**COMMONWEALTH OF VIRGINIA**
**STATE CORPORATION COMMISSION**

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| **IN THE MATTER OF THE INQUIRY INTO VERIZON VIRGINIA INC.'S COMPLIANCE WITH THE CONDITIONS SET FORTH IN 47 U.S.C. § 271 (c)** | ) ) ) ) | **DOCKET NO. PUC-2002-0046** |

# REPLY CHECKLIST DECLARATION

## ON BEHALF OF VERIZON VIRGINIA INC.


Donald E. Albert

Rosemarie Clayton

Timothy J. Coombs

Peter J. D'Amico

Maureen Davis

Susan Fox

Nancy M. Gilligan

Carleen Gray

William H. Green, III

Karen Maguire

Josephine Maher

Claire Beth Nogay

Richard L. Rousey

Stephen Savino

Alice B. Shocket

Jonathan Smith

John White

Alan T. Young

**REPLY CHECKLIST DECLARATION**

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# REPLY CHECKLIST DECLARATION

# ON BEHALF OF VERIZON VIRGINIA INC.

## I. THE DECLARANTS

1. My name is Donald E. Albert. My credentials are stated in my original declaration, filed on March 15, 2002.

2. My name is Rosemarie Clayton. My credentials are stated in my original declaration, filed on March 15, 2002.

3. My name is Timothy J. Coombs. My credentials are stated in my original declaration, filed on March 15, 2002.

4. My name is Peter J. D'Amico. My credentials are stated in my original declaration, filed on March 15, 2002.

5. My name is Maureen Davis. My credentials are stated in my original declaration, filed on March 15, 2002.

6. My name is Susan Fox. My credentials are stated in my original declaration, filed on March 15, 2002.

7. My name is Nancy M. Gilligan. My credentials are stated in my original declaration, filed on March 15, 2002.

8. My name is Carleen Gray. My credentials are stated in my original declaration, filed on March 15, 2002.

9. My name is William H. Green, III. My credentials are stated in my original declaration, filed on March 15, 2002.

10. My name is Karen Maguire. My credentials are stated in my original declaration, filed on March 15, 2002.

11. My name is Josephine Maher. My credentials are stated in my original declaration, filed on March 15, 2002.

12. My name is Claire Beth Nogay. My credentials are stated in my original declaration, filed on March 15, 2002.

13. My name is Richard L. Rousey. My credentials are stated in my original declaration, filed on March 15, 2002.

14. My name is Stephen Savino. My credentials are stated in my original declaration, filed on March 15, 2002.

15. My name is Alice B. Shocket. My credentials are stated in my original declaration, filed on March 15, 2002.

16. My name is Jonathan B. Smith. My credentials are stated in my original declaration, filed on March 15, 2002.

17. My name is John White. My credentials are stated in my original declaration, filed on March 15, 2002.

18. My name is Alan T. Young. My credentials are stated in my original declaration, filed on March 15, 2002.

## II. PURPOSE OF DECLARATION

19. This Reply Checklist Declaration is filed on behalf of Verizon Virginia Inc. ("Verizon VA") in response to the Declarations filed by Allegiance Telecom of Virginia, Inc., AT&T Communications of Virginia, Inc., Cavalier Telephone, LLC, Cox Virginia Telecom, Inc., Covad Communications Company, NTELOS Network Inc. and R&B Network Inc., OpenBand of Virginia, LLC and WorldCom Inc., which challenge Verizon VA's compliance with specific Checklist Items.

20. This Declaration demonstrates that, contrary to these claims, Verizon VA provides nondiscriminatory access to interconnection in accordance with its obligations under Checklist Item 1 of Section 271 of the Telecommunications Act of 1996 ("Act"). The Declaration shows that Verizon VA's interconnection practices and procedures, including interconnection trunking and collocation, are in compliance with its tariffs and Checklist Item 1 of the Act, despite the assertions of Cavalier, Covad, Cox, NTELOS, and WorldCom to the contrary. The Declaration responds to the comments made by OpenBand concerning compliance with Checklist Item 2, nondiscriminatory access to network elements. The Declaration also responds to Cavalier's allegations under Checklist Item 3, and demonstrates that these claims are meritless. The Declaration also addresses a number of parties claims concerning Verizon VA's satisfaction of Checklist Item 4 obligations, specifically, Cavalier, Allegiance, Covad, and NTELOS's claims concerning DS-1 and DS-3 loops; Cavalier and NTELOS claims concerning UNE loop provisioning practices; Covad's claims concerning access to remote terminals and the functionality of the LiveWire database; and, Cavalier, Covad and WorldCom's allegations concerning UNE loop performance. The Declaration also addresses the comments filed by Cavalier, OpenBand, and WorldCom regarding Verizon VA's

compliance with Checklist Item 5, Local Transport. The Declaration also responds to WorldCom's legal argument challenge to Verizon VA's compliance with Checklist Item 6, local switching. Although Cavalier and Cox expressed concerns with Verizon VA's provisioning of 911/E911 services, and Allegiance, Cox and WorldCom claimed that there were problems with Verizon VA's Directory Assistance database, the Declaration responds to those claims. The Declaration further responds to four CLECs contentions concerning Checklist Item 8, White Pages Directory Listings, which are either based on out-of-date claims or misunderstandings of the White Pages process and/or the requirements of the 1996 Act. The Declaration responds to WorldCom's challenge, again a legal argument, concerning Verizon VA's compliance with Checklist Item 10, Access to Databases and Signaling. Covad's claims concerning Checklist Item 11, Local Number Portability, are addressed briefly in this Declaration. The Declaration addresses the claims of three CLECs concerning the payment of reciprocal compensation on Internet-bound traffic under Checklist Item 13. Finally, the Declaration addresses the claim of WorldCom challenging Verizon VA's compliance with Checklist Item 14, Resale, concerning the resale of DSL and resale provisioning performance.

21. As demonstrated in its Checklist Declaration, Verizon VA has satisfied all its Checklist obligations, and none of the other parties has demonstrated that the Commission should reach a finding of non-compliance on the Checklist. Because no participants in this proceeding filed comments questioning Verizon VA's compliance with Checklist Items 9 and 12, this silence further demonstrates Verizon VA's compliance with these checklist items. Because these checklist items are undisputed, Verizon VA is not submitting reply comments on them.

## III. CHECKLIST ITEM 1: INTERCONNECTION

22. Verizon VA demonstrated in its Checklist Declaration, ¶¶ 24-90, that it has satisfied its obligations under Checklist Item 1. There, Verizon VA demonstrated that it provides for interconnection, including interconnection trunking and collocation, consistent with the requirements of the Act. Verizon VA showed that it meets its general interconnection obligations in Virginia in the same manner endorsed by the FCC in approving the Pennsylvania 271 Application.

23. A number of CLECs – Cavalier, Covad, Cox, NTELOS and WorldCom – have challenged Verizon VA's contention that it satisfies both its interconnection trunking and collocation requirements under the Act. As will be demonstrated below, these claims have no merit.

### A. Interconnection Trunking

24. WorldCom lists several issues related to Verizon VA's interconnection practices and processes that remain unresolved in the FCC arbitration proceeding for a new agreement in Virginia.[1] Relating to interconnection trunking, WorldCom indicates that arbitration issues I-1, III-3, III-1, and IV-2 remain unresolved. These issues involve disputes regarding: (1) Verizon's obligation to provide multiple points of interconnection; (2) the imposition of a charge on WorldCom for traffic that originates on Verizon VA's network; (3) the provision of interconnection via technically feasible methods of Mid-Span Fiber Meet Points; (4) the proposal to limit WorldCom's right to indirect interconnection; (5) interconnection via two-way trunks; and (6) the proposal to charge

[1] *I/M/O* Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket No. 00-218.

WorldCom access charges for interconnection facilities to the extent that Verizon VA provides the facilities.[2]

25. WorldCom is correct that these issues are pending before the FCC. Indeed, in the non-cost phase of the arbitration alone, the FCC received approximately 1930 pages of testimony from over 50 witnesses, and heard 9 days of live testimony. The case is fully briefed and a decision is expected shortly. In the arbitration, the FCC, pursuant to a provision of the 1996 Act, has assumed a role that is assigned to the state commissions in the first instance. However, WorldCom's assertion that this Commission cannot submit a consultative report to the FCC on Verizon VA's application until the FCC has fully resolved these disputed issues is utterly baseless. As the FCC has held, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions . . . ."[3]. In addition, in the Verizon Pennsylvania 271 proceeding, the FCC stated:

> [N]ew interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.[4]

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[2] *See* WorldCom Freifeld ¶¶ 6-8.

[3] Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, released April 16, 2001 ("*Massachusetts Order*") ¶ 203

[4] Memorandum and Order, *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 ¶ 126 (Rel. Sept. 19, 2001) (*"Pennsylvania Order"*) *r*¶ 92.

26. Accordingly, the fact that the FCC has yet to render a decision on the new disputes raised in the WorldCom arbitration does not preclude this Commission from gathering information for its consultative report to the FCC on Verizon VA's 271 application, as WorldCom states.

27. Cavalier argues that Verizon VA does not comply with its obligations under Checklist Item 1 because of the position it has taken on GRIPs ("Geographically Relevant Interconnection Points").[5] A GRIPs provision is included in the interconnection agreement that Cavalier agreed to in Virginia. Interconnection Points ("IPs") are the agreed-to network points at which Verizon VA is obligated to deliver certain types of telecommunications traffic originating on its network, including local traffic. A clear distinction exists between a point of interconnection ("POI") and an IP. A POI is where the ILEC and CLEC physically interconnect their respective networks. This is the place where the carriers' wires physically meet. An IP (the GRIPs location in Cavalier's case) is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an IP may be at the same place, but this is not required. Even though traffic is physically on one party's network, the second party may still bear financial responsibility for the traffic over that segment by purchasing transport from the first party. In such a case, the POI and the IP would be different.

28. Under the GRIPs provision in the Cavalier ICA, Verizon VA is financially responsible for delivering its traffic to Cavalier's interconnection point ("IP") at the Cavalier collocation site – its GRIP. Verizon VA bears the financial burden of delivering

[5] Cavalier at 6-9, 65-66.

such traffic to the GRIP, and Cavalier bears the financial burden of carrying the traffic from the GRIP back to its end-users. GRIPs provisions are intended to require two carriers to *share* in the cost of providing the transport facilities needed to carry traffic between them, instead of having that cost loaded primarily on Verizon, as Cavalier proposes.

29. Despite the fact that its interconnection agreement includes a GRIPs provision, Cavalier claims, erroneously, that Verizon is ignoring its obligation to pay Intercarrier Compensation charges for the further transport and termination of Verizon's traffic over Cavalier's facilities and that Verizon VA's refusal to compensate Cavalier for these services is contrary to its obligations under the 1996 Act. It asserts that "Verizon's intent . . . is to force the competitor to incur the costs to build and then doubly incur the costs to give Verizon a free ride over the point where the networks are physically interconnected."[6] Cavalier is wrong, and what it is complaining about is the fact that Verizon VA has declined to pay for transporting the traffic *after* the traffic passes the agreed-upon GRIP – where Cavalier's ICA explicitly puts financial responsibility for carrying the traffic on *Cavalier*, not *Verizon*. Moreover, Cavalier notes that it has filed a complaint with the SCC regarding its dispute with Verizon VA over the interpretation of the GRIPs provision in its ICA.[7]

30. Cavalier's claims are meritless. First, in its Pennsylvania 271 Order, the FCC squarely addressed Verizon's position on GRIPs and found that it did not violate the FCC's rules and, therefore, did not warrant a finding of checklist non-compliance.

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[6] Cavalier at 8.

[7] *See* Case No. PUC 202-00089, Petition to Enforce Interconnection Agrement, dated April 19, 2002.

Acknowledging that CLECs had raised issues about Verizon PA's GRIPs provisions, which are similar to Verizon VA's provisions, the FCC found that "Verizon's policies do not represent a violation of our existing rules."[8] The FCC noted in the Pennsylvania 271 proceeding that:

> [T]he issue of allocation of financial responsibility for interconnection facilities is an open issue in our *Intercarrier Compensation NPRM*. We find, therefore, that Verizon complies with the clear requirement of our rules, *i.e.*, that incumbent LECs provide for a single *physical* point of interconnection per LATA.[9]

31. Verizon VA, like Verizon PA, provides for a single physical POI per LATA, if a CLEC so chooses. Thus, despite Cavalier's claim that Verizon VA's GRIPs policies do not comport with law, the FCC does not agree.

32. Second, the 1996 Telecommunications Act provides for commission resolution of disputes that arise out of the terms and conditions of ICAs. The Checklist review process is not an alternative avenue for resolving specific intercarrier disputes, and the fact that a dispute exists between Verizon VA and a CLEC over the interpretation of an ICA does not provide a basis for a finding of Checklist noncompliance. Indeed, the FCC has concluded that such an approach would be "irreconcilable" with the statutory scheme of section 271.[10] As the FCC has stressed:

> Congress designed section 271 to give the BOCs an important incentive to open their local markets to

[8] *See Pennsylvania Order* ¶ 100.

[9] *Id*. (footnotes omitted).

[10] *See* Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, ¶ 24 (2000) ("*Texas Order*").

> competition, and that incentive presupposes a realistic hope of attaining section 271 authorization. That hope would largely vanish if a BOC's opponents could effectively doom a section 271 application by freighting their comments with novel interpretative disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor.[11]

33. The FCC has also stated, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions . . . ."[12] In the Verizon Pennsylvania 271 proceeding, the FCC said:

> As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.[13]

34. As Cavalier admits, its complaints regarding the proper interpretation that should be given to the GRIPs provision in its ICA are already before the Commission in a separate complaint proceeding.[14] Thus, Cavalier's objection to Verizon VA's compliance with this checklist item is based on factual and legal issues that have been raised in a pending complaint proceeding.

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[11] *Texas Order* ¶ 26.

[12] *Massachusetts Order* ¶ 203.

[13] *Pennsylvania Order* ¶ 92.

[14] Cavalier at 9.

35. Finally, many Commissions that have addressed GRIPs issues have agreed that ILECs have raised valid concerns regarding the proper allocation of transportation costs between ILECs and CLECs.[15]

36. Two CLECs, NTELOS and Cox, provide comments relating to Verizon VA's interconnection trunk maintenance and repair performance and processes. As stated in the Checklist Declaration, overall Verizon VA is doing a good job with interconnection trunk maintenance and repair: "In the period from November through January 2002, the Network Trouble Report Rate for interconnection trunks (MR-2-01) was virtually nonexistent."[16] Other performance measures for interconnection trunking during this same period, such as Mean-Time-To-Repair Total (MR 4-01), also show the fine job Verizon VA is doing. These trends have continued in February and March with a miniscule interconnection trunk trouble report rate by CLECs of .01 percent.

