

for Verizon to take an active role in Cavalier's negotiations with third-party carriers.¹⁷⁸ Cavalier's proposed language would obligate Verizon to provide "affirmative but reasonably limited assistance" to Cavalier, assistance which would include "timely providing information, timely responding to inquiries, and . . . participating in discussions and negotiations with third parties."¹⁷⁹ Verizon proposes language that would require it to provide contact information to Cavalier and, in the event Cavalier's "commercially reasonable efforts to initiate negotiation" with a third party fail, "to assist Cavalier in scheduling a conference call and/or meeting" with the third party.¹⁸⁰ Verizon's proposal would not obligate it to participate in any conference calls or meetings between Cavalier and third parties.¹⁸¹

b. Positions of the Parties

53. Cavalier contends that Verizon's cooperation is essential to Cavalier's ability to enter into direct traffic exchange agreements with third-party carriers because Verizon possesses information concerning its relationship with third-party carriers that Cavalier has found, in past negotiations, would aid its understanding of traffic flow and billing between Verizon and the third party.¹⁸² Cavalier maintains that it needs certain information regarding the compensation arrangements for the traffic it is indirectly exchanging with these third parties through Verizon, and that this is information that only Verizon possesses.¹⁸³ Cavalier also alleges that Verizon has failed to respond to Cavalier's request for assistance negotiating direct agreements with third parties, despite Verizon's current contractual duty to cooperate.¹⁸⁴ According to Cavalier,

¹⁷⁸ Cavalier's desire to enter these direct relationships results both from the obligation, imposed by § 7.2.3 of the Agreement, to "exercise best efforts" to enter into such agreements, and from routing and billing difficulty Cavalier has experienced with traffic that Verizon transits from third-party carriers for termination with Cavalier. *See supra* Issue C3.

¹⁷⁹ *See* Final Proposed Language at 5-6 (Cavalier Proposed § 7.2.8).

¹⁸⁰ *See* Final Proposed Language at 5-6 (Verizon Proposed § 7.2.8).

¹⁸¹ *Id*

¹⁸² Cavalier Brief at 23; Cavalier Reply Brief at 9; Cavalier Direct Testimony of Clift at 3-4. For example, Cavalier maintains that Verizon is the only entity in a position to know how intercarrier billing actually works, or whether traffic is being routed over the correct trunk group. Cavalier Brief at 23; Cavalier Direct Testimony of Clift at 4-5.

¹⁸³ Cavalier Brief at 23-24; Cavalier Rebuttal Testimony of Clift at 7. Cavalier opposes Verizon's language because Cavalier is already able to obtain the contact information it needs. Cavalier Brief at 23. Moreover, Cavalier indicates that it is insufficient simply to rely on the publicly available interconnection agreement between Verizon and the third party carrier for whom Verizon is performing the transiting service, because it is necessary for Cavalier to know how Verizon treats the traffic it receives and transits for termination to Cavalier or other carriers. Cavalier Reply Brief at 9.

¹⁸⁴ Cavalier Direct Testimony of Clift at 3-4. Although the witness does not cite any section of the Parties' current agreement, we note that § 4.9 of the Price Schedule attached to that agreement provides that "[t]he Parties will, upon request, provide each other with all reasonable cooperation and assistance in obtaining [reciprocal local traffic exchange arrangements with third parties]" and indicates that "[t]he Parties agree to work cooperatively in appropriate industry fora to promote the adoption of reasonable industry guidelines relating to transit traffic." Cavalier Arbitration Petition at Ex. C.

Verizon wishes to discourage direct connection between other carriers in order to safeguard its current transit revenue,¹⁸⁵ yet Verizon refuses to provide the necessary information to enable Cavalier to bill the originating carrier for the terminating service Cavalier provides.¹⁸⁶

54. Verizon claims it has no duty under the Act to help Cavalier negotiate traffic exchange agreements.¹⁸⁷ Verizon claims that Cavalier's proposal would be burdensome and would require access to competitively sensitive Verizon information.¹⁸⁸ Verizon maintains that Cavalier has not demonstrated a need for Verizon's help,¹⁸⁹ and Cavalier can find all the information it needs on the signaling stream and billing tapes that Verizon sends to Cavalier.¹⁹⁰

c. Discussion

55. We adopt a modified version of both Parties' proposed language. We begin with the mutually acceptable language regarding the duty not to hamper the other Party's negotiations with third-party carriers. In addition, because we agree with Verizon that Cavalier's proposed language may impose upon Verizon an inappropriate duty to negotiate Cavalier's direct traffic agreements with other carriers,¹⁹¹ we adopt Verizon's proposed language, but modify it in two respects. First, we find that the duty to assist negotiations with third-party carriers should be reciprocal between Verizon and Cavalier, and we modify Verizon's proposal accordingly.¹⁹² Second, we find that Verizon comes into possession of important information regarding origination and termination through Verizon's provision of a transit service, such as the nature and amount of traffic that carriers pass through Verizon's network, matters for which terminating and originating carriers may have inconsistent or incomplete information. Carriers need to know this basic information in order to form a direct relationship that properly accounts for their traffic to each other. Therefore, we also modify Verizon's language to incorporate certain limited aspects of Cavalier's proposal that reflect this finding. We share Verizon's concern that an open-ended obligation to provide information could require Verizon to share proprietary information with Cavalier.¹⁹³ We understand Cavalier's proposal to permit it to request information that

¹⁸⁵ Cavalier Brief at 24; Cavalier Rebuttal Testimony of Clift at 8-9.

¹⁸⁶ See *supra* Issue C3; Cavalier Brief at 8.

¹⁸⁷ Verizon Brief at 14.

¹⁸⁸ Verizon Brief at 15; Verizon Answer/Response at 11; Verizon Direct Testimony of Smith at 14.

¹⁸⁹ Verizon notes that Cavalier negotiated an arrangement with Cox without Verizon's help. Verizon Brief at 15-16; Verizon Rebuttal Testimony of Smith at 8-9. Cavalier asserts that its negotiations with Cox may have been much shorter if Verizon had supplied requested billing information. Cavalier Brief at 23.

¹⁹⁰ Verizon Brief at 15-16; Verizon Answer/Response at 12.

¹⁹¹ See Verizon Reply Brief at 15; Verizon Rebuttal Testimony of Smith at 8.

¹⁹² This approach is consistent with our treatment of transit traffic generally. See *supra* Issue C4.

¹⁹³ See Verizon Brief at 15; Verizon Answer/Response at 11; Verizon Direct Testimony of Smith at 14.

pertains solely to its relationship with the third-party carrier with whom Cavalier seeks to interconnect directly, and we modify the contract language accordingly.

d. Arbitrator's Adopted Contract Language

56. Accordingly, the Arbitrator adopts Verizon's proposed language with respect to Issue C5, modified as follows:

7.2.8. – Neither Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange agreement with any carrier to which it originates, or from which it terminates, traffic. Upon request, either Party (the requested Party) shall provide to the other Party (the requesting Party) the names, addresses and phone numbers of points of contact of CLECs, ITCs, CMRS providers, and/or other LECs with which that Party wishes to establish reciprocal Telephone Exchange Service traffic arrangements in the Commonwealth of Virginia, provided that the requested Party has such information in its possession. In the event that the requesting Party makes commercially reasonable efforts to initiate negotiation of a direct and reciprocal traffic exchange agreement with a CLEC, ITC, CMRS carrier or other LEC and such efforts are not successful, the requested Party will, upon written request (including, without limitation, a statement detailing such efforts by the requesting Party), provide affirmative but reasonably limited assistance to the requesting Party. Such affirmative but reasonably limited assistance shall consist of (1) making commercially reasonable efforts to assist the requesting Party in scheduling a conference call and/or a meeting between the requesting Party and such third party carrier, (2) timely providing information regarding the nature of the traffic exchanged between the third-party carrier and the requesting Party through the requested Party, and (3) timely responding to inquiries. Notwithstanding any provision here, in no event shall the requested Party be required to participate in interconnection negotiations, mediations, arbitrations, hearings, litigation or the like involving the requesting Party and a third-party carrier, or to take any actions in connection therewith, except as explicitly set forth in this section 7.2.

