paras. 713, 720-29.

8. Issue C14 (Integrated DLC Loops)

a. Introduction

126. The Parties disagree about Verizon's obligation to provide unbundled access to loops served by Integrated Digital Loop Carrier (Integrated DLC or IDLC) systems.[409] As the Commission noted in the *Triennial Review Order*, unbundling in the context of Integrated DLC systems presents particular challenges not always present in the case of other hybrid loops.[410] Nonetheless, the Commission required incumbent LECs "to provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems," recognizing "that in most cases this will be either through a spare copper facility or through the availability of Universal DLC systems."[411]

127. Cavalier proposes language that would require the Parties to conduct trials of two processes for unbundling access to loops served by Integrated DLC systems, and seeks unbundled access to such loops using one of these processes whenever Verizon uses Integrated DLC systems to serve end users.[412] Verizon claims to offer adequate alternatives to unbundling Integrated DLC loops, and thus claims that there is no need to conduct trials of unbundling the loops served by Integrated DLC systems themselves.[413]

b. Positions of the Parties

128. Cavalier expresses dissatisfaction with the level of service it is able to provide over unbundled spare copper loops or Universal Digital Loop Carrier (Universal DLC or UDLC) systems when serving a customer that Verizon previously served by Integrated DLC systems.[414] Cavalier asserts that Verizon must unbundle the loops served by Integrated DLC systems themselves, and proposes language that requires the Parties to conduct trials of hairpin/nail-up and multiple switch-hosting processes for unbundling such loops.[415] If the tests are successful,

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[409] Integrated DLC loops are a specific type of "hybrid loop," which is defined as "a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant." 47 C.F.R. § 51.319(a)(2).

[410] Specifically, because the Integrated DLC "system is integrated directly into the switches of incumbent LECs" and incumbent LECs "typically use concentration as a practice for engineering traffic on their networks," meaning that "a one-for-one transmission path between an incumbent's central office and the customer premises may not exist at all times." *Triennial Review Order*, 18 FCC Rcd at 17154, para. 297.

[411] *Id.*

[412] Final Proposed Language at 19-21 (Cavalier Proposed § 11.4).

[413] Verizon Brief at 38-39.

[414] Cavalier Direct Testimony of Vermeulen at 7-8 (discussing inadequacy of loops served by Universal DLC systems).

[415] Final Proposed Language at 19-21 (Cavalier Proposed §§ 11.4.1 – 11.4.6). The "hairpin/nail-up" option generally involves configuring a semi-permanent path and disabling certain switching functions. *Triennial Review Order*, 18 FCC Rcd at 17154, para. 297 n.855. The "multiple switch hosting" option proposed by Cavalier would (continued....)

Cavalier proposes provisions requiring that the Parties meet to develop procedures to implement that unbundling process for Integrated DLC loops "on a fully available, commercial basis under the same rates, terms, and conditions as an unbundled loop provisioned over copper."[416]

129. Verizon responds that it is not obligated to unbundle loops served by Integrated DLC systems.[417] Verizon states that when Cavalier requests an unbundled loop to serve a customer that Verizon had served using Integrated DLC systems, Verizon first seeks to provide Cavalier with a spare copper loop or loop served by a Universal DLC system.[418] If no spare copper loop or Universal DLC loop is available, Verizon offers either to perform a line-and-station transfer[419] to make available space on copper or UDLC facilities or to construct a new copper loop or UDLC.[420] Verizon claims that this allows it to meet its obligation under the *Triennial Review Order* to provide either a spare copper loop or UDLC or other "technically feasible methods of unbundled access."[421] In light of the small number of lines served by IDLC where there is no spare copper loop or UDLC, Verizon sees no justification for conducting trials of methods for unbundling IDLC loops.[422]

130. Verizon notes that, at Cavalier's request, Verizon previously reviewed the hairpin/nail-up process, and found that this approach is not cost-justifiable.[423] With respect to Cavalier's proposed multiple switch hosting process, Verizon states that the approach is not technically feasible given Verizon's current network technology.[424] Verizon also maintains that the 60 days Cavalier has proposed for each trial is too short.[425] Finally, Verizon contends that

(Continued from previous page)
involve "grooming of the integrated loops, such that discrete groups of multiplexed loops may be assigned to transmission facilities, or the termination of loops to integrated network access systems." Final Proposed Language at 19 (Cavalier Proposed § 11.4.3).

[416] *Id.* at 20 (Cavalier Proposed § 11.4.5).

[417] Verizon Brief at 38.

[418] *Id.*

[419] As discussed above, a "line-and-station transfer" in the xDSL context involves switching a customer's service from a loop that is not suitable for providing xDSL service to an available loop that is suitable for providing xDSL service. Similarly, a line-and-station transfer also can be used to switch a customer's service from a loop served by an Integrated DLC system to an available spare copper loop or Universal DLC loop. Verizon Direct Testimony of Albert Panel at 13.

[420] Verizon Brief at 38.

[421] *Id.* (citing *Triennial Review Order*, 18 FCC Rcd at 17154, para. 297).

[422] *Id.* at 39.

[423] *Id.* at 39-40.

[424] *Id.* at 40-41.

[425] *Id.* at 41-42.

Cavalier has not adequately demonstrated that Integrated DLC loops should be unbundled "under the same rates, terms, and conditions as an unbundled loop provisioned over copper."[426]

c. Discussion

131. We decline to adopt Cavalier's proposed language. While Verizon is obligated to offer unbundled loops served by Integrated DLC systems where no spare copper loops or Universal DLC loops are available, the *Triennial Review Order* does not require Verizon to use the particular methods proposed by Cavalier.