37. NTELOS provides details concerning one trunk trouble ticket #IX356073. However, this trouble occurred on August 31, 2001, not on September 24, 2001 as described by NTELOS. This trouble was in fact caused by Verizon technicians performing corrective maintenance activities on the Digit Analysis Selector software of a Verizon-NTELOS intraLATA trunk group in Lynchburg, Virginia. Attached is a letter

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[15] *See, e.g.,* South Carolina Public Service Commission, *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079 (January 30, 2001), at 19, 22-28; *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73, P-646, Sub 7 (March 9, 2001) ("NC (AT&T/BellSouth) Arbitration Order") at 7-15.

[16] *See* Checklist Declaration ¶ 48 (citing Measurements Declaration Attachment 401).

from Verizon to Mr. Goodman at NTELOS, apologizing for the outage and describing process commitments to avoid future occurrences. *See* Attachment 214.

38. As Cox admits, it is **not** currently experiencing any problems with truck blocking or inadequate facilities between Verizon VA and itself. Despite this fact, Cox suggests that Verizon VA change its current trunk maintenance/repair processes so that: "When Verizon customers experience problems when trying to call Cox customers, or when Verizon hears of problems with Cox customers trying to call Verizon customers, Verizon should file a trouble report with Cox."[17] The trunk maintenance processes currently used by Verizon VA are the same as the processes used by Verizon PA, NY, CT, RI, and VT. These are the same processes that the FCC found satisfy the Checklist. Since Verizon VA interconnects with all carriers (CLECs, IXCs, wireless, and other LECs), it is important to have standard uniform procedures that are used with all these carriers. Using unique one-of-a-kind procedures with only one CLEC, Cox, would be cumbersome and inefficient. In addition, Cox's request is too broad and vague to apply in an environment where there are numerous types of different trouble conditions that are reported and encountered by a large number of different Verizon VA employees and Verizon VA wholesale carrier customers. To literally do what Cox is requesting would require hundreds of Verizon VA employees to "guess" when they were working on a potential network trouble condition that might possibly affect call completion to Cox's customers. This is not practical since the majority of network troubles within Verizon VA's network concurrently impact the customers of multiple carriers, not just Cox. Verizon VA is equally concerned with maintaining trunk quality, and in fact, already has

[17] Cox Mounce at 9.

in place a notification procedure that is used with all carriers (that wish to receive such notifications), to simultaneously inform the carriers of major failures within Verizon VA's network when they occur.

39. Cox also suggests that Verizon VA should provide trunk forecasts to Cox and to other facilities based CLECs, similar to the forecasts Cox provides Verizon VA.[18] This issue is currently being addressed in the Verizon-Cox FCC interconnection agreement arbitration, and, accordingly, should not be part of this proceeding. A decision in that proceeding is expected soon.

40. In addition, the approach advocated by Cox is not the current process used by Verizon VA and Cox in Virginia, and it is not used by Verizon VA and other CLECs in Virginia. In Virginia other CLECs follow the trunk forecasting procedures developed in the New York State PSC Carrier-to-Carrier proceeding. Pursuant to those procedures,[19] the CLECs forecast trunk quantities in both directions between the CLEC and Verizon networks. These procedures correctly recognize that the information known only to the CLEC has the biggest impact on calling demand (and therefore trunk quantities) between the CLEC networks and Verizon's network.

41. Finally, Cox suggests that "Verizon VA, as the ILEC and largest network stakeholder, should hold quarterly planning meetings with CLECs, IXCs, Wireless Providers and other service providers that could impact network reliability."[20] This request, although it may sound appealing at first blush, is not workable. Verizon VA

[18] *Id.* at 9.

[19] *See* Case 97-C-0139, Carrier-to-Carrier Guidelines, Appendix I.

[20] Cox Mounce at 9.

does meet periodically with Cox, as it does individually with other carriers, and will continue to strive to meet the reasonable business needs of its CLEC customers. In the meantime, however, Cox's suggestion is unrelated to Checklist compliance. Verizon VA does not orchestrate and conduct industry meetings of this nature in Virginia, nor does it in New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, or Vermont, where the FCC has found Verizon meets the Checklist.

42. None of the claims of WorldCom, Cavalier, Cox or NTELOS demonstrates that Verizon VA has not fully complied with the interconnection trunking requirements of the 1996 Act.

**B. Collocation**

43. Verizon VA demonstrated in its Checklist Declaration, ¶¶ 57-90, that it has satisfied its obligations for providing collocation as a component of Checklist Item 1. Three CLECs – Cavalier, Covad, and Cox – filed comments regarding Verizon VA's compliance with this requirement. As will be demonstrated below, the claims raised by these parties are without merit or are not properly a part of this proceeding. As noted in the Checklist Declaration, Verizon VA uses the same methods and procedures that the FCC found acceptable in the Pennsylvania 271 proceeding.

44. Cavalier alleges it "experiences serious problems with collocating in Verizon Central Offices," and identifies a panoply of alleged problems with Verizon VA's practices and procedures including "excessive costs for initial collocation sites, excessive wait times for collocation sites, misrepresenting the availability of collocation space, excessive power charges, unjustified power charges, excessive collocation augment charges, excessive collocation augment waiting periods, unreasonable restrictions on the use of cell phones, unreasonable restrictions on minor details like the

use of tie wraps, inadequate access to collocated equipment, and discriminatory and harassing treatment."[21]

45. Cavalier's claims are false. Verizon VA will address each of Cavalier's complaints independently and demonstrate that, contrary to Cavalier's assertions, Verizon complies with all established State and Federal requirements. Moreover, as described below in more detail, Cavalier is seeking to resolve issues in this proceeding that are properly before the Commission in Case No. PUC990101.[22]

46. First, Cavalier states that Verizon "wanted" to charge Cavalier at some unspecified time as much as $400,000 for space preparation for a single 10-foot by 10-foot space in a central office. Cavalier goes on to say that "Verizon dropped the charge to a uniform $47,686.20."[23] Cavalier indicated in its response to Verizon Data Request Set 1, No. 33 that this charge was for one office in February 1999. This date is important for three reasons. First, this issue, occurring 39 months ago, is not indicative of the current status of Verizon's collocation offering. The FCC has repeatedly indicated that it reviews an ILEC's performance in the 4-5 months immediately preceding a 271 application. Information from prior time periods is simply not relevant. Cavalier is complaining about a valid policy from over three years ago that is no longer in existence. This is absurd. Second, all charges for site preparation for collocation in February of 1999 were assessed to the initial CLEC, and then adjusted as future CLECs collocated in the office. Thus, the initially charged amount was appropriate in light of the rate terms and

[21] Cavalier at 9-10.

[22] *See* Case No. PUC990101 *Application of Verizon Virginia Inc. f/k/a Bell Atlantic-Virginia, Inc. for Approval of its Network Services Interconnection Tariff*, SCC-VA.-No. 218.

[23] Cavalier at 10.

conditions in place at that time. Third, in May of 1999, Verizon adopted flat rate charges, and as Cavalier identifies, it was charged $47,686.20. Thus, the amount charged to Cavalier is the amount specified in the Virginia Collocation Tariff 218. This rate has been in effect since May of 1999. Since Cavalier is currently being charged the correct amounts for collocation space preparation, no violation of any rules or tariff provisions exist, and Cavalier's claim is meritless.[24]

47. Second, Cavalier claims that charges for site preparation in Virginia are three times higher than those in Pennsylvania.[25] This statement is patently false. The current site preparation charge for 100 square foot physical collocation arrangement is $47,686.20. The same charge in the Pennsylvania tariff is $32,263.92. While the difference in the amounts may appear significant, two factors matter for this proceeding. First, the $47,686 amount is the current amount specified in the Virginia tariff. Second, the difference between the Pennsylvania and Virginia charges for conditioning exists due to Cavalier's own actions. In a settlement agreement filed on December 21, 2000 with the Commission, Verizon VA agreed to reduce its space and conditioning charge by more than $15,000, from $47,686 to $32,264 (for a 100 foot cage). This was so even though the FCC had approved a rate that was even higher than Verizon's then current rate of $47, 686.[26] The 2000 Collocation Settlement Agreement also expressly prohibited

[24] Cavalier also makes vague claims about "similarly overpriced" charges for SCOPE space preparation, but admits in its response to Verizon Data Request Set 1, No. 33 that these charges are contained in Verizon's effective tariff, No. 218.

[25] *Cavalier at 10.*

[26] Virginia 2000 Settlement Agreement, § II.A.1 *see also In the Matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report

refunds of any collocation charges paid since May 1999, the date the collocation tariff went into effect. Verizon VA was able to obtain this original concession from the CLECs in exchange for reducing other collocation rate elements. Indeed, without this concession from the CLECs, Verizon likely would have insisted on higher collocation rates in some instances.

48. Cavalier argued in its March 27, 2001 comments regarding the 2000 Collocation Settlement Agreement that Verizon VA should be required to provide refunds of its space and conditioning charges. As a result of Cavalier's comments, the Commission rejected the Settlement Agreement, and the conditioning charge of $47,686 remained in place. That amount, however, is potentially subject to change since Verizon VA, once again with other active CLECs in Virginia, including AT&T, Sprint, WorldCom, Broadslate, and NTELOS, developed and filed a revised Collocation Settlement Agreement with the Commission. The new proposal also provides for refunds. Additionally, Verizon has agreed to credit the CLECs *more* than the difference between the current space and conditioning rate and the settlement rate.[27] Verizon VA agreed to provide credits of its space and conditioning charges, even though it was not legally required to do so.

49. Thus, the CLECs in Virginia, including Cavalier, will benefit significantly from Verizon's agreement to drastically lower its space and conditioning charges and to provide credit to the CLECs. Cavalier is the only CLEC that has actively blocked

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and Order, ¶ 436, Appendix C at 18976 (June 13, 1997) (approving space conditioning rate of $51,440.20).

[27] The revised Collocation Settlement Agreement, which was filed on February 1, 2002, was included as Checklist Declaration, Attachment 205.

approval of the pending Revised Collocation Settlement Agreement. Moreover, the appropriate conditioning charges are an issue in Case No. PUC990101 and thus are not appropriate for consideration in this proceeding. The relevant fact is that Verizon VA is charging Cavalier the approved collocation rate.

50. Third, Cavalier alleges that Verizon VA made Cavalier wait long periods for collocation, identifying intervals of 330 and 600 days.[28] This allegation is misleading. What Cavalier fails to state is that Verizon VA identified these offices as space constrained offices at the time Cavalier initiated its requests. When Verizon VA could not satisfy Cavalier's request, Cavalier was placed in queue, so that when space did become available, Cavalier would be offered space on a "first come, first served basis."[29] Once collocation space is exhausted, Verizon VA is "not required to lease or construct additional space to provide for physical collocation."[30] Verizon is required, however, "[w]hen planning renovations of existing facilities or constructing or leasing new facilities" to "take into account projected demand for collocation of equipment."[31] Verizon has done precisely that, and as Cavalier notes, Verizon VA has made space available in the Midlothian and Pemberton Central Offices ("COs"). This occurred after building additions were made to these COs. As required by law, a portion of the new space was dedicated to collocation so that the queue list could be processed. Cavalier's suggestion that any wait is unreasonable is unfounded; Verizon VA exceeded FCC

[28] Cavalier at 10.

[29] 47 C.F.R 51.323 F(1)

[30] *Id.*

[31] 47 C.F.R. 51.323 F(3)

standards by completing a building addition to satisfy collocation demand when the requirement clearly indicates that this proactive action is not required. This situation, instead of identifying a violation, identifies Verizon's ongoing compliance. Furthermore, these complaints relate to matters that occurred in the first half of 2001, far outside the applicable time period for this proceeding.

51. Fourth, Cavalier states that "because other competitors would request space at different times from Cavalier, it seemed virtually impossible . . . that the space would absolutely never be ready before the expiration of a defined interval after Cavalier's request."[32] This claim is confusing on several levels, and it is not clear what Cavalier is complaining about. Verizon requested clarification of Cavalier's claim in Verizon Data Request Set 1, No. 34. Verizon requested specific incidents that it could investigate to address Cavalier's concern. Cavalier responded that the "information is revealed on Verizon's spreadsheet" provided as part of Cavalier Exhibit No. 3. Cavalier's response to No. 34 also states that "on average it took Verizon 163 calendar days to complete a collocation installation" when "at the time, the tariff allowed Verizon ….168 calendar days."

52. Although Cavalier's makes sweeping claims that collocation space was "absolutely never" ready before the expiration of the defined interval, Cavalier's response confirms that Verizon VA completed the collocation installation within an average interval that was 5 days shorter than the allowed interval. Clearly, Cavalier's "absolutely never" assertion is wrong.

[32] Cavalier at 11.

53. Cavalier also references 19 jobs in its response to this interrogatory that had completion intervals in excess of 200 calendar days. Of note, 14 of the 19 jobs were received on July 8, 1999, and they were all given extended intervals (207 days) due to the large number of jobs that were received on one day. While the **offered** intervals were longer than the standard, the **actual** completion interval for each of these jobs was 139 days. Of the remaining five applications referenced by Cavalier, four of the collocation jobs were virtual applications that were received on March 15, 1999. In each case, Cavalier controlled a portion of the installation, and encountered delays associated with the changing of vendors and, in some cases, delays in receiving equipment. This served to delay the completion of the collocation arrangements. Finally, the remaining job mentioned was for a SCOPE arrangement in a space-constrained office. The original application was received on March 4, 1999, and the application was placed in queue awaiting space. When space was made available, Cavalier was offered 5 SCOPE bays, and accepted. Again, Cavalier is complaining about events transpiring in 1999, and the facts from these events do not even support Cavalier's sweeping accusations. And they certainly do not demonstrate any violations of any State or Federal regulation.

54. Fifth, Cavalier asserts that Verizon VA"[m]isrepresent(s) the availability of collocation space."[33] Once again, this claim is not supported by the facts.[34] Indeed, it is impossible for Verizon VA to "misrepresent" the availability of collocation space. When Verizon VA denies a request for collocation, Verizon VA is required to file with

[33] *Id*.

[34] In response to Verizon's request for additional information regarding this allegation in Verizon Data Request, Set 1, No. 35, Cavalier admits that the tours it referenced took place in the "late 1999 time frame." Once again, Cavalier is referencing incidents that occurred well beyond the relevant time period for this proceeding.

the Commission to close the office to new requests. The denied collocator is allowed to request a tour within 10 days of receiving a denial. Verizon VA routinely invites all other CLECs to tour the office, as well as the Commission Staff. These tours enable CLECs to dispute Verizon VA's assertion regarding space availability, and if the CLEC does choose to do so, the Commission is the final arbiter. This process has worked well throughout Verizon footprint, and continues to work well in Virginia.