5. Issue C6 (911/E911)

a. Introduction

57. Cavalier proposes language that would establish notification and cost-allocation obligations to govern both Parties' interaction with the Public Safety Answering Points (PSAPs) regarding 911/E911 service to Cavalier's customers.¹⁹⁴ Specifically, Cavalier asks the Bureau to adopt contract terms that would: (1) require the Parties jointly to inform PSAPs of 911/E911 procedures applicable to each Party; (2) require Verizon not to charge PSAPs for 911/E911

¹⁹⁴ A PSAP is defined as "a facility that has been designated to receive emergency calls and route them to emergency service personnel." 47 U.S.C. § 222(h) (4).

functions that Cavalier performs; and (3) require Verizon to reduce its 911/E911 charges to PSAPs to reflect 911/E911 functions that Cavalier performs.¹⁹⁵ Verizon proposes to retain the language found in the underlying AT&T agreement.¹⁹⁶

b. Positions of the Parties

58. Cavalier asserts that Verizon's 911/E911 charges to PSAPs should reflect the fact that when customers switch their local service provider from Verizon to Cavalier, Cavalier performs part of the 911/E911 service for that customer and consequently incurs 911/E911-related costs that it should appropriately recover from the PSAPs.¹⁹⁷ However, Cavalier contends that Verizon does not reduce Verizon's charges to the PSAPs to reflect that Verizon's costs decrease when a customer switches to Cavalier. Cavalier concedes that Verizon still performs a 911/E911 function after a customer switches to Cavalier, but Cavalier maintains that Verizon's function changes but Verizon's tariff does not account for this, which leads to double billing.¹⁹⁸ As a result, Cavalier complains that PSAPs have refused payment to Cavalier for the 911/E911 costs it incurs. To solve this problem, Cavalier proposes language that would require Verizon to cooperate to clarify which LEC is owed for which 911/E911 services, including reducing the rates Verizon charges the PSAPs, in order to identify and account for the 911/E911 service that Cavalier provides to its customers.¹⁹⁹

59. Verizon asserts that its 911/E911 costs, as the administrator of the 911/E911 system, are not reduced by Cavalier's provision of local services which include 911/E911 service.²⁰⁰ Verizon maintains that its costs are fixed and unrelated to which LEC serves a particular customer.²⁰¹ In addition, Verizon contends that Cavalier should resolve this issue directly with the PSAPs, and asserts that the Virginia Commission is the appropriate forum to deal with 911/E911 tariffed retail charges to PSAPs.²⁰² Cavalier concedes that this issue is

¹⁹⁵ See Final Proposed Language at 6 (Cavalier Proposed §§ 7.3.9, 7.3.10).

¹⁹⁶ See Final Proposed Language at 6 (Verizon Proposed §§ 7.3.9, 7.3.10).

¹⁹⁷ Cavalier indicates that it provides three 911/E911 functions for its customers: entry of customer names and addresses into Verizon's database, automatic location identification, and routing 911 calls, in conjunction with Verizon, to the appropriate PSAP. Cavalier Direct Testimony of Clift at 7; Cavalier Rebuttal Testimony of Clift at 9.

¹⁹⁸ Cavalier Direct Testimony of Clift at 8. Cavalier argues that Verizon's process results in double billing of the PSAP because it applies its tariffed charges based on "1000 local exchange lines, even though those exchange lines are Cavalier lines." Cavalier Direct Testimony of Clift at 7 (emphasis omitted).

¹⁹⁹ Cavalier Brief at 24-26; Cavalier Direct Testimony of Clift at 5.

²⁰⁰ Verizon Reply Brief at 20; Verizon Answer/Response at 13.

²⁰¹ Verizon Reply Brief at 20; Verizon Direct Testimony of Green at 5; Verizon Rebuttal Testimony of Green at 3-4.

²⁰² Verizon Answer/Response at 13-14.

currently before the Virginia Commission, but is not sure how or when it will be resolved.²⁰³ Therefore, as a short-term solution, Cavalier maintains that Verizon should offset its PSAP charges against Cavalier's charges until the Virginia proceeding is concluded.²⁰⁴

c. Discussion

60. We reject Cavalier's proposed language, and adopt the language Verizon offers for sections 7.3.9 and 7.3.10. We do not find the Parties' Agreement to be the proper vehicle to address this issue, particularly when the issues are pending before the Virginia Commission. Accordingly, we find that the Virginia Commission is the appropriate forum to adjudicate 911/E911 retail tariff disputes. Consequently, we defer to the outcome of the Virginia Commission's proceeding.

d. Arbitrator's Adopted Contract Language

61. Accordingly, the Arbitrator adopts the following language for Issue C6:

7.3.9 – Verizon and Cavalier will work cooperatively to arrange meetings with PSAPs to answer any technical questions the PSAPs, or county or municipal coordinators may have regarding the 911/E911 arrangements.

7.3.10 – Cavalier will compensate Verizon for connections to its 911/E911 pursuant to Exhibit A.

6. Issues C9 (xDSL-Capable Loops)

a. Introduction

62. Cavalier and Verizon disagree about the language governing certain operational and pricing issues for xDSL-capable loops. Cavalier seeks additional protection against inaccuracies in Verizon's loop qualification information,²⁰⁵ which is used to determine the technical characteristics of loops to determine their suitability for providing xDSL service. Verizon states that its existing loop qualification process is adequate.²⁰⁶ Cavalier also proposes language that would allow it to obtain unbundled xDSL-capable loops that more closely track the requirements of the specific "ReachDSL" service it offers.²⁰⁷ Verizon claims that its standard loop offerings, coupled with the availability of line conditioning, already allow Cavalier to offer

²⁰³ Cavalier Brief at 26-27. See Establishing Rules Governing the Provision of Enhanced 911 Service by Local Exchange Carriers, Order for Notice and Comment or Requests for Hearing, PUC-2003-00103, (Va Comm'n Aug. 1, 2003).

²⁰⁴ Cavalier Brief at 26-27; Cavalier Direct Testimony of Clift at 9.

²⁰⁵ Cavalier Brief at 27-29.

²⁰⁶ Verizon Brief at 20-21, 25-26.

²⁰⁷ Final Proposed Language at 7-8 (Cavalier Proposed §§ 11.2.3 – 11.2.8(a)).

the services it desires.²⁰⁸ The Parties also disagree as to what rates Verizon may charge Cavalier for loop qualification and conditioning in Virginia.²⁰⁹ Cavalier also seeks to reduce the required maintenance and repair intervals associated with xDSL-capable loops to require quicker repairs. Cavalier proposes language that would prohibit Verizon's practice of occasionally substituting 2-wire HDSL loops with 4-wire interfaces when Cavalier orders 4-wire DS1-compatible loops, because Cavalier states that it has experienced more problems with the substituted loops.²¹⁰ Verizon asserts that its standard maintenance and repair interval and provisioning practices for xDSL-capable loops meet Cavalier's needs, and satisfy Verizon's obligations under the Act and Commission rules.²¹¹

b. Access to Loop Qualification Information

(i) Positions of the Parties

63. According to Cavalier, in some situations it receives loop qualification information from Verizon indicating that no xDSL-capable loops are available to serve a customer, but subsequently Verizon nonetheless is able to provide xDSL service to that customer.²¹² Cavalier thus speculates that it has access to inferior loop qualification information than is available to Verizon. To address this situation, Cavalier proposes language requiring that new Verizon xDSL customers have the right to transfer to Cavalier at no charge if, within 60 days prior to initiating service with Verizon, Cavalier obtained loop qualification information indicating that no xDSL-capable loop was available to serve that customer.²¹³

64. Cavalier also states that the loop qualification language proposed by Verizon entails a needlessly complicated process that Verizon has not adequately explained or justified.²¹⁴ Thus, Cavalier proposed a contract provision providing for access to loop qualification information through more "simple and straightforward language."²¹⁵

65. Cavalier also asserts that Verizon's standard loop qualification provisions should be rejected. According to Cavalier, Verizon has not adequately justified the extensive

²⁰⁸ Verizon Brief at 21-24.

²⁰⁹ Compare Final Proposed Language, Ex. A, Part VI (Cavalier Pricing Attachment) with Final Proposed Language, Ex. A, Part VI (Verizon Pricing Attachment).