132. When a competitive LEC seeks access to an unbundled loop to serve a customer that an incumbent LEC is serving using an Integrated DLC loop, the *Triennial Review Order* gives the incumbent LEC three choices[427]: (1) unbundle a spare copper loop;[428] (2) unbundle a Universal DLC loop; or (3) provide unbundled access to a transmission path over the hybrid loop served by the Integrated DLC system.[429] Verizon's refusal, under any circumstances, to unbundle access to Integrated DLC loops is not consistent with the Commission's rules. The hybrid loop unbundling rules only require incumbent LECs to provide a technically feasible method of access to a DS0 transmission path over the Integrated DLC loop where no spare copper loop or Universal DLC loop is available.[430]

133. We also find that the specific language proposed by Cavalier is at odds with the *Triennial Review Order*. Because incumbent LECs only are required to provide "a technically feasible method of unbundled access" to a transmission path over the Integrated DLC loop,[431] we reject Cavalier's language that would require Verizon to conduct trials of the specific hairpin/nail-up and multiple switch hosting unbundling processes.[432] We also reject Cavalier's claim that Verizon should be required to unbundle Integrated DLC loops whenever desired by Cavalier.[433] The *Triennial Review Order* gives incumbent LECs the choice whether to unbundle

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[426] Verizon Direct Testimony of Albert Panel at 26-27.

[427] Because Integrated DLC loops are "hybrid loops," they are subject to the obligation to unbundle either spare copper facilities or a DS0 transmission path on the hybrid loop. *Triennial Review Order*, 18 FCC Rcd at 17154, para. 297.

[428] Incumbent LECs have the option, instead of unbundling the hybrid loop, "to provide a homerun copper loop . . . if the incumbent LEC has not removed such loop facilities." *Id.* at 17153-54, para. 296.

[429] Specifically, the *Order* states that incumbent LECs must "provid[e] unbundled access to hybrid loops" for narrowband service by providing "an entire non-packetized transmission path capable of voice-grade service (*i.e.*, a circuit equivalent to a DS0 circuit) between the central office and customer's premises." *Id.*

[430] *Id.* at 17153-54, paras. 296-97.

[431] *Id.* at 17154, para. 297.

[432] Final Proposed Language at 19-21 (Cavalier Proposed § 11.4).

[433] *See* Cavalier Direct Testimony of Vermeulen at 7-8 (discussing inadequacy of loops served by Universal DLC systems).

Integrated DLC loops when spare facilities are available, and the choice of technically feasible methods of Integrated DLC loop unbundling.[434]

134. Despite rejecting Cavalier's proposed contract language relating to unbundled Integrated DLC loops, we note that Verizon is obligated under other, undisputed terms of the Agreement to provide unbundled Integrated DLC loops when a spare copper loop or Universal DLC loop is not available. Specifically, section 11.2 of the Agreement provides, in pertinent part:

> Subject to the conditions set forth in Section 11.7, Verizon shall allow Cavalier to access Loops unbundled from local switching and local transport as required by Applicable Law, in accordance with the terms and conditions set forth in this Section 11.2. *The following enumeration of specific loop types in this Agreement does not preclude Cavalier from requesting, to the extent Verizon is required to provide under Applicable Law, additional Loop types.*[435]

Pursuant to this provision, Cavalier is entitled to request unbundled Integrated DLC loops, as permitted by the *Triennial Review Order* and Commission rules, even though unbundled Integrated DLC loops are not specifically enumerated in the interconnection Agreement.

135. We further note that section 11.7.6 of the Agreement specifies that, in those cases where Cavalier requests an unbundled loop to serve a customer that Verizon is serving using an Integrated DLC system, "Verizon shall, where available, move the requested Loop(s) to a spare physical Loop, if one is existing and available, at no additional charge to Cavalier."[436] Section 11.7.6 then proceeds to state that:

> If, however, no spare physical Loop is available, Verizon shall within three (3) Business days of Cavalier's request notify Cavalier of the lack of available facilities. Cavalier may then at its discretion make a Network Element Bona Fide Request to Verizon to provide the unbundled Local Loop through the demultiplexing of the integrated digitized Loop(s). Cavalier may also make a Network Element Bona Fide Request for access to Unbundled Local Loops at the Loop concentration site point. Notwithstanding anything to the contrary in this Agreement, standard provisioning intervals shall not apply to Loops provided under this Section 11.7.6.[437]

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[434] The *Order* recognizes that incumbent LECs have successfully provided unbundled access to Integrated DLC loops through various methods, including the hairpin method requested by Cavalier. *Triennial Review Order*, 18 FCC Rcd at 17154, para. 297 n.855.

[435] Aug. 1 Draft Agreement § 11.2 (emphasis added).

[436] *Id.* at § 11.7.6.

[437] *Id.*

As discussed above, where a spare copper loop or Universal DLC loop is not available, Commission rules require Verizon to unbundle the Integrated DLC loop itself. Subject to that underlying unbundling obligation, however, Verizon is free also to continue to offer Cavalier the options specified in section 11.7.6.[438]

136. With respect to Cavalier's request that the rates for unbundled Integrated DLC loops should be the same as for an unbundled loop provisioned over copper, we conclude that Cavalier has not provided evidence that would allow us to determine appropriate TELRIC rates for unbundled Integrated DLC loops. We agree with Verizon that Cavalier has not justified this rate proposal. Indeed, Cavalier has presented no evidence to support any determination of the proper rates for unbundled Integrated DLC loops beyond its mere assertion in its proposed contract language. Verizon, on the other hand, also has not provided any cost-related data demonstrating that rates for unbundled Integrated DLC loops should not be the same as for copper loops. Because the Parties did not submit evidence regarding the cost of provisioning an unbundled Integrated DLC loop in those circumstances where no spare copper loop or Universal DLC loop is available, we have no basis for considering appropriate rates in this Order.

