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

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DISP

In the Matter of	)	
	)	
Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration	)	WC Docket No. 02-359

MEMORANDUM OPINION AND ORDER

Adopted: December 12, 2003 **Released:** December 12, 2003

By the Chief, Wireline Competition Bureau:

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I. INTRODUCTION AND BACKGROUND

1. In this Order, we resolve open issues in dispute between Cavalier Telephone, LLC (Cavalier or Petitioner) and Verizon Virginia, Inc. (Verizon) (collectively the Parties) arising out of negotiations for interconnection and unbundled access under section 251(c) of the Telecommunications Act of 1996 (1996 Act).[1] On February 4, 2003, at Cavalier's request, we preempted the jurisdiction of the Virginia State Corporation Commission (Virginia Commission).[2] The Virginia Commission had declined to arbitrate the interconnection disputes raised by Cavalier.[3] Consequently, we decide these issues today pursuant to section 252(e)(5) of the Act and the Commission's rules implementing that section.[4]

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[1] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The Telecommunications Act of 1996 amended the Communications Act of 1934. *See* 47 U.S.C. §§ 151 *et seq.* We refer to the Communications Act as amended by the 1996 Act and other statutes, as the Communications Act, or the Act. Throughout this Order, we will use "Party" or "Parties" when referring specifically to either Cavalier or Verizon, or both, respectively.

[2] *See* Petition of Cavalier Telephone, LLC Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, WC Docket No. 02-359 (filed Nov. 7, 2002) (Cavalier Preemption Petition); *see Pleading Cycle Established for Comments on Petition of Cavalier Telephone, LLC for Preemption Pursuant to Section 252(e)(5)*, WC Docket No. 02-359, Public Notice, DA 02-3152 (rel. Nov. 14, 2002); *Petition of Cavalier Telephone, LLC, Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*, Memorandum Opinion and Order, 18 FCC Rcd 1558, DA 03-357 (WCB rel. Feb. 4, 2003) (*Cavalier Preemption Order*) (preempting the Virginia Commission and inviting Cavalier to file a Petition for Arbitration).

[3] Cavalier, the petitioning carrier in this proceeding, originally brought its interconnection disputes with Verizon to the Virginia Commission, as envisioned in § 252(b). *See* 47 U.S.C. § 252(b); *see also* Petition of Cavalier Telephone, LLC for Arbitration with Verizon Virginia, Inc. Pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Case No. PUC-2002-00171 (filed Aug. 14, 2002) (Virginia Petition). On October 11, 2002, the Virginia Commission issued an Order of Dismissal, declining to arbitrate the issues under the Act so that Cavalier and Verizon could immediately proceed before this Commission under § 252(e)(5). *See Petition of Cavalier Telephone, LLC, for Arbitration with Verizon Virginia, Inc Pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996*, Case No. PUC-2002-00171, Order of Dismissal at 5 (Oct. 11, 2002) (*Order of Dismissal*). The Virginia Commission had previously declined to arbitrate other interconnection disputes between competitive LECs and Verizon, requiring this Commission to assume jurisdiction under § 252(e)(5). *See infra* para. 2 note 9.

[4] *See* 47 U.S.C. § 252(e)(5); 47 C.F.R. §§ 51.801 *et seq.; see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16122-32, paras. 1269-95 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, 16 FCC Rcd 6231 (2001) (*Arbitration Procedures Order*) (adopting rules for the conduct of § 252(e)(5) arbitration proceedings and delegating authority to the Chief, Wireline Competition Bureau (Bureau), to be assisted by Bureau staff, to serve as arbitrator. *Id.* at para. 8.

2. Cavalier has petitioned for resolution of a range of issues.[5] These issues include disputes relating to network architecture, unbundled network elements (UNEs), and more general terms and conditions that affect Cavalier's ability to compete effectively with Verizon in the Commonwealth of Virginia as contemplated by Congress in enacting the 1996 Act.[6] We decide all unresolved issues presented to us in the Cavalier Arbitration Petition and Verizon's response, and limit our consideration to only those issues.[7] In doing so, we apply current Commission rules and precedents, including those most recently adopted in the *Triennial Review Order*; and the Parties' briefs and testimony address such rules and precedents where relevant.[8] To that end, we note that the Bureau has previously arbitrated certain issues regarding interconnection between other competitive LECs and Verizon in Virginia.[9]

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[5] *See* Petition of Cavalier Telephone, LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, WC Docket No. 02-359 (filed Aug. 1, 2003) (Cavalier Arbitration Petition).

[6] *Id.* at Ex. A.

[7] *See* Answer of Verizon Virginia, Inc. to Petition of Cavalier Telephone, LLC, WC Docket No. 02-359 (filed Sept. 5, 2003) (Verizon Answer/Response); *see also* 47 U.S.C. §§ 252(b)(4)(C) (state commission shall resolve each issue in petition and response), 252(c) (state commission shall resolve by arbitration any open issue), 252(b)(4)(A) (state commission shall limit its consideration to the issues set forth in the petition and response; *Procedures Established For Arbitration of An Interconnection Agreement Between Verizon and Cavalier*, WC Docket No. 02-359, Public Notice, DA 03-2733 (rel. Aug. 25, 2003) at Item A.3 (*Cavalier-Verizon Procedural Public Notice*).

[8] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) *(Triennial Review Order), corrected by* Errata, 18 FCC Rcd 19020 (2003) *(Triennial Review Order Errata), petitions for review pending, United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 *(and consolidated cases); see also* 47 U.S.C. § 252(c); *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039, 27043, para. 3 (2002) (*Virginia Arbitration Order*) (relating to non-cost issues).

[9] *See Virginia Arbitration Order*, 17 FCC Rcd at 27043 (resolving disputes between Verizon and WorldCom, AT&T and Cox in Virginia). The Commission recently released the text of the order addressing the cost-related issues presented by two of the parties in the *Virginia Arbitration Order*. *See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 and 00-251, Memorandum Opinion and Order, 18 FCC Rcd 17722, (2003) (*Virginia Cost Issues Arbitration Order*).

II. PROCEDURAL HISTORY

3. Cavalier filed its Arbitration Petition on August 1, 2003.[10] The Commission released the text of the *Triennial Review Order* on August 21, 2003.[11] Because the rules adopted in the *Triennial Review Order* went into effect on October 3, 2003, these new rules now govern the resolution of the Parties' unresolved issues.[12] To enable the Parties to consider the impact of the *Triennial Review Order* rules on their issues, Verizon requested a modification of the proposed arbitration procedural schedule to extend the August 26, 2003 deadline for Verizon's response to the Cavalier Arbitration Petition, as well as certain other dates. Cavalier responded to Verizon's motion proposing alternative dates.

4. On August 25, 2003, the Bureau released the *Cavalier-Verizon Procedural Public Notice* establishing the schedule for the remainder of the proceeding, as well as the procedures that would apply from that point until the arbitration award was issued.[13] Verizon filed its Answer/Response on September 3, 2003, resulting in a total of 23 identified unresolved issues for our initial consideration.[14] The following paragraphs briefly summarize the subsequent filings, hearings and related activities that have culminated in the release of this Order today.

5. *Resolution of Certain Previously Identified Unresolved Issues.* When Cavalier filed its Arbitration Petition, Cavalier identified 21 unresolved issues in dispute which it

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[10] At the initial joint pre-filing conference on March 4, 2003, the Parties indicated they were continuing to negotiate their disputes in an effort to resolve additional issues and limit the number of issues for arbitration. They requested the ability to continue negotiations prior to Cavalier filing its Petition for Arbitration. The Bureau agreed, and on July 22, 2003 held a second joint pre-filing conference wherein the Parties proposed a tentative schedule for proceeding with the arbitration.

[11] *See supra* note 8.

[12] *See OMB grants Emergency Approval Of New Rules Adopted In Triennial Review Order; Effective Date Is October 2, 2003,* CC Docket No. 01-338, Public Notice, 18 FCC Rcd 18516 (2003); *see also supra* para. 2.

[13] *Cavalier-Verizon Procedural Public.* Cavalier requested that the Bureau adopt the same procedures used for the *Virginia Arbitration. See Cavalier Preemption Order* at para. 5 and note 23. Specifically, Cavalier requested that we follow the procedures set forth in *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended,* Order, 16 FCC Rcd 6231 (2001) (*Arbitration Procedures Order*); *Procedures Established For Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom*, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-270 (rel. Feb. 1, 2001) (*AT&T/Cox/WorldCom Procedural Public Notice*). Because the Bureau had not specified a format for Cavalier's arbitration petition that differed from the specified for the *Virginia Arbitration,* Cavalier filed its petition in accordance with the format specified in the *AT&T/Cox/WorldCom Procedural Public Notice.* On August 26, 2003, the Bureau issued an erratum to the *Cavalier-Verizon Procedural Public* to correct two minor items relating on the attached schedule. These corrections did not modify the dates specified on the schedule attached to the August 25, 2003 public notice.

[14] *See* Answer of Verizon Virginia, Inc. to Petition of Cavalier Telephone LLC, WC Docket No. 02-359 (filed Sept. 5, 2003) (Verizon Answer/Response). Certain of these issues were subsequently resolved during the course of the proceeding. *See infra* para. 5.

requested the Bureau to arbitrate.[15] Verizon identified an additional four issues in its Answer/Response.[16] During the course of the arbitration process, the Parties were able to resolve some of these issues and withdraw them from the Arbitrator's consideration.[17] As a result, the Arbitrator resolves 14 issues in dispute in this Order. None of these issues involve the determination of appropriate new cost methodologies, nor were any cost studies submitted for review.

6. *Mediation Session.* On August 19, 2003, the Arbitrator and staff convened a mediation session to discuss possible resolution of disputes regarding the Directory Listing process, including Yellow Pages listings (Issue C18). The Parties were ultimately able to reach resolution of this matter and withdraw Issue C18.[18] The Parties did not seek mediation on any other issue.

7. *Written, Pre-Filed Testimony.* The Parties filed direct and rebuttal testimony on September 23, and October 9, 2003, in accordance with the schedule established by the Bureau.[19] In addition, each Party requested the ability to offer limited surrebuttal testimony on certain

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[15] *See* Cavalier Arbitration Petition at Ex. A. Before Verizon filed its response, the Parties settled two of Cavalier's identified issues. *See* Letter from Stephen T. Perkins, Counsel for Cavalier, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-359 (filed Sept. 4, 2003) (Cavalier's Sept. 4 Resolved Issues Letter) (withdrawing Issues C15 and C20).

[16] Verizon Answer/Response at Ex. B (identifying four Verizon issues, two of which -- V2 and V34 -- were subsets of corresponding Cavalier-identified issues, *i.e.*, C28 and C21, respectively.)

[17] *See* Letter from Kimberly A. Newman, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-359 (filed Oct. 2, 2003) (Verizon's Oct. 2 Resolved Issues Letter) (requesting removal from consideration of Issues C11, C19, C28 (same as V2) and V25 as a result of resolution or withdrawal by Cavalier of its corresponding issue in dispute); Letter from Stephen T. Perkins, Counsel for Cavalier, WC Docket No. 02-359 (filed Nov. 12, 2003) (Cavalier's Nov. 12 Resolved Issue Letter) (withdrawing Issue C12); Letter from Stephen T. Perkins, Counsel for Cavalier, WC Docket No. 02-359 (filed Dec. 5, 2003) (Cavalier's Dec. 5 Resolved Issue Letter) (withdrawing Issue C18); *see also* Letter from Stephen T. Perkins, Counsel for Cavalier, WC Docket No. 02-359 (filed Dec.4, 2003) (Cavalier's Dec. 4 Resolved Sub-Issue Letter) (withdrawing sub-issue related to dark fiber connectivity maps in Issue C10). Many of the issues raised by the Parties contain a number of sub-issues.

[18] *See supra* para. 5.