²¹⁰ Cavalier Brief at 30-32.

²¹¹ Verizon Brief at 26-27, 29.

²¹² Cavalier Brief at 27-29 & Exs. C9-1, C9-2.

²¹³ Final Proposed Language at 10 (Cavalier Proposed § 11.2.13).

²¹⁴ Cavalier Brief at 28; Cavalier Reply Brief at 12.

²¹⁵ Cavalier Direct Testimony of Edwards at 2; Cavalier Brief at 28.

mechanized and manual processes that would be used to obtain loop qualification information.²¹⁶ Finally, Cavalier asserts that Verizon waived its right to assert its proposed loop qualification changes to section 11.2.12 by failing expressly to raise its issue V26 in responding to Cavalier's petition, and instead raising them as part of issue C9.²¹⁷

66. Verizon claims to provide Cavalier and other competitive LECs with access to the same loop qualification information that Verizon itself uses.²¹⁸ Verizon maintains that this parity of access was confirmed in the *Verizon Virginia Section 271 Order*,²¹⁹ and that Cavalier's examples fail to demonstrate discriminatory conduct.²²⁰ The changes made in Verizon's loop qualification systems since the time it received section 271 approval for Virginia improved the access or detail of information provided to competitive LECs.²²¹ Verizon states that its use of line-and-station transfers and line conditioning – not better access to loop qualification information – allows it to provide xDSL service where loop qualification information initially indicates that no xDSL-capable loop is available.²²² These capabilities already are available to competitive LECs, giving Cavalier an equal opportunity to provide xDSL service to these customers.²²³

67. Verizon claims that its loop qualification proposal is justified as the implementation of a process to which competitive LECs in a New York DSL collaborative agreed, approved by state commissions, including the Virginia Commission, and approved by the Commission for purposes of section 271 approval.²²⁴ Finally, Verizon claims that it did not waive its right to propose revised loop qualification language regarding section 11.2.12 by raising them in the context of issue C9 rather than issue V26, because they are the same issue.²²⁵

²¹⁶ Cavalier Brief at 27; Cavalier Reply Brief at 12.

²¹⁷ Verizon Answer/Response at 4.

²¹⁸ Verizon Brief at 21; Verizon Direct Testimony of Albert Panel at 8.

²¹⁹ Verizon Brief at 21 (citing *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21895, 21898, paras. 29, 34).

²²⁰ *Id.* at 23-24.

²²¹ Verizon Reply Brief at 22; Tr. at 436-37.

²²² Verizon Brief at 25; Verizon Direct Testimony of Albert Panel at 13. In the context of xDSL service, a "line-and-station transfer" involves switching a customer's service from a loop that is not suitable for providing xDSL service to an available loop that is suitable for providing xDSL service. Verizon Direct Testimony of Albert Panel at 13.

²²³ Verizon Brief at 25-26.

²²⁴ Verizon Reply Brief at 20-22. Verizon also claims that Cavalier has deleted much of the language that would give it a right to access loop qualification information. Verizon Brief at 20. We note, however, that Cavalier's revised proposed contract language restores much of those provisions. Final Proposed Language at 9-10 (Cavalier Proposed § 11.2.12).

²²⁵ Verizon Brief at 30; Verizon Rebuttal Testimony of Albert Panel at 13-14.

(ii) Discussion

68. We generally adopt Verizon's language, with the exception of section 11.2.12.2. For that section, as discussed below, we do not adopt either Party's proposed language, but instead we direct the Parties to submit in their compliance filings revised language in accordance with the *Virginia Arbitration Order* and *Virginia Cost Issues Arbitration Order*.²²⁶ As an initial matter, we reject Cavalier's assertion that Verizon has waived its right to propose its changes to section 11.2.12, and agree with Verizon that issues C9 and V26 concern the same fundamental issues. Further, we note that section 11.2.12 clearly is in dispute under issue C9, and our rules permit the Parties to submit revised final offers with respect to the issues in dispute.²²⁷ We thus find that Verizon's proposed section 11.2.12 is properly before us.

69. Further, Cavalier submits no direct evidence that indicates that Verizon's processes and procedures to identify xDSL-capable loops would provide unequal access to loop qualification information. Cavalier presents only the inference it draws from the circumstances where Verizon provides xDSL service.²²⁸ Verizon adequately rebuts Cavalier's inference of unequal access by explaining how Verizon is able to provide xDSL service using line-and-station transfers and line conditioning, which it similarly makes available to Cavalier where requested to provision xDSL-capable loops.²²⁹

70. Verizon asserts that its proposed loop qualification language accurately describes the processes developed in collaboration with competitive LECs, and approved by the Virginia Commission and this Commission for purposes of section 271 approval. Cavalier does not claim that this process violates the Act or Commission rules, nor does it even state its specific concerns regarding Verizon's language. We find, however, that aspects of Verizon's loop qualification language regarding mechanized loop qualification information charges run counter to the Bureau's determinations in the *Virginia Cost Issues Arbitration Order*.²³⁰ Further, we find Verizon's proposed section 11.2.12.2 language to be ambiguous as to whether Cavalier is

²²⁶ 47 C.F.R. § 51.807(f)(3); *see also supra* para. 16 n.49.

²²⁷ 47 C.F.R. § 51.801(d); *see also supra* para. 11.

²²⁸ One Cavalier witness testified that Cavalier has anecdotal evidence of customers seeking xDSL service from Cavalier, being "told it was unavailable" but ultimately obtaining xDSL service from Verizon. Cavalier Direct Testimony of Edwards at 1-2. However, Cavalier provides no evidence of which party told the customer that xDSL service is not available. Indeed, in the specific examples Cavalier provides, Cavalier, not the end-user customer, is the party receiving the loop qualification information. Similarly, Cavalier, not Verizon, is the party informing Cavalier's potential customer that xDSL service is not available when, in fact, it might be possible for Cavalier to provide xDSL service to that customer following conditioning of the loop or a line-and-station transfer. *See* Cavalier Brief at Ex. C9-1. We thus find no evidence that Verizon is misleading customers regarding the availability of xDSL service when provided by Cavalier.

²²⁹ To the extent that Verizon regularly performs such activities to provide service to its own customers, it must perform those functions for Cavalier, 47 C.F.R. § 51.319(a)(8), and Verizon does. Verizon Brief at 25-26.

²³⁰ *Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17963, para. 616 (disallowing mechanized loop qualification information charges); *see also infra* para. 90.

restricted from using alternative methods of loop qualification generally available to other competitive LECs, contrary to the Bureau's determinations in the *Virginia Arbitration Order* and the *Virginia Cost Issues Arbitration Order*.²³¹ Consequently, we do not adopt Verizon's proposed section 11.2.12.2. Because we reject the language that both Parties submitted, pursuant to section 51.807(f)(3) of the Commission's rules we direct the Parties to submit in their compliance filings revised language in accordance with the *Virginia Arbitration Order* and the *Virginia Cost Issues Arbitration Order*.²³²

(iii) Arbitrator's Adopted Contract Language

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

11.2.12 – "Digital Designed Loops" are comprised of designed loops that meet specific Cavalier requirements for metallic loops over 18k ft. or for conditioning of ADSL, HDSL, IDSL, SDSL or BRI ISDN (Premium) Loops. "Digital Designed Loops" may include requests for:

- A) a 2W Digital Designed Metallic Loop with a total loop length of 18k to 30k ft., unloaded, with bridged tap(s) removed, at Cavalier's option;
- B) a 2W ADSL Loop of 12k to 18k ft. with bridged tap(s) removed, at Cavalier's option;
- C) a 2W ADSL Loop of less than 12k ft. with bridged tap(s) removed, at Cavalier's option;
- D) a 2W HDSL Loop of less than 12k ft. with bridged tap(s) removed, at Cavalier's option;
- E) a 4W HDSL Loop of less than 12k ft with bridged tap(s) removed, at Cavalier's option;
- F) a 2W Digital Designed Metallic Loop with Verizon-placed ISDN loop extension electronics;

²³¹ See *Virginia Arbitration Order*, 17 FCC Rcd at 27230-32, paras. 397-99; *Virginia Cost Issues Order*, 18 FCC Rcd at 17963-64, paras. 615-18. For example, the Bureau found in the *Virginia Cost Issues Arbitration Order* that the availability of an alternative tool for loop qualification, Verizon's Loop Facility Assignment and Control System (LFACS), should make the need for manual loop qualification rare. *Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17963, paras. 615, 617. To the extent the language Verizon has proposed for § 11.2.12.2 does not recognize that Cavalier may use LFACS for loop qualification purposes, this proposed language must be modified.