55. Furthermore, Cavalier states that they could not identify examples of where these "misrepresentation[s]" occurred because they were required to sign a non-disclosure agreement.[35] This non-disclosure agreement does not prohibit any CLEC from raising an issue with the Commission. The non-disclosure agreement, which is routinely required of all participants during Central Office tours, is intended to prevent public dissemination of confidential materials that CLECs may have access to during a Central Office tour. This information may include information proprietary to Verizon, as well as highly sensitive competitive information related to other customers who may have arrangements in the Central Office. Cavalier also asserts that "Verizon apparently did not require Staff of the Virginia State Corporation Commission to sign such agreements when they participated in Cavalier's visits, so we concluded that Verizon was not trying to participate [sic] confidential information, but was instead trying to limit Cavalier's ability to complain about Verizon's misrepresentations about collocation space."[36] As the Staff was present on these tours, Verizon VA is confused about Cavalier's assertion that it had a "limited" ability to complain. If Cavalier is suggesting that Verizon VA

[35] Cavalier at 12.

[36] *Id*.

prohibited Cavalier from talking to the SCC Staff while the tour was underway or subsequently prevented Cavalier from raising a legitimate claim regarding space availability, its claim is nothing short of absurd.

56. Sixth, Cavalier complains about Verizon's "excessive power charges." Again, Cavalier's claims are disingenuous and misleading. The Revised Collocation Settlement Agreement[37] that, as noted above, was agreed to by AT&T, Sprint, WorldCom, Broadslate and NTELOS -- and which Cavalier has actively sought to delay -- also dramatically decreases a CLEC's DC power costs. The DC power charges identified in the Revised Collocation Settlement Agreement directly address Cavalier's concerns, yet again Cavalier is the only carrier that has opposed the Settlement. Cavalier cannot have it both ways. This issue, in any event, is squarely before the Commission in Case No. PUC990101. Verizon VA will comply with the decision in that proceeding, and in the meantime, is complying with the current applicable charges and conditions in the Virginia No. 218 Tariff.

57. Seventh, Cavalier complains about the "excessive wait periods for augments."[38] Cavalier complains that an augment should not require the same amount of time as a new installation of 76 business days. Once again Cavalier neglects to mention that the Revised Collocation Settlement Agreement includes a provision that would decrease the interval for numerous augment requests to 45 business days.[39] As Cavalier has sought to delay implementation of these changes, it disingenuous for them to raise

[37] Checklist Declaration, Attachment 205.

[38] Cavalier at 13.

[39] Checklist Declaration, Attachment 205, Illustrative Tariff Revisions, First Revised Page 4, Section 2.B.1.h.

these issues in this proceeding. Verizon, along with the majority of the CLEC community, has agreed to the proposed collocation settlement, and is interested in having it implemented.

58. Eighth, Cavalier complains about Verizon's "unreasonable limitations on Cell Phone use."[40] This complaint is baseless; Verizon employees are subject to the same limitation, which is standard practice to protect sensitive electronic equipment from radio frequency interference. Similarly, Cavalier's complaint regarding Verizon's prohibition of plastic tie wraps is likewise meritless.[41] The same rule applies to Cavalier's equipment as applies to Verizon's equipment. Further, these requirements are no different in Virginia than the other states throughout the entire Verizon footprint including Pennsylvania, Massachusetts, New York, and Connecticut, where the FCC found Verizon's collocation offerings to be in compliance with its Checklist obligations.

59. Ninth, Cavalier recounts an access problem it encountered. As is identified in their attachment,[42] Cavalier identified the issue to the Verizon Project Manager, and the Project Manager provided the 800 number for Verizon's Collocation Care Center, which handles issues collocators experience after collocation acceptance. This center, while not required, was established at Verizon's initiative to handle any ongoing issues that a CLEC may experience. While ideally no problems would ever occur, this center was established to ensure that should a problem arise, it will be identified, tracked, and resolved expeditiously. Furthermore, in the majority of Central

[40] Cavalier at 14.

[41] *Id*.

[42] Cavalier Exhibit No. 5.

Offices, access is provided through an electronic card reader. A number of issues have been identified regarding access, such as expired cards not being accepted, cards needing to be removed from the plastic protector, the card reader being defective, or the system requiring a reset. Since the Collocation Care Center receives these calls, it is able to track the trouble tickets through to completion. If problems recur, the center can take action to alleviate any continuing problems.

60. Finally, Cavalier also mentions a specific "episode" of alleged improper behavior on the part of a Verizon VA employee.[43] Without specific information,[44] Verizon VA is unable to respond to this allegation or confirm that the event even occurred. Moreover, anecdotal information of this nature is not properly part of this proceeding. But, if such events occur, Cavalier should raise such concerns directly with the Collocation Project Manager at the time they occur for expeditious resolution.

61. Cox Communications states that "Cox has good experience with Verizon on virtual collocations generally."[45] Cox goes on, however, to express a need for better upfront planning. Cox states that it "has developed a work-around to the process which involves reviewing our application with the Verizon Project Manager who oversees the actual installation, but this is outside the normal flow, and Cox has no assurance that it will be able to continue this."[46] Verizon VA has taken steps to ensure that this process

[43] Cavalier at 15.

[44] Verizon requested details of this allegation in Verizon Data Request Set 1, No. 43. While Cavalier did provide the name of the Verizon VA employee it claims acted improperly, it failed to respond to Verizon's request for the date of or the names of witnesses to the alleged incident. Cavalier also states it did not file a complaint with the SCC.

[45] Cox at 6.

[46] *Id*.

continues. At a recent meeting with Cox personnel, Verizon VA established an agreement to formalize this process. Attachment 215 to this filing is an e-mail of minutes recorded by Cox that describes this agreement. Cox has not raised any other issues related to Verizon's Collocation compliance.

62. Covad Communications raises one complaint regarding Verizon VA's collocation compliance.[47] Covad criticizes Verizon VA's position on conversions from virtual to cageless arrangements. Covad has raised this issue before the FCC on two separate occasions without success. As stated in Verizon's most recent response to Covad's complaint in August of 2001:

> Covad repeats an argument it previously raised with the FCC Enforcement Bureau. Covad claims it was unfairly forced to establish new physical collocation arrangements in central offices where it already had virtual collocation arrangements because Verizon refused to just convert its existing, in-service virtual collocation arrangements to physical arrangements. The Enforcement Bureau has already denied Covad's request to make this claim the subject of its accelerated docket process, and Verizon previously provided information that proved to the bureau's satisfaction that Verizon's policies are consistent with the FCC's collocation rules. As Verizon explained to the Enforcement Bureau, Verizon did not convert Covad's in-place virtual collocation arrangements to physical arrangements in every central office where Covad requested such conversions because in some cases, Covad's virtual collocation equipment was commingled with Verizon equipment in the same equipment bays and line ups. The Commission's rules have never required such commingling for physical collocation arrangements. Given the commingled nature of the equipment, Verizon could not implement the reasonable security measures permitted under the Commission's rules to properly protect its equipment. However, in those instances, Verizon agreed to provide cageless collocation to Covad in other locations in

[47] Covad at 46.

the same offices where space for cageless collocation was available.[48]

63. As explained in the above paragraph, Covad's complaints are meritless.

64. The issues raised by Cavalier, Cox, and Covad have either been satisfactorily remedied by Verizon, the SCC, or the FCC; or they are being addressed in the pending collocation Settlement Agreement. The Commission should reject the CLEC's allegations and find that Verizon VA has demonstrated compliance with all its Collocation obligations under Checklist Item 1.

## IV. CHECKLIST ITEM 2: NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS

65. Verizon VA demonstrated in its Checklist Declaration, ¶¶ 91-98, that it provides nondiscriminatory access to UNE elements. Only one party -- OpenBand -- commented on the nonpricing section of Checklist Item 2, stating that the Commission should reaffirm the requirement that Verizon VA may not separate UNEs that are already combined. No such reaffirmation is necessary as Verizon VA currently abides by all applicable provisions of law and FCC regulations, and will continue to do so. OpenBand has not attempted to show anything different.

66. After Verizon VA filed its Checklist Declaration, the Supreme Court issued its decision in *Verizon Communications Inc. v. Federal Communications Commission,* 535 U.S. ____ (2002), in which the Court, first, decided that the FCC's TELRIC pricing rules do not conflict with the 1996 Act, and second, reinstated the FCC's rules requiring ILECs to combine for CLECs UNEs that are not already combined in the

[48] Letter to Alexander Star, Chief Enforcement Bureau, from Jason Groves dated August 24, 2001. A copy of the entire letter is provided as Attachment 216.

ILEC's network. The first item requires no action by Verizon, because all of the UNE rates offered by Verizon VA already conform to TELRIC, as described in the Checklist Declaration.

67. The second aspect of the Supreme Court decision calls for two modifications to Verizon VA's practices, which Verizon has already announced to the CLEC community. First, in a number of states, including Virginia, Verizon did not provide Expanded Extended Loop (EEL) combinations if the component loop and transport segments were not already combined. As soon as the Supreme Court's decision is effective, Verizon VA will accept new orders for EELs that are not already combined, subject to the availability of facilities, and in accordance with the FCC's limitations on the conversion of special access facilities to EELs. On May 30, 2002, Verizon modified its Wholesale Customer Handbook to this effect and sent an industry letter announcing the change. Second, the Supreme Court reinstated an FCC rule that required ILECs to combine for CLECs UNEs that are not normally combined in the ILEC's network. Accordingly, the Handbook change and industry letter also clarified that the Bona Fide Request (BFR) process is available to handle and assess the technical feasibility, price and timeframes for possible delivery of any such newly requested combinations, again subject to the availability of facilities.

## V. CHECKLIST ITEM 3: POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY

68. Verizon VA demonstrated in its Checklist Declaration, ¶¶ 108-123, that it has satisfied its obligations under Checklist Item 3. Only one party, Cavalier, filed comments regarding Verizon VA's compliance under Checklist Item 3. As will be demonstrated below, the claims raised by Cavalier are meritless.

69. Cavalier enumerates in its Panel Testimony (page 61-62) six alleged problems with Verizon VA and its licensing processes. They are: (1) the cost of make-ready work on poles, (2) the time required to perform make-ready work on poles, (3) the time required to grant or deny applications for permits to attach to poles, (4) the refusal to allow third-party contractors to move Verizon VA's attachments, (5) "legacy" practices regarding poles and (6) billing practices.

70. Contrary to Cavalier's allegations, Verizon VA offers telecommunications carriers non-discriminatory access to poles, ducts, conduits and right-of-way at rates, terms and conditions stated in standard licensing agreements (Attachment 206 of the Declaration). Cavalier first executed a standard licensing agreement on October 31, 1998. Several of the issues raised by Cavalier in the Panel Testimony are addressed very specifically in the License Agreement.

71. First, Cavalier complains about the make-ready work process and the cost of make-ready work. Cavalier understates what is required to make room for additional attachments on a pole in an orderly and safe manner. After receiving an application for a pole attachment, Verizon VA must first review the application for accuracy and verify that the proposed design meets engineering and safety standards. The standards are the same that Verizon VA applies to its own pole attachment projects. Verizon VA then conducts a field survey to determine if make-ready work is needed to accommodate the request for attachment. If make-ready work is required, Verizon VA must then provide the CLEC with an estimate for such work. These procedures are detailed in Article VIII of the standard license agreement that Cavalier executed. In most instances, contrary to Cavalier's assertion, making room for an additional attacher involves moving more than

just the Verizon VA attachment. For example, other attachers – cable television, CLECs, or the power company – may need to move their attachments higher or lower on a pole. In the worst case scenario, the existing pole may have to be replaced with a taller or stronger pole to accommodate the additional cable attachment. All make-ready work is based on actual cost of time and material; Cavalier pays only for the work necessary to prepare facilities for its attachments and occupancy. The above process is not "overworking" every task, as Cavalier alleges. Rather, this process includes the minimal steps required to ensure that new pole attachments are properly and safely engineered, and that the make-ready estimate is provided to the CLECs in a timely fashion.

72. Second, Cavalier suggests that Verizon VA "drags out" make-ready work for months, but does not provide any documented proof of this other than its bald allegation.[49] Verizon VA schedules Cavalier's make-ready work along with all other requests for make-ready work, including Verizon VA's, on a first-come first-served basis. As indicated in paragraph 121 of the Checklist Declaration, Verizon VA completed make-ready work for CLECs within an average of 94 days from July 2001 through January 2002. In contrast, Verizon VA's own make-ready work was completed in an average of 217 days. This is hardly evidence that Verizon VA "drags out" make-ready work for CLECs. It is also worth noting that Cavalier has only sent Verizon VA five applications for pole attachments in the last eighteen months, and in four of these cases, Cavalier illegally attached to poles prior to having a license authorizing them to do so. See Attachment 217, which is CLEC proprietary.

[49] Verizon VA requested details concerning this Cavalier allegation in Interrogatory No. 30. Cavalier's answer was non-responsive, leading to the inescapable conclusion that this was a groundless accusation.

73. Third, Cavalier asserts Verizon VA wrongly interprets the FCC's 45-day rule. Article VII-2 of the standard license agreement states, "VZ shall process all license applications, including the performance of a Prelicense Survey, on a first-come, first-served basis in accordance with the provisions of Articles VII and VIII. VZ shall make all access determinations in accordance with the requirements of Applicable Law, considering such factors as capacity, safety, reliability and general engineering considerations. VZ shall inform Licensee in writing as to whether an application has been **granted or denied** (including the reasons for denial) within the following time after receipt of such application: 45 days, plus any time taken by Licensee for action by Licensee, including, but not limited to, time taken by Licensee to respond to VZ's proposal for a Prelicense Survey." Cavalier provides absolutely no evidence to support its claim that Verizon VA does no more than "acknowledge receipt" of the application within 45 days. To the contrary, Verizon VA measures and tracks its results in meeting this 45-day requirement, and all applications from carriers in the last two years for access to poles, ducts and conduit received a response within 45 days as required. If a Cavalier request does not require make-ready work, Verizon VA grants a license to occupy the pole within the 45-day timeframe as stated in Article VIII-3 of the standard license agreement. The FCC 45-day rule does not include time required to complete make-ready work. The make-ready timeframe is separate and does not start until Cavalier has approved the estimated make-ready charges and authorized Verizon VA to proceed by providing advance payment of Make Ready Work Estimate dollar amounts. Thus, any delays in Cavalier's network deployment were caused by Cavalier, not Verizon VA.