[19] On October 3, 2003, the Bureau issued a revised schedule affecting certain filing dates. *See* Letter from Julie Veach, Assistant Division Chief, CPD, WCB, to Counsel for Cavalier and Verizon, WC Docket No. 02-359 (Oct. 3, 2003) (*Revised Schedule Letter*) (revising filing dates for testimony, discovery and certain other requirements due to emergency closing of offices, but leaving the Hearing dates and post-Hearing deadlines intact); *see also* Direct Testimony of Cavalier Telephone, LLC, WC Docket No. 02-359 (filed Sept. 23, 2003) (Cavalier Direct Testimony); Rebuttal Testimony of Cavalier Telephone, LLC, WC Docket No. 02-359 (filed Oct. 10, 2003) (Cavalier Rebuttal Testimony); Direct Testimony of Verizon Virginia, Inc., WC Docket No. 02-359 (filed Sept. 23, 2003) (Verizon Direct Testimony); Rebuttal Testimony of Verizon Virginia, Inc., WC Docket No. 02-359 (filed Oct. 10, 2003) (Verizon Rebuttal Testimony). The Parties marked their pre-filed direct and rebuttal testimony as exhibits and moved them into evidence at the hearing. For convenience, however, we will refer to the testimony by type as filed rather than as entered by its exhibit number.

issues at the Hearing.[20] Prior to the Hearing date, the Bureau notified the Parties that it would permit written surrebuttal testimony limited to the issues for which it was requested.[21] The Arbitrator reiterated the disposition of the surrebuttal requests at the opening of the Hearing on October 16, 2003.[22] The Parties filed their surrebuttal testimony and responsive testimony, accordingly.[23]

8. *Discovery*. Discovery began on September 8, 2003, pursuant to the general guidelines the Arbitrator had adopted to govern this process.[24] Prior to discovery beginning, the Parties had mutually agreed to certain self-imposed discovery limitations to facilitate the process, as they had discussed at the pre-filing conference in March. The last day to propound discovery was September 25, 2003, and responses were due on October 10, 2003.[25] The Parties did not ask the Arbitrator to resolve any discovery disputes.

9. *Evidentiary Hearing*. The evidentiary hearing, at which the Parties submitted documentary evidence and orally examined witnesses, began on October 16 and concluded on October 17, 2003. In preparation for the Hearing, the Parties filed Evidence and Witness

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[20] These requests were submitted via electronic mail rather than filed as formal motions in this proceeding. Verizon requested the ability to introduce a new witness at the Hearing, Mr. Jay Griles from Virginia Power Company, to address allegations made by Cavalier's witness, Matthew Ashendon, on the same issue. Cavalier opposed permitting this new Verizon witness to appear because Cavalier would not have an opportunity to cross-examine him. Cavalier requested the ability to offer surrebuttal testimony from Cavalier witnesses (who had already provided written testimony) with respect to Issue C3, the assertion by Verizon that Verizon does not misroute any traffic, and Issue C27, the assertion by Verizon witness Louis Agro that Cavalier's "truck roll" issue is covered by the Performance Assurance Plan. Verizon indicated it did not oppose Cavalier's limited surrebuttal as long as it was able to offer Mr. Giles' surrebuttal testimony.

[21] Written surrebuttal testimony was permitted to enable each Party to offer the surrebuttal testimony each requested while providing an opportunity for the other Party to have time to prepare a response. The written surrebuttal testimony was scheduled to be filed on October 20, 2003 and the response by October 22, 2003.

[22] *See* Transcript of the Testimony of October 16, 2003, Volume: 1, Case: Petition of Cavalier Telephone, WC Docket No. 02-359, Arbitration Hearing (Tr.) at 10-11.

[23] *See* Surrebuttal Testimony of Cavalier Telephone, LLC, WC Docket No. 02-359 (filed Oct. 20, 2003) (Cavalier Surrebuttal); Reply Surrebuttal Testimony of Cavalier Telephone, LLC, WC Docket No. 02-359 (filed Oct. 22, 2003) (Cavalier Reply Surrebuttal); Surrebuttal Testimony of Verizon Virginia, Inc, WC Docket No. 02-359 (filed Oct. 20, 2003) (Verizon Surrebuttal); Surrebuttal Testimony of Verizon Virginia, Inc, WC Docket No. 02-359 (filed Oct. 22, 2003) (Verizon Reply Surrebuttal).

[24] *See Cavalier-Verizon Procedural Public Notice* at Item C. and Attach. I. The Bureau also entered a Protective Order to govern the material exchanged by the Parties during Discovery. *See Petition of Cavalier Telephone, LLC, Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*, Protective Order, DA 03-2826 (rel. Sept. 3, 2003), Errata (rel. Sept.16, 2003) (*Cavalier Protective Order*).

[25] The original dates were September 22, 2003 and October 3, 2003, respectively, however these dates also were changed as a result of the *Revised Schedule Letter*. *See supra* para. 7 & note 19.

Designations.[26] Each Party raised a variety of objections to certain of the other Party's designated evidence or witnesses.[27] The Arbitrator ruled on these objections from the bench at the opening of the Hearing, denying all objections and allowing each Party to offer the witnesses and evidence specified in their October 10 filings.[28] The Bureau held a pre-hearing conference on October 14, 2003, to explain the schedule that issues would be heard at the Hearing as well as other procedural matters related to the conduct of the Hearings.[29] The Bureau sent the Parties a confirming letter that same day outlining what had been addressed at the conference.[30] The Hearing was transcribed, and a copy of the transcript was filed with the Secretary of the Commission for inclusion in the record.[31]

10. *Joint Decision Point Lists and Revised Final Contract Language.* The *Cavalier-Verizon Procedural Public Notice* required the Parties to jointly file Decision Point Lists (JDPLs).[32] At the conclusion of the Hearing, the Arbitrator instructed the Parties, on the record, to file a final JDPL reflecting only that proposed contract language that the Parties mutually agreed was to be considered by the Arbitrator in resolving the issues.[33] When the "final" JDPL

[26] *See* Cavalier Witnesses and Exhibit Lists, WC Docket No. 02-359 (filed Oct. 10, 2003) (Cavalier Witness/Evidence List); Verizon Virginia Inc.'s Witnesses and Evidence, WC Docket No. 02-359 (filed Oct. 10, 2003) (Verizon Witness/Evidence Lists).

[27] *See* Cavalier's Objections to Verizon's Witnesses and Evidence, WC Docket No. 02-359 (filed Oct. 14, 2003) (Cavalier Witness Objections); Verizon Virginia Inc.'s Objections to Cavalier Telephone's Witness and Exhibit Lists, WC Docket No. 02-359 (filed Oct. 14, 2003) (Verizon Witness Objections). Objections were based on such things as irrelevance and introducing new testimony in rebuttal rather than direct.

[28] *See* Tr. at 10-11.

[29] *See Cavalier-Verizon Procedural Public Notice* at Item F.

[30] *See* Letter from Jeremy Miller, Competition Policy Division, WCB, to Counsel for Cavalier and Verizon, WC Docket No. 02-359, Hearing Schedule and Procedures (dated Oct. 14, 2003) (*Hearing Schedule and Procedures Letter*). In anticipation of the October 14, 2003 pre-hearing conference, the Bureau invited the Parties to discuss their preferred order of issues to be heard, desired time allotments for cross-examination, waiver of cross, if any, and other related matters necessary to ensure that the Hearing proceeded smoothly in the time allotted so that all issues would be covered. The Parties submitted a proposal regarding procedures for the Hearing via electronic mail on October 9, 2003. The Commission largely adopted those proposals as set forth in the *Hearing Schedule and Procedures Letter*.

[31] *See supra* note 22; *see also* Transcript of the Testimony of October 16, 2003, Volume: 2, Case: Petition Of Cavalier Telephone, WC Docket No. 02-359, Arbitration Hearing (filed Nov. 12, 2003).

[32] *See Cavalier-Verizon Procedural Public Notice* at Item. D; *see also* Letter from Jeremy Miller, Acting Assistant Division Chief, CPD, WCB, to Counsel for Cavalier and Verizon, WC Docket No. 02-359 (dated Sept. 12, 2003) (*JDPL Letter*). This letter indicated that the JDPL was expected to be a synthesis of information already before the Bureau in the proceeding.

[33] *See* Tr. at 652 requiring this final JDPL to be filed on October 21, 2003; *see also* Tr. at 648-661 for the general discussion regarding the issue with the JDPLs. Certain proposed contract language in the second JDPL, filed on Oct. 10, 2003, appeared not to have been properly submitted in the record by the Party proposing it; and neither the Bureau nor the other Party had proper notice that it was the current contract language being offered by that Party for that unresolved issue.

was submitted, however, the parties indicated they could not agree whether certain contract language was properly before the Bureau for consideration.[34]

11. In order to resolve the matter promptly, the Arbitrator provided written instructions to the Parties the next day regarding the submission of final proposed contract language and the basis for those instructions.[35] The Bureau explained that section 51.807(d)(2) of the rules permits the Parties to continue to negotiate during the arbitration process after "final offers" are filed and to "submit subsequent final offers following such negotiations."[36] The Bureau explained that Cavalier and Verizon were both entitled to submit new proposed language for consideration relating to an unresolved issue only if such language resulted from negotiations that had occurred between the Parties on that issue subsequent to the filing of the Cavalier Arbitration Petition and Verizon Answer/Response. If, however, subsequently proposed contract language related to a new issue neither raised in the Cavalier Arbitration Petition nor the Verizon Answer/Response, it would be not be considered.[37]

12. Finally, the Bureau indicated that when a Party decides to revise previously proposed contract language for the Arbitrator's consideration, it must do so in a manner that clearly enables staff (and the opposing Party) to identify the new language.[38] Similarly, when entire issues or sub-issues are resolved by the parties during the arbitration process, the Petitioner

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[34] *See* Letter from Kimberly A. Newman, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-359 (filed Oct. 21, 2003) (transmitting, on behalf of both Parties, the "final" JDPL and noting the Parties' disagreement with the language contained therein).

[35] *See* Letter from Richard Lerner, Associate Bureau Chief, WCB, to Counsel for Cavalier and Verizon, WC Docket No. 02-359, (dated Oct. 24, 2003) (*Final Proposed Contract Language Letter*). This letter also reminded the Parties about the restricted nature of this arbitration proceeding and provided instructions regarding *ex parte* presentations that the parties may be giving in other proceedings that relate to issues before the Arbitrator in this proceeding. Prior to sending the letter, the Arbitrator discussed its contents with the parties via teleconference. In issuing these instructions, the Arbitrator exercised his authority to adopt those procedures necessary to facilitate the process. *See Arbitration Procedures Order*, 16 FCC Rcd at 6233, para. 8 (the arbitrator shall conduct such proceedings as he or she deems necessary and appropriate); *see also Cavalier-Verizon Procedural Public Notice* at Item H.1.

[36] *See* 47 C.F.R. 51.807(d)(2). The *Final Proposed Contract Language Letter* explained that the initial "final offers" were the proposed contract language identified by the Parties in the Cavalier Arbitration Petition and the Verizon Answer/Response.

[37] See 47 U.S.C.§ 252(b)(4)(A); *see also Cavalier-Verizon Procedural Public Notice* at Item A.3. During the course of the proceeding, Verizon proposed a language change to § 11.7.6 of the contract that was not identified as in dispute in the Cavalier Arbitration Petition or the Verizon Answer/Response. This proposed language raised a new issue and therefore is not considered. *See* Tr. at 653-654.