²³² 47 C.F.R. § 51.807(f)(3); see also *supra* para. 16 n.49. We further note that, to the extent that Cavalier has actual evidence of discriminatory access to loop qualification information, it can file a complaint with the Commission or the Virginia Commission.

G) a 2W SDSL Loop with bridged tap(s) removed, at Cavalier's option;

H) a 2W IDSL Loop of less than 18k ft. with bridged tap(s) removed, at Cavalier's option.

Requests for repeaters for 2W and 4W HDSL Loops with lengths of 12k ft. or more shall be considered pursuant to the Network Element Bona Fide Request process set forth in Exhibit B.

11.2.12.1 – Verizon shall make Digital Designed Loops available to Cavalier at the rates as set forth in Exhibit A.

11.2.12.3 – The Parties will make reasonable efforts to coordinate their respective roles in order to minimize Digital Design Loop provisioning problems. In general, unless and until a shorter period is required under Applicable Law, where conditioning or loop extensions are requested by Cavalier, an interval of eighteen (18) business days will be required by Verizon to complete the loop analysis and the necessary construction work involved in conditioning and/or extending the loop as follows:

A. Three (3) business days will be required following receipt of Cavalier's valid, accurate and pre-qualified service order for a Digital Designed Loop to analyze the loop and related plant records and to create an Engineering Work Order.

B. Upon completion of an Engineering Work Order, Verizon will initiate the construction order to perform the changes/modifications to the Loop requested by Cavalier. Conditioning activities are, in most cases, able to be accomplished within fifteen (15) business days. Unforeseen conditions may add to this interval, unless such additional time is not permitted pursuant to Applicable Law.

C. After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, subject to Verizon's standard provisioning intervals.

11.2.12.4 – If Cavalier requires a change in scheduling, it must contact Verizon to issue a supplement to the original service order. If Cavalier cancels the request for conditioning after a loop analysis has been completed but prior to the commencement of construction work, Cavalier shall compensate Verizon for an Engineering Work Order charge as set forth in Exhibit A. If Cavalier cancels the request for conditioning after the loop analysis has been completed and after construction work has started or is complete, Cavalier shall compensate Verizon

for an Engineering Work Order charge as well as the charges associated with the conditioning tasks performed as set forth in Exhibit A.

c. Loops Up To 30,000 Feet in Length

(i) Positions of the Parties

72. Cavalier proposes that Verizon make available to it all xDSL-capable loops up to 30,000 feet in length, including different features than Verizon's standard loop offerings.²³³ Cavalier asserts that, although it can order loops from Verizon of the lengths it needs, Verizon's standard loop offerings include features that hinder Cavalier's ability to provide xDSL service, and that its proposed language is less complex.²³⁴ Cavalier further claims that "it has never been offered loops over [18,000 feet] with reasonable loop conditioning rates in the event that load coils or other impediments must be removed."²³⁵

73. In addition, Cavalier claims that the power spectral density (PSD) mask²³⁶ restrictions associated with Verizon's loop offerings improperly prevent Cavalier from providing its "ReachDSL" service over those loops.²³⁷ With respect to the IDSL, SDSL, and digital designed metallic loop (DDML) loop types, Cavalier claims that Verizon improperly narrows the ways in which a technology can comply with the relevant PSD mask industry standard.²³⁸ Specifically, Cavalier asserts that its service is in compliance with ANSI T1.417, the relevant national standard for PSD masks, which provides two approaches for demonstrating compliance. "Method A" requires a showing that the technology fits within certain predefined "classes" of PSD masks.²³⁹ "Method B" involves a calculation-based approach to demonstrate compliance with the deployment guidelines of the PSD mask standard.²⁴⁰ Cavalier submitted evidence that the ReachDSL technology satisfies the ANSI T1.417 standard using Method B, but asserts that

²³³ Final Proposed Language at 8 (Cavalier Proposed § 11.2.8(a)).

²³⁴ Cavalier Reply Brief at 13; Cavalier Direct Testimony of Edwards at 2.

²³⁵ Cavalier Reply Brief at 13 n.43.

²³⁶ PSD masks are a tool to help ensure that advanced services technologies can be deployed without causing harmful interference with other deployed loop technologies. PSD masks chart the maximum power and frequency levels that a particular xDSL technology will attain. Knowing these power and frequency levels allows engineers to deploy xDSL technologies in a way that minimizes interference from crosstalk between that xDSL technology and other technologies deployed within the same loop plant. *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, 20991, para. 181 n.390 (1999) (*Line Sharing Order*).

²³⁷ Final Proposed Language at 7-8 (Cavalier Proposed §§ 11.2.4 – 11.2.8(a)).

²³⁸ Cavalier Brief at 32-35; Cavalier Reply Brief at 16-17; Cavalier Rebuttal Testimony of Ko at 1-5.

²³⁹ Cavalier Brief at 32-35; Cavalier Reply Brief at 16-17; Cavalier Rebuttal Testimony of Ko at 2.

²⁴⁰ Cavalier Brief at 32-35; Cavalier Reply Brief at 16-17; Cavalier Rebuttal Testimony of Ko at 3.

Verizon's proposed language only allows it to use Method A.²⁴¹ Cavalier similarly maintains that the PSD mask and DC line power restrictions specified in Verizon technical reference TR 72575, associated with Verizon's ADSL and HDSL loops, limit Cavalier's ability to deploy the technology to offer ReachDSL service.²⁴²

74. Verizon states that it should not be required to create a new loop offering encompassing all loops up to 30,000 feet.²⁴³ Verizon states that its standard loop offerings, in conjunction with line conditioning, already meet Cavalier's needs.²⁴⁴ Specifically, Verizon states that it offers loops longer than 18,000 feet in length, which can be conditioned as needed by Cavalier to provide services using ReachDSL technology.²⁴⁵ Verizon notes that Cavalier's concern about conditioning for loops longer than 18,000 feet was raised by Cavalier and rejected in the *Verizon Virginia Section 271 Order*.²⁴⁶

75. Verizon also claims that its proposed language associated with its xDSL-capable loops would not prevent Cavalier from offering ReachDSL service, despite Cavalier's contrary interpretation of that language.²⁴⁷ Regarding the IDSL, SDSL, and DDML loop types, Verizon acknowledges that either Method A or Method B of demonstrating compliance with the ANSI T1.417 standard is proper, and it offers revised language in an effort to accommodate Cavalier's concerns.²⁴⁸ Verizon, however, states that it cannot simply adopt that same language for its provisions regarding ADSL and HDSL loops. Verizon maintains that such a change for ADSL and HDSL loops, which are shorter than 18,000 feet, would require significant and needless modifications to its ordering, provisioning, and maintenance systems when its standard loop offerings already meet Cavalier's needs.²⁴⁹ Specifically, Verizon states that "Verizon's language does not prevent Cavalier from deploying its ReachDSL technology over one of Verizon's numerous, existing under-18,000 foot loop offerings."²⁵⁰ Independently, at the hearing, Verizon

²⁴¹ Cavalier Brief at 32-35; Cavalier Reply Brief at 16-17; Cavalier Rebuttal Testimony of Ko at Exs. KK-2, KK-3.

²⁴² Cavalier Brief at 32; Cavalier Rebuttal Testimony of Ko at 4-5; Tr. at 438; *see also* Final Proposed Language at 7-8 (Verizon Proposed §§ 11.2.4 – 11.2.6).

²⁴³ Verizon Reply Brief at 28.

²⁴⁴ Verizon Brief at 20-22.

²⁴⁵ *Id.*

²⁴⁶ *Id.* at 22 (citing *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21964, para. 149).

²⁴⁷ Verizon Reply Brief at 28.

²⁴⁸ Tr. at 439-30; Final Proposed Language at 8-9 (Verizon Proposed §§ 11.2.7 – 11.2.8(a)).