137. As a result, under the Agreement as it currently stands, because the Parties have provided no evidence relating to the appropriate costs of Integrated DLC loop unbundling, loops unbundled pursuant to section 11.2 that are not specifically enumerated, such as Integrated DLC loops, are priced through the Bona Fide Request (BFR) process:

> Verizon shall, upon request of Cavalier and to the extent required by Applicable Law, provide to Cavalier access to its Network Elements on an unbundled basis for the provision of Cavalier's Telecommunications Service. Any request by Cavalier for access to a Verizon Network Element not provided pursuant to this Agreement or pursuant to another interconnection agreement in accordance with the terms and conditions of Section 28.13 hereof shall be treated as a Network Element Bona Fide Request.[439]

This BFR process will govern until the Parties negotiate a provision that specifically establishes the rates, terms, and conditions for access to a transmission path over hybrid loops served by Integrated DLC systems.

d. Arbitrator's Adopted Contract Language

138. As discussed above, the Arbitrator does not adopt any new language regarding issue C14, but instead clarifies that other, undisputed provisions in the Agreement require Verizon to unbundle Integrated DLC loops when no spare copper loop or Universal DLC loop is available.

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[438] *See supra* para. 132.

[439] *Id.* at § 11.8.1. Although we do not resolve the pricing of unbundled Integrated DLC loops in this proceeding, we note that any charges imposed through the BFR process should not allow double-recovery by permitting Verizon to recover for costs that also will be included in recurring or non-recurring charges imposed on other competing carriers in the future. *See Virginia Arbitration Order*, 17 FCC Rcd at 27274, para. 478 & ns. 1958-99.

9. Issue C16 (Pole Attachments)

a. Introduction

139. The Parties disagree about language Cavalier proposes in an attempt to expedite the pole attachment process. Section 251(b)(4) of the Act requires all LECs to provide access to poles, ducts, conduits, and rights-of-way in a nondiscriminatory manner consistent with section 224 of the Act.[440] The current pole attachment arrangements permit Verizon, as well as all other entities attached to Verizon's poles, to "engineer" the pole to make it ready for a new attachment and to bill the new attacher accordingly.[441] Cavalier proposes language that would change Verizon's make-ready process for accommodating Cavalier's pole attachment requests under section 224 of the Act.[442] Verizon opposes Cavalier's proposal, asserting that it would affect the rights of nearly every other attacher in Virginia,[443] and indicating Verizon has streamlined its pole attachment process since Cavalier last made use of the process.[444]

b. Positions of the Parties

140. Cavalier wants to substitute the current system which involves multiple rounds of engineering and make-ready work on a single stretch of poles by each attacher with a single, unified engineering and make-ready process.[445] Under Cavalier's proposal, a single third party contractor would simultaneously perform the engineering and make-ready services on behalf of all attached entities on the pole, and render the new attacher a single bill.[446] Cavalier claims it has experienced excessive pole attachment delays and make-ready costs in the past.[447] It concedes that the Commission stopped short of requiring such a procedure in a recent pole attachment case, but asserts that the Commission left the door open for such a future requirement

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[440] 47 U.S.C. § 251(b)(4). Section 224 provides for the regulation of pole attachments on poles owned by utilities including local exchange carriers, electric, gas, water, steam, or other public utility. 47 U.S.C. § 224; *see also* 47 C.F.R. § 1.1403.

[441] Cavalier Direct Testimony of Ashenden at 8-10; Cavalier Brief at 48-49. This process is referred to as the "make-ready" process. This means that Verizon, the power company, the cable company, and any other attached competitive LEC each send out separate field teams to determine the impact on their respective attachment and to take any necessary steps to accommodate the planned new attachment. *See* 47 U.S.C. §§ 224(h), (i).

[442] Final Proposed Language at 21-25 (Cavalier Proposed § 16.2).

[443] Verizon Brief at 42.

[444] Tr. at 337-39; Verizon Brief at 44.

[445] Cavalier Arbitration Petition at 23-24.

[446] Cavalier Brief at 49.

[447] Cavalier Rebuttal Testimony of Ashenden at 13; Cavalier Brief at 49. Cavalier implicitly concedes that other attachers often caused the delays it faced. Cavalier Brief at 48-49.

by indicating that such a process would probably be more efficient.[448] Cavalier's proposed language would also require Verizon to complete the engineering and make-ready work process within 45 days after its application is submitted.[449] Cavalier believes that this proceeding is an appropriate forum for resolving this dispute, as Verizon is the primary obstacle to its resolution.[450]

141. Verizon argues that Cavalier's proposal should be rejected for at least three reasons: (1) it calls for Verizon to assume the role of project coordinator for all pole attachers in Virginia, which it is not required to do under the Act; (2) Cavalier is not in a position to complain the current process is inefficient because Cavalier has insufficient experience with it;[451] and (3) even if a new process were needed it should be addressed in a proceeding which would allow for the participation of all affected attachers.[452] Instead, Verizon proposes to continue following the current pole attachment process which the Virginia Commission and this Commission approved in approving its section 271 application.[453] Verizon also points to the

[448] Cavalier Direct Testimony of Ashenden; Cavalier Rebuttal Testimony of Ashenden at 9 (citing *Cavalier Telephone Company, LLC v. Virginia Electric and Power Company*, File No. PA-99-005, Order, 17 FCC Rcd 24414 (2002) (*Virginia Electric and Power*)); Cavalier Brief at 49-50.