[38] The Arbitrator and opposing Party must receive some form of written correspondence filed in the proceeding, *e.g.*, a letter or pleading, having the specific purpose of clearly identifying newly proposed contract language relating to an unresolved issue resulting from ongoing negotiations that the Party is offering.

is obligated to inform the Arbitrator in writing and to submit revised proposed contract language, if necessary, to reflect such resolution.[39]

13. The Bureau encouraged the Parties to continue to negotiate after submission of their final contract language, but indicated they could not file any additional proposed language for consideration after the date of that submission.[40] The Parties made all required filings relating to the final proposed contract language as specified by the Bureau.[41]

14. *Post-Hearing Briefs*. The Parties filed post-hearing briefs and reply briefs as required in accordance with the schedule established.[42] The Briefs were submitted on October 27, 2003, and Reply Briefs on November 3, 2003.

15. Consistent with the Commission's rules and the procedures governing this arbitration, the Bureau encouraged the Parties to work together to mutually resolve any procedural, scheduling or other related administrative matters that arose rather than bringing them first to the Bureau for resolution. The Parties' efforts to this end contributed to the Bureau's ability to keep this proceeding on track and to issue this Order within the nine month timeframe encouraged by the Commission.[43] This cooperative dealing with one another and the Bureau was in addition to the Parties' continued efforts throughout the course of the proceeding to attempt to mutually resolve the disputed substantive issues that had arisen during their interconnection negotiations and were before the Bureau for decision.[44]

III. UNRESOLVED ISSUES

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[39] *See Cavalier-Verizon Procedural Public Notice* at Item H.4.; *see also* Tr. at 654-654.

[40] To the extent that an issue or sub-issue was resolved after the final contract language was filed, the Parties could file proposed languages necessary to eliminate that issue from proposed contract language in dispute.

[41] *See* Cavalier Telephone, LLC's Notification of Subsequent Final Offers, WC Docket No. 02-359 (filed Oct. 24, 2003); Amended Final Offer of Verizon Virginia Inc., WC Docket No. 02-359 (filed Oct. 24, 2003); *see also* Parties Final Proposed Contract Language, WC Docket No. 02-359 (filed Oct. 29, 2003) (Final Proposed Language).

[42] *See Cavalier-Verizon Procedural Public Notice* at Item G; *see also* Post-Hearing Brief of Cavalier Telephone, LLC, WC Docket No. 02-359 (filed Oct. 27, 2003) (Cavalier Brief); Reply Brief of Cavalier Telephone, LLC, WC Docket No. 02-359 (filed Nov. 3, 2003) (Cavalier Reply Brief); Post-Hearing Brief of Verizon Virginia Inc., Docket No. 02-359, (filed Oct. 27, 2003) (Verizon Brief); Reply Brief of Verizon Virginia Inc., WC Docket No. 02-359 (filed Nov. 3, 2003) (Verizon Reply Brief).

[43] In the *Arbitration Procedures Order*, the Commission encouraged the release of an arbitration award within the 9-month period after the date on which an incumbent LEC is deemed to have received a request to negotiate, even though the Commission is not bound by the 9-month deadline imposed on the states by § 252. For purposes of the Commission's resolution of issues presented for arbitration pursuant to § 252(e)(5) of the Act, the date on which a Petition for Arbitration is filed with the Commission shall be deemed to be the 135th day after which the incumbent LEC, in this case Verizon, received the request to negotiate.

[44] *See supra* para. 5 (identifying the issues that were resolved and removed from consideration during the course of the proceeding).

A. Standard of Review

16. Section 252(c) of the Act sets forth the standard of review to be used in arbitrations by the Commission and state commissions in resolving any open issue and imposing conditions upon the Parties in the interconnection agreement.[45] This provision states that any decision or condition must meet the requirements of section 251 and accompanying Commission regulations; establish rates in accordance with section 252(d); and provide an implementation schedule.[46] As described above, section 252(e)(5) requires the Commission to issue an order preempting a state commission that fails to act to carry out is responsibilities under section 252, and to assume the responsibility of the state commission.[47] Rule 51.807, which implements section 252(e)(5), provides that (a) the Commission is not bound to apply state laws or standards that would have otherwise applied if the state commission were arbitrating the section 252 proceeding; (b) except as otherwise provided, the Commission's arbitrator shall use final offer arbitration; and (c) absent mutual consent of the parties, the arbitrator's decision shall be binding on the parties.[48] Rule 51.807 also provides the arbitrator additional flexibility to resolve interconnection issues.[49]

17. We apply the Commission's current rules and precedents in deciding which proposed contract language to adopt. To the extent an issue presented here touches upon an issue previously decided in the *Virginia Arbitration Order*, the Bureau's decisions in that proceeding provide guidance and precedent only insofar as the Commission's rules upon which that order was based have not changed, and only to the extent that the factual scenarios presented herein are similar.[50] Similarly, the Commission has granted Verizon section 271 authority for Virginia.[51]

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[45] 47 U.S.C. § 252(c).

[46] 47 U.S.C. §§ 252(c)(1)-(3).

[47] 47 U.S.C.§ 252(e)(5); *see also* 47 C.F.R. § 51.803(d).

[48] *See* 47 C.F.R. §§ 51.807(b), (d), (h); *see also Local Competition First Report and Order*, 11 FCC Rcd at 16127-32, paras. 1283-9.

[49] *See Arbitration Procedures Order*. 16 FCC Rcd at 6232, paras. 4-6. Rule 51.807(f)(3) was amended to broaden the scope of "final offer arbitration" as specified in § 51.807(d)(1) so that, if a final offer submitted by one or more parties fails to comply with the other requirements of the rule, or if the arbitrator determines in unique circumstances that another result would better implement the Act, the arbitrator has discretion to direct the parties to submit new final offers or to adopt a result not submitted by any party that is consistent with § 252 of the Act and the Commission's rules adopted pursuant to that section. In granting additional flexibility to the arbitrator, the rules do not specify every circumstance where the arbitrator may exercise this discretion, but indicate that additional flexibility is necessary to facilitate the efficient and expeditious discharge of the Commission's statutory responsibility under § 252 of the Act. *See* 47 C.F.R. § 51.807(f)(3); *Arbitration Procedures Order*, 16 FCC Rcd at 6232, paras. 5-6; *see also Virginia Arbitration Order*, 17 FCC Rcd at 27054, para 30.

[50] For example, at the time the *Virginia Arbitration Order* was adopted, the Bureau applied the unbundling rules adopted in the Commission's *UNE Remand Order*. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, para. 2 (1999) (UNE Remand Order), reversed and remanded in part sub nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA*), *cert denied sub nom. WorldCom, Inc. v United States Telecom Ass'n*, 123 S.Ct. 1571 (2003 Mem.). The *UNE Remand Order* was (continued....)

Consistent with our resolution of an issue previously considered in the *Virginia Arbitration Order*, any changes in our rules since the issuance of our *Verizon Virginia Section 271 Order* or material differences in the factual circumstances before us today are reflected in the contract language we adopt. Finally, to the extent that the rules upon which this Order is based are modified in the future, the Parties may rely on the change of law provisions in their respective agreements to implement such changes.

18. Finally, in resolving the issues before us in this arbitration, we decline to adopt entire package final offer arbitration. Rather, we apply issue-by-issue final offer arbitration, and find that, for certain issues, it is appropriate within an issue to select portions of language from both Parties to resolve the dispute or to adopt some but not all of a single Party's proposal.[52] In other cases, we have found it necessary to avail ourselves of the ability to modify a Party's proposal somewhat where such modifications can bring the agreement into conformity with the Act and Commission rules, or where modification is necessary to maintain consistency with our resolution of the issue.[53] Similarly, we have determined that for some issues, the proposed language offered by a Party is unnecessary as language elsewhere in the agreement addresses its concerns.[54] Moreover, we have found it necessary to direct the Parties to make certain language modifications to their Agreement in their compliance filing with respect to issues where the existing or proposed language violates section 251 of our rules or a prior Commission order, and would therefore be a basis for rejection of the Agreement when submitted for approval.[55] We

(Continued from previous page)
vacated and remanded by the D.C. Circuit in *USTA*, 290 F.3d 415. The rules adopted by the Commission in the *Triennial Review Order*, which became effective on October 2, 2003, interpret the unbundling requirements of § 251 of the Act as a result of the *USTA* court's remand and other judicial decisions. *See Triennial Review Order*, 18 FCC Rcd 16978. To the extent the issues raised by the Parties in this proceeding involve UNEs or any other issue subject to remand, we conduct a *de novo* review based on the rules adopted in the *Triennial Review Order* as applied to the evidence presented herein.

[51] *Application by Verizon Virginia Inc., Verizon Long Distance, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, 17 FCC Rcd 21880 (2002) (*Verizon Virginia Section 271 Order*).

[52] *See, e g.*, Issues C3, C4; *see also Virginia Arbitration Order*, 17 FCC Rcd at 27054-55, paras. 31-32.

[53] *Id.* Modifying the Parties' proposed language where we are able rather than rejecting the language and directing the Parties to develop and submit additional new language for review, conserves administrative resources and results in the ability to issue a final arbitration award more expeditiously. *See, e.g.*, Issue C4 (where we modify the words "Verizon" and "Cavalier" in § 7.2.6 of Verizon's proposed language to "the transiting Party" and "the originating Party" respectively, to reflect the reciprocal transit obligations proposed by Cavalier and adopted by the Commission in that same section).

[54] *See, e.g.*, Issue C14 (where we decline to adopt Cavalier's language regarding Integrated DLC loop provisioning, but point to another provision in the agreement where Cavalier's request is partially resolved).

[55] *See* 47 U.S.C.§ 252(e)(2)(B). *See, e.g.*, Issue C10 (where we strike the language indicating Verizon is not obligated to splice dark fiber to provide to Cavalier as contrary to routine network modification rules adopted in the *Triennial Review Order); see also* Issue C9 (where we direct the parties to file new language to conform the proposed language to the *Virginia Cost Issues Arbitration Order).*

explain the basis for how we determine the final contract language for each unresolved issue within the discussion of each issue below.[56] In addition, we provide within each discussion the specific contract language we adopt.

B. True-Up

19. The Commission requires that an arbitration award issued by the Bureau pursuant to delegated authority that establishes rates for interconnection, resale, or UNEs must contain a requirement that the arbitrated interconnection agreement contain a true-up provision.[57] This true-up provision will apply in the event that the Commission ultimately modifies any rates the Bureau establishes and ensures that no carrier is disadvantaged by our orders in the event that they are subsequently modified by the Commission on review.[58] Certain issues we resolve herein do relate to the appropriate rates associated with that issue. Accordingly, in the event that the Commission, on review, establishes rates that differ from those established in this Order or in any subsequent Bureau order addressing the Parties' compliance filings,[59] any rates established by this Order shall be trued-up to the rates subsequently ordered. Any such true-up shall apply retroactively to the effective date of the Bureau's order adopting the Parties' compliance filings. Payment of the net true-up amount owed by the appropriate party to the interconnection agreement shall be made to the other party to the agreement in accordance with the billing practices and other relevant provisions delineated in the agreement. To the extent that there is a disagreement between the Parties as to the amount of any such true-up or to the appropriate true-up procedures, such disagreement shall be subject to the dispute resolution provisions of the interconnection agreement.

C. Disposition of the Issues

1. Issue C2 (Compensation for Responding to Network Rearrangements)

a. Introduction

20. When the number of trunks connected to a tandem switch reaches a certain level, Verizon adds another tandem switch to the LATA network to avoid tandem exhaust.[60] At that time, under the previous interconnection agreement between the Parties, if Cavalier interconnected at the first tandem it would be required to establish new facilities to carry its traffic to the new tandem. Cavalier proposes language here that would require each Party to

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[56] We reiterate that we base our decisions on current Commission rules and precedent, and therefore reject or modify Parties' proposals that extend beyond existing law.

[57] *See Arbitration Procedures Order*, 16 FCC Rcd at 6233, para. 10; *see also Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17737, para. 26.

[58] *Id.*

[59] *See infra* para. 208.