74. Fourth, Cavalier complains that Verizon VA does not allow Cavalier to employ third-party contractors to perform Verizon VA's make-ready work. This is true. Verizon VA does not permit contractors working for a third party to move Verizon VA attachments. Verizon VA has an obligation to its customers to strive to provide trouble-free service, and does not want a third party, unaccountable to Verizon VA, potentially disrupting service to Verizon VA's customers. Verizon VA does employ contractors to perform some of its work, including make-ready work, but must follow the terms of its labor agreement as was explained in paragraph 118 of the Checklist Declaration. Indeed, Cavalier filed a complaint at the FCC in an attempt to require Dominion Virginia Power to permit Cavalier's contractors to rearrange Dominion Virginia Power's facilities. The FCC denied Cavalier's request.[50] Furthermore, AT&T apparently does not allow Cavalier's contractors to rearrange AT&T facilities. In discovery, AT&T could not provide any agreement with Cavalier demonstrating that it permitted Cavalier's contractors to rearrange AT&T facilities.[51] Contrary to Cavalier's unsupported assertion that Verizon VA was the "lone hold-out" preventing a process to allow a Cavalier contractor to rearrange all attachments, it is obvious that another provider has not entered into an agreement where they might suffer potential facility damage and customer outages at the hands of a contractor over whom they have no control.

75. Fifth, Cavalier raises a concern with the industry practice of placing Verizon VA in the lowest position on a pole. This is no "historical accident." Contrary to Cavalier's claim, there are several very practical reasons for Verizon VA to be the bottom

[50] *Cavalier Telephone, LLC v. Virginia Electric and Power Company*, 15 FCC Rcd 9563 at ¶18 (June 7, 2000).

attacher on a pole. Traditionally, Verizon VA has the heavier copper cables attached to poles and under summer heat and winter ice loading these copper cables sag more than the lighter fiber and coaxial cables typically used by CATV and CLECs. If Cavalier placed their lighter cables under Verizon VA's heavier cables, the heavier copper cables would sag into the lighter fiber cables. Over time the resulting rubbing together of the cables would cause damage to both. Ultimately this action can cause either or both companies' services to be disrupted. Also, consistent assignment of pole position – Verizon VA the lowest position on the pole, the power company in the highest position, and CATV and CLECs in the communications space in between – makes identification of the attachments easier and provides for a constant position on the pole. Otherwise, cables changing levels of attachment from one pole to the next would cross and rub each other (causing damage as previously discussed) or would block space on the pole and make it difficult to provide for other attachments.

76. Finally, Cavalier asserts that Verizon VA's billing is problematic and inaccurate. Verizon VA acknowledges a billing dispute over the semi-annual bill for pole attachments and conduit occupancy dated December, 2001. Verizon VA went to great lengths to verify all of Cavaliers attachments for which it was billing Cavalier, and found that the billing was more than 98% accurate with a slight correction made in Cavalier's favor. This adjustment was made immediately and the billing corrected going forward. Cavalier further argues that the Verizon VA bills are "meaninglessly obscure" and require extensive manual processing by Cavalier personnel. If Cavalier finds Verizon VA's billing to be "meaninglessly obscure," it is because Cavalier apparently does not keep the

[51] AT&T Response to Verizon VA Data Request, Set One No. 9.

necessary records to track its pole attachments. Each time Verizon VA grants Cavalier a license (See Attachment 217, which is CLEC proprietary) it is provided with a license number (e.g., 60-504-P90) that includes the number of attachments and pole details. Cavalier must maintain that number for their records and future correspondence with Verizon VA, including issues concerning the semi-annual billing. It appears that Cavalier is not keeping this information to verify billing. Attached are example pages from a recent bill that detail exactly what is being billed for on a semi-annual attachment and occupancy bill. See Attachment 218, which is CLEC proprietary. Again, Cavalier's allegations are meritless.

## VI. CHECKLIST ITEM 4: LOCAL LOOP TRANSMISSION FROM THE CENTRAL OFFICE TO THE CUSTOMER'S PREMISES, UNBUNDLED FROM LOCAL SWITCHING AND OTHER SERVICES

77. Verizon VA demonstrated in its Checklist Declaration, ¶¶ 124-207, that it has satisfied its obligations under Checklist Item 4. Verizon VA provides or offers to provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. Verizon VA has demonstrated that it provides local loops unbundled from local switching or other network elements using the same processes and procedures in Virginia as are used in Pennsylvania and the other states where Verizon has received 271 approval from the FCC. In Pennsylvania, the FCC found that "Verizon has adequately demonstrated that it provides unbundled local loops as required by Section 271 and our rules."[52] The same is true in Virginia. A number of

[52] *See Pennsylvania Order* ¶ 76. *See also Massachusetts Order* ¶ 124; *Application by Bell Atlantic New York for Authorizations Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, Memorandum Opinion and Order*, 15 FCC Rcd 3953 (1999) ("*New York Order*") ¶ 273.

parties, however, have alleged that Verizon VA has failed to satisfy its Checklist 4 obligations. As will be demonstrated below, these allegations are without foundation.

### A. Verizon VA Satisfies Its Obligation To Provide DS-1 And DS-3 Loops

78. Several CLECs assert that Verizon VA's provisioning policy regarding UNE DS-1 facilities is discriminatory. Cavalier contends that Verizon VA has recently changed its policy regarding the provisioning of DS-1 facilities and that due to this change in policy "Cavalier has been denied access to almost half of the primarily business customers that seek Cavalier's service."[53] Allegiance opines that Verizon VA discriminates against its wholesale customers since it does not reject DS-1 orders from its retail end users for no facilities where a DS-1 line could be put into service by simply adding a repeater shelf or an apparatus or doubler case."[54] Covad asserts that "Verizon is denying CLECs access to the UNEs to which they are entitled to by law and is also engaging in a discriminatory practice."[55] Lastly, NTELOS and R&B Network complain that "Verizon has taken a new position on whether DS-1 loops are available. Verizon is now rejecting CLEC orders for DS-1 loops where it does not have common equipment in the central office or at the end user's location."[56] Despite the firm precedent to the contrary, these CLECs apparently believe that Verizon VA is obligated to expend capital to add electronics to existing loops for the sole purpose of providing DS-1 loops as unbundled network elements.

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[53] Cavalier at 30.

[54] Allegiance at 5.

[55] Covad at 9.

[56] NTELOS and R&B at 5.

79. The CLECs are wrong. Verizon VA has an obligation to provision DS-1 facilities as a UNE only where such facilities currently exist. Verizon VA does not have an obligation to build new facilities or add electronics to existing facilities for the purpose of providing those facilities as an unbundled element. The construction of new facilities or the addition of electronics to existing facilities will be provided to CLECs as a Special Access service under applicable tariff. Under the FCC's rules, an ILEC is not required to install additional equipment. In fact, the FCC has already addressed this very issue in a previous 271 case and held that Verizon's DS-1 UNE provisioning policy, which the CLECs complain about here, is consistent with current FCC rules.[57]

80. Verizon VA meets its unbundling obligation under the Act and FCC rules by providing high capacity loops where facilities are available.[58] Indeed, Verizon VA goes beyond its unbundling obligation in certain situations where not all of the necessary facilities are available, but the loop can be activated without the need for additional construction or equipment installation. Where there already are suitable Verizon loop facilities serving an end user's location, Verizon VA will utilize those facilities to fill a CLEC order for an unbundled high capacity loop. In these cases, Verizon VA will cross-connect the high capacity loop to the CLEC's collocation arrangement and, if necessary, install the appropriate cards, provided the central office common equipment and the equipment at the end user's location necessary to create a high capacity loop are available and accessible. In instances where no facilities are available and Verizon VA must notify

[57] Pennsylvania Order ¶¶ 91-92.

[58] *See* DS1 and DS3 Unbundled Network Elements Policy, Verizon, July 24, 2001 (the "Policy Statement"), which is provided as Attachment 203 to the Checklist Declaration.

CLECs of this fact, Verizon VA contacts CLECs by telephone and provides them with the reason(s) why the requested facilities were not available.

81. This policy does not restrict the ability of CLECs to get DS-1 loops to locations where a customer either has DS-1 service, or had DS-1 service, and all the necessary equipment is still in place. Verizon VA will install the appropriate high capacity card in the spare slots or ports of the equipment, and perform cross-connection work between the common equipment and the wire or fiber facility between the central office and the customer premises. Furthermore, Verizon VA will terminate the high capacity loop in the appropriate network interface device at the customer premises, such as a Smart Jack or a Digital Cross Connect ("DSX"). Finally, where no facilities exist, "wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS-1 and DS-3 services pursuant to the applicable state or federal tariffs."[59]

82. Verizon VA will not for a UNE high capacity loop service request: (a) deploy new copper or fiber facilities, (b) deploy new multiplexers in the central office or at the customer's premise where existing equipment is fully utilized, (c) deploy a new apparatus case on the loop or transport facilities where existing equipment is fully utilized, (d) reconfigure a multiplexer (that is, rewire and reprogram a shelf on the multiplexer from DS-3 to DS-1), or (e) deploy new facilities where it cannot correct a defect in existing facilities and no spare facilities are available.[60]

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[59] *See* Policy Statement at 2.

[60] In order to provide CLECs with more information about the reason that a request for a high capacity loop has been rejected for "no facilities," Verizon VA provides one of six reasons for the rejection, as Allegiance correctly notes. Allegiance at 4-5. However, Allegiance is wrong in asserting that two of these reasons – no repeater shelf and no apparatus/doubler can be remedied without any construction and with a modest out lay of money. *Id*. Furthermore, it claims that Verizon VA has contradicted itself by claiming that it will place a doubler, while

83. Contrary to the CLEC's allegations, Verizon VA policy violates neither FCC rules or the 1996 Act. In fact, under the Act, Verizon VA is required to unbundle *only* its existing network for competitors. The United States Court of Appeals for the Eighth Circuit has held that the requirement to unbundle applies only to the network the incumbent LEC already has, not to some superior network that it otherwise would have to build for a requesting CLEC.[61] Simply put, the Act does not, in any way, require Verizon VA to build a new network or new facilities for a CLEC. Network construction is not a UNE.

84. Despite this firm precedent, several CLECs allege that this is a new Verizon policy. To the contrary, this has been Verizon's longstanding policy. In July 2001 Verizon issued a notice to CLECs reiterating its policy, not creating it. Moreover, in its *Verizon PA 271 Approval Order*, the FCC directly addressed Verizon's "no facilities" policy and found that it did not violate the FCC's rules and, therefore, did not warrant a finding of checklist non-compliance. Specifically, the FCC concluded:

> We disagree with commenters that Verizon PA's policies and practices concerning the provisioning of high capacity loops, as explained to us in the instant proceeding, expressly violate the Commission's unbundling rules. Accordingly, we decline to find that these allegations warrant a finding of checklist non-compliance.[62]

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one of the six reasons for rejecting an order for no facilities is lack of a doubler. *Id*. at 6. Allegiance is wrong. Verizon VA will place a doubler *card* in an *existing* apparatus case. It will not perform splicing or construction work to open a cable sheath to splice in a new apparatus case.

[61] *Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Circuit 1997), *aff'd in part and rev'd in part*, *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

[62] *See* Pennsylvania Order, ¶ 92 (citing *Massachusetts Order* ¶ 10, *Texas Order,* 15 FCC Rcd at 18366, ¶ 23).

85. Verizon VA's "no facilities" policy is the same as Verizon PA's policy. Thus, despite the allegations raised by the CLECs in this proceeding, this policy does not violate FCC rules or warrant a finding of checklist noncompliance by this Commission. Moreover, despite the CLEC's attempts to introduce specific complaints about Verizon VA's "no facilities" policy in this Section 271 proceeding, the fact is the FCC already has determined that such complaints are not germane to a Section 271 approval proceeding. In the Verizon Pennsylvania Section 271 proceeding, the FCC ruled:

> To the extent that commenters have specific disputes with Verizon PA's actual practice in implementing these policies, such disputes are best addressed in an alternative forum. As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.[63]

86. Furthermore, the FCC has issued a Notice of Proposed Rulemaking, which, among other things, "[s]eek[s] comment on whether application of a more refined impairment analysis would result in a continued requirement of access to all capacity levels for unbundled loops."[64] This review of the FCC's unbundling rules was given greater urgency by the D.C. Circuit's May 24, 2002 order remanding these rules to the

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[63] *Id*. As noted above, Cavalier has filed a petition with this Commission requesting a finding that Verizon VA's DS1 UNE provisioning policy violates federal and state law. Case No. PUC 2002-00088, Petition of Cavalier Telephone, LLC, For Injunction Against Verizon Virginia, Inc. For Violations of Interconnection Agreement And For Expedited Relief To Order Verizon To Provision Unbundled Network Elements In Accordance With The Telecommunications Act of 1996.

[64] *See* CC Docket Nos. 01-339, 96-98, and 98-147, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability* "Notice of Proposed Rulemaking" (rel. December 20, 2001) ("the Triennial Review Notice"), at ¶ 52.

FCC because of the FCC's failure to give the Act's "impairment" requirement meaningful application.[65] In the Triennial Review Notice, the FCC also stated specifically that "we are seeking comment on whether, and to what extent, incumbents should be obligated to complete orders for high-capacity loops when spare facilities and or capacity on those facilities is unavailable."[66] Since a number of companies have the capability of providing the facilities for High Capacity Loops, ILECs, including Verizon, have argued in that proceeding that their High Capacity Loops should not be subject to the 1996 Act's unbundling requirements. In its recent decision, the D.C. Circuit found that the FCC had given insufficient weight to this and similar arguments when it created its list of required unbundled elements. Until the FCC's rules are modified, however, Verizon VA will continue to provide high capacity loops and other UNEs as required by law.

87. Contrary to Allegiance's allegation,[67] Verizon has no legal obligation under federal and state law to install additional electronics to provide DS-1 service to CLECs at UNE rates. Verizon will, however, build new DS-1 facilities for wholesale customers and for all other customers on the same terms and conditions under its special access tariffs or applicable state tariffs. The CLECs claim, however, that it is discriminatory for Verizon VA to refuse to deploy new equipment for purchasers of UNEs when it is willing to do so for purchasers of DS-1 special access. This argument is a red herring. Verizon's policy is fully consistent with the Act's unbundling requirements

[65] *See United States Telecom Ass'n v. Federal Communications Commission***,** No. 00-1012, Slip Opinion (D.C. Cir. May 24, 2002).

[66] *Triennial Review Notice* at n.118.

[67] Allegiance at 3.

and does not discriminate against these CLECs or any other UNE purchasers. Notably, these CLECs do ***not*** allege that Verizon discriminates against UNE orders in favor of orders for DS-1 special access when existing facilities ***are*** available – nor can it. Moreover, where no facilities are available to provision a UNE order, Verizon VA has no legal obligation to install additional electronics to provide DS-1 service to CLECs at UNE rates under the Act and the FCC's rules.

88. Verizon VA will, however, build new DS-1 facilities for wholesale customers such as Cavalier *and for all other customers* on the same terms under its special access tariffs or applicable state tariffs. As Verizon stated in its July 24 notice, "Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design and construction program." Requests from all of Verizon's customers who order service under the appropriate special access tariffs or applicable state tariffs, whether they are CLECs, IXCs or end users, are handled in the same manner, precluding any claim of discrimination.