[449] Final Proposed Language at 24-25 (Cavalier Proposed § 16.2.8). The proposed final language, however, conflicts with Cavalier's statement that it would like to see an end-to-end 45-day process, but would be satisfied if applications were approved or denied within 45 days (without restarting the 45-day clock at a whim as it alleges Verizon does) and make-ready work completed within a reasonable time. Cavalier Rebuttal Testimony of Ashenden at 12-13.

[450] Cavalier Rebuttal Testimony of Ashenden at 11-12. Cavalier states that it has been able to reach a similar agreement with entities other than Verizon and that such a process has been followed in eastern Virginia where Verizon's poles are not involved. Cavalier Direct Testimony of Ashenden at 11; Cavalier Rebuttal Testimony of Ashenden at 11.

[451] Verizon Rebuttal Testimony of Young at 4; Verizon Brief at 43. Verizon notes that in the two year period since Cavalier experienced delays associated with prior attachments to Verizon's poles, Verizon has modified and centralized its pole attachment process, appointing a Single Point of Contact (SPOC) based in Richmond. Tr. at 337-339; Verizon Brief at 44; Verizon Reply Brief at 44.

[452] Verizon Direct Testimony of Young at 7; Verizon Rebuttal Testimony of Young at 1-4.

[453] Verizon Direct Testimony of Young at 2-3; Verizon Brief at 42 (citing *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21986-87, para. 193). Verizon further asserts that in making its determination that Verizon was in compliance with Checklist Item 3, the Virginia Hearing Examiner in the state 271 proceeding rejected essentially the same argument from Cavalier. Verizon Direct Testimony of Young at 10; Verizon Brief at 42-43; Virginia Hearing Examiner's Report at 97. In addition, Verizon distinguishes the issue Cavalier raises here from what it characterizes as a superficially similar but fundamentally different issue in the *Virginia Arbitration Order*. Where WorldCom proposed the use of its own contractors to perform make-ready work on Verizon's poles due to a shortage of Verizon contractors, noting even that the Bureau adopted Verizon's language after Verizon agreed to a minor modification. Verizon Answer/Response at Exhibit A.

Commission's rejection of a similar pole attachment proposal by Cavalier in *Virginia Electric and Power*.[454]

c. Discussion

142. We decline to adopt the language proposed by Cavalier. First, the record indicates that Verizon's current pole attachment process has been streamlined and centralized since Cavalier's prior experience with the process.[455] Second, given the multilateral nature of pole attachment arrangements, the process contemplated by Cavalier's proposed language would affect the interests of numerous entities not parties to this Agreement.[456] These parties may refuse to embrace a unified process, resulting in Verizon's inability to implement the process advocated by Cavalier even if we were to adopt Cavalier's proposed language.[457] Finally, the language advocated by Cavalier would require Verizon to attempt to renegotiate potentially all of its pole attachment license agreements in Virginia, imposing a potentially unreasonable burden on Verizon in the absence of evidence of discriminatory treatment toward Cavalier.

143. In declining to adopt Cavalier's language, however, we note the need for continued processing of pole attachment applications in an efficient and timely manner. Competitive LECs like Cavalier that seek to attach to poles, as contemplated in section 251(b)(4) of the Act, do so to compete with incumbent LECs.[458] If evidence exists that the pole attachment process is not functioning to ensure that such access is made available expeditiously, Cavalier could revisit this issue in the future.

d. Arbitrator's Adopted Contract Language

144. The Arbitrator adopts the following language:

> 16.0 – ACCESS TO RIGHTS-OF-WAYS Section 251(b)(4) —To the extent required by applicable law and where facilities are available, each Party ("Licensor") shall provide the other Party ("Licensee") access for purposes of making attachments to the poles, ducts, rights-of-way and conduits it owns or controls, pursuant to any existing or future license agreement between the Parties. Such access shall be in conformance with 47 U.S.C. § 224 and on terms and

[454] Verizon Direct Testimony of Young at 7-8 (citing *Virginia Electric and Power*, 17 FCC Rcd at 24421, para. 21 (order was released subsequent to the *Verizon Virginia Section 271 Order*)).

[455] Tr. at 337-338.

[456] These entities have § 224 rights under the Act as well rights under their individual License agreements with Verizon. Cavalier's proposal could affect these rights without their ability to be heard.

[457] The process advocated by Cavalier would be more appropriately considered on a statewide basis, where all entities to be affected by this process would have an opportunity to participate.

[458] *See* 47 U.S.C. § 251(b)(4).

conditions and prices comparable to those offered to any other entity pursuant to each Party's applicable tariffs (including generally available license agreements).