[60] *See* Verizon Direct Testimony of Albert Panel at 5.

reimburse the other for reasonable costs incurred when one Party's network rearrangement causes the other to move existing facilities or establish new facilities.[61] Verizon opposes this language.[62]

b. Positions of the Parties

21. Cavalier explains that its proposal stems from problems it experienced recently when Verizon rehomed two tandems in Virginia.[63] Cavalier incurred costs associated with the rehomings, which were magnified due to Verizon's unacceptable delays.[64] Cavalier points out that Verizon's own witness admitted that a competitive LEC could incur several hundred thousand dollars costs in connection with a Verizon tandem rehoming.[65] Cavalier's costs included leasing duplicate transport facilities from Verizon during the protracted period of rearrangement, and internal expenses, such as for increased switch ports and labor costs.[66] Cavalier argues that these costs are too exorbitant for it to bear and Verizon should be responsible for them because it caused the network rearrangement.[67] Cavalier also claims that Verizon may have reimbursed or borne the costs of independent telephone companies with which it interconnects when these carriers responded to Verizon's network rearrangements and thus that Cavalier's proposal is consistent with Verizon's prior conduct.[68]

22. Cavalier disputes Verizon's contention that tandem rehoming benefits all carriers. Instead, Cavalier argues that Verizon has a financial incentive to handle traffic through a tandem because it can charge a higher reciprocal compensation rate for tandem traffic than for traffic switched at the end office.[69] Cavalier also argues that direct interconnection between carriers, which Verizon claims would reduce the necessity and frequency of tandem rehomings, could not be achieved quickly enough to make a difference in the short term.[70] Accordingly, as owner of the tandem switching facilities, Verizon is the only carrier that can impose or require order in the

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[61] *See* Final Proposed Language at 1 (Cavalier Proposed § 9.6).

[62] Verizon Brief at 5.

[63] *See* Cavalier Direct Testimony of Cole at 1-3.

[64] *Id*

[65] Cavalier Reply Brief at 2 (citing Tr. at 29-30).

[66] *See* Cavalier Direct Testimony of Cole at 2.

[67] *See* Cavalier Reply Brief at 2.

[68] *Id.* Cavalier presented evidence suggesting that Verizon may at some time have paid or borne the costs of independent telephone companies in responding to Verizon's network rearrangements. *See* Cavalier Rebuttal Testimony of Clift at 3-4 & Ex. MC-1R; *see also* Tr. at 16-17 *cited in* Cavalier Reply Brief at 2 n.2.

[69] Cavalier Brief at 5-6.

[70] *Id* at 6.

tandem rehoming process.[71] Cavalier also notes that section 252 does not require direct interconnection.[72]

23. In response to Verizon's argument that Cavalier need not lease duplicate facilities because it has the option, under section 4.1.1 of the proposed Agreement, to "connect[] to all of Verizon's tandems through a single point in the LATA," Cavalier claims that Verizon never before has offered Cavalier the option of not directly connecting at the new tandem.[73] Cavalier complains that Verizon's proposed section 4.1.1, and accompanying schedule 4.2.7, which itemizes end office interconnection arrangements between the Parties in Virginia, are at best vague, and, at worst, inconsistent with Verizon's argument about tandem rehomings.[74] Schedule 4.2.7, which specifies only three points of interconnection (POIs) between Cavalier and Verizon, does not explicitly recognize that Cavalier exchanges a significant amount of traffic through end offices, not tandems.[75] Cavalier fears that, under Verizon's proposal, Verizon may not provide sufficient capacity between the POI and a new tandem, which would make Cavalier's network vulnerable to blockage. Blockage historically has been a problem between the Parties.[76] Moreover, based both on its own experience and another carrier's recent experience, Cavalier expresses skepticism that Verizon actually will effect its POI commitment.[77] Accordingly, Cavalier asks, if the Bureau rejects Cavalier's reimbursement proposal, that it modify Verizon's section 4.1.1 to explicitly allow Cavalier to select its POIs, including its existing POIs, with all transport costs to the new tandems to be borne by Verizon.[78]

24. Verizon explains that its tandem switches establish a connection between trunks connected to competitive LECs, interexchange carriers, wireless carriers, some independent telephone companies, and Verizon's end office switches.[79] When the number of trunks connected to a tandem reaches a certain level, Verizon must add another tandem to the LATA

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[71] *Id.*

[72] *Id.* (citing 47 U.S.C.§ 252).

[73] *Id.* at 2 (quoting Verizon Answer/Response at 3 and citing *id.* at Ex. C (Verizon's Proposed Agreement to Cavalier) at § 4.1.1). It points out that Verizon's industry letters do not present a single point of interconnection (SPOI) as an alternative. Cavalier Brief at 3; Cavalier Reply Brief at 4.

[74] Cavalier Brief at 3, 5.

[75] *Id.* at 5. Cavalier adds that Schedule 4.2.7 does list 60 end offices where Cavalier exchanges traffic with Verizon. *Id.*

[76] *Id* at 4. Cavalier also criticizes the SPOI concept. Cavalier notes that the SPOI creates the potential for a single point of failure in the interconnection of the two networks, further taxing Verizon's switches, rather than decentralizing the burden on them, and further discourages the kind of facilities-based competition in which Cavalier is engaged. *Id.* at 3-4 (citing Tr. at 25-26), 6.

[77] *See id.* at 3-4.

[78] Cavalier Reply Brief at 1-2, 3-4 (citing Tr. at 30-32, 35, 40, 43, 44).

[79] Verizon Brief at 2; *see also* Verizon Rebuttal Testimony of Albert Panel at 3.

network to serve the increased carrier demands.[80] At that time, all carriers, including competitive LECs who interconnect at the first tandem, need to rehome trunks to the new tandems.[81] Verizon notes that nearly 275,000 competitive LEC trunks have been added in Virginia as a result of "explosive CLEC growth."[82] Verizon argues that all carriers benefit from these arrangements because if tandem capacity is not added, all carriers connected to the tandem will experience trunk blockage and service disruptions.[83] Verizon argues that its longstanding arrangement with all competitive LECs is that each carrier bears the costs associated with network rearrangements.[84] It also denies that it reimburses independent telephone companies under the similar circumstances.[85]

25. Verizon also denies that it historically caused any delays associated with tandem rehomings in Virginia.[86] Rather, in the cases referred to by Cavalier, Verizon claims to have been at the mercy of some 50 other carriers that it could not control.[87] All carriers must cooperate to make the rehoming process proceed smoothly.[88] Regardless, Verizon argues, the possibility that delays may result from rehoming does not justify requiring Verizon to pay Cavalier's expenses incurred in connection with a rehoming project.[89] Verizon points out that Cavalier could completely avoid these delays by moving its traffic off Verizon's tandems and connecting directly with other carriers' networks.[90]

26. In any case, Verizon argues, under the contract it has proposed to Cavalier, Cavalier need not lease facilities to a new tandem. Instead, pursuant to its proposed section 4.1.1, to which Cavalier has already agreed,[91] and in accordance with subsection 251(c)(2)(B) of the Act,[92] Cavalier can establish one or more POIs for all traffic in a LATA, and "if Cavalier

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[80] Verizon Brief at 2; *see also* Verizon Rebuttal Testimony of Albert Panel at 3; Tr. at 20.

[81] *See* Verizon Brief at 2-3 (citing Verizon Direct Testimony of Albert Panel, at 5).

[82] Verizon Reply Brief at 5 (citing Tr. at 47).

[83] Verizon Brief at 3 (citing Verizon Direct Testimony of Albert Panel at 6); Verizon Reply Brief at 5 (citing *Virginia Arbitration Order*, 17 FCC Rcd at 27118-19, paras. 155-56).

[84] Verizon Brief at 3 (citing Verizon Direct Testimony of Albert Panel at 5).

[85] *Id.*; Verizon Reply Brief at 5 (quoting Tr. at 10).

[86] Verizon Brief at 4-5 (citing Tr. at 49, 66).

[87] *Id.* (citing Tr. at 66).

[88] *Id.* at 4-5.

[89] *Id.* at 5 (citing Verizon Rebuttal Testimony of Albert Panel at 2-3).

[90] *Id.* at 5 (citing Verizon Rebuttal Testimony of Albert Panel at 4); Verizon Reply Brief at 3-4.

[91] Verizon Reply Brief at 2; *see also* Cavalier Arbitration Petition at Ex. B (Aug. 1 Draft Agreement) § 4.1.

[92] 47 U.S.C. § 251(c)(2)(B) *cited in* Verizon Reply Brief at 4.

chose to have a POI that wasn't at that [new] tandem, then Verizon would be responsible for the transport to get to that particular tandem."[93] Verizon admits that this differs from its prior contract arrangements, where POIs were selected by mutual agreement and not solely by the competitive LEC.[94] Verizon claims, however, that the Parties have been operating within this new network architecture since April 2003.[95] Verizon stipulates that the language set forth in section 4.1.1 "contractually obligate[s it] to pay the costs of transporting Cavalier's traffic from the POI to the new tandem."[96] Accordingly, Verizon argues, the Bureau should reject Cavalier's proposed language that would require each Party to reimburse the other for reasonable costs incurred when one Party's network rearrangement causes the other to move existing facilities or establish new facilities.[97]

c. Discussion

27. First, we reject Cavalier's proposal that Verizon reimburse it for network rearrangements. Cavalier complains that Verizon has, in the past, reimbursed or otherwise borne some share of the costs incurred by interconnecting independent telephone companies when the latter incurred costs responding to Verizon's network rearrangements. We will not order Verizon to reimburse Cavalier when a rearrangement of the Verizon network has some collateral impact on Cavalier. Rather, we believe that Verizon's offer to establish transport facilities from the old to the new tandem should limit Cavalier's costs.

28. Although we reject Cavalier's broad language, we modify Verizon's proposal to reflect its offer, as Cavalier requests. Verizon contends that, under section 4.1.1 of its proposed agreement with Cavalier, Cavalier could avoid altogether the kind of expenses it incurred during the prior tandem rehomings. Because we do not think section 4.1.1 is as explicit as Verizon claims, we modify that section.

29. According to Verizon, the Parties previously operated under a contract that required mutual consent as to the location of the Parties' POIs.[98] Apparently, when Verizon rehomed its tandem, this mutual consent requirement enabled Verizon to change the POI. Verizon states that under section 4.1.1 of the new agreement, Cavalier has the sole right to select one or more POIs.[99] Thus, pursuant to section 4.1.1, and in accordance with subsection

[93] Verizon Brief at 4 (quoting Tr. at 30); *see also* Verizon Reply Brief at 2; Tr. at 44.

[94] *See* Verizon Reply Brief at 3; Tr. at 35-37.

[95] Verizon Reply Brief at 2 (citing Ex. 1 (Apr. 1, 2003 Amendment No. 3 to Interconnection Agreement between Verizon and Cavalier at § 2.1.1)).

[96] *Id.* at 2-3 (citing Tr. at 30).

[97] *Id.* at 6.

[98] *See id.* at 3; Tr. at 35-37.

[99] *See* Verizon Brief at 3 (citing Verizon Direct Testimony of Albert Panel at 6); Verizon Reply Brief at 2-3 (citing Tr. at 30); *see also* Tr. at 40, 44.

251(c)(2)(B) of the Act,[100] Cavalier will now be able to establish one or more POIs for all traffic in a LATA, and those POIs will remain unchanged, regardless of how many tandem rehomings occur.[101] Further, "if Cavalier cho[oses] to have a POI that [i]sn't at that [new] tandem, then Verizon w[ill] be responsible for the transport to get to that particular tandem."[102] According to Verizon, the cost of transport between the original and the new tandem will not be the subject of any additional charge but will be recovered as part of the tandem-switched reciprocal compensation rate these carriers collect in Virginia.[103] Verizon's section 4.1.1, which is titled "Points of Interconnection," provides, in toto –

> Each Party, at its own expense, shall provide transport facilities to the technically feasible Point(s) of Interconnection on Verizon's network in a LATA selected by Cavalier.[104]

30. Verizon stipulates that this language "contractually obligate[s it] to pay the costs of transporting Cavalier's traffic from the POI to the new tandem."[105] We do not believe that, as drafted, section 4.1.1 captures Verizon's offer with clarity.[106] Moreover, we believe that other provisions of the Agreement make this more rather than less ambiguous.[107] Because we find reasonable Verizon's agreement to carry the traffic from the POI selected by Cavalier to the new tandem and beyond for no more than it would have charged Cavalier to terminate traffic

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[100] 47 U.S.C. § 251(c)(2)(B) *cited in* Verizon Reply Brief at 4.