89. Finally, Verizon VA is not required to use the same rates and rate structure for all customers who order DS-1 services or UNEs from Verizon VA as some CLECs imply. Verizon VA is not legally obligated to charge the same rate to all customers – indeed, the suggestion that the non-discrimination provisions (whether in the Act, the FCC rules, or state law) require identical rates and rate structures for all customers is ridiculous. If that were the case, the below-market UNE rates that CLECs pay for existing DS-1 loop facilities would unlawfully discriminate against Verizon's DS-1 special access customers, since DS-1 special access customers must pay the higher

tariffed rates for the same facilities. Verizon VA's duty to charge uniform *pricing* extends only to classes of customers who are similarly situated – which UNE customers and tariffed special access customers are not.[68]

90. Accordingly, even if the CLECs' assertions had merit, which they do not, CLEC complaints regarding Verizon's "no facilities" policy are a matter that is before the FCC. If the CLECs are unhappy with the FCC's unbundling policies and want the FCC to expand its requirements on a going-forward basis, they should press their arguments in the Triennial Review proceeding. Verizon's DS-1 and DS-3 "no facilities" policy is not a Section 271 checklist compliance issue.

### B. The UNE Loop Provisioning Practices In Verizon VA's Interconnection Agreements Associated With IDLC Do Not Violate The Checklist

91. Cavalier claims that customers served via Integrated Digital Loop Carrier ("IDLC") have little opportunity to switch to Cavalier for local service.[69] NTELOS and R&B raise similar claims.[70] While both carriers are correct that neither Verizon VA, nor any other Verizon company for that matter, can provide a 2-wire analog unbundled loop to a CLEC using an IDLC system, the FCC has held that this technological limitation does not justify a finding of checklist non-compliance.

92. The technological problem is that IDLC systems do not split the multiplexed signal into individual electronic pairs (loops) within the central office. The

[68] *See also* Va. St. Ann. § 56-234 ("It shall be [the public utilities'] duty to charge uniformly therefor all persons, corporations or municipal corporations using such service *under like conditions*.").

[69] Cavalier at 33.

[70] NTELOS Networking and R&B Network at 4.

digitized and multiplexed signal from the remote terminal is transported directly into Verizon's central office switch that is providing dial tone services to the end user. There simply are no points within the central office building and outside the serving switch where individual voice grade, analog circuits being transported by the integrated system can be disconnected (unbundled) from the switch and re-connected to the CLEC's collocated equipment as a 2-wire analog UNE loop. There are, however, viable alternatives that allow customers competitive choices.

93. In its approval of the Verizon NY 271 application, the FCC stated that:

> The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses integrated digital loop carrier (IDLC) technology or similar remote concentration devices for the particular loop sought by the competitor.[71]

94. Thus, the only issue for 271 purposes is whether Verizon VA has procedures in place that will allow a CLEC to obtain service for its new customer using a different loop, if one is available. The answer is "yes." Moreover, the procedures in place in Virginia are substantially the same as in New York, and in the New York 271 proceeding the FCC found that Verizon NY "demonstrates that it provides unbundled loops in accordance with the requirements of Section 271."[72]

95. The procedures are as follows: When Verizon VA receives a request for a 2-wire unbundled loop, for an end user that is currently served on IDLC, Verizon VA

[71] New York Order ¶ 271. The FCC noted that "the costs associated with providing access to such facilities may be recovered from the competing carrier." The FCC also justified its decision to order subloop arrangements by arguing, among other things, that such arrangements would provide a vehicle for the CLEC to serve IDLC customers. *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 No. FCC 99-238 (1999) ("UNE Remand Order")*, ¶ 217.

will first determine whether an immediate spare alternate facility (*i.e.*, copper or Universal Digital Loop Carrier or "UDLC") is available. If such a facility is available, then Verizon VA will transfer the customer to that alternate facility to provide the 2-wire UNE loop. Second, if Verizon VA determines that no immediate UDLC or copper loop is available for assignment to the CLEC, it then checks to see if an existing Verizon VA customer currently served by UDLC or copper in the same service area can be transferred to an IDLC facility, thereby "freeing up" an unbundled facility for the CLEC to use. If so, Verizon VA will move its customer to the IDLC facility and provision the newly created spare loop to the CLEC as a 2-wire UNE loop. Third, if 2-wire UNE loop facilities are still not available, the CLEC may then use the Bona Fide Request process to define, evaluate and develop new and different types of UNE loops that could potentially be used to serve end users currently served by IDLC.[73]

96. Approximately 24% of Verizon VA's loops are provisioned on IDLC with 76% being on copper and UDLC as of March 2002. Verizon VA's existing practice is to deploy some non-integrated facilities in areas where IDLC is deployed, thereby lowering the chance that alternative facilities are not available. In addition, for Verizon VA end users currently served by IDLC, CLECs also have the option of ordering service via UNE-Platform or Resale, both of which can be provided to CLECs on loops using IDLC technology.

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[72] New York Order at ¶ 273.

[73] Two potential technological concepts for developing a new DS1 UNE loop type with a multiplexed interface, suggested by Cavalier in their comments, are digital switch hairpinning and GR-303 multi-hosting. These approaches, as well as the use of electronic digital cross connect machines, were discussed in the NY PSC collaborative in September 1999.

97. Despite Cavalier's criticisms in its filing, the interconnection agreement between Cavalier and Verizon VA plainly provides that Verizon VA is to move customers served by IDLC onto a copper pair or UDLC equipment, if either is available. The agreement also addresses the BFR development process for new UNEs. Specifically, Section 4.1.3 in Attachment III states:

> "If Bell Atlantic uses integrated digital loop carrier ("DLC") systems to provide the local loop, Bell Atlantic will make alternative arrangements if available, … {which} may, at Bell Atlantic's option, include the following: provide {Cavalier} with copper facilities or universal DLC that are acceptable to {Cavalier}. Additional arrangements, such as deployment of Virtual Remote Terminals, or allowing {Cavalier} to purchase the entire DLC, are subject to the BFR procedures of Section 25 of Part A of this Agreement."

While Cavalier claims that over 800 orders were cancelled for the period January through March 2002 due to the presence of IDLC,[74] neither Cavalier, nor NTELOS/R&B, have used the BFR process in Virginia to attempt to define, evaluate and develop new types of UNE loops that might be used with end users currently served by IDLC loop technology.

98. Finally, no merit exists to Cavalier's contention that a CLEC customer that has been moved off an IDLC loop will receive unsatisfactory 2-wire analog unbundled loop (POTS) service. Unbundled 2-wire analog loops served by copper loop technology and UDLC technology both meet the technical transmission characteristics that are included in Verizon's technical reference documents, which are referenced in Cavalier's Interconnection Agreement.[75] Finally, the issue of 2-wire analog UNE loop provisioning

[74] Furthermore, it is not clear how many of these orders are Virginia orders.

[75] TR 72565 Basic Unbundled Loop Services Technical Specifications.

for end users served by IDLC, including the potential development of new UNE loop types using the BFR process, is currently being addressed in the Verizon/AT&T FCC interconnection agreement arbitration, and therefore, should not be part of this proceeding.[76] A decision is that proceeding is expected soon.

99. Accordingly, contrary to Cavalier's and NTELOS and R&B's allegations, Verizon VA's IDLC engineering and provisioning practices do not violate any checklist obligations.

### C. Verizon Provides Access To Remote Terminals In Full Compliance With Existing Legal Requirements

100. Covad argues that Verizon VA is not satisfying its obligation to provide access to remote terminals so that CLECs, like Covad, can provide DSL service to end users.[77] Covad is wrong. In its Checklist Declaration, Verizon VA outlines the options available to CLECs to provide DSL to end users served from remote terminals by using Verizon VA's subloop unbundling offering.[78] Basically, a CLEC may collocate in or adjacent to the remote terminal and interconnect at the feeder distribution interface to obtain access to the copper distribution portion of the loop. The CLEC can then either purchase unbundled dark fiber (where available) or purchase an unbundled transport element between their DSLAM and the central office. The CLEC can also use their own

[76] FCC Arbitration Non-Cost Issue VII-10: Integrated Digital Loop Carrier (IDLC) Loop Provisioning.

[77] Covad at 13-19.

[78] Checklist Declaration, ¶ 172.

transport facility or that of an alternative third party.[79] These alternatives comply with the requirements of the FCC's Advanced Services Order as well as the UNE Remand Order.

101. In fact, Verizon VA employs the same methods and procedures to provide access to RTs in Virginia as are used in Massachusetts. In the Massachusetts 271 proceeding, the FCC found that Verizon provides nondiscriminatory access to subloops consistent with the requirements of Section 271 and the UNE Remand Order. The FCC stated, "[C]onsistent with our rules, Verizon allows collocation inside remote terminals on space-available basis. Where space is unavailable, competitive LECs may deploy an adjacent cabinet to access subloops through an interconnecting cable."[80]

102. Covad complains that while it "wants the option of traditional collocation,"[81] it may be "cost prohibitive" for Covad to collocate a DSLAM at or near a remote terminal, and, therefore, it would not be commercially viable to serve the customer. Covad goes on to complain that even if Covad were to collocate a DSLAM, it would have a problem incurring the cost of dispatching its own technicians to run cross connections on its own equipment.[82]

103. Covad's complaint regarding Verizon VA's offerings is one of commercial viability, not compliance with the FCC rules and regulations or 1996 Act. Section 271(c)(2)(B)(ii) of the Act requires a Section 271 applicant to offer "nondiscriminatory access to network elements in accordance with the requirements of

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[79] *Id*. ¶¶ 172-173.

[80] Massachusetts Order ¶¶ 154-155.

[81] Covad at 15, footnote 6.

[82] *Id*.

sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) of the Act requires the incumbent LEC to "provide to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . ."[83] Nowhere is it a requirement for a 271 applicant to ensure that any particular CLEC, regardless of resources, capabilities or competencies, is able to offer a commercially viable retail product through the purchase of UNEs. Furthermore, Covad has failed to analytically support its allegations regarding "commercial viability." Accordingly, Covad's claim that it does not have "a commercially viable means to provide DSL services through Verizon's remote terminals" does not demonstrate checklist noncompliance and should be rejected.

104. Covad also attempts to make Verizon VA's future deployment of its PARTS (Packet At Remote Terminal Service) offering a 271 issue. Covad notes that "Verizon announced the introduction during the third quarter of 2002 in the Verizon East (former Bell Atlantic/NYNEX) territory of an end-to-end DSL access service at the remote terminal over next generation digital loop carrier (NGDLC) equipment, also known as [PARTS] architecture."[84] Covad asserts that, as part of this 271 proceeding, the Commission should:

> [R]equire Verizon to offer an end-to-end UNE loop provisioned over the fiber-fed NGDLC architecture, and the right to request the full set of features and functions supported on the NGDLC platform, as those features and functions become commercially available. If the Commission should decide not to require Verizon to offer

[83] *See* Checklist Declaration ¶ 91.

[84] Covad at 15(citations omitted.)

> an end-to-end PARTS UNE loop. . . the Commission [should] require Verizon to unbundle all of the components of the PARTS architecture, including giving CLECs the ability to own and collocate line cards in the NGDLC.[85]

105. These requests should be denied. First, as Covad notes, PARTS has not yet been deployed in Virginia and, as Verizon VA has noted above, the CLECs have no right to UNEs from an unbuilt, future network. Second, PARTS is an end-to-end packet switching service (not unbundled elements at TELRIC prices). Verizon VA is not legally obligated under the 1996 Act or any associated FCC regulations to provide packet switching as a UNE at this time. Indeed, the FCC in its UNE Remand Order expressly declined to unbundle packet switching.[86] Third, Covad neglects to mention that Verizon will make this service (as an end-to-end service) available to CLECs, as well as to Verizon's other wholesale customers.

106. Furthermore, Covad's argument that the potential deployment of a service by Verizon is sufficient for the Commission to create a UNE is simply wrong. Without actual deployment, no basis exists to conduct an "impairment" analysis, which is the predicate for the creation of any UNE.[87] Moreover, the definition, terms and conditions of such a UNE would have to be established in the abstract.

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[85] *Id*. at 18-19.

[86] *See* UNE Remand Order at ¶¶ 306-317. In determining not to unbundle packet switching, the FCC considered the following factors: the widespread availability of advanced services equipment (*e.g.*, packet switches and DSLAMs); the collocation and interconnection costs that CLECs may incur without access to unbundled ILEC packet switching facilities; the fact that ILECs do not retain a monopoly position in the advanced services market; and public policy considerations, *i.e.*, the need to preserve some incentive to ILECs to continue to build new networks.

[87] *See* 47 CFR § 51.319(c)(3). The FCC rules state that ILECs are obligated to unbundle packet switching services in only very limited circumstances that do not exist in Virginia. *Id*.

107. Finally, Covad fails to disclose that the issues it raised here are currently pending before the FCC in various proceedings.[88] For example, the FCC is currently addressing, *inter alia*, the ILEC's obligation under the Act to make their facilities available as UNEs to CLECs for the provision of broadband services. Accordingly, even if Covad's requests were valid 271 issues (which they are not), it would be premature for the Commission to rule on these *same* issues prior to the FCC's resolution of such matters in the pending dockets. The bottom line is that Verizon VA is satisfying its current obligations under the Act and FCC rules.

108. In short, Covad has failed to establish that Verizon VA has not satisfied any obligations under Checklist 4.

**D. The LiveWire Data Base Provides Parity Functionality**

109. Covad states that the LiveWire database, which stores xDSL Loop Qualification information, incorrectly "reports certain loops as non-qualifiers."[89] Covad correctly contends that it is then ***their decision*** to either (1) turn the customer away or (2) request, and pay, for a manual loop qualification to validate or invalidate the initial findings reported in LiveWire. Covad does not attempt to quantify the alleged scale of

[88] *SeeSee* Triennial Review Notice. Issues relating to the terms and conditions under which ILECs would be required to offer advanced services are also raised in the context of pending legislation, *i.e.*, H.R. 1542, The Tauzin-Dingell Internet Freedom and Broadband Deployment Act of 2001. That bill, which passed the House of Representatives by an overwhelming majority (273-157) on February 27, 2002, would preclude collocation at the RT and unbundled packet switching. The FCC is also considering the issue of unbundled packet switching and line card collocation in *In the Matter of 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 and Sixth Notice of Proposed Rulemaking, CC Docket No. 98-147 and 96-98 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*"), at ¶ 56.

[89] Covad at 5. Verizon VA presented information regarding its Loop Qualifications process under Checklist Item 4 and in the OSS Declaration. The FCC traditionally addresses this issue with OSS issues under Checklist Item 2.

incorrect information within the LiveWire database, but implies that this flaw in the LiveWire data constitutes noncompliance with this checklist item. Covad is wrong.