10. Issue C17 (Customer Contacts)

a. Introduction

145. Cavalier expresses concern about improper conduct by Verizon representatives either during misdirected calls intended for Cavalier or during calls to Cavalier customers initiated by Verizon. Cavalier proposes expanded obligations addressing each Party's conduct during contacts with the other Party's customers, and asks for mandatory investigations and liquidated damages in the event of improper conduct.[459] Verizon claims that its existing practices governing customer contacts are adequate, and thus objects to the additional obligations and liquidated damages proposed by Cavalier.[460]

b. Positions of the Parties

146. Cavalier states that there have been numerous instances of improper contacts between Verizon employees and Cavalier customers, including the disparagement of Cavalier, improper efforts to win back customers from Cavalier, and misrepresentation of Cavalier customers' obligations to Verizon or its affiliates.[461] Cavalier also expresses concern that Verizon's retail operations have access to information about Cavalier and its customers from Verizon's wholesale operations.[462] When Cavalier has brought concerns about improper contacts to Verizon's attention, it believes that Verizon has not taken adequate internal steps to address the problems.[463] Cavalier further maintains that it suffers economic harm from improper contacts, for which it is not compensated.[464]

147. To prevent these sorts of incidents from recurring, Cavalier recommends a variety of expanded obligations regarding both Parties' contacts with each other's customers. Specifically, Cavalier proposes to modify sections 18.2.1 and 18.2.2 of the Agreement, which govern a carrier's responsibility to serve as the single point of contact for its customers, to make these obligations equivalent for both Cavalier and Verizon.[465] In the event that one Party "receives or responds to an inquiry from a Customer of the other party, or a prospective Customer of the other party," Cavalier proposes prohibitions on marketing products and services,

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[459] Final Proposed Language at 25-28 (Cavalier Proposed § 18.2).

[460] Verizon Brief at 45-48.

[461] Cavalier Brief at 53-56 & Ex. C17-1.

[462] *Id.*

[463] *Id.* at 55.

[464] Cavalier Reply Brief at 28; Cavalier Direct Testimony of Zitz at 4.

[465] Final Proposed Language at 25-26 (Cavalier Proposed §§ 18.2.1, 18.2.2).

and against disparaging or discriminating against the other Party during such contacts.[466] In such cases, Cavalier also proposes expanded obligations to provide referrals to the correct Party.[467] According to Cavalier, if, as Verizon claims, improper customer contacts are rare, then these provisions seldom will be triggered, creating only a small burden for Verizon.[468]

148. Cavalier suggests language requiring each Party to implement codes of conduct and train its employees regarding proper behavior during contacts with the other Party's customers.[469] Under Cavalier's proposal, an investigation and reporting system would be required in the event of reported improper customer contacts, with a system of liquidated damages that would apply in the event of verified misconduct.[470] Cavalier also proposes that remedies related to customer contacts specified in section 18.2 of the Agreement are not exclusive remedies, but that Parties also may pursue their claims in other appropriate fora.[471]

149. As a threshold issue, Verizon claims that Cavalier's proposals are "not appropriate for consideration in this arbitration, which is intended to determine the terms and conditions under which the Parties will satisfy their interconnection and other network access obligations under section 251 of the Act."[472] Regarding the substance of Cavalier's proposals, Verizon's proposed sections 18.2.1 and 18.2.2 only address Cavalier's responsibility to serve as the single point of contact for its customers.[473] In the remainder of section 18.2, Verizon proposes more limited language than Cavalier, requiring that Parties not disparage one another when responding to misdirected calls, and providing for referrals only in the case of misdirected repair calls.[474] Verizon alleges that, given the existing procedures it already has in place, the burdensome proposed investigation and reporting requirements and system of liquidated damages payments are not warranted by the small number of isolated instances of problematic customer contacts cited by Cavalier, nor by instances of lawful conduct on the part of Verizon's Yellow Pages affiliate.[475] Verizon further states that it should not be required to train its employees in the products and services offered by Cavalier in order to meet the extensive referral obligations suggested by Cavalier.[476] Finally, Verizon asserts that such mechanisms could create incentives

[466] *Id.* at 26 (Cavalier Proposed § 18.2.3.4).

[467] *Id.* at 26 (Cavalier Proposed § 18.2.3.4).

[468] Cavalier Brief at 55-56.

[469] Final Proposed Language at 26-27 (Cavalier Proposed § 18.2.5).

[470] *Id.* at 26-28 (Cavalier Proposed §§ 18.2.5 – 18.2.7).

[471] *Id.* at 28 (Cavalier Proposed § 18.2.8).

[472] Verizon Brief at 28.

[473] Final Proposed Language at 25 (Verizon Proposed §§ 18.2.1, 18.2.2).

[474] *Id.* at 25-26 (Verizon Proposed §§ 18.2.3 - 18.2.4).

[475] Verizon Brief at 47-48.

[476] Verizon Direct Testimony of Smith at 16.

for competing carriers to assert dubious claims in the hopes of receiving liquidated damages payments.[477]

c. Discussion

150. As an initial matter, we reject Verizon's claim that this issue is not appropriate for consideration in the arbitration. Cavalier properly presented this issue in its petition and the arbitration, among other things, evaluates the terms and conditions relating to the Parties' compliance with section 251 of the Act and associated Commission rules.[478] Such compliance requires Verizon to interconnect with Cavalier and provide access to UNEs on "terms and conditions that are just, reasonable, and nondiscriminatory."[479] We note that it is Verizon's position as the provider of UNEs to Cavalier that gives rise to the possibility of such contacts in many instances, for example during contacts by Verizon personnel performing maintenance and repair on behalf of Cavalier.[480] We find that terms addressing each Party's contacts with the other Party's customers arising out of the relationships governed by section 251 properly may be considered in this arbitration. Moreover, we note that the Commission has considered factors such as improper customer contacts in evaluating carriers' compliance with their unbundling obligations for purposes of section 271.[481] We thus find that we may consider issue C17 raised by Cavalier.