[101] Verizon Brief at 4 (citing Verizon Direct Testimony of Albert Panel at 6); Verizon Reply Brief at 1-2.

[102] Verizon Brief at 4 (quoting Tr. at 30); Verizon Reply Brief at 1-2.

[103] *See* Tr. at 35-40.

[104] *See* Verizon Answer/Response, Ex. C (Verizon Proposed Agreement to Cavalier) at § 4.1.1.

[105] Verizon Reply Brief at 1-2 (citing Tr. at 30).

[106] As drafted, the clause "selected by Cavalier" in § 4.1.1 does not clearly modify "technically feasible Point(s) of Interconnection on Verizon's network." We note that, despite Verizon's testimony to the contrary, *see* Tr. at 44, proposed § 4.1.1 does not appear to have been derived from language adopted by the Bureau in the prior arbitration or from the AT&T contract that resulted from that arbitration. The "Points of Interconnection" provision in the Verizon-AT&T agreement provides that "Verizon shall permit AT&T to interconnect at any technically feasible point on Verizon's network, including, without limitation, tandems, end offices, outside plant and Customer premises, as described in and in accordance with Schedule 4." *See* Interconnection Agreement Under §§ 251 and 252 of the Telecommunications Act of 1996 by and between Verizon-Virginia Inc. and AT&T Communications of Virginia, Inc., CC Docket No. 00-251, at § 4.1.2 (filed Sept. 3, 2002).

[107] Language from § 4.1.1 is repeated in the general introductory paragraph of § 4.0. § 1.63, which defines "Point of Interconnection" is ambiguous as to whether Cavalier has the right to select the POI or whether the Parties must mutually agree to it, as apparently was true under the prior agreement. Specifically, § 1.63 provides, in part, that "[a]s set forth in this Agreement, a Point of Interconnection shall be at (i) a technically feasible point on Verizon's network in a LATA and/or (ii) a Fiber Meet point *to which the Parties mutually agree under the terms of this Agreement*." Verizon Answer/Response, Ex. C at § 1.63 (emphasis added). It is possible to read the italicized language to require mutual agreement as to both the "technically feasible point on Verizon's network in a LATA" and the "Fiber Meet point."

delivered to the original tandem, we direct it to modify section 4.1.1 of the Agreement as set forth below.[108]

d. Arbitrator's Adopted Contract Language

31. With respect to Issue C2, and in accordance with the foregoing discussion, the Arbitrator adopts the following language:

> 4.1.1 Each Party, at its own expense, shall provide transport facilities to the technically feasible point(s) of interconnection on Verizon's network in a LATA selected by Cavalier. Notwithstanding any other language contained in this Agreement, including schedules and attachments hereto, this section 4.1.1 shall be interpreted to permit Cavalier the sole right to select and maintain one or more technically feasible points of interconnection on Verizon's network, including preexisting Cavalier points of interconnection. In the event of a network rearrangement by Verizon, including a tandem rehoming, the point of interconnection shall not change unless Cavalier so requests. In the event of such a network rearrangement by Verizon, this section 4.1.1 shall be interpreted to require Verizon to continue to provide transport from the existing point of interconnection and Cavalier shall pay Verizon no more than the reciprocal compensation rate that it paid before the network rearrangement occurred. Cavalier shall have the right to designate additional points of interconnection in its sole discretion and subject to technical feasibility. In the event of a conflict between this section 4.1.1 and any other provision of this Agreement, this section 4.1.1 shall govern.

2. Issue C3 (Call Detail for Traffic Over Interconnection Trunks)

a. Introduction

32. The Parties disagree whether, and to what extent, a Party sending traffic over interconnection trunks must provide certain information regarding the origin of those calls, necessary for billing, or may be held responsible for calls that lack that information. Both Parties propose language designed to facilitate accurate billing, to the appropriate carrier, for telephone exchange service traffic and exchange access traffic.[109] Verizon's proposed language would require the originating Party to include identifying information, specifically the Calling Party

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[108] Cavalier voices concern that Verizon might not provide sufficient capacity between the POI and the new tandem, which would make Cavalier's network vulnerable to blockage. *See* Cavalier Brief at 4. We note that Verizon's duty under 47 U.S.C. § 251(c)(2)(D) to provide interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, includes the duties to forecast future capacity utilization needs, adequately plan for them, and implement those plans so blockages do not occur. *See Core Communications, Inc. v. Verizon Maryland Inc.*, File No. EB-01-MD-007, 18 FCC Rcd 7962, 7980, 7983, paras. 47, 53 (2003).

[109] *See* Final Proposed Language at 1-4 (Cavalier Proposed §§ 1.12(b), 1.46, 1.48, 1.62(a), 1.87, 5.6.1, 5.6.6, 5.6.6.1, 5.6.6.2, 6.3.9, 7.2.2, Verizon Proposed §§ 1.87, 5.6.1, 5.6.6, 5.6.6.1, 5.6.6.2, 6.3.9, 7.2.2).

Number (CPN), on calls transported to the receiving Party.[110] Cavalier proposes similar language, but would expand the information that must be provided.[111] Both proposals would allow the receiving Party to bill the originating Party directly if that Party does not pass along sufficient billing information on 95 percent or more of calls transported to the receiving Party.[112] Verizon also proposes language obligating it to provide billing information only to the extent the carrier originating the call provides such billing information to Verizon and the provision of such billing information is consistent with industry guidelines.[113]

b. Positions of the Parties

33. Cavalier maintains that as a transiting carrier, Verizon is obligated to pass correct billing information on to other carriers.[114] Cavalier contends, however, that information necessary to identify the proper carrier and calling number is missing on 17 percent of all minutes that Verizon transits to Cavalier's network.[115] According to Cavalier, this problem arises in part from Verizon's mixing of traffic on local exchange and exchange access trunk groups.[116] Cavalier contends that the problem arises when originating carriers deliver one type of traffic and

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[110] For purposes of Verizon's proposal, the "originating Party" is the Party delivering the traffic for termination. The "receiving Party" is the Party to which the originating Party delivers the traffic. *See* Final Proposed Language at 2-3 (Verizon Proposed §§ 5.6.6.1, 5.6.6.2). These terms apply with respect to interexchange traffic from an interexchange carrier and local traffic that originates with a third party (*i.e.*, transit traffic).

[111] This information includes the following codes, which help identify the carrier originating the call, the number placing the call, or the type of call: the CPN, the Carrier Identification Code (CIC), the Local Routing Number (LRN), the Operating Company Number (OCN), and/or the Jurisdiction Information Parameter (JIP). *See* Final Proposed Language at 1-2 (Cavalier Proposed §§ 1.12(b), 1.46, 1.48, 1.62(a), 5.6.6).

[112] *See* Final Proposed Language at 2-4 (Cavalier Proposed §§ 5.6.6.1, 5.6.6.2, Verizon Proposed §§ 5.6.6.1, 5.6.6.2). Cavalier explains that its proposal would permit Cavalier, to the extent Verizon does not provide adequate billing information on up to 5% of calls, to bill Verizon "at a prorated local/access ratio." Cavalier Brief at 8. Furthermore, Cavalier explains that its proposal also would permit Cavalier, to the extent Verizon does not provide adequate billing information on more than 5% of calls, to bill Verizon at Switched Exchange Access rates for those calls. Cavalier Brief at 8. *See* Final Proposed Language at 3-4 (Cavalier Proposed § 5.6.6.2).

[113] *See* Final Proposed Language at 2-3 (Verizon Proposed §§ 5.6.6.1, 5.6.6.2).

[114] In normal circumstances, the terminating carrier would use this information to render a bill for the call to the originating carrier if that carrier is not Verizon. *See* Cavalier Brief at 10; Verizon Brief at 5.

[115] Cavalier Reply Brief at 7; Cavalier Brief at 13; Cavalier Direct Testimony of Haraburda at 1-2. *See* Cavalier Direct Testimony of Cole at 4. For example, Cavalier maintains that in Richmond, on July 8, 2003, Verizon misrouted 23,763 minutes of Access Traffic on Local Trunks. Cavalier Direct Testimony of Cole at 5-6; *see also* Cavalier Direct Testimony of Haraburda at 3-4. This "misrouting will cause our trunks groups to be sized incorrectly over the long term." Cavalier Direct Testimony of Cole at 6. Cavalier contends that Verizon omits CIC or OCN on 17% of calls, or over 64 million minutes, from the August 1, 2003 Carrier Access Billing Records. Cavalier Rebuttal Testimony of Whitt at 1.

[116] Cavalier Brief at 10-11, 17; Cavalier Direct Testimony of Cole at 6; Cavalier Rebuttal Testimony of Whitt at 2; Cavalier Direct Testimony of Whitt at 6.

Verizon sends it to Cavalier in a manner that makes it look like a different type of traffic.[117] Cavalier maintains that it currently has $8 million in uncollectible access and local termination revenue because of inaccurate billing information or because Verizon has done something to change the appearance of the traffic.[118]

34. An example of traffic that is unable to be properly identified is when an interexchange carrier sends a Cavalier-bound call to a Verizon end office, rather than to a Verizon tandem switch.[119] Verizon first determines that the called party is a Cavalier customer, not a Verizon customer. Consequently, and according to Cavalier, contrary to the express language of the current agreement,[120] Verizon then reoriginates the call and routes it to Cavalier's switch over Cavalier's local interconnection trunks, rather than the appropriate access traffic trunks.[121] The Parties indicate that in this circumstance, Cavalier is unable to identify the originating carrier – even though Verizon should know its identity based on the trunk group over which it received the call or the identifying information sent to Verizon by that carrier and even though Verizon would bill the carrier that passed the call to Verizon at access rates.[122] In such cases, Cavalier does not even know that the call originated from an interexchange carrier.[123] The call appears to be a local call originating from Verizon, which Cavalier would bill to Verizon at the local reciprocal compensation rates, rather than appropriately billing the originating interexchange carrier at the higher Switched Exchange Access Service rates.[124] In yet another example, the record shows that when an originating carrier populates the call record with zeros, Verizon re-populates the call record with the called party's number in order to permit the call to be transported to Cavalier.[125]

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[117] Cavalier Brief at 9, 13; Cavalier Direct Testimony of Whitt at 2.

[118] Cavalier Brief at 16; Cavalier Direct Testimony of Whitt at 7.

[119] This situation may arise when an interexchange carrier fails to conduct a local or line number portability (LNP) dip to determine which local carrier serves a called party. Verizon Reply Brief at 10; Tr. at 80-82, 95-98. *See* Cavalier Brief at 8-9, 11.

[120] Cavalier Brief at 8; *see also* Aug. 1 Draft Agreement § 5 (specifying what type of traffic should be sent over interconnection trunks).

[121] *See* Verizon Reply Brief at 10 (conceding that Verizon sends an access call over Cavalier's local interconnection trunks); Cavalier Brief at 9, 10-13.

[122] *See* Tr. at 91-92, 96-97.

[123] Tr. at 95-97, 124. *See* Cavalier Brief at 8-10.

[124] *See* Cavalier Brief at 8-9, 11-13.