110. First, Verizon provides the same pre-order loop information via the same systems in Virginia as it does in New York, Massachusetts, Pennsylvania, and Rhode Island. The FCC has concluded that each of these states satisfies the requirements of the competitive checklist including the obligation to provide access to loop qualifications information. Most recently, the FCC found in the Rhode Island 271 Order, that "Verizon provides access to loop qualification information in a manner consistent with the requirements of the UNE Remand Order. Specifically, we find that Verizon provides competitors with access to all the same detailed information about the loop that is available to itself, and in the same time frame as any of its personnel could obtain it."[90]

111. Second, in Attachment 305 to its OSS Declaration, Verizon VA details the significant effort expended to ensure all loops in all central offices in Virginia were included in the data base.[91] This was specifically done as a result of working with the DSL collaborative in New York in which Covad participated. Moreover, these enhancements occurred after the FCC had found the then-existing loop qualification functionality satisfactory in the New York 271 Proceeding. To be sure, the LiveWire database is not perfect, but perfection is not the criterion for 271 compliance. As the FCC noted in the Rhode Island Order, the criterion is parity, and CLECs and Verizon VA alike utilize the LiveWire database to determine if loops are qualified for DSL services.

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[90] Memorandum Opinion and Order, *In the Matter of Verizon New England Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Rhode Island for FCC Authorization to Provide In-Region, InterLATA Services in the State of Rhode Island and Providence Plantations*, FCC CC Docket No. 01-324 released February 22, 2002 ("*Rhode Island Order*")., ¶ 61.

[91] Attachment 305 at 2.

112. Moreover, it is Covad's business decision to turn customers away rather than to check through a manual qualification what Covad feels are questionable LiveWire results. In January 2002 Verizon VA processed almost 12,000 requests for loop qualification information through the LiveWire system. In that same month, Verizon VA began reporting a metric to measure the response time of manual loop qualifications. During January, there were a total of two (2) requests from all VA CLECs combined for manual loop qualifications.

113. Covad also complains that it is incurring additional costs and unreasonable provisioning delays due to the LiveWire data base returning loop lengths of 99,000 feet or zero feet as not qualified loops.[92] Covad's complaint is meritless and should be rejected. As Covad is well aware, Verizon had a practice of populating the database with a loop length of 99,000 feet as a "flag" where Verizon identified issues with the initial loop qualification testing. In Verizon VA, it is estimated that approximately one in every 50,000 lines in the LiveWire database has such a flag. In fact, in April of this year, Covad provided Verizon a list of 18 loops where they had received such a response. None of them were in Verizon VA territory. Similarly, zero loop length was used as a "flag" for offices/loops that had not been initially tested. All offices have now been tested or re-tested and are currently available in the database. There are minimal flags of zero loop length remaining. As noted above, Verizon VA's retail operations also have to contend with this issue when they use the LiveWire database.

[92] Covad at 5.

114. Covad also argues that "incorrect spectrum compatibility issues have also prevented [it] from submitting valid DSL orders."[93] Covad claims that Verizon VA has a "policy of rejecting any Covad line sharing order submitted, where the loop may be located in the same binder group as a loop over which Verizon currently serves one of its retail customers with AMI T-1 service,"[94] and that the LiveWire database contains inaccuracies regarding the presence of T-1 lines. Covad claims that this situation has prevented it from provisioning service to "well over a thousand customers."[95] Covad is correct that, due to spectrum interference issues, Verizon VA complies with the T1E1 Industry Standards and does not install DSL service in cable binders that have AMI T-1 service.

115. Covad states that at a recent meditation session with the FCC on this very issue, 240 line share orders were analyzed to determine if the "loop not qualified" response was an accurate response. During that session Verizon agreed to analyze any Covad prequalifications that came back with a disqualified message associated with AMI T1 conflicts to see if any alternative arrangements were possible, such as a line and station transfer. In addition, and as Covad is aware, Verizon has system enhancements planned that will automatically search for alternative facilities. What Covad conveniently omits about the FCC mediation session, is that only four of the 240 orders in its complaint were in Virginia and that none of the four were denied service. The process in

[93] *Id.*

[94] Covad ¶ 13.

[95] *Id.*

place is consistent for both Verizon and CLECs, complies with industry standards, and does not warrant a finding of checklist noncompliance.

116. Covad asserts that "Verizon's imposition of line and station transfer charges on DSL competitors is discriminatory."[96] This is yet another inaccurate claim that should be rejected. If a DSL loop does not qualify for DSL service due to the type of facility for the loop, Verizon VA offers the CLEC the opportunity to have the service "transferred" to a copper loop that will support the service, assuming such a facility exists. Should the CLEC choose this alternative, a TELRIC based rate is imposed.

117. Covad also claims that neither Verizon VA retail nor CLECs purchasing unbundled loops are required to pay an equivalent TELRIC charge. Covad's complaint is misplaced. Verizon VA charges retail customers market-based retail rates, not TELRIC rates. Verizon VA, just like Covad, can choose to include such functionality into the overall cost of providing service on a deaveraged basis. The concept of comparing TELRIC pricing to market-based pricing for Verizon VA retail customers is one of apples to oranges. As for CLECs purchasing UNE Loops, if the CLEC requests a line and station transfer, the corresponding TELRIC rate would also apply. In addition, Covad agreed to such charges and to the swapping process in the amendments to its interconnection agreements, which were adopted after the FCC issued its *Line Sharing Order*. Covad also actively participated in the DSL Collaborative sessions in New York which established the processes, procedures and charging for this activity and resulted in a Commission Order to implement line and station transfers as agreed upon.

[96] Covad at 4.

118. Covad also states that the LiveWire database incorrectly returns a "Loop not Qualified" response when the loop is served by DLC. Covad claims that when it receives this response, it is precluded from requesting a line and station transfer, even if spare copper is available.[97] Covad is wrong. If the loop is served by DLC, the LiveWire response of "Loop not Qualified due to the presence of DLC" is accurate.

119. Covad also claims discriminatory pricing treatment when it requests Verizon VA perform specialized conditioning of loops over 18,000 feet in length.[98] Covad claims that such charges "make it uneconomical for Covad to offer service." As permitted by law, Verizon VA charges CLECs TELRIC based rates for costs it incurs. The formula for TELRIC compliance does not include a requirement to ensure the CLECs market based service to its end customer is commercially viable.

### E. Verizon VA Provides Good Performance For UNE Provisioning And Maintenance

120. Three parties, Cavalier, Covad and WorldCom complain about Verizon VA's UNE Loop performance. As will be demonstrated below, these complaints are meritless.

121. Cavalier asserts that in March 2002, 138 hot cut and loop orders were cancelled on the due date ("DD") because facilities were not available, and that a total of 844 were cancelled in the first quarter 2002.[99] Cavalier also complains that Verizon VA does not report this information to the Commission.[100]

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[97] Covad ¶ 15.

[98] Covad ¶ 14.

[99] Cavalier at 33, Exhibit 19 and 20.

[100] *Id*. at 33.

122. Cavalier's assertions are baseless. There is a defined process to provision a hot cut when the existing Verizon VA subscriber is served by IDLC. A hot cut order for an IDLC end user will fall out for manual handling in Verizon's loop assignment center. As noted above, if alternate copper or UDLC facilities are available in the end user's serving terminal, a line and station transfer (LST) is scheduled for DD-1. Occasionally the LST may fail due to a defective facility and will result in a facility cancellation. For a hot cut, this notification generally takes place on the day before the due date (DD-1).

123. For new loops, Verizon's facility assignment systems look to assign copper or UDLC to a new unbundled loop, just like a hot cut. If a suitable facility cannot be assigned automatically, the order will fall out for manual review by assignment personnel and/or an outside plant engineer. Every attempt is made to find a compatible facility – even to the extent of doing an LST on a nearby Verizon end user to free up a copper pair for the new unbundled CLEC service. For new loops, this activity generally takes place on the due date, but work activity can carry over to a day or two after the scheduled due date as Verizon technicians continue to try to locate and provision a suitable cable pair. If the LST fails in an IDLC area and no alternate copper pair can be found or exists, the service cannot be provided unless the BFR process is requested. (*See* discussion, *supra*.)

124. There is also no merit to Cavalier's assertion that it does not have the ability to determine whether an order can be provisioned, and Verizon VA refuses to provide Cavalier with access to this information.[101] In a meeting, among Verizon,

[101] Cavalier at 35 and 40.

Cavalier and the Virginia Commission staff on June 14, 2001, Verizon informed Cavalier of its new "loop make up" pre-order transaction. This pre-order transaction can be used by Cavalier before an LSR is submitted to determine the type of facility served by a particular address – IDLC, UDLC, or copper. While information on this transaction was provided to Cavalier at this meeting, to Verizon VA's knowledge, Cavalier has not used this pre-order transaction or followed up with questions about the process. Thus, Cavalier has no basis to complain that it "looks down right stupid" to its customers when an order can not be provisioned.[102]

125. As for Cavalier's complaint that the performance metrics do not capture orders cancelled for no facilities, that is correct. The PR-5 family of metrics, "Facility Missed Orders" are designed, according to the business rules and C2C Guidelines, to capture orders that are completed, but delayed due to facility problems. It does not, nor was it ever intended to, capture orders that never get completed at all for facility reasons. As noted above, Verizon VA has no obligation to build new facilities for an unbundled loop of any type. Its obligation is to unbundle existing loops. The fact that Verizon VA will attempt to clear defective pairs, attempt LSTs or other facility modifications will occasionally cause orders to be completed after the committed due date. This is exactly what the PR 5 metrics measure. In fact, an order completed late for facilities is captured in no less than three separate metrics – PR 4-04 % Missed Appointment – Loop, PR 4-02 Average Delay Days-Total, and PR 5-01 % Missed Appointment-Facilites. In any case, metric issues, such as this one, can be raised in the C2C proceeding. They are not 271 compliance issues.

[102] Cavalier at 35. As discussed, *supra*, there is no merit to Cavalier's argument that Verizon VA will discriminate in favor of its retail customers. *Id*.

126. Cavalier asserts that certain metrics must be viewed with suspicion – especially PR 5-01, PR 6-01, PR 6-02, PR 9-01.[103] Cavalier is way off base. In general, Cavalier's claim of inaccurate metrics reveal a surprising lack of understanding of the C2C reports and the business rules or Guidelines that are used to calculate them. For example, PR 5-01 measures *completed* orders delayed by facilities. Cavalier is attempting to correlate all of their facility-cancelled orders with this metric. If the order is not completed, it is not in PR 5-01. As for PR 6-01 and PR 6-02, Cavalier fails to understand that the denominator for installation quality or "I-Codes" is all provisioned *lines* in the month. Cavalier is under the misguided impression that the observations for this metric represents actual installation trouble reports. It then divides these "trouble reports" by the number of orders provisioned in the month and erroneously concludes that Verizon provisions at an error rate of 1.29 troubles per order. Although Cavalier is quick to admit Verizon VA service is not quite "that bad," if it bothered to read the C2C Guidelines that explain how these metrics are constructed, how the arithmetic is done, and how to read the performance result, Cavalier would come to the correct conclusion: Verizon VA's installation quality is very strong.

127. Covad's provisioning comments offer no specific data or claims about Verizon VA's performance.[104] They mostly restate the importance of following certain cooperative test and loop tagging processes that Verizon VA already supports. Verizon VA's process is to tag DSL loops at the NID and to do cooperative testing at the NID. Covad offers no data that Verizon VA is not following these processes.

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[103] Cavalier at 53-54.

[104] Covad at 9-10.

128. Covad also states the DSL loop provisioning interval should be shortened. This is not a 271 compliance issue. Verizon VA is satisfying the current intervals. Moreover, Verizon has informed Covad at a recent Executive Quarterly Review meeting that it should bring this request to the CLEC User Forum for industry consideration.

129. Covad also claims that Verizon VA has problems with the maintenance of its DSL loops.[105] Covad is wrong. As a basis for its assertion, Covad points to performance on PR 6-03 (a provisioning metric) % Installation Troubles Reported within 30 Days – CPE/TOK/FOK. Covad suggests that Verizon "has developed a novel approach" with respect to its reporting of maintenance performance in that it "disregards the troubles reported that Verizon did not identify as found in its network."[106]. Far from a novel approach on Verizon's part, this is merely in compliance with the Carrier to Carrier Guidelines in effect in VA (and all other Verizon East states). Moreover, Verizon does report troubles not found in the Verizon network – in MR 2-05 (Network Trouble Report Rate – CPE/TOK/FOK) and MR 3-03 (% Missed Appointment CPE/TOK/FOK). Results for these measures across almost all products are significantly better for CLECs than for Verizon's own retail customers. Covad further suggests that it has had to file repeated trouble tickets before a Verizon trouble is eventually found, and that this is an indication of poor maintenance service. On the contrary, this scenario is measured in MR 5-01 % Repeated Reports within 30 Days, and Verizon's performance for DSL loops is excellent. In fact, for Covad in the November 2001 through January 2002 period, just 13% of the trouble tickets, where trouble was found, were repeat reports where trouble was found in

[105] Covad at 11.

[106] Covad at 11.

the Verizon network. Less than 2% involved multiple reports closed to "no trouble found" prior to the repair. So while Covad's theory of what "could" happen may be cause for concern, the reality is that Verizon's repair quality as measured by MR 5-01 is reported accurately, is not understated, and is not indicative of poor performance.

130. Covad comments on Verizon's UNE POTS Provisioning performance with a discussion of MR 5-01 % Repeat Reports within 30 Days. (Since Covad does not purchase UNE POTS loops, one wonders at the relevance of its comments.) Further, Covad confuses the discussion of "no access" reports and their impact on MR 5-01 with its own alleged experience with "no access" installation orders. One has nothing to do with the other. MR 5-01 measures maintenance performance, not provisioning quality. None of Covad's discussion of "no access" is relevant to the maintenance process. Covad suggests that "reports will be 'no access' because Verizon gave Covad insufficient notice that they would be coming out to the customer's premises."[107] On the contrary, Covad always knows when a repair dispatch is scheduled – Covad opens the ticket with Verizon and requests a dispatch to the end user's premise. Covad is required to provide access information to Verizon and Verizon provides to Covad a commitment time (usually same day or next day).

131. WorldCom implies that Verizon fails to satisfy Checklist Item 4 because it missed a number of measures included in the C2C reports. WorldCom is wrong. First, as Verizon VA explained in its Checklist Declaration, it is providing good service on the key measures that the FCC examines to determine compliance with Checklist Item 4. The FCC does not give equal weight to the hundreds of metrics included in the C2C

[107] Covad page 12-13. It is worth noting that the results for MR 5-01 for DSL loops are very strong – even without the 'no access' exclusion approved by the NY Carrier Working Group.

Guidelines. Second, as stated in the Metrics Reply Declaration, the FCC does not require a 271 applicant to provide perfect performance, as WorldCom implies. Third, a number of metrics WorldCom highlights are seriously flawed. WorldCom makes the observation that Verizon missed 10 of 37 metrics for 2 wire digital and xDSL loops and that 8 of the 10 were missed for two or more months between November and January. While it is a very simple matter to scan the C2C reports and highlight every missed metric, it is quite another to understand what these metrics represent operationally.