²⁴⁹ Verizon Brief at 21-24; Verizon Reply Brief at 28.

²⁵⁰ Verizon Reply Brief at 28.

asserted that the issue of loops shorter than 18,000 feet was not properly raised by Cavalier, and thus is not properly before us.²⁵¹

(ii) Discussion

76. We adopt Verizon's provisions, modified to reflect Cavalier's ability to offer its ReachDSL service using those loops.

77. *New Loop Offering For All Loops Up To 30,000 Feet.* We do not adopt Cavalier's proposal for a new loop offering encompassing all loops up to 30,000 feet in length. We find that Verizon's separate loop offerings are adequate to satisfy its obligations under the Act and Commission rules, once Cavalier's concerns regarding PSD mask limits are addressed through changes in the language addressing the specific loop types.²⁵² Although Cavalier states that it cannot always get access to loops greater than 18,000 feet in length,²⁵³ we note that the Commission reached the opposite conclusion in the *Verizon Virginia Section 271 Order*.²⁵⁴ Cavalier has not provided a factual or legal basis for this Bureau to reach a different conclusion here. Cavalier presents no evidence that the mere fact that loops need to be conditioned in some circumstances violates section 251 or Commission rules. Further, we observe that Verizon largely has accepted Cavalier's proposed new loop offering for loops longer than 18,000 feet, which we adopt as modified to address PSD mask requirements, as discussed below. This provides Cavalier yet another option for obtaining loops longer than 18,000 feet. To the extent that Cavalier's true concern actually relates to the rates for conditioning these loops,²⁵⁵ we address that issue below.²⁵⁶

78. *Deployment of ReachDSL on IDSL, SDSL, and DDML Loops.* We adopt Verizon's proposed language regarding IDSL, SDSL, and DDML loops, modified as discussed below. Both Parties agree that ANSI T1.417 is the applicable PSD mask standard, and that either

²⁵¹ Tr. at 439-40.

²⁵² Verizon demonstrates that eliminating the distinctions among its separate loop offerings in favor of the single loop offering proposed by Cavalier would require significant changes to its ordering, provisioning, and maintenance systems. Verizon Brief at 21-24; Verizon Reply Brief at 28. The mere fact that Verizon would incur costs in making such loops available is not in itself sufficient to decline imposing an unbundling obligation if it otherwise is required for compliance with the Act or Commission rules.

²⁵³ Cavalier Rebuttal Testimony of Edwards Rebuttal at 2 ("My understanding is that, in the past, Verizon has refused Cavalier access to xDSL loops over 18,000 feet in length.").

²⁵⁴ *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21964, para. 149 (responding to Cavalier's claim that it could not get access to loops over 18,000 feet to provide xDSL service by "find[ing] that Verizon's offerings for the provision of DSL-capable loops over 18,000 feet are reasonable.").

²⁵⁵ Cavalier Reply Brief at 13 n.43 (stating that Cavalier "has never been offered loops over [18,000 feet] with reasonable loop conditioning rates in the event that load coils or other impediments must be removed").

²⁵⁶ See *infra* Part III.C.6.d.

Method A or Method B may be used to demonstrate compliance.²⁵⁷ The Parties continue to disagree, however, regarding the specific language that should be used. We find that mirroring the phrasing of Cavalier's reference to a different technical standard in its proposed section 11.2.9 would properly incorporate both methods for demonstrating compliance with the ANSI T1.417 standard, as well as accommodating future modifications to that standard. We thus adopt Verizon's sections 11.2.7, 11.2.8, and 11.2.8(a), modified to replace Verizon's proposed reference to the ANSI T1.417 standard with language adapted from Cavalier's proposed section 11.2.9.²⁵⁸

79. *Deployment of ReachDSL on ADSL and HDSL Loops.* We adopt Verizon's proposed language regarding ADSL and HDSL loops, modified to reflect that Cavalier may deploy its ReachDSL technology on those loops. As an initial matter, we reject Verizon's claim that PSD mask issues relating to loops shorter than 18,000 feet – specifically ADSL and HDSL loops – are not properly before us.²⁵⁹ We find that Cavalier's petition raises the issue of PSD masks as a general matter, without respect to particular loop lengths.²⁶⁰ As discussed above, we decline to adopt Cavalier's proposed language, which needlessly would require extensive changes to Verizon's systems, when such changes are not necessary to enforce Cavalier's rights under section 251 and the Commission's rules. In particular, Verizon states that its proposed "language does not prevent Cavalier from deploying its ReachDSL technology over one of Verizon's numerous, existing under-18,000 foot loop offerings."²⁶¹ Thus, for clarification, we add the sentence "Notwithstanding the foregoing, Cavalier may deploy its ReachDSL technology on such loops." at the end of Verizon's proposed sections 11.2.4, 11.2.5, and 11.2.6.

80. Finally, we note that Cavalier has proposed a change to section 11.2.3 of the Agreement, addressing the "2 Wire ISDN Digital Grade Loop." Specifically, Cavalier proposes to delete the requirement that when Verizon provides loop extension equipment, "[s]uch request will be treated as request for a Digital Designed Loop pursuant to Section 11.2.12."²⁶² Cavalier provides no discussion or explanation regarding why it proposes this change. In the absence of any explanation, and because Verizon's proposed language is taken from an approved interconnection agreement,²⁶³ we adopt Verizon's proposed section 11.2.3.²⁶⁴

²⁵⁷ Cavalier Brief at 32-35; Cavalier Reply Brief at 16-17; Verizon Brief at 22-24; Verizon Reply Brief at 26-28.

²⁵⁸ We note that Cavalier remains obligated to provide Verizon with information regarding the advanced services it intends to offer pursuant to § 51.231 of the Commission's rules. 47 C.F.R. § 51.231.

²⁵⁹ Tr. at 439-40.

²⁶⁰ Cavalier Request for Arbitration, Ex. A at 2 (discussing issue C9).

²⁶¹ Verizon Reply Brief at 28.

²⁶² Compare Final Proposed Language at 7 (Cavalier Proposed § 11.2.3) with Final Proposed Language at 7 (Verizon Proposed § 11.2.3).

²⁶³ Verizon Brief at 19.

(iii) Arbitrator's Adopted Contract Language

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

11.2.3 "2 Wire ISDN Digital Grade Loop" or "BRI ISDN" provides a channel with 2-wire interfaces at each end that is suitable for the transport of 160 kbps digital services using the ISDN 2B1Q line code, as described in ANSI T.1601-1998 and Verizon TR 72575, as revised from time to time. In some cases, loop extension equipment may be necessary to bring the line loss within acceptable levels. Verizon will provide loop extension equipment only upon request. Such request will be treated as request for a Digital Designed Loop pursuant to Section 11.2.12.

11.2.4 "2-Wire ADSL-Compatible Loop" or "ADSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of digital signals up to 8 Mbps toward the Customer and up to 1 Mbps. from the Customer. In addition, ADSL-Compatible Loops will be available only where existing copper facilities can meet applicable industry standards. The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR 72575, Issue 2, as revised from time to time, must be met. Notwithstanding the foregoing, Cavalier may deploy its ReachDSL technology on such loops.

11.2.5 "2-Wire HDSL-Compatible Loop" or "HDSL 2W" consists of a single 2-wire non-loaded, twisted copper pair that meets the carrier serving area design criteria. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time to time, must be met. HDSL compatible Loops will be available only where existing copper facilities can meet applicable specifications. The 2-wire HDSL-compatible loop is only available in former Bell Atlantic service areas. Notwithstanding the foregoing, Cavalier may deploy its ReachDSL technology on such loops.

11.2.6 "4-Wire HDSL-Compatible Loop" or "HDSL 4W" consists of two 2-wire non-loaded, twisted copper pairs that meet the carrier serving area design criteria. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time to time, must be met. HDSL compatible Loops will be available only where existing copper facilities can meet applicable specifications. Notwithstanding the foregoing, Cavalier may deploy its ReachDSL technology on such loops.

11.2.7 "2-Wire IDSL-Compatible Metallic Loop" consists of a single 2-wire non-loaded, twisted copper pair that meets revised resistance design criteria. This

(Continued from previous page)

²⁶⁴ Final Proposed Language at 7 (Verizon Proposed § 11.2.3). We note, however, that the adoption of this language does not authorize Verizon to impose any charges prohibited elsewhere in this order. See *infra* Part III.C.6.d.