[125] Cavalier Brief at 9, 10-13; Verizon Brief at 10-11; Verizon Reply Brief at 9-10; Verizon Rebuttal Testimony of Smith at 6. Verizon explains that this practice arose as an accommodation to independent telephone companies that cannot process calls where the "From Number" field includes zeros. To enable the call to be completed, Verizon inserts the "To Number" in both fields in this circumstance. Verizon Brief at 10-11.

35. To resolve the problem, Cavalier proposes that Verizon must include any adequate combination of CPN, CIC, LRN, OCN, and/or JIP information on calls it passes to Cavalier.[126] Cavalier asserts that Verizon is in a better position than Cavalier to require originating carriers to supply the necessary information.[127] According to Cavalier's proposal, if Verizon passes sufficient information to allow proper billing of traffic on less than 95 percent of all calls, Cavalier would be permitted to bill Verizon directly, for those insufficiently identified calls that exceed 5 percent, at the higher of the intrastate Switched Exchange Access Service rates or the interstate Switched Exchange Access Service rates.[128]

36. Verizon claims that Cavalier's language is unnecessary, because Verizon already includes sufficient information for Cavalier to bill the originating carrier, in accordance with industry guidelines established for all receiving carriers.[129] Verizon contends that Cavalier's language would require Verizon to collect more information than industry standards require, would require Verizon to send codes to Cavalier that Verizon's billing systems do not currently support,[130] and would hold Verizon responsible for termination charges if it failed to pass this information to Cavalier.[131] Verizon claims that it cannot selectively weed out calls that lack sufficient billing information, and that it would not block such calls.[132] Verizon asserts that

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[126] Cavalier Brief at 7-8; 17; Cavalier Direct Testimony of Cole at 7. *See* Cavalier Direct Testimony of Haraburda at 2. Cavalier's proposal states, in this respect, "To facilitate accurate billing to the originating carrier, each Party shall pass sufficient information to allow proper billing, in the form of Calling Party Number ("CPN"), CIC, LRN, OCN, and/or JIP information on each call, including Transit Traffic, carried over the Interconnection Trunks." Final Proposed Language at 2 (Cavalier Proposed § 5.6.6).

[127] Cavalier Brief at 9; Cavalier Direct Testimony of Whitt at 10.

[128] *See* Final Proposed Language at 3-4 (Cavalier Proposed § 5.6.6.2); Cavalier Brief at 7-8. Cavalier's proposal also provides that if the receiving Party is not compensated for traffic the originating Party transits without adequate billing information, then the originating Party must cease routing such traffic upon 10 days notice from the receiving Party. *See* Final Proposed Language at 4 (Cavalier Proposed § 5.6.6.2).

[129] Verizon Brief at 6; Verizon Rebuttal Testimony of Smith at 1.

[130] Verizon states that Cavalier's language requiring Verizon to send billing information over SS7 signaling streams, rather than billing tapes, would require Verizon to fashion a separate billing system for Cavalier. Verizon Brief at 7-9. Verizon claims that one reason many calls are delivered without the calling number is that some carriers use multi-frequency signaling instead of SS7 signaling, and multi-frequency signaling does not deliver the calling number. Verizon Rebuttal Testimony of Smith at 6. Verizon also maintains that Cavalier's language is ambiguous, specifically its language requiring Verizon to pass "CPN, CIC, LRN, OCN, and/or JIP information on each call." Verizon Rebuttal Testimony of Smith at 3. Verizon asserts that, even though Cavalier contends that this language requires merely "any adequate combination" of call information, the use of the words "and/or" in that sentence indicates that Cavalier wants CIC, LRN, OCN, and JIP information on each call record. Verizon asserts, however, that including the words "any adequate combination" in Cavalier's language would be confusing and vague. *Id.; see also* Final Proposed Language at 2-4 (Cavalier Proposed §§ 5.5.6, 5.6.6.1, 5.6.6.2).

[131] Verizon Brief at 5. We note that Verizon's proposed language also enables Cavalier to bill Verizon for these unidentified calls based on certain identified factors. *See* Final Proposed Language at 2-3 (Verizon Proposed §§ 5.6.6.1, 5.6.6.2).

[132] Verizon Rebuttal Testimony of Smith at 7.

Cavalier's language would require it to serve as a billing intermediary for Cavalier, a role that Verizon is under no obligation to serve.[133] In fact, Verizon contends that is it is not required to provide transit service, and declares that if the Bureau adopts Cavalier's proposal, Verizon would cease transiting traffic to Cavalier altogether.[134]

37. Verizon asserts that it sends to Cavalier all billing information that originating carriers include on their calls, and that it does not misroute calls.[135] Verizon explains that not all carriers have a CIC and that some carriers do not include the CPN or OCN on their calls, and Verizon has no control over this situation.[136] If this information is missing on a call, Verizon claims that it would be unable to supply that information on the call record it generates for Cavalier. Verizon suggests that Cavalier could solve its billing problems by interconnecting directly with originating carriers, which would diminish Cavalier's need for Verizon's transit service.[137] Verizon also contends that the issues Cavalier raises should be resolved on an industry-wide basis in the Ordering and Billing Forum (OBF).[138] Verizon asserts that its proposed language would require it to send information to Cavalier consistent with industry standards, and that this makes sense because billing is an industry-wide concern.[139] Verizon also contends that its proposal would ensure that Cavalier would receive the same information Verizon uses to bill for its own terminating services.[140]

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[133] Verizon Brief at 7-8; Verizon Answer/Response at 6 (citing *Virginia Arbitration Order,* 17 FCC Rcd at 27102, para. 119).

[134] Verizon Brief at 6; Verizon Rebuttal Testimony of Smith at 1.

[135] Verizon Brief at 6; Verizon Rebuttal Testimony of Smith at 1. Verizon contends that at least some of the calls Cavalier complains about are likely traffic from wireless carriers, which may appear as access traffic but which is properly routed over local trunks. Verizon Brief at 10; Verizon Rebuttal Testimony of Smith at 2.

[136] Verizon Brief at 6. For example, Verizon explains that interexchange carriers are the only carriers that have CICs, so those local exchange carriers that are not interexchange carriers will not have CICs. Verizon Rebuttal Testimony of Smith at 4. In addition, originating carriers often fail to provide the CPN. Verizon Rebuttal Testimony of Smith at 5-6. Verizon claims that the OBF acknowledges that CIC cannot be passed on each call, and there are guidelines to govern which information should be passed when the CIC is not available. Verizon Rebuttal Testimony of Smith at 4.

[137] Verizon Brief at 9; Verizon Rebuttal Testimony of Smith at 7. Cavalier maintains that it cannot negotiate directly with the originating carrier in instances where minutes are not associated with a carrier. Cavalier Rebuttal Testimony of Whitt at 3.

[138] Verizon Brief at 8, 10. *See* Verizon Answer/Response at 6 (citing *Virginia Arbitration Order,* 17 FCC Rcd at 27344-45, para. 628).

[139] Verizon Brief at 6.

[140] Verizon Brief at 6.

c. Discussion

38. We adopt portions of both Parties' language.[141] We find it reasonable, based on the call scenarios addressed above, to require Verizon, at a minimum, to pass to Cavalier the information Verizon receives from the originating carrier, to enable Cavalier to render an accurate bill to the call's originating carrier. We note that, as with the *Virginia Arbitration Order*, the Commission has not yet had occasion to determine whether incumbent LECs have a duty to provide transit service under the Act or whether incumbent LECs must serve as billing intermediaries for other carriers, nor do we find clear Commission precedent or rules declaring such duties.[142] In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has such duties under the Act. Where a Party undertakes to voluntarily provide transit service, however, and proposes to incorporate the terms of such service into a provision of an interconnection agreement which is subject to arbitration by the Bureau, we have determined whether such provisions are reasonable.[143]

39. We find that in some circumstances, such as where a Cavalier-bound interexchange call is delivered to Verizon's end office, and Verizon reoriginates it to Cavalier's switch, Verizon passes calls to Cavalier in a manner that makes it difficult for Cavalier to identify the originating carrier or calling party and, therefore, to bill the appropriate originating carrier for the call, at the proper rate.[144] In so doing, we find that Verizon improperly impedes Cavalier's right to share terminating access revenues for that call, as required by the provisions of

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[141] We adopt Verizon's proposed §§ 5.6.1 and 6.3.9. We adopt Cavalier's proposed §§ 1.12(b), 1.48, and 1.62(a). Because we are adopting reciprocal obligations in the context of Issue C4, we also adopt Cavalier's proposed §§ 1.87 and 7.2.2, to reflect the reciprocal nature of transit service for purposes of this Agreement. *See infra* Issue C4. We adopt Verizon's proposed § 5.6.6.1 with modifications to reflect our conclusion that Verizon shall pass CPN, CIC, LRN, and OCN information to Cavalier and to reflect our understanding that Cavalier would bill Verizon, as the originating Party, under the circumstances outlined in Verizon's proposal. We adopt portions of both Parties' language with respect to § 5.6.6.2, to make that section consistent with § 5.6.6.1. We also adopt portions of both Parties' language with respect to § 5.6.6, to reflect our conclusion that Verizon shall pass CPN, CIC, LRN, and OCN information to Cavalier, to reflect our understanding that the Parties have resolved their dispute with respect to V/FX traffic, and to reflect our understanding that because transit traffic is included among the traffic dealt with in § 5 of the Agreement generally, it need not be separately identified in § 5.6.6. *See* Aug. 1 Draft Agreement § 5.1 (prescribing parameters for trunk groups used for interconnection as including Reciprocal Compensation Traffic, Measured Internet Traffic, Transit Traffic, translated LEC IntraLATA 8YY Traffic, InterLATA Toll Traffic and IntraLATA Toll Traffic between the Parties' respective Telephone Exchange Service Customers).

[142] *See Virginia Arbitration Order*, 17 FCC Rcd at 27101-02, paras. 117, 119.

[143] *See e.g., Virginia Arbitration Order*, 17 FCC Rcd at 27100, para. 115 ("Given the absence of Commission rules specifically governing transit service rates, we decline to find that Verizon's additional charges are *unreasonable*. We also find that Verizon's proposed 60-day transition period is *reasonable*, providing AT&T adequate time to arrange to remove its transit traffic from Verizon's tandem switch once the traffic meets the DS1 threshold. We determine, however, that Verizon's language allowing it to terminate tandem transit service after this transition period at its "sole discretion" is not *reasonable*.") (italics added).

[144] *See supra* para. 34.

Section 6 of the Agreement.[145] There are other ramifications as well. For example, misidentification of the originating carrier or the calling party can skew Cavalier's traffic factor ratios, which can impact other charges Cavalier pays to Verizon.[146] In addition, as explained more fully in Issue C5, this also affects Cavalier's ability to contact the true originating carrier in question, to work out direct connections based on an understanding of traffic flows between Cavalier and such carrier.[147]

40. Because Verizon does have control over how it passes calls to Cavalier, we conclude that Verizon must pass to Cavalier information necessary to identify the originating carrier or calling party in order to render accurate bills, to the extent that Verizon has that information in some ascertainable form.[148] Verizon shall pass traffic to Cavalier in a way that does not eliminate critical information from calls and does not add information that misidentifies the calling party or the jurisdictional nature of the call. The language we adopt is intended to address the issue of how Verizon miscategorizes traffic sent to Cavalier, specifically the circumstances under which Verizon routes access traffic over local interconnection trunks. Similarly, the language we adopt is intended to preclude Verizon from populating call record fields with incorrect data and then failing to provide Cavalier information Verizon has regarding the calls' origination.[149] We agree that billing issues such as these are of great interest to the industry as a whole, and acknowledge that the OBF may ultimately be an appropriate body to resolve them in a manner that sets specific new industry standards and guidelines. We find, however, that for purposes of this Agreement, Verizon should not impede Cavalier's ability to bill the appropriate carrier at the appropriate rates for calls Cavalier terminates by failing to provide identifying information it has. We agree that Verizon is unable to pass to Cavalier

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[145] *See* Aug. 1 Draft Agreement § 6. *See Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, 16 Comm. Reg. 757, rel. July 16, 1999, paras. 74, 80 (*Telephone Number Portability Fourth Memorandum Opinion and Order on Reconsideration*) citing *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8424 (1996) (stating that the forwarding carrier must provide "the necessary information to permit the terminating carrier to issue a bill")). Similarly, we find that where an originating carrier populates the call record with zeros, which Verizon inappropriately re-populates with the called party's number – an essentially fictitious OCN – Cavalier is unable to identify the calling party and, in some cases, even the jurisdictional nature of the call, and consequently is unable properly to bill for that call. *See supra* para 34.