132. For example, Verizon actually missed 9 of 10 digital loop metrics (not 8 as WorldCom claims) and they can be categorized as follows: 6 were interval-related, 1 was for on-time performance, 1 was facility-related and 1 was for installation quality. The NY Carrier Working Group expends a great deal of time and effort to continuously review metrics for their ability to accurately reflect true performance and how a metric can best measure a competitively significant process. Of the 6 missed interval measures above, 3 were changed to "no standard" measures by the NY CWG because the retail compare groups were not relevant. The one on-time performance measure missed above (PR 4-16) was eliminated entirely by the CWG. The facility related measure (PR 5-01) and the installation quality metric (PR 6-01) were also modified by the NY CWG and all of these modifications were implemented in the VA C2C for the February 2002 performance month.

133. The three remaining interval metrics are all for the 2-wire digital product whose standard interval is 6 days. Recently a CLEC made a request to change the standard interval to 5 days. Verizon is reviewing that request, and if the new five-day interval is adopted, performance on this metric will be measured on an apples-to-apples

basis. In short, of the 37 metrics cited by WorldCom for xDSL and 2 Wire digital loops, there are only 2 that Verizon VA occasionally misses that represent true operational performance.

134. Another example of how a metric does not always measure a competitively significant process is the Average Interval Offered - Disconnect and Average Interval Completed-Disconnect metrics. These metrics largely measure CLEC behavior, not Verizon. CLECs routinely request longer intervals for their own business reasons, and Verizon VA grants whatever desired due date is requested. In fact, Verizon investigated this metric as part of its normal, ongoing analysis activities and talked to CLECs that were requesting long intervals. One CLEC responded that it thought the standard interval for an analog loop disconnect was the same as the new connect (5 days). Another responded that it liked to give 10 day intervals on disconnects because they were experiencing problems with disconnecting their end users in error. By placing an order with a 10-day interval, the CLEC would have a chance to do a "software" disconnect in the CLEC switch first, then wait for customer reaction. If the customer did not complain about being disconnected in error, it would then let the Verizon disconnect continue to completion. If the customer did complain, the CLEC could quickly restore their end user with a software command in its switch and still have time to cancel the Verizon disconnect and removal of the frame crossconnect. While Verizon VA will honor disconnect requests with a 2-day interval, it cannot control what interval is requested by the CLECs. Accordingly, the performance recorded under these metrics is *not* indicative of discriminatory treatment.

135. With regard to the Average Interval Offered/Completed Disconnect – Dispatch metrics, these metrics were eliminated in the January 22, 2002 version of the Guidelines effective with the February data month. Verizon never dispatches on a disconnect order of any type and the NY CWG appropriately agreed to remove these meaningless metrics for the C2C Guidelines. As for the missed interval metrics for Hot Cuts intervals, this was addressed in the Checklist Declaration where we explained that these metrics are flawed and not indicative of discriminatory conduct.[108] Likewise, we explained the issues related to PR 6-01, and provided a special study that demonstrated that we were not discriminating against the CLECs.[109] In addition, PR 3-01 has been eliminated as a hot cut metric with the adoption of the new guidelines in February. Also, the FCC has recognized that interval metrics do not provide a valid indication of the Wholesale provisioning services to CLECs.[110]

136. WorldCom's allegations regarding Verizon VA's performance on the maintenance metrics are also meritless**,** and ignore valid and current explanations offered in Verizon's Checklist Declaration. WorldCom notes that Verizon failed to meet the parity standard for MR 2-02 Network Trouble Report Rate – Loop for UNE Complex Services – 2 Wire Digital and 2 Wire xDSL. As explained in Verizon's Checklist Declaration, the higher trouble rate for CLEC xDSL Loops reflects the fact that troubles included in the retail compare group for unbundled xDSL loops (*i.e.,* line sharing provided by VADI) do not include troubles that also affect Verizon VA's voice service

[108] Checklist Declaration, at 142.

[109] *Id.* at 132.

[110] FCC Rhode Island 271 Approval Order ¶ 70.

because such "loop" troubles are reported and "scored" as retail POTS voice troubles rather than VADI line share troubles. In contrast, troubles reported on CLEC xDSL loops include all troubles. Similarly, the retail compare group for UNE 2 Wire Digital Loops does not present a valid comparison for performance. Recognizing this, the New York Carrier Working Group agreed to change the retail standard for these measures to retail POTS and, against that standard, the trouble report rates for 2 wire digital and xDSL loops are in parity with retail. The FCC has recently found that "retail POTS service appears to be a more probative comparison in this context."[111]

137. Worldcom also notes that Verizon failed to meet MR 4-01 (Mean Time to Repair – Total) and MR 4-04 (% Cleared within 24 Hours) for Complex Services – 2 Wire Digital loops in January. While it is noteworthy that no CLEC who actually purchases these loops (as WorldCom does not) commented on or complained about Verizon's performance in January, it should also be noted that the reported performance does not yet include consensus changes ordered by the NY PSC in October 2001 that govern the use of stop clock for situations in which the CLEC cannot provide access to the end user's premises. Applying the new rules to January's performance reduces the Mean Time to Repair for digital loops by over 5 hours and brings MR 4-01 into parity.

138. WorldCom observes that Verizon failed to meet MR 4-03 Mean Time to Repair – Central Office – Loop for all three months and MR 4-07 % Out of Service > 12 Hours for November and January. First, central office troubles represent just 10.7% of all UNE POTS Loop troubles. Second, the overall Mean Time to Repair for all UNE POTS Loop troubles is 4.39 hours less than retail – surely it is immaterial to the end user

[111] *See Rhode Island Approval Order* ¶ *79*

(and thus to the CLEC) where the trouble was found, as long as the troubles are fixed (on average) at parity with retail. Similarly, if all troubles are fixed in a much shorter average duration than retail, the performance for a subset of troubles that are out of service longer than 12 hours is not relevant.

139. WorldCom comments that Verizon failed to meet the target for MR 4-04 Percent Cleared (all troubles) within 24 hours and MR 4-08 % Out of Service > 24 Hours for Special Services. It is worth noting that in November and January it would not have been possible for Verizon to make parity if any troubles went over 24 hours – a single ticket over 24 hours results in a parity miss. More importantly, when the permutation test is applied to January performance (for MR 4-08), this issue is resolved and the small sample impact is neutralized.

140. Reviewing all the evidence submitted by the CLECs regarding Verizon VA's performance under Checklist Item 4, there is no indication of "patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete."[112] The record in this case demonstrates, at most, that a few isolated cases of performance disparities have occurred in Virginia. The FCC has held that isolated cases of performance disparity "especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance." Examining "the totality of the circumstances in evaluating Verizon's performance in providing loops in accordance with the checklist requirements," it is clear that Verizon VA provides good service on the vast majority of unbundled loops in Virginia. Verizon VA has complied with Checklist Item 4. The Commission should

[112] *PA Approval Order*, at ¶ 77

affirm in its consultative report to the FCC that Verizon VA has satisfied its Checklist Item 4 obligations.

## VII. CHECKLIST ITEM 5: LOCAL TRANSPORT FROM THE TRUNK SIDE OF A WIRELINE LOCAL EXCHANGE CARRIER SWITCH UNBUNDLED FROM SWITCHING OR OTHER SERVICES

141. Verizon VA demonstrated in its Checklist Declaration, ¶¶ 208-224, that it has satisfied its obligations under Checklist Item 5. Three CLECs – Cavalier, OpenBand, and WorldCom – filed comments regarding Verizon VA's compliance with this Checklist Item. As will be demonstrated below, the claims raised by these parties are without merit or are not properly a part of this proceeding.

142. WorldCom raises a number of issues that are currently under consideration before the FCC.[113] Several of these issues relate to Verizon VA's provision of unbundled transport and unbundled dark fiber and are pending resolution in the FCC arbitration proceeding.[114] Regarding unbundled transport service, WorldCom indicates that issues IV–18 and IV-21 remain unresolved. These issues involve disputes regarding Verizon VA's obligation to provide (1) the multiplexing feature and digital cross-connect systems as unbundled network elements and (2) unbundled dedicated transport in conjunction with facilities purchased out of tariffs.[115] Regarding unbundled dark fiber service, WorldCom notes that issue III-12 is pending in the FCC arbitration proceeding.

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[113] CC Docket No. 00-218, *I/M/O* Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration.

[114] WorldCom ¶¶ 15-21. OpenBand also notes that the SCC should require "fair and full access' to Verizon VA's unbundled transport services but does not provide any specific criticisms of Verizon VA's current offering. OpenBand ¶ 8.

[115] WorldCom ¶ 19.

Specifically, this item number includes a dispute over Verizon VA's requirements regarding how and where CLECs may obtain access to unbundled dark fiber.[116]

143. WorldCom is correct that these issues are pending before the FCC. As noted earlier, the non-cost phase of the arbitration has been extensively litigated, the case is fully briefed and a decision is expected shortly. In the current FCC arbitration, the FCC, pursuant to a provision of the 1996 Act, has assumed a role that is assigned to the state commissions in the first instance. However, WorldCom's assertion that this Commission cannot submit a consultative report to the FCC on Verizon VA's application until the FCC has fully resolved these disputed issues is utterly baseless. As the FCC has held, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions . . . ."[117] In addition, as noted, in the Verizon Pennsylvania 271 proceeding, the FCC stated:

> [n]ew interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.[118]

144. Accordingly, the fact that the FCC has yet to render a decision in the WorldCom arbitration does not preclude this Commission from gathering information for its consultative report to the FCC on Verizon VA's 271 application.

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[116] WorldCom ¶ 15.

[117] *Massachusetts Order* ¶ 203.

[118] *Pennsylvania Order* ¶ 92.

145. Cavalier and OpenBand have raised issues beyond those raised by WorldCom.[119] Both OpenBand and Cavalier complain about the nature and extent of dark fiber information that is available from Verizon VA for the CLECs to engineer their networks and to order dark fiber.[120] OpenBand recommends that the SCC adopt similar policies for the availability of dark fiber information as have been adopted by the Texas PUC, or, at a minimum, by the Maine PUC. Cavalier requests that Verizon VA provide it with an "overview map" that identifies where dark fiber exists in the network.

146. Cavalier and OpenBand's requests are totally without merit. First, OpenBand's comments are not based on any Virginia-specific experience since OpenBand has admitted in responses to discovery requests that it currently does not have unbundled dark fiber circuits in service, nor has it ordered any unbundled dark fiber circuits from Verizon VA.[121] Accordingly, since OpenBand has no experience with Verizon's dark fiber practices and procedures in Virginia its testimony should be given no weight. Second, contrary to OpenBand's claims, Verizon VA is not obligated to provide dark fiber in Virginia in accordance with the dark fiber offerings in Maine or required to provide dark fiber in compliance with any dark fiber rulings issued by the Texas PUC. Verizon VA is obligated to provide nondiscriminatory access to dark fiber in Virginia solely in accordance and compliance with the requirements of the Act and the FCC's *UNE Remand Order,* which it is doing.

[119] OpenBand ¶¶ 20-25.

[120] Cavalier at 57-58, OpenBand at ¶¶ 22-24.

[121] Openband Responses to Verizon Data Request Set 1, Nos. 1 and 2.

147. As noted in the Initial Declaration, Verizon VA makes the same dark fiber information available to CLECs in Virginia, as it does in Pennsylvania. The FCC found Verizon's transport offerings, including dark fiber, in Pennsylvania to be in compliance with its Checklist requirements.[122] The fact that another state may have imposed terms and conditions on Verizon's dark fiber offering, which some CLECs view as more favorable to them, is not determinative.[123] In the Vermont 271 proceeding, a CLEC argued that Verizon VT's dark fiber offering was less favorable than the Verizon Massachusetts offering. The FCC rejected this argument noting that the dark fiber offering in Vermont was substantially the same as in Pennsylvania and Connecticut -- states where the FCC had already granted 271 authority.[124]

148. In addition, both OpenBand and Cavalier have existing interconnection agreements with Verizon Virginia that include terms and conditions for UNE dark fiber. The issues raised by OpenBand and Cavalier in this proceeding go well beyond the current interconnection agreements. The appropriate means for OpenBand and Cavalier to address the unique terms and conditions they seek regarding the availability of dark fiber information is through the interconnection agreement negotiation process.[125] The bottom line for this proceeding is that Verizon VA's dark fiber offering satisfies the checklist.

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[122] *Pennsylvania Approval Order* ¶¶ 109-113.

[123] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc.(d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont*, released April 17, 2002 ("*Vermont Order*") ¶¶ 56-57.

[124] *Id.*

[125] *Pennsylvania Approval Order* ¶ 113.

149. Currently in Virginia -- as in Pennsylvania -- there are three ways for CLECs to obtain information relating to the availability of Verizon VA's dark fiber facilities. This information allows a CLEC to (1) do general network planning, (2) make location specific and quantity specific dark fiber service requests, and (3) obtain detailed fiber optic transmission data needed to engineer the fiber optic system electronics that the CLEC will connect to Verizon VA's dark fiber facilities.

150. First, upon receipt of the CLEC's written request (the Dark Fiber Inquiry Form), Verizon VA will initiate a review of its fiber optic cable records and known, near-term fiber optic requirements to determine whether spare dark fiber may be available for lease between the requested locations, and in the quantities specified in the CLEC's request. Based on the review of cable records, Verizon VA will provide a written response to the CLEC indicating whether the requested dark fiber may be available. A CLEC must submit a Dark Fiber Inquiry Form prior to submitting a dark fiber order, *i.e.*, an Access Service Request ("ASR"). Verizon VA will also provide the services described below at the CLEC's option, to obtain additional information about Verizon VA's fiber facilities. These services are provided under a time and materials process.

151. Second, since Verizon VA makes no representation or guarantee of the accuracy or completeness of its fiber optic cable records, Verizon VA will initiate a field survey at the CLEC's request, for time and material charges, to verify the availability of specific dark fiber pairs. As part of this field survey, Verizon VA will test the specific fiber pairs by placing a light source on the individual fibers and measuring the end-to-end loss using industry standard fiber optic test equipment. Verizon VA will document the

test results and provide them to the CLEC so that it may determine if the fiber characteristics can be used with their engineering design.

152. Third, upon written request from the CLEC, Verizon VA will create a wire center fiber layout map (at time and material charges) based on its existing records for the CLEC's use in performing preliminary network planning and engineering work. These maps will provide street level detail of the existing fiber routes within the wire center where Verizon VA's fiber optic cables exist. As part of this process, Verizon VA will provide the CLEC with a written estimate of the time and cost associated with creating the maps. These maps are provided subject to a non-disclosure agreement, which limits disclosure to the CLEC personnel that need the fiber layout information to design the CLEC network.