UNE loop, is intended to be used with very-low band symmetric DSL systems that meet ANSI T1.417, as revised from time to time, and are not compatible with 2B1Q 160 kbps ISDN transport systems. The actual data rate achieved depends upon the performance of Cavalier-provided modems with the electrical characteristics associated with the loop. This loop cannot be provided via UDLC. IDSL-compatible local loops will be provided only where facilities are available and can meet applicable specifications. Verizon will not build new copper facilities.

11.2.8 “2-Wire SDSL-Compatible Loop”, is intended to be used with low band symmetric DSL systems that meet ANSI T1.417, as revised from time to time. This UNE loop consists of a single 2-wire non-loaded, twisted copper pair that meets ANSI T1.417, as revised from time to time. The data rate achieved depends on the performance of the Cavalier-provided modems with the electrical characteristics associated with the loop. SDSL-compatible local loops will be provided only where facilities are available and can meet applicable specifications. Verizon will not build new copper facilities.

11.2.8(a) “2-Wire Digital Designed Metallic Loop” 18-30 Kft. provides a channel with 2-wire interfaces at each end, which is intended to be used for digital services beyond 18 Kft. Cavalier may deploy any loop technology that meets ANSI T1.417, as revised from time to time. The average normalized power in any 100 kHz band must not exceed unity and the peak PSD must not exceed that of the Spectrum Management standard template by more than 2.5 dB. The transmit power is limited to 14.0 dBm. This loop may be ordered with load coil removal under the terms and conditions for load coil removal under Digital Designed Loops.

d. Pricing of Loop Qualification and Conditioning

(i) Positions of the Parties

82. Cavalier explains that the Virginia Commission never has set rates for xDSL-related services and that the Parties have been unable to agree on the prices that should apply for the conditioning of xDSL-capable loops.²⁶⁵ Cavalier specifically challenges Verizon’s “standard” proposed charges in Virginia.²⁶⁶ In light of the Bureau’s August 29, 2003 release of the *Virginia Cost Issues Arbitration Order*, Cavalier proposes to adopt the AT&T/WorldCom rates when they become effective, subject to challenge in the normal course of that proceeding and this one.²⁶⁷ It argues that the prices for loop conditioning in this proceeding should conform to this Bureau’s

²⁶⁵ Cavalier Brief at 35; Cavalier Reply Brief at 18.

²⁶⁶ See Cavalier Brief at 35.

²⁶⁷ Cavalier Brief at 36. We note that, although AT&T, Cox, and WorldCom were parties to the prior arbitration, Cox did not seek arbitration of rates. See *Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17726, para. 1 n.1.

determination in the *Virginia Cost Issues Arbitration Order* because the Bureau acted there in the stead of the Virginia Commission and set the only such prices ever specifically set for these services in Virginia.²⁶⁸ In response to Verizon's claim that Cavalier cannot opt into the loop conditioning rates set by this Commission in the Virginia Cost Issues Arbitration without adopting the terms and conditions of the AT&T agreement, Cavalier notes that Verizon does not explain how it believes Cavalier's proposal departs from those terms and conditions.²⁶⁹

83. Until the rates set by the Bureau in the Virginia Cost Issues Arbitration become final, Cavalier requests that the Commission adopt the lowest Verizon prices for loop conditioning that exist within the Cavalier footprint, specifically the rates set by the Maryland Commission.²⁷⁰ Although Verizon argues that a Maryland rate cannot be imported to Virginia, Cavalier argues that position is inconsistent with the way Verizon's own proposed rates were set.²⁷¹ Cavalier cites a document produced to it in discovery by Verizon, which traces the source of ten of Verizon's 11 "standard" xDSL loop qualification and conditioning rates in Virginia as "VA Billed," meaning, apparently, that Verizon has charged these rates to a customer under an interconnection agreement in Virginia.²⁷² Verizon subsequently represented to the Commission that these ten rates are "equal to or lower than [the] comparable rate in NY."²⁷³ Cavalier claims that Verizon, itself, has not demonstrated that these "mystery rates that are equal to or lower than New York rates" are Virginia-specific.²⁷⁴ In response to Verizon's claim that its proposed rates are TELRIC compliant because they were approved in this Commission's *Verizon Virginia Section 271 Order*, Cavalier notes that Verizon has argued, in a separate proceeding with respect to certain UNE prices, that it would be inappropriate to derive TELRIC assumptions from the record in the Virginia 271 case.²⁷⁵ Moreover, Cavalier argues, Verizon has not explained why rates that passed muster for purposes of a 271 proceeding are sufficient in the context of a 251-

²⁶⁸ Cavalier Brief at 36-37. Cavalier also notes that, to the extent that these prices actually become part of effective agreements between AT&T/WorldCom and Verizon, § 252(i) requires Verizon to make available to Cavalier prices that become part of an effective interconnection agreement between it and AT&T/WorldCom. *Id.* at 36.

²⁶⁹ Cavalier Reply Brief at 18.

²⁷⁰ Cavalier Brief at 35, 37. Cavalier argues that cost models and data used by incumbent LECs often are very similar in neighboring states. Cavalier Brief at 35 (citing *Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection, Service, Unbundled Elements, and Transport and Termination under the Telecommunications Act of 1996 and Related Indiana Statutes*, 2003 Ind. PUC LEXIS 116, at *35-*41 (Ind. Util. Reg. Comm'n Feb. 17, 2003)).

²⁷¹ See Cavalier Reply Brief at 18.

²⁷² Cavalier Brief at 37 (citing Ex. C9-3 (Verizon Response to Cavalier Discovery Request) at 0861); see also Cavalier Reply Brief at 19.

²⁷³ See Verizon Brief at Ex. 2; see also Tr. at 457-58.

²⁷⁴ See Cavalier Reply Brief at 18.

²⁷⁵ *Id.* (citing Cavalier Ex. C16-4 (Rebuttal testimony of Robert W. Woltz, Jr. in Virginia SCC Case No. PUC-2002-00088 (filed June 2003)) at 8).

252 arbitration.²⁷⁶ Although Verizon argues that Cavalier has not provided any cost studies to back up its proposed prices, Cavalier points out the same is true of Verizon.²⁷⁷

84. Verizon urges the Commission to reject Cavalier's request that the Bureau adopt the loop conditioning rates set in the *Virginia Cost Issues Arbitration Order*, as inconsistent with section 252(i). According to Verizon, neither section 252(i) nor the Commission's rules permit a party to adopt a rate separate from the accompanying terms and conditions for providing that network element that are contained in the Parties' interconnection agreement.²⁷⁸ Since Cavalier has requested changes to language in the AT&T agreement, and a carrier must adopt legitimately related terms and conditions of the element associated with a rate in order for the carrier to adopt that rate, Verizon argues, it would be premature for the Bureau to decide whether Cavalier is entitled to AT&T's rates for loop conditioning because it is unclear whether Cavalier will adopt all related terms and conditions.²⁷⁹

85. Verizon also opposes Cavalier's request that, until the AT&T/WorldCom rates become effective, the Bureau adopt the lowest Verizon rates approved by a public service commission within Cavalier's footprint, particularly the Maryland loop conditioning rates.²⁸⁰ Verizon argues that, in the *Verizon Virginia Section 271 Order*, the Commission rejected this exact request, and found that the use of Verizon's Virginia "proxy" rates produced rates within the range that a reasonable application of TELRIC principles would produce.²⁸¹ Verizon argues that, since Cavalier has not filed cost studies and rates must be cost based, the Bureau cannot set rates.²⁸² Verizon also claims that Cavalier has not submitted other evidence to support its contention that Verizon's rates in Virginia are inappropriate, therefore, it argues, the Bureau should adopt the TELRIC-compliant rates it has already approved in the *Verizon Virginia Section 271 Order*, and reject Cavalier's proposals.²⁸³

(ii) Discussion

86. In accordance with Cavalier's proposal, we adopt the loop qualification and conditioning rates set in accordance with this Bureau's August 29, 2003 *Virginia Cost Issues*

²⁷⁶ Cavalier Brief at 37.