[146] *See, e.g.*, Aug. 1 Draft Agreement § 5.6.7.

[147] *See infra* Issue C5. In this regard, we reject Verizon's argument that Cavalier could easily resolve this issue by contacting offending originating carriers and forming a direct interconnection arrangement with those carriers.

[148] While we decline to require Verizon to pass to Cavalier call information that Verizon does not possess, we note that, to the extent Verizon transports traffic from another carrier, Verizon is likely able to identify that carrier as a result of its physical interconnection with such carrier or call identification information it receives, and thus must provide this information to Cavalier where available. *See* Tr. at 126.

[149] *See supra* para. 34. In this regard, we disagree with Verizon's assertion that its proposed language would require it to provide Cavalier with "the same information Verizon uses to bill for its own terminating services." Verizon Brief at 6. We note that Verizon has admitted that it has the ability to bill and collect revenue for every call it has a role in completing. Tr. at 126.

information that Verizon does not receive and we do not expect Verizon to attempt to obtain information it does not have. Rather, the language we adopt is designed to address instances where Verizon performs actions that have the effect of disguising the nature of certain calls, affecting Cavalier's ability to bill the appropriate carrier at the appropriate rate for those calls.[150]

41. We disagree that the language we adopt would require Verizon to serve as a "billing intermediary" between Cavalier and originating carriers, in violation of the Bureau's finding in the *Virginia Arbitration Order*.[151] Indeed, although there is no requirement that Verizon involve itself in the payment of access charges or reciprocal compensation on traffic it does not originate, the language Verizon itself proposes in 5.6.6.1 and 5.6.6.2 places it in that position.

42. The language we adopt would not require Verizon to "juggle varying degrees" of call detail for different carriers.[152] We do not require Verizon to modify its billing systems or to provide billing tapes that differ from those currently provided. Rather, we require Verizon to provide, in addition to those billing tapes, whatever information it has about the originating carrier or calling party number to Cavalier for those calls where such information is not readily apparent on the billing tapes sent to Cavalier and Cavalier requests such information. Verizon's reliance on our finding in the *Virginia Arbitration Order* that the Bureau did not require Verizon to provide additional billing information beyond that already agreed to in the contract is misplaced. There, AT&T had not explained why it required additional billing information. In contrast, Cavalier has more than justified in this proceeding why additional information is both required and warranted. We find that establishing a 5 percent threshold for calls without adequate billing information, above which Cavalier can bill Verizon for such calls at a higher access rate,[153] will discourage Verizon from passing exchange traffic over local interconnection

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[150] In this respect, we disagree with Verizon that its proposed language would ensure Cavalier has all the information Verizon has regarding the identity of the called party or originating carrier. *See* Verizon Brief at 6. By its own admission, Verizon demonstrates that this is not the case. Tr. at 94-97.

[151] The language we adopt addresses the manner in which Verizon delivers traffic to Cavalier when Verizon provides transiting services on behalf of other carriers and Cavalier is the receiving/terminating carrier. Verizon's role in this regard is distinct from a billing services provider or billing intermediary. We disagree with Verizon's characterization of the Bureau's *Virginia Arbitration Order*, with regard to Verizon's obligation to provide transit services. *See* Verizon Brief at 7. There, the Bureau found that Verizon would not be permitted to abruptly terminate transit service "with no transition period or consideration of whether WorldCom has an available alternative," because that would "undermine WorldCom's ability to interconnect indirectly with other carriers in a manner that is inconsistent with" a fundamental purpose of the Act, which is to "promote the interconnection of all telecommunications networks by ensuring that incumbent LECs are not the only carriers that are able to interconnect efficiently with other carriers." *Virginia Arbitration Order*, 17 FCC Rcd at 27101-02, para. 118 (citing Collocation Remand Order, 16 FCC Rcd 15435, 15478, para. 84 (2001) (internal quotations omitted)).

[152] *See* Verizon Brief at 7-8.

[153] We find that a 5% threshold is a reasonable margin of error for missing call data. We read both Parties' proposals for § 5.6.6.1 to require Verizon (which, in the case of Verizon's proposed language, would be the "originating Party" on all traffic it delivers, including transit traffic, while Cavalier would be the "receiving Party") to pay Cavalier for those calls, up to 5% of all calls passed, for which Verizon fails to provide adequate information to bill the appropriate carriers, at a prorated local/access ratio established by the calls that have adequate billing (continued....)

trunks and discourage Verizon from populating fields of call records with inaccurate and inappropriate data.[154] Because we acknowledge that Verizon need not alter its billing systems to pass on information it has available in some form, we omit reference to the JIP, which Cavalier had proposed to include and which we find Verizon's billing systems do not support. Similarly, we do not adopt Cavalier's proposed sections 6.3.9, which would require Verizon to provide SS7 signaling streams instead of the currently-provided billing tapes.[155]

d. Arbitrator's Adopted Contract Language

43. With respect to Issue C3, and in accordance with the foregoing discussion, the Arbitrator adopts the following language:

> 1.12(b) – "Carrier Identification Code" or "CIC" is a numeric code assigned by the North American Numbering Plan (NANP) Administrator for the provisioning of selected switched services. The numeric code is unique to each entity and issued to route the call to the trunk group designated by the entity to which the code is assigned.
>
> 1.48 – "Local Routing Number" or "LRN" is a 10-digit number in the Service Control Point (SCP) database maintained by the Numbering Portability Administration Center (NPAC), used to identify a switch with ported numbers.

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information. In addition, we understand Cavalier's proposal regarding § 5.6.6.2 to require Verizon to pay Cavalier for those calls, exceeding 5% of all calls passed, for which Verizon fails to provide adequate information to allow proper billing, at the higher of the intrastate or interstate Switched Exchange Access Service rate. Cavalier Brief at 8. This understanding of Cavalier's intent for § 5.6.6.2 is consistent with Verizon's proposed § 5.6.6.2, and we therefore adopt language for §§ 5.6.6.1 and 5.6.6.2 to reflect these assumptions, which we conclude are reasonable. Specifically, we adopt language for § 5.6.6.1 that would permit Cavalier to charge Verizon (as the originating Party), for up to 5% of calls that Verizon passes without adequate information. In addition, to the extent Cavalier's proposed § 5.6.6.2 would require Verizon to pay Cavalier the Switched Exchange Access Service rate for all calls with inadequate billing information if the number of such calls exceeds 5%, instead we adopt language for § 5.6.6.2 that would require Verizon to pay Cavalier, in cases where the amount of calls lacking adequate billing information exceeds 5%, the appropriate Switched Exchange Access Service rate only for those calls that exceed 5%, and the prorated local/access ratio for those calls up to 5%, consistent with treatment given these calls in § 5.6.6.1.

[154] We disagree that it is appropriate to copy the "To Number" to the "From Number" field in order to route the call to Cavalier. Doing so precludes Cavalier from knowing which carrier originated the call, information Verizon necessarily has to bill that carrier for such call. *See* Verizon Brief at 11. We also disagree that the OBF requires this result. As indicated in Cavalier Hearing Exhibit C-6, the OBF has resolved that the OCN field should be populated with the OCN of the company that originated the call, but that the tandem company may not be able to correctly populate this field if the originating company has ported out numbers. However, we do not read this document as authorizing the tandem company to populate this field with a number of its own choosing. *See* Cavalier Brief at 14-15.

[155] *See* Tr. at 127; *Telephone Number Portability Fourth Memorandum Opinion and Order on Reconsideration*, 16 Comm. Reg. 757, para. 80 (citing *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8424 (1996)). We note that Cavalier has provided no specific justification for requiring SS7 signaling streams, although the record reflects that carriers that do not use SS7 signaling streams do not pass calling party information.

1.62(a) – "Operating Company Number" or "OCN" is a four-place alphanumeric code that uniquely identifies providers of local telecommunications service and is required of all service providers in their submission of utilization and forecast data.

1.87 – "Tandem Transit Traffic" or "Transit Traffic" means Telephone Exchange Service traffic that originates on either Party's network or the network of another carrier (competitive local exchange carrier, independent telephone company, commercial mobile radio service (CMRS) carrier, or other local exchange carrier) and is transported through either Party's switch that performs a tandem function to either Party or another carrier that subtends the relevant switch (performing a tandem function), to which such traffic is delivered substantially unchanged. "Transit Traffic" and "Tandem Transit Traffic" do not include or apply to traffic that is subject to an effective Meet-Point Billing Arrangement.

5.6.1 – Terms and Conditions for Meet Point Billing are addressed in Section 6 only.

5.6.6 – To facilitate accurate billing to the originating carrier, each Party shall pass sufficient information to allow proper billing, in the form of Calling Party Number ("CPN"), CIC, LRN, and/or OCN information on each call, carried over the Interconnection Trunks. Except as set forth in Sections 4.2.7.15(c) and 5.7.6.9 of this Agreement with respect to the determination of V/FX Traffic (as such traffic is defined in Section 4.2.7.15(c)) and billing of applicable charges in connection with such V/FX traffic, the Parties agree to use appropriate information in the form of CPN, CIC, LRN, and/or OCN information, as set forth below.

5.6.6.1 – If the originating Party passes sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information, on ninety-five percent (95%) or more of the calls that it sends to the receiving Party, the receiving Party shall bill the originating carrier the Reciprocal Compensation Traffic termination rates, Measured Internet Traffic rates, intrastate Switched Exchange Access Service rates, intrastate/interstate Transit Traffic rates, or interstate Switched Exchange Access Service rates applicable to each relevant minute of traffic (including Exhibit A and applicable Tariffs), for which sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information, is passed. For the remaining (up to five percent (5%) of) calls without sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information, the receiving Party shall bill the originating Party for such traffic at Reciprocal Compensation Traffic termination rates, Measured Internet Traffic rates, intrastate Switched Exchange Access Service rates, intrastate/interstate Transit Traffic rates, or interstate Switched Exchange Access Service rates applicable to each relevant minute of traffic (including Exhibit A and applicable Tariffs), in direct proportion to the

minutes of use of calls passed with sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information.

5.6.6.2 – If the originating Party passes sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN, on less than ninety-five percent (95%) of its calls, the receiving Party shall bill the originating Party the higher of its intrastate Switched Exchange Access Service rates or its interstate Switched Exchange Access Service rates for that traffic passed without sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information, which exceeds five percent (5%), unless the Parties mutually agree that other rates should apply to such traffic. For any remaining (up to five percent (5%) of) calls, without sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information, the receiving Party shall bill the originating Party for such traffic at Reciprocal Compensation Traffic termination rates, Measured Internet Traffic rates, intrastate Switched Exchange Access Service rates, intrastate/interstate Transit Traffic rates, or interstate Switched Exchange Access Service rates applicable to each relevant minute of traffic (including Exhibit A and applicable Tariffs), in direct proportion to the minutes of use of calls passed with sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information. Notwithstanding any other provision of this Agreement, if the receiving Party is not compensated for traffic passed without sufficient information to allow proper billing of traffic, in the form of CPN, CIC, LRN, and/or OCN information, then the originating Party must cease routing such traffic from its switch(es) to the receiving Party upon ten (10) days' written notice to the other Party. If the receiving Party is not compensated for such traffic, and the originating Party does not cease routing such traffic upon ten (10) day's written notice from the receiving Party, then the receiving Party may cease receiving or terminating such traffic immediately, without further notice or any liability whatsoever to the originating Party.