151. We adopt Cavalier's proposed sections 18.2.1 and 18.2.2, which require Cavalier to serve as the contact point for inquiries or maintenance and repair requests from its end-user customers and Verizon to serve as the contact for inquiries or maintenance and repair requests from its end-user customers.[482] Although Verizon's proposed sections 18.2.1 and 18.2.2 do not expressly make these obligations mutual, Verizon acknowledges that such a division of responsibility is proper.[483]

152. We also adopt Cavalier's proposed sections 18.2.3, 18.2.3.1, 18.2.3.2, and 18.2.3.3, modified as discussed below.[484] Cavalier proposes to revise section 18.2.3 to eliminate

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[477] Verizon Reply Brief at 45; Tr. at 215.

[478] 47 U.S.C. § 252(c); 47 C.F.R. § 51.807(c).

[479] 47 U.S.C. §§ 251(c)(2), (3).

[480] *See, e.g.*, Cavalier Direct Testimony of Zitz at 2-4; Cavalier Brief at Ex. C17-1.

[481] *See, e.g., In the Matter of Application By SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion & Order, WC Docket No. 03-138, 18 FCC Rcd 19024, 19070, para. 86 (2003) (considering claims of improper customer contacts for purposes of evaluating SBC's satisfaction of its OSS obligations under the standard of § 271).

[482] Final Proposed Language at 25-26 (Cavalier Proposed §§ 18.2.1, 18.2.2).

[483] Verizon Direct Testimony of Smith at 15.

[484] Final Proposed Language at 26 (Cavalier Proposed §§ 18.2.3 - 18.2.3.3).

the restriction that limits the section's scope to misdirected "repair" calls.[485] As Cavalier demonstrates, the possibility of problematic customer contacts is not limited solely to misdirected repair calls, but also could arise in the context of other misdirected calls.[486] Further, we note that Verizon's claimed current informal practices are not dissimilar to what would formally be required under this language.[487] Consistent with the evidence, we revise Cavalier's section 18.2.3.2 and 18.2.3.3 to eliminate the limiting reference to misdirected "repair" calls, instead applying those sections' referral and non-disparagement obligations to all types of misdirected calls.

153. We reject Cavalier's proposed section 18.2.3.4. This section would impose referral and non-disparagement obligations on each Party in the context of any calls from the other Party's customers or "prospective Customers."[488] It also would restrict each Party from providing information about its own products and services during contacts with customers or "prospective Customers" of the other Party.[489] Protection against disparagement and a referral obligation in the context of misdirected calls already are encompassed in the revisions to section 18.2.3.2 discussed above, and thus would be duplicative here. The proposed restriction on providing information about the called carrier's services is overly broad, and thus potentially anticompetitive. "Customers" or "prospective Customers" of one carrier with respect to certain services might also be customers or prospective customers of the other carrier with respect to other services. Such a broad restriction on a carrier providing information about its products and services to its own customers goes beyond the requirements of the Act and the Commission's rules. Indeed, as Verizon points out, the scope of "prospective Customers" could include virtually all customers located in Cavalier's service area,[490] and Cavalier offers no limiting definition that would allow it to be applied in a more reasonable manner. Given the protections of section 18.2.3.2 in the case of customers actually seeking to contact Cavalier, but contacting Verizon instead, the imposition of the unworkably broader requirements proposed by Cavalier is not justified.

154. We reject Verizon's proposed section 18.2.4 as unnecessary. As proposed, Verizon's section 18.2.4 imposes a non-disparagement requirement in the case of misdirected inquiries, other than repair calls, from the other Party's customer.[491] As discussed above, such protections already are incorporated into the modified section 18.2.3.2 we adopt.

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[485] *Id.* at 26 (Cavalier Proposed § 18.2.3).

[486] Cavalier Brief at 53-56 & Ex. C17-1.

[487] Verizon Brief at 45-46 (referrals); Tr. at 209-10 (referrals); Final Proposed Language at 26 (Verizon Proposed § 18.2.4) (non-disparagement).

[488] Final Proposed Language at 26 (Cavalier Proposed § 18.2.3.4).

[489] *Id.*

[490] Verizon Brief at 46.

[491] Final Proposed Language at 26 (Verizon Proposed § 18.2.4).

155. We adopt portions of Cavalier's proposed section 18.2.5, as discussed below. The first sentence of Cavalier's proposed section 18.2.5 imposes on each Party the obligation to implement procedures to ensure "appropriate professional conduct" by its employees when engaging in contacts with the other Party's customers and to train its employees with respect to that policy.[492] We find this to be a reasonable step for the parties to take in ensuring that their employees act in a manner consistent with the obligations each Party has undertaken in this portion of the Agreement. Indeed, Verizon asserts that it already has policies of this general nature in place, and provides instructions to its employees with respect to those policies. We anticipate that such policies also would address other types of problems, such as misrepresentations to Cavalier's customers regarding their obligations for distinct services that they obtain from Verizon, which Cavalier raises but which do not appear to be the subject of any express language. In addition to adopting the first sentence of section 18.2.5, we also adopt the third sentence of section 18.2.5 that defines "appropriate professional conduct" for purposes of this section.[493] We decline, however, to adopt Cavalier's additional proposed language relating to a Verizon affiliate offering discounted Yellow Pages listings.[494] To the extent that Cavalier believes that this or any other action by Verizon violates this section 18.2, it may file a complaint or pursue other legal action to enforce its rights under this Agreement, as discussed below.[495] We also decline to adopt Cavalier's proposed second sentence of section 18.2.5, which would establish formal internal investigation and reporting requirements in the event of reports of improper customer contacts. We agree with Verizon that the establishment of a formal investigation and reporting mechanism does not appear warranted by the volume of reported violations,[496] and further find it unnecessary in light of Cavalier's rights under this Agreement. Such formal processes also could be subject to abuse, as Verizon notes.[497] We would expect each Party to have processes already in place to investigate claims of employee misconduct arising from any aspect of their employment including those related to carrying out duties under this Agreement.[498] Instead, because we adopt many of Cavalier's proposed requirements, Cavalier now is in a position to enforce those obligations as it would other provisions of this Agreement.