²⁷⁷ Cavalier Brief at 37; Cavalier Reply Brief at 18.

²⁷⁸ Verizon Reply Brief at 29 (citing 47 U.S.C. § 252(i)).

²⁷⁹ Verizon Brief at 28 & n.3; Verizon Reply Brief at 29-30 & n. 2 (citations omitted).

²⁸⁰ See Verizon Brief at 27 (citing Tr. at 470).

²⁸¹ Verizon Brief at 27 (citing *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21950-52, paras. 124-26, 128); Verizon Reply Brief at 28-29.

²⁸² Verizon Brief at 27.

²⁸³ *Id.*; Verizon Reply Brief at 29 (citing *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21950-51, paras. 124-26).

Arbitration Order.²⁸⁴ If final rates have not been approved by the Bureau in that proceeding when the Cavalier-Verizon agreement arbitrated here becomes effective, we direct the Parties to negotiate interim loop qualification and conditioning rates, based upon the rates set forth in AT&T/WorldCom's October 28, 2003 compliance filing in the Virginia Cost Issues Arbitration and Verizon's November 18, 2003 Reply thereto, subject to true-up against the rates the Bureau approves in that proceeding. We find that this solution more likely than either of the Parties' proposals to achieve appropriate, Virginia-specific rates for loop qualification and conditioning.

87. The Parties agree that the rates that Verizon currently charges for loop qualification and conditioning in Virginia were not set by the Virginia Commission. Rather, according to information provided by Verizon to the Bureau, the existing rates were derived from New York rates and are "equal to or lower than" the comparable rates in New York.²⁸⁵ Although, as we discuss further below, we adopt Cavalier's proposal that loop qualification and conditioning rates be set in accordance with the *Virginia Cost Issues Arbitration Order*, we do not adopt Cavalier's interim proposal. Cavalier stated at the hearing that, if final rates have not been set in the Virginia Cost Issues Arbitration by the effective date of its agreement with Verizon, it requests on an interim basis the rates set by the Maryland commission.²⁸⁶ The language it proposes in its agreement provides, instead, that certain prices will be set "[a]t the lowest Verizon rate approved by a public service commission within Cavalier's footprint."²⁸⁷ Cavalier presents no specific information as to what these interim rates are or how they were set. In the absence of any specific information, the Bureau cannot assess whether these proposed interim rates comply with section 252(d) of the Act.²⁸⁸ Accordingly, we decline to adopt Cavalier's interim proposal.

88. As Verizon argues, in its *Verizon Virginia Section 271 Order*, the Commission found Verizon's current proxy rates to be "within the range that a reasonable application of TELRIC principles would produce."²⁸⁹ It is well-established, however, that, when the Commission applies TELRIC pricing principles to determine whether an incumbent LEC has complied with section 271, it does not conduct a *de novo* review of a state's pricing

²⁸⁴ Cavalier Brief at 35. Although Cavalier's briefs specifically address Verizon's rates for load coil and bridged tap removal, Cavalier's interlineations of the proposed pricing schedule also indicates that it opposes other Verizon rates for loop qualification and conditioning. Verizon was directed to source those rates, see Tr. at 466-74, which it did. See Verizon Brief at Ex. 2. Based upon these filings, and in accordance with the *Virginia Cost Issues Arbitration Order*, we set the rates that Verizon may charge Cavalier for loop qualification and conditioning.

²⁸⁵ See Verizon Brief at Ex. 2; see also *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21950, para. 126, cited in Verizon Reply Brief at 29.

²⁸⁶ Tr. at 470.

²⁸⁷ Final Proposed Language, Ex. A at 4 (Cavalier Proposed Pricing Attachment).

²⁸⁸ 47 U.S.C. § 252(d).

²⁸⁹ See *Verizon Virginia Section 271 Order*, 17 FCC Rcd at 21950, para 124, cited in Verizon Brief at 27.

determinations.²⁹⁰ Rather, it makes a general assessment of compliance with TELRIC principles.²⁹¹ In the Virginia Cost Issues Arbitration, the Bureau, standing in the stead of the Virginia Commission did apply its pricing rules to resolve numerous specific issues pertaining to the rates that Verizon may charge AT&T and WorldCom in Virginia.²⁹² In the *Virginia Cost Issues Arbitration Order*, the Bureau applied existing Commission rules, including TELRIC principles, to resolve pricing issues regarding Verizon's Virginia operations.²⁹³ That Order contained a detailed analysis of Verizon's proposed rates for loop qualification and conditioning services in Virginia, including the services at issue here.²⁹⁴ In the *Virginia Cost Issues Arbitration Order*, the Bureau selected the appropriate cost model for most non-recurring charges related to loop qualification and conditioning services and directed those parties to submit compliance filings for these charges.²⁹⁵ AT&T/WorldCom made their compliance filing in the Virginia Cost Issues Arbitration on October 28, 2003, and Verizon filed its Reply on November 18, 2003. Both filings contain, *inter alia*, proposed loop qualification and conditioning rates. The compliance filings will be addressed by the Bureau in a forthcoming order.

89. Because the rates set by the Bureau in its recent *Virginia Cost Issues Arbitration Order* determined specific rates that Verizon may charge two competitive LECs in Virginia and considered Verizon's own evidence concerning its Virginia operations, those rates are more appropriate than the either the interim rates that Cavalier advocates or the proxy rates, imported from New York, upon which Verizon relied in its Virginia 271 application and that were found to be generally TELRIC compliant.²⁹⁶ We reject Verizon's argument that Cavalier must, under section 252(i), also "opt in" to the terms and conditions accompanying the AT&T/WorldCom arbitrated rates, to be entitled to them. Cavalier initiated its own arbitration and asked the Bureau to set loop qualification and conditioning rates. We adopt the rates set in accordance with our earlier order. Cavalier is not "opting in" to the AT&T agreement under section 252(i).

²⁹⁰ *Application of Verizon Pennsylvania Inc, Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region InterLATA Services in Pennsylvania*, CC Docket No. 01-138, 16 FCC Rcd 17419, 17453, para. 55 (2001).

²⁹¹ *Sprint Communications v. FCC*, 274 F.3d 549, 556 (D.C. Cir. 2001) ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles." (citation omitted)).

²⁹² See *Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17727, paras. 2-7.

²⁹³ See *id.*

²⁹⁴ Compare *id.* at 17958-79, paras. 605-661 with Final Proposed Language, Ex. A at Part IV (Cavalier Proposed Pricing Attachment); Final Proposed Language, Ex. A at Part IV (Verizon Proposed Pricing Attachment).

²⁹⁵ See generally *Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17727, paras. 2-3.

²⁹⁶ In this proceeding Cavalier is seeking to have rates set for services that are identical to services that the Bureau set rates for in the Virginia Cost Issues Arbitration. *Id.* There is no basis for charging different rates to different carriers for identical services. See *Local Competition First Report and Order*, 11 FCC Rcd at 15929, para. 862 ("pricing for interconnection, unbundled elements, and transport and termination of traffic should not vary based on the identity or classification of the interconnector.").

90. Accordingly, we direct the Parties to incorporate the loop qualification and conditioning rates set in accordance with this Bureau's August 29, 2003 *Virginia Cost Issues Arbitration Order* into the Parties' Pricing Schedule, Exhibit A to the Parties' Agreement.²⁹⁷ We note that our prior order allows Verizon to charge for: (1) Manual Loop Qualification;²⁹⁸ (2) Engineering Query;²⁹⁹ (3) Engineering Work Order;³⁰⁰ (4) Bridged Tap Removal when the combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet;³⁰¹ and (5) Load Coil Removal on loops more than 18,000 feet.³⁰² Verizon may not: (1) charge for Mechanized Loop Qualification;³⁰³ or (2) charge for Cooperative Testing;³⁰⁴ (3) impose a mandatory charge for WideBand Testing if the competitive LEC does not request it;³⁰⁵ or (4) impose an ISDN electronics charge.³⁰⁶ If final rates have not been approved by the Bureau in the Virginia Cost Issues Arbitration by the time Cavalier and Verizon make their compliance filing, the Parties are directed to negotiate interim rates. These interim rates, which shall be subject to true up against the final rates approved by the Bureau in the Virginia Cost Issues Arbitration, shall be based upon AT&T/WorldCom's October 28, 2003 compliance filing and Verizon's November 18, 2003 Reply.