6.3.9 – Cavalier shall provide Verizon with the Originating Switched Access Detail Usage Data (EMI category 1101XX records), recorded at the Cavalier end office switch, on magnetic tape or via such other media as the Parties may agree, no later than ten (10) business days after the date the usage occurred.

7.2.2 – Transit Traffic may be routed over the Interconnection Trunks described in Sections 4 and 5. Each Party shall deliver each Transit Traffic call to the other Party with CCS and the appropriate Transactional Capabilities Application Part ("TCAP") message to facilitate full interoperability of those CLASS Features supported by the receiving Party and billing functions. In all cases, each Party shall follow the Exchange Message Interface ("EMI") standard and exchange records between the Parties. For such Transit Traffic, each Party shall also deliver other necessary information consistent with industry guidelines; such information

shall be sufficient to allow proper billing of such Transit Traffic, including but not limited to CPN, CIC, LRN, and/or OCN information.

3. Issue C4 (Third-Party Charges)

a. Introduction

44. Cavalier proposes language that would recognize that the Parties have reciprocal obligations to each other to the extent each Party provides Transit Service on behalf of the other Party.[156] Verizon proposes language that would establish distinct obligations depending on which Party provides Transit Service. Under the first part of Verizon's proposal, Cavalier would be obligated to pay Verizon for Transit Service that Cavalier originates, and to reimburse Verizon for whatever charges a terminating carrier levies upon Verizon, and not Cavalier, for the delivery or termination of Cavalier traffic, unless Cavalier successfully disputes the charges. Second, Verizon's proposal provides that, where a third-party carrier's central office subtends a Cavalier Central Office, Cavalier would make Tandem Transit Service available to Verizon at Verizon's request, so that Verizon could terminate calls to that third-party carrier's Central Office that subtends a Cavalier Central Office.[157]

b. Positions of the Parties

45. Cavalier proposes language for section 7.2.6 that would provide for reciprocal obligations should Cavalier begin to provide Transit Service for Verizon.[158] Cavalier opposes Verizon's proposed section 7.2.6 language because it would hold Cavalier responsible for unspecified third-party charges without a reciprocal obligation from Verizon in the event Cavalier provides Transit Service for Verizon.[159] Cavalier maintains that previously Verizon has not billed Cavalier for third-party termination of transit calls,[160] because under normal industry billing practices, the terminating carrier should bill the originating carrier directly.[161] Cavalier contends that it should not be held responsible for unspecified billing charges that Verizon chooses to pay a third-party terminating carrier, at least not without a reciprocal obligation from Verizon.[162] Cavalier characterizes Verizon's proposal as seeking indemnification from Cavalier

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[156] *See* Final Proposed Language at 4 (Cavalier Proposed § 7.2.6). For the purposes of this section, transiting carrier means the carrier that provides Transit Service for calls originated by another carrier.

[157] *See* Final Proposed Language at 4-5 (Verizon Proposed §§ 7.2.6, 7.2.7).

[158] Cavalier maintains that it is unclear whether the underlying agreement between AT&T and Verizon provides for reciprocal transit obligations. Cavalier Direct Testimony of Clift at 2; Cavalier Rebuttal Testimony of Whitt at 5.

[159] Cavalier Direct Testimony of Clift at 2.

[160] Cavalier Rebuttal Testimony of Whitt at 4-5.

[161] *Id.*

[162] Cavalier Direct Testimony of Clift at 2; Cavalier Rebuttal Testimony of Whitt at 5.

in case of billing disputes, and Cavalier does not want to assume responsibility for any bill Verizon chooses to pay to a terminating carrier.[163]

46. Verizon contends that Cavalier should reimburse Verizon if a terminating carrier bills Verizon, rather than Cavalier, for traffic that Cavalier originates and sends to a Verizon tandem for termination by the third carrier.[164] Verizon maintains that its language would obligate it to cooperate with Cavalier to dispute charges, at Cavalier's expense, but ensures that Cavalier pay any charges associated with Cavalier's own traffic.[165] By contrast, Verizon asserts that Cavalier's proposed language would require Cavalier to reimburse Verizon only for those charges that Cavalier deems "proper."[166] Verizon indicates that it agrees that the Parties' transit obligations should be reciprocal, but Verizon opposes Cavalier's language because it would revise several contract provisions,[167] while Verizon's proposed language for reciprocal transit obligations – should Cavalier begin to offer transit service – would be contained in a single contract provision.[168] Verizon maintains that it is not required to provide Transit Service at all or to serve as a billing intermediary between carriers, and that Cavalier should develop direct billing relationships with other carriers.[169]

c. Discussion

47. We adopt Cavalier's proposed language for section 7.2.6, with respect to reciprocal obligations for Transit Service, with modifications that include some language from Verizon's proposed section 7.2.6. We reject Verizon's proposed section 7.2.7.

48. While Cavalier does not currently provide Transit Service to other carriers, it has indicated that it plans to do so.[170] Thus, it is appropriate in the context of this Agreement to include the terms that will apply when Cavalier does provide Transit Service that Verizon originates, particularly in light of Verizon's agreement in principle that Transit Service obligations should be reciprocal.[171] We find that Verizon's proposed language does not, in fact,

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[163] Cavalier Rebuttal Testimony of Whitt at 4-5.

[164] Verizon Brief at 11; *see also* Verizon Answer/Response at 9.

[165] Verizon Brief at 12-13; *see also* Verizon Answer/Response at 9; Verizon Direct Testimony of Smith at 12.

[166] Verizon Brief at 11; *see also* Verizon Direct Testimony Smith at 11.

[167] Verizon points out that Cavalier amends §§ 1.87 and 7.2.6 to provide reciprocal Transit Service obligations, even though Cavalier does not provide Transit Service for Verizon. *See* Verizon Brief at 12-13; Verizon Answer/Response at 9; Verizon Direct Testimony of Smith at 13; Verizon Rebuttal Testimony of Smith at 8.

[168] Verizon Brief at 13.

[169] Verizon Brief at 11-12; Verizon Rebuttal Testimony of Whitt at 4–5.

[170] Cavalier Brief at 19.

[171] Verizon Brief at 12-13.

provide a reciprocal obligation between the Parties, despite the fact that Verizon states it does not object to reciprocal Transit Service obligations.[172]

49. The Parties agree that in normal circumstances, the terminating carrier would bill the originating carrier directly, based on the billing information the transiting carrier passes along with the call. We do not see any indication that Cavalier originates calls to Verizon without including necessary information for terminating carriers to render bills directly to Cavalier. Under these circumstances, if Verizon passes along adequate billing information, terminating carriers should be able to bill Cavalier directly.[173] Nevertheless, it appears that in some cases terminating carriers bill Verizon for these calls.[174] While we agree that Cavalier is the appropriate Party to be billed for calls it originates, Verizon's proposed language neither indicates under which circumstances it would pay charges billed to it by a terminating carrier nor does it provide guidance regarding how Cavalier may determine whether the charges reflect the actual type of call which Cavalier originated.[175] Rather, Verizon's proposed language indicates that Verizon will pay charges levied by a terminating carrier and then attempt to recover those charges from Cavalier, regardless of which charges should appropriately apply to the call.

50. We find that Verizon's proposed language obligates itself only to dispute charges from a terminating carrier at Cavalier's request. This is of little value to Cavalier because Verizon also seeks to require Cavalier to pay for expenses that Verizon incurs to dispute the charges, including attorneys' fees, without regard to whether the third party charges are ultimately deemed proper or improper. We nevertheless agree that the Parties should cooperate as indicated in Verizon's proposed section 7.2.6 to dispute any charges imposed by the terminating carrier on the transiting carrier that appear improper because the terminating carrier did not receive sufficient or accurate information from Verizon about the call. In such cases, the transiting carrier is the entity most likely to know the information that was provided to the terminating carrier regarding the type of traffic and its point of origination and whether that information is consistent with information the transiting carrier received about the call. This

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[172] We find that Verizon's proposed language obligates Cavalier to reimburse Verizon for charges it pays to carriers terminating Cavalier traffic, but we do not find that Verizon's proposal similarly obligates Verizon to reimburse Cavalier for charges Cavalier might pay to another carrier in a circumstance where Cavalier provides Transit Service to Verizon. *See* Final Proposed Language at 4-5 (Verizon Proposed §§ 7.2.6, 7.2.7).

[173] We note that in certain cases, Verizon terminates traffic to one carrier on behalf of another carrier and does not always transmit the information necessary to enable the terminating carrier to appropriately identify the type of call and bill the appropriate originating carrier. *See supra* Issue C3.

[174] We cannot determine whether this is due to omissions by Verizon in billing information passed to terminating carriers (*see supra* note 173), or whether terminating carriers may simply choose to bill Verizon rather than Cavalier. *See* Tr. at 172.

[175] We find Verizon's willingness to pay charges levied by a terminating carrier puzzling in light of Verizon's stated objection to serve as a "billing intermediary" for Transit Service. *See supra* Issue C3. In this instance, however, Verizon's proposed language indicates that it would do so rather than insisting that such terminating carrier bill Cavalier directly. *See* Final Proposed Language at 4-5 (Verizon Proposed § 7.2.6).

information is essential when resolving disputes regarding proper charges.[176] We thus adopt the portion of Verizon's language that indicates it will work cooperatively with Cavalier to dispute the charges. Similarly, we adopt Verizon's language regarding full payment of charges ordered by an appropriate commission, court, or other regulatory body. If a dispute regarding charges has risen to the level of resolution by such a body of competent jurisdiction, these ordered charges should be deemed to be "properly imposed" under Cavalier's proposed section 7.2.6 and thus, Cavalier should not object to their payment.[177]

d. Arbitrator's Adopted Contract Language

51. With respect to Issue C4, and in accordance with the foregoing discussion, the Arbitrator adopts the following language:

> 7.2.6. – Each Party shall pay the other Party for Transit Service that the paying Party originates, at the rate specified in Exhibit A, plus any additional charges or costs that the terminating CLEC, ITC, CMRS carrier, or other LEC, properly imposes or levies on the compensated Party for the delivery or termination of such traffic, including any Switched Exchange Access Service charges. In the event the transiting Party bills the originating Party for charges or costs that the terminating CLEC, ITC, CMRS carrier, or other LEC imposes or levies on the transiting Party for the delivery or termination of the originating Party's traffic, the transiting Party will, upon the originating Party's request, work cooperatively with the originating Party to dispute such charges or costs with the terminating CLEC, ITC, CMRS carrier, or other LEC. In the event the Commission or a court or arbitrator of competent jurisdiction orders the transiting Party to pay (in whole or in part) charges or costs that the terminating CLEC, ITC, CMRS carrier, or other LEC imposes or levies on the transiting Party for the delivery or termination of the originating Party's traffic, the originating Party will reimburse the transiting Party in full for the charges or costs that the transiting Party is ordered to pay.

4. Issue C5 (Reasonable Assistance with Direct Interconnection)

a. Introduction

52. Both Parties agree to language stating that neither Party shall take any actions to prevent the other Party from entering into direct and reciprocal traffic exchange agreements with third parties. Each Party, however, proposes additional language to address Cavalier's request

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[176] We reject Verizon's position that Cavalier's language might require Verizon to serve as a billing intermediary, and we reject Verizon's characterization of the Bureau's conclusions regarding transit services in the *Virginia Arbitration Order*. *See supra* note 151.

[177] In adopting these provisions from Verizon's proposed § 7.2.6, we modify the language slightly to be consistent with the general reciprocal transit service obligations that Cavalier proposes in § 7.2.6. Accordingly, we substitute the word "Verizon" with "transiting Party" and the word "Cavalier" with "originating Party." *See* Final Proposed Language at 4-5 (Verizon Proposed § 7.2.6).