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[492] *Id.* at 26-27 (Cavalier Proposed § 18.2.5).

[493] Because we adopt more limited requirements under § 18.2 than originally proposed by Cavalier, we thus reject Verizon's claim that the prohibition on employee conduct in violation of § 18.2 is overly broad due to the breadth of obligations imposed under Cavalier's proposed § 18.2. Verizon Brief at 46.

[494] Final Proposed Language at 26-27 (Cavalier Proposed § 18.2.5).

[495] *See infra* para. 157.

[496] Verizon Brief at 47-48. Cavalier provided specific evidence regarding only approximately 15 allegedly improper contacts over a five-year period. Cavalier Brief at Ex. C17-1. As discussed below, while we do not require Verizon to implement the formal investigation and reporting procedures sought by Cavalier, it may wish to use such procedures in particular cases to invoke the resulting liability limitations of § 18.2.8. *See infra* para. 157.

[497] Verizon Brief at 46-48.

[498] Indeed, it appears that Verizon does have such processes in place. *Id.* at 48.

156. Similarly, we reject Cavalier's proposed sections 18.2.6 and 18.2.7, providing for liquidated damages in the event of improper customer contacts.[499] Cavalier's proposed liquidated damages provisions are unnecessary in light of our adoption of section 18.2.8, discussed below, which will enable Cavalier to raise concerns about compliance with the requirements of sections 18.2 through the contract's dispute resolution mechanism,[500] or through other means available for enforcing the terms of this contract and seeking monetary damages for violations.[501]

157. We adopt portions of Cavalier's proposed section 18.2.8 providing that each Party may seek relief for a violation of section 18.2 through any forum of competent jurisdiction, with the modifications discussed below.[502] As Verizon concedes, Cavalier should have the ability to pursue claims in the event of significant harm caused by improper customer contacts.[503] We therefore direct that any liability of either Party under section 18.2 expressly be excluded from any liability limitation provisions of the Agreement. To conform section 18.2.8 to the language we adopt in section 18.2.5, we modify the term "improper conduct" in section 18.2.8 to reference "inappropriate professional conduct" instead. We have made a conforming modification to section 25.5 of this Agreement as well to specifically exclude section 18.2 violations from general limitation of liability provisions.[504] Cavalier's proposed section 18.2.8 also restricts the injured Party from seeking such relief for the first occurrence of a particular type of misconduct if the other Party certifies that it has investigated the matter and taken proper remedial action.[505] While we do not require the adoption of a formal investigation and reporting process, we nonetheless believe it is appropriate to permit the Parties voluntarily to undertake such actions in order to limit their liability under this provision of the Agreement. Because we do not adopt Cavalier's proposed liquidated damages provisions under section 18.2.6, we do not adopt the last sentence of Cavalier's proposed section 18.2.8, which cross-references that liquidated damages provision.

d. Arbitrator's Adopted Contract Language

158. As discussed above, the Arbitrator adopts the following language with respect to issue C17:

18.2 – Customer Contact, Coordinated Repair Calls and Misdirected Inquiries

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499 Final Proposed Language at 27-28 (Cavalier Proposed §§ 18.2.6 – 18.2.7).

500 Aug. 1 Draft Agreement § 28.11.

501 *See infra*, para. 157.

502 Final Proposed Language at 28 (Cavalier Proposed § 18.2.8).

503 Tr. at 216-17.

504 *See infra* Part III.C.14 (discussing Issue C25 – Limitation of Liability).

505 Final Proposed Language at 28 (Cavalier Proposed § 18.2.8).

18.2.1 – Each party will recognize the other party as the customer of record of all Services ordered by the other party under this Agreement. Each party shall be the single point of contact for its own Customers with regard to all services, facilities or products provided by the other party directly to that party, and other services and products which each party's Customers wish to purchase from that party or which they have purchased from that party. Communications by each party's Customers with regard to all services, facilities or products provided by the other party to that party and other services and products which each party's Customers wish to purchase from that party or which they have purchased from that party, shall be made to that party, and not to the other party. Each party shall instruct its Customers that such communications shall be directed to that party, and not to the other party.

18.2.2 – Requests by each party's Customers for information about or provision of products or services which they wish to purchase from that party, requests by that party's Customers to change, terminate, or obtain information about, assistance in using, or repair or maintenance of, products or services which they have purchased from that party, and inquiries by that party's Customers concerning that party's bills, charges for that party's products or services, and, if that party's Customers receive dial tone line service from that party, annoyance calls, shall be made by the that party's Customers to that party, and not to the other party.

18.2.3 – Cavalier and Verizon will employ the following procedures for handling misdirected calls:

18.2.3.1 – Cavalier and Verizon will educate their respective Customers as to the correct telephone numbers to call in order to access their respective repair bureaus.

18.2.3.2 – To the extent Party A is identifiable as the correct provider of service to Customers that make misdirected calls to Party B, Party B will immediately refer the Customers to the telephone number provided by Party A, or to an information source that can provide the telephone number of Party A, in a courteous manner and at no charge. In responding to misdirected calls, neither Party shall make disparaging remarks about the other Party, its services, rates, or service quality.

18.2.3.3 – Cavalier and Verizon will provide their respective contact numbers to one another on a reciprocal basis.