(iii) Arbitrator's Adopted Contract Language

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

**EXHIBIT A
VERIZON VIRGINIA INC. and CAVALIER**

²⁹⁷ As Cavalier proposes, these rates are subject to that proceeding's true-up provision. See Cavalier Brief at 36; see also *Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17737, para. 26 (citing *Arbitration Procedures Order*, 16 FCC Rcd at 6233, para. 10).

²⁹⁸ See *Virginia Cost Issues Arbitration Order*, 18 FCC Rcd at 17964, para. 618.

²⁹⁹ See *id.*

³⁰⁰ See *id.* at 17972, 17974, paras. 639, 643.

³⁰¹ See *id.* at 17972, 17973-74, paras. 639, 642.

³⁰² See *id.* at 17972-73, paras. 639-41.

³⁰³ See *id.* at 17963, para. 616.

³⁰⁴ See *id.* at 17969, para. 632.

³⁰⁵ See *id.* at 17965-66, para. 622.

³⁰⁶ See *id.* at 17979, para 660.

DETAILED SCHEDULE OF ITEMIZED CHARGES

<u>Service or Element Description:</u>	<u>Recurring Charges:</u>	<u>Non-Recurring Charges:</u>
Standard Digital Loops	<u>All:</u> No charge / Mechanized Loop Qualification per Loop Provisioned	<u>All:</u> \$/ Manual Loop Qualification per Loop Request
	\$1.69/Wideband Test Access System (optional)	\$No charge/Cooperative Testing
2 Wire ADSL compatible Loops (up to 12,000 feet)	See rates for 2 Wire ADSL Loops as set forth above	
2 Wire ADSL compatible Loops (up to 18,000 feet)	See rates for 2 Wire ADSL Loops as set forth above	
2 Wire HDSL compatible Loops (up to 12,000 feet)	See rates for 2 Wire HDSL Loops as set forth above	
4 Wire HDSL compatible Loops (up to 12,000 feet)	See rates for 4 Wire HDSL Loops as set forth above	
2 Wire SDSL compatible Loops	See rates for 2 Wire SDSL Loops as set forth above	
2 Wire IDSL compatible Loops (up to 18,000 feet)	See rates for 2 Wire IDSL Loops as set forth above	
Digital Designed Loops		
2 Wire ADSL compatible Loop (up to 12,000 feet) with Bridged Tap removal	See rates for 2 Wire ADSL Loops as set forth above	Removal of Bridged Taps when combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet: \$*
		Engineering Query: \$*

Engineering Work Order
Charge: \$*

2 Wire ADSL compatible Loop (up to 18,000 feet) with Bridged Tap removal See rates for 2 Wire ADSL Loops as set forth above

Removal of Bridged Taps when combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet: \$*

Engineering Query: \$*
Engineering Work Order
Charge: \$*

2 Wire Digital Designed Metallic Loop (up to 30,000 Feet) Non-loaded with Bridged Tap options See rates for 2 Wire ADSL and 2 Wire HDSL Loops as set forth above

Required Removal of Load Coils on Loops over 18,000 feet \$*

Removal of Bridged Taps when combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet: \$*

Engineering Query: \$*
Engineering Work Order
Charge: \$*

2 Wire Digital Designed Metallic Loop with ISDN Loop Extension Electronics See rates for 2 Wire ISDN Loops as set forth above

Required Removal of Load Coils on Loops over 18,000 feet \$*

Addition of Range
Electronics: No charge
Engineering Query: \$*
Engineering Work Order
Charge: \$*

2 Wire HDSL compatible Loops (up to 12,000 feet) with Bridged Tap removal

See rates for 2 Wire HDSL Loops as set forth above

Removal of Bridged Taps when combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet: \$*

Engineering Query: \$*
Engineering Work Order Charge: \$*

4 Wire HDSL compatible Loops (up to 12,000 feet) with Bridged Tap removal

See rates for 4 Wire HDSL Loops as set forth above

Removal of Bridged Taps when combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet: \$*

Engineering Query: \$*
Engineering Work Order Charge: \$*

2 Wire SDSL compatible Loops with Bridged Tap removal

See rates for 2 Wire SDSL Loops as set forth above

Removal of Bridged Taps when combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet: \$*

Engineering Query: \$*

Engineering Work Order
Charge: \$*

2 Wire IDSL compatible Loops (up to 18,000 feet) with Bridged Tap removal See rates for 2 Wire IDSL Loops as set forth above

Removal of Bridged Taps when combined length of all taps does not exceed 2,500 feet, with no single tap longer than 2,000 feet: \$*

Engineering Query: \$*

Engineering Work Order
Charge: \$*

* To be replaced with final rate set by the FCC in CC Docket Nos. 00-218, 00-249, and 00-251, including true-up pursuant to ¶ 10 of the FCC's January 17, 2001 Order, FCC 01-21, 16 FCC Rcd (rel. Jan. 19, 2001).

e. Maintenance and Repair Interval

(i) Positions of the Parties

92. Cavalier proposes language that would require Verizon to respond to all maintenance and repair requests for xDSL-capable loops in the same time interval as it does for DS1 loops.³⁰⁷ Cavalier asserts that this shorter interval is necessary because its xDSL customers use those loops in a way similar to how T1 circuits are used.³⁰⁸ While acknowledging that Verizon does not provide maintenance and repair within Cavalier's requested intervals for other competitive LECs, or even Verizon retail customers, Cavalier states that those customers "would also benefit from such an interval."³⁰⁹

93. Verizon responds that its maintenance and repair intervals for xDSL-capable loops are the same as those for POTS.³¹⁰ It makes no sense, according to Verizon, to adopt the

³⁰⁷ Final Proposed Language at 9-10 (Cavalier Proposed § 11.2.12(C)).

³⁰⁸ Cavalier Brief at 30.

³⁰⁹ *Id.*

³¹⁰ Verizon Brief at 29.

same intervals for a predominantly business service (DS1) as for a predominantly residential service (xDSL).³¹¹ Verizon asserts that maintenance and repair intervals should be based on the nature of the particular product, and not the way in which customers use that product.³¹² Verizon notes that its current maintenance and repair intervals have been adopted in Virginia for purposes of the Carrier-to-Carrier Guidelines, and it expresses concern about its ability to administer a system that required different intervals for different carriers.³¹³ Further, Verizon states that Cavalier's proposal would result in Cavalier customers receiving superior service to Verizon's own retail customers.³¹⁴

(ii) Discussion

94. We reject Cavalier's proposed new language. Cavalier has not demonstrated – or even claimed – that Verizon must provide maintenance and repair of xDSL-capable loops within the shorter intervals Cavalier seeks in order to provide nondiscriminatory access to loops or to comply with section 251.³¹⁵ Consequently, we reject Cavalier's proposal. We note that collaboratives regarding the performance measures established under the Virginia Carrier-to-Carrier Guidelines are ongoing in Virginia,³¹⁶ which are the appropriate fora for this issue. If Cavalier wishes a shorter interval for maintenance and repair of xDSL-capable loops, it should raise its proposal in that forum.

(iii) Arbitrator's Adopted Contract Language

95. As discussed above, the Arbitrator does not adopt any language with respect to this aspect of issue C9.

f. 4-Wire DS1 Loops

(i) Positions of the Parties

96. Cavalier states that when it orders "4-wire DS1-compatible loops," Verizon occasionally provides 2-wire HDSL DS1 loops with 4-wire interfaces at each end.³¹⁷ Cavalier

³¹¹ *Id.* at 29-30; Verizon Rebuttal Testimony of Albert Panel at 8.

³¹² Verizon Reply Brief at 24.

³¹³ Verizon Brief at 29.

³¹⁴ *Id.* at 29.

³¹⁵ *See, e.g.*, Cavalier Brief at 30 ("Cavalier's customers need an improved service interval for xDSL loops comparable to that for T1 circuits, and Cavalier suspects that customers of other CLECs or Verizon would also benefit from such an interval.").

³¹⁶ Verizon Reply Brief at 24; Tr. at 453-54.

³¹⁷ Cavalier Brief at 31-32.