18.2.4 – Deleted

18.2.5 – Each party shall provide adequate training, and impose sufficiently strict codes of conduct or standards of conduct, for all of its employees and contractors to engage in appropriate professional conduct in any contact with the other party's customers. For purposes of this section 18.2.5, "appropriate professional

conduct" shall be deemed to be conduct that is in accordance with sections 18.2 of this Agreement, as well as all applicable industry standards.

18.2.6 – Deleted

18.2.7 – Deleted

18.2.8 – The provisions of section 18.2 of this Agreement shall not be construed to preclude either party from seeking relief in any forum of competent jurisdiction, except that each party shall be barred from seeking relief in any forum of competent jurisdiction in response to the first occurrence of any particular type of allegedly inappropriate professional conduct reported by one party to the other, if the alleged violation is confirmed through investigation and the investigating party certifies in good faith to the non-offending party that it has: (a) promptly investigated any report of alleged wrongdoing, and (b) taken prompt, reasonable, and appropriate remedial or disciplinary action in response to any improper conduct identified by the investigating party.

11. Issue C21/V34 (Assurance of Payment)

a. Introduction

159. Verizon's proposed section 20.6 would permit it to demand "adequate assurance of payment" from Cavalier if the latter: cannot demonstrate that it is creditworthy, fails to timely pay a bill, admits it is unable to pay its debts when due, or is the subject of a bankruptcy or similar proceeding.[506] Under Verizon's proposed language, the "assurance of payment" may take the form of a cash deposit or letter of credit equal to two months' charges for services rendered in connection with the Agreement by Verizon to Cavalier. In addition, pursuant to Verizon's proposed subsections (x) and (y), if Cavalier fails to timely pay two or more bills within a 60-day period or three or more bills in a 180-day period, Verizon may demand additional assurance of payment in the form of monthly advanced payments of estimated charges. Cavalier opposes Verizon's proposed language.[507] We adopt a modified version of Verizon's proposed language.

b. Positions of the Parties

160. Cavalier argues that Verizon's proposed section 20.6 exposes Cavalier to the risk of disproportionately high deposits and advance payment, provides Verizon with far too much latitude, and does not comport with the Commission's *Deposit Policy Statement,* which was issued after the *Virginia Arbitration Order* in another proceeding to which Verizon was a party.[508] Although, in the *Virginia Arbitration Order*, the Bureau approved language similar to

[506] *See* Final Proposed Language at 33-35 (Verizon Proposed § 20.6).

[507] Cavalier Brief at 61.

[508] Cavalier Brief at 65 (citing *Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202, Policy Statement, 17 FCC Rcd 26884 (2002) (*Deposit Policy Statement*)).

Verizon's proposal here, Cavalier notes that AT&T apparently did not object to the assurance of payment requirements and the Commission expressly exempted WorldCom from those requirements as long as the latter's net worth exceeded $100 million, an exemption Verizon has not offered Cavalier.[509] Cavalier also claims that there are major unsupportable differences between Verizon's proposed section 20.6 and the AT&T language.[510] Cavalier notes that Verizon itself acknowledges that it has modified the AT&T language concerning "'when Verizon can exercise its remedies and what those remedies will be.'" Accordingly, Cavalier argues, Verizon's proposed language should be rejected.

161. Cavalier also argues that Verizon's proposal is inconsistent with the Commission's *Deposit Policy Statement*.[511] First, although in that Statement the Commission recommended that carriers define a "proven history of late payment" trigger for requiring a deposit to include a failure to pay more than a *de minimis* amount within a set period, Cavalier asserts that Verizon's two-month deposit provision contains neither a *de minimis* exception nor any reference to a proven history of late payment.[512] As drafted, Cavalier argues, section 20.6 would allow Verizon to demand a $5 million deposit if it only *thinks* Cavalier may be unable to pay a bill, rather than requiring Verizon to apply an objectively determined measure of financial stability.[513] It would also allow Verizon to make such a demand if Cavalier failed to pay only one of between 200 and 300 bills that Cavalier receives from Verizon each month, not all of which are timely received.[514] Indeed, although Verizon argues that its proposed language tracks the Commission's recommendations concerning late payment and advance payment, Cavalier claims that subsections (x) and (y) of Verizon's proposed section 20.6 are *additional* assurances of payment, not initial deposit obligations.[515] Cavalier argues that, if it disputed more than five percent of Verizon's charges on any two bills in a 60-day period or three bills in a 180-day period, such dispute would trigger these "additional assurance of payment" provisions of subsections (x) and (y), bringing the total "assurance of payment" that Verizon could demand to $7.5 million.[516] Further, although the Commission suggested in the *Deposit Policy Statement* that carriers bill in advance for usage-based services currently billed in arrears, Cavalier claims that it

[509] *Id.* at 62; Cavalier Reply Brief at 33 (citing *Virginia Arbitration Order*, 17 FCC Rcd at 27390, para. 728).

[510] *Id.* at 33 (quoting Verizon Brief at 56).

[511] Cavalier Brief at 63.

[512] *See id.* at 63-64 (citing *Deposit Policy Statement*, 17 FCC Rcd at 26887-88, para. 6).

[513] *See* Cavalier Reply Brief at 32.

[514] *See id.* (citing Tr. at 311-12.

[515] *See id.* at 37 (citing Verizon's Brief at 58).

[516] Cavalier explains that it currently pays about $2.5 million per month to Verizon. Therefore, Verizon could request $5 million under its initial deposit/letter of credit requirement, and an additional $2.5 million under the additional assurance of payment provisions set forth in subsections (x) and (y). *See* Cavalier Brief at 64 (citing Tr. at 12).