153. Thus, in Virginia, as in Pennsylvania, Verizon meets its obligation under the Act and the FCC's *UNE Remand Order* for the provision of dark fiber availability. Cavalier's and OpenBand's requests go beyond these requirements and should be disregarded.

154. Cavalier also raises concerns regarding the ordering process for unbundled dark fiber service.[126] Specifically, CLECs must have a collocation arrangement constructed prior to ordering dark fiber circuits that will be connected to that collocation arrangement. Cavalier complains that this is an unnecessarily lengthy process. Currently, Verizon VA's existing ordering, provisioning, and billing processes, procedures, and operations systems for all existing wholesale and all existing retail services require that a physical location exist to which the service will be provisioned

[126] *See* Cavalier at 58-59.

before Verizon VA can accept an order to provision the service or UNE. The physical location must exist so the service or UNE can be properly terminated or connected. This is similar to the Postal Service not being able to receive and deliver a letter to a new residence, before the residence has a street address and a mailbox.

155. However, to respond to Cavalier's stated need, Verizon has recently entered into trial agreements with Cavalier for the "parallel provisioning" of collocation arrangements and unbundled interoffice facility dark fiber in Virginia, Maryland, and Washington, D.C. The purpose of these trials is to develop new processes, procedures, and system modifications so that, shortly after receipt of a collocation application, Verizon VA can accept and partially provision a CLEC's order for unbundled dark fiber. Verizon VA will be able to provision the unbundled dark fiber service through the facility assignment stage so it can be terminated at the central office(s) where the collocation arrangement(s) will be constructed. Upon completion of the collocation arrangement(s), the CLEC shall submit a second ASR requesting Verizon VA to complete provisioning and delivery of the unbundled dark fiber order to the collocation site(s). In turn, the CLEC will be charged for the unbundled dark fiber service coincident with the date Verizon that completes the CLEC's initial order for the unbundled dark fiber circuit.

156. Upon successful completion of these trials and the establishment of appropriate processes and procedures, Verizon and Cavalier have agreed to amend their interconnection agreements to reflect the availability of the parallel provisioning option. At that time, the availability of the new provisioning option will be offered to other carriers through interconnection agreement amendments, as necessary. Verizon VA is diligently working to address Cavalier's stated requirements, but in the meantime, as the

FCC determined in the Pennsylvania 271 proceeding, Verizon's current practices satisfy the Checklist.

157. OpenBand claims that Verizon VA is not providing non-discriminatory access because Verizon VA does not make unused fibers that are not terminated at accessible terminals available as unbundled dark fiber.[127] OpenBand's claim is meritless. First, as stated earlier, Openband's claim is not based upon any Virginia-specific experience. Further, as noted, Verizon's dark fiber offering in Virginia is substantially the same as its dark fiber offering in Pennsylvania, Vermont and Connecticut, where the FCC has found that the dark fiber offering satisfies the checklist.[128] Under Verizon VA's dark fiber offering, an unbundled dark fiber network element consists of two spare continuous fiber strands (*i.e.*, one pair) within an existing fiber optic cable sheath. These fibers are terminated to an accessible terminal, but are not connected to any Verizon equipment used or that can be used to transmit and receive telecommunications traffic. CLECs can order dark fiber for loops as well as dark fiber interoffice facilities. Access to dark fiber which has not yet been installed in Verizon VA's network, goes beyond the requirements of the FCC's *UNE Remand Order.*

158. Thus, OpenBand is not requesting access to "dark fiber" as defined by the FCC – "unused loop capacity that is physically connected to facilities that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can

[127] OpenBand at ¶ 12.

[128] *See Pennsylvania Order* ¶¶ 109-113; Vermont Order ¶¶ 56-57, and Memorandum Opinion and Order, *Application of Verizon New York, 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 Connecticut*, CC Docket No. 01-100 (2001) ("*Connecticut Order")*; ¶¶ 62-66.

be used by competitive LECs without installation by the incumbent."[129] Rather, OpenBand is requesting that Verizon VA *install* dark fiber at particular points in Verizon VA's network and provide OpenBand access to the fiber at those points. Verizon VA has no obligation to provide access to such fiber because it is not yet installed or connected to Verizon VA's network and is not available for use by either Verizon VA or OpenBand.

159. OpenBand also claims that this unterminated fiber is easily called into service and readily available after marginal work.[130] This is not true. First, since the fiber is not terminated, it does not fit the FCC's definition of unbundled dark fiber, because the fiber does not connect two points. Second, unterminated fibers occur in the network during the construction process. Since they are not terminated, they are not inventoried in Verizon VA's systems. Such unused fibers are not available to Verizon VA for growth, maintenance spares or survivability without additional fiber facility construction to complete the fiber strands and connect them to an accessible terminal at both ends. Examples of possible construction activities that may be required include placing fiber optic cables, splicing fiber optic cables, obtaining additional right-of-way, building conduit, and building pole lines. Since construction is required to terminate these fibers, they are not readily available after marginal work as OpenBand claims. As noted above in the discussion of Checklist Item 4, the Act does not require ILECs to construct unbundled network elements and, therefore, these unterminated fibers are not available to CLECs as unbundled dark fiber.

[129] *UNE Remand Order* ¶174, n.323.

[130] OpenBand at ¶¶ 14, 16.

160. OpenBand notes that the Texas PUC rejected SWBT's termination requirement and that the SCC should use this proceeding to reject a Virginia VA's termination requirement.[131] As previously stated, Verizon VA is not required to provide dark fiber in accordance with a dark fiber offering in Texas or in compliance with past dark fiber rulings issued by the Texas PUC. Moreover, as explained above, such a requirements is unworkable and at odds with how fiber is deployed in the network. Verizon VA is obligated to provide nondiscriminatory access to dark fiber in Virginia in accordance with the requirements of the Act and the FCC's *UNE Remand Order*. It does that.

161. As demonstrated above, the complaints by Cavalier, OpenBand and WorldCom regarding Verizon's unbundled transport and dark fiber offering fail to undercut Verizon VA's showing in the Checklist Declaration that it complies with the requirements of Checklist Item 5. Accordingly, the Commission should conclude, as did the FCC for Pennsylvania, Connecticut and Vermont, that Verizon VA satisfies this Checklist Item.

## VIII. CHECKLIST ITEM 6: LOCAL SWITCHING UNBUNDLED FROM TRANSPORT, LOCAL LOOP TRANSMISSION, OR OTHER SERVICES

162. Section 271(c)(2)(B)(vi) of the Act requires a Section 271 applicant to provide or offer to provide local switching unbundled from transport, local loop transmission, or other services.[132] Verizon VA has demonstrated in its Checklist Declaration, ¶¶ 225-247, that it provides local switching unbundled from transport, local loop transmission, or other network elements using the same processes and procedures in

[131] OpenBand at ¶ 19.

[132] 47 C.F.R. §51.319(c)(2); *Local Competition Order* ¶ 425, 426.

Virginia as are used in Pennsylvania. In Pennsylvania, as in New York, Massachusetts, and Connecticut, the FCC found that Verizon was in compliance with this checklist item.[133]

163. While no party has challenged Verizon VA's compliance with this checklist item from an operational standpoint, WorldCom has raised the same legal argument that it has raised in the FCC arbitration.[134] It claims that Verizon VA's interpretation of its switching obligations is inconsistent with the FCC's "switching exception", and that, as a result, Verizon VA will not provide unbundled switching whenever there is a customer with a single line in Density Zone 1 who has three or more other locations somewhere within the same LATA.[135] WorldCom is wrong, and Verizon VA has demonstrated in that proceeding that it is providing local switching as a UNE as prescribed by the Commission.[136] Clearly, this issue is pending before the FCC. As previously noted, the FCC has held that "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions… ."[137] The FCC has also held that:

> [N]ew interpretative disputes concerning the precise content of an incumbent LEC's obligations to its

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[133] *Pennsylvania Order* ¶ 120; *New York Order* ¶¶ 346-348; *Massachusetts Order* ¶ 222; and *Connecticut Order* ¶ 68.

[134] *I/M/O* Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket No. 00-218.

[135] *See* MCIW Freifeld Dec. at 10.

[136] *See* Verizon VA's Port Hearing Reply Brief at UNE - 22, filed December 11, 2001, CC Docket Nos. 00-218, 00-249, 00-251.

[137] *Massachusetts* Order ¶ 203.

> competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.[138]

164. Accordingly, WorldCom's claims should be rejected, and the Commission should conclude that Verizon VA has satisfied its Checklist Six obligation.

## IX. CHECKLIST ITEM 7: 911/E911, DIRECTORY ASSISTANCE, OPERATOR CALL COMPLETION SERVICES

165. Verizon VA demonstrated in its Checklist Declaration, ¶¶ 248-282, that it has satisfied its obligations under Checklist Item 7. Nevertheless, Cavalier and Cox express concerns with Verizon VA's provisioning of 911/E911 services. In addition, Allegiance, Cox and WorldCom claim that there are problems with Verizon VA's Directory Assistance database as it relates to CLEC customers. Allegiance's claims will be addressed in the OSS Reply Declaration. Cox's claim has been resolved, as Cox acknowledges in its testimony.[139] As shown below, WorldCom's claim does not refute the evidence provided by Verizon VA that it has fulfilled its obligations under Checklist Item 7.

### A. 911/E911

166. Verizon VA showed in its Checklist Declaration, ¶¶248-263, that it has met its 911/E911 obligations under Checklist Item 7. Two parties, Cavalier and Cox, raise issues related to Verizon VA's performance under this Checklist Item. Cavalier alleges that Verizon VA is not providing nondiscriminatory access to 911/E911 services. However, its only example is a Cavalier collection issue involving Chesterfield

[138] *Pennsylvania Order* ¶ 92.

[139] Direct Testimony of Mrs. Tracy Carhart ("Carhart Testimony") at p. 10.

County.[140] Cavalier does not provide any examples of 911/E911 services or facilities that Verizon VA has failed to provide to Cavalier. Cox claims that Verizon VA occasionally omits the process of unlocking 911 records when a number is ported to Cox from Verizon VA and that Verizon VA is "either adding information that was not sent by Cox, to the Cox customer 911 record, or omitting information that was sent by Cox to the Cox's customer 911 record."[141] These allegations are baseless.

167. First, Cavalier does not dispute that Verizon VA provides Cavalier with access to the same 911/E911 facilities and system used by Verizon VA to provide 911/E911 services, as required by Checklist Item 7. Indeed, as evidenced by Cavalier's own testimony, Cavalier is using this access to provide 911/E911 services to Chesterfield County. That should be the end of the inquiry for purposes of whether Verizon VA meets this Checklist Item.

168. Rather than disputing the access Verizon VA provides to its 911/E911 services, Cavalier instead points to a billing dispute that it is having with Chesterfield County as evidence that Verizon VA's access is discriminatory. How Cavalier chooses to provide 911/E911 service and be compensated for these services, however, is a matter between Cavalier and Chesterfield County. Furthermore, as a factual matter, Cavalier's claim is without merit.

169. Cavalier and Verizon VA separately bill Chesterfield County for the 911/E911 services each company provides to Chesterfield County. As stated in the Checklist Declaration, ¶250, Verizon VA bills localities for the trunking, routing,

[140] Cavalier Panel Testimony at pp. 60-61.

[141] Direct Testimony of Ms. Mary Clarke ("Clarke Testimony") at pp. 8-9.

database, and other services it provides to localities. This billing is pursuant to the Miscellaneous Service Arrangements Tariff, S.C.C. – Va. – No. 211, Section 14.

170. Specifically, for calls originating from both Verizon VA and Cavalier customers, Verizon VA provides Chesterfield with the following 911-related services: (1) selective routing in the tandem switch to route the call to the appropriate Public Safety Answering Point (PSAP) as determined through a query to the Automatic Location Identification/Selective Routing (ALI/SR) database; (2) redundant trunks from the tandem switches to the ALI/SR database; (3) the ALI/SR database; (4) redundant trunks from the redundant tandem switches to Chesterfield's PSAP; and (5) redundant trunks from the PSAP to the ALI database. For calls from Verizon VA customers, Verizon VA also provides Chesterfield with Automatic Number Identification (ANI), database entry and maintenance, as well as redundant trunks from the originating switch to the redundant tandem switches.[142] As noted above, Verizon VA bills Chesterfield for these services in accordance with its tariffs.

171. Verizon VA is not involved in Cavalier's billing to, and collection from, localities. Cavalier alleges that Verizon VA has "scared" Chesterfield County into not paying Cavalier for any 911/E911 services that Cavalier provides to Chesterfield. When asked by Verizon VA to produce evidence to support Cavalier's allegations of "scare tactics," Cavalier was unable to produce anything.[143] Indeed, when Chesterfield asked Verizon VA about the Cavalier 911/E911charges in the past, Verizon VA has simply

[142] These two functions represent only a small fraction of Verizon VA's cost of providing the 911/E911 services to Chesterfield County. Contrary to Cavalier's claim, Verizon VA has never stated that its costs were not reduced when Cavalier serves a customer. See Cavalier Panel Testimony at p. 60.

[143] Cavalier Response to Verizon VA Interrogatory I-29.

referred Chesterfield to Cavalier. This billing dispute is entirely a matter between Cavalier and Chesterfield and not a matter for this proceeding.[144]

172. Second, Cox too does not dispute that Verizon VA provides Cox with access to the same 911/E911 facilities and system used by Verizon VA to provide 911/E911 services as required by Checklist Item 7. Rather, Cox refers in its testimony to "Verizon's occasional (with no pattern) omission of the process of unlocking 911 records when a number is ported to Cox from Verizon."[145] Verizon VA is not aware of any systemic problem in which it fails to unlock records that are ported to Cox, and Cox has failed to identify specific instances in which Verizon VA has failed to unlock records without good cause.

173. Good cause for not unlocking Cox's or another carrier's records being ported to Cox or the other carrier could include instances where the CLEC has submitted an incorrect LSR. Errors could include incorrect names, addresses, or other information. 911 records may also remain locked in cases where the due date for the order has been moved forward and the CLEC attempts to migrate the record using the original due date.

174. The second issue identified by Ms. Clarke in her testimony concerns the alleged unauthorized modification of Cox's customer's records by Verizon VA. Cox claims that Verizon VA has been "…either adding information that was not sent by Cox, to the Cox customer record, or omitting information that was sent by Cox to the Cox customer record."[146] Until March 14, 2001, Verizon VA maintained the 911 records in

[144] The root cause of Chesterfield County's dispute over the 911/E911 billing is Cavalier charging a tariff rate that mirrors an ILEC tariff rate for providing end-to-end 911/E911 service when Cavalier only provides minor piece parts of the 911/E911 service to Chesterfield County.

its ALI database on behalf of Cox. In order to distinguish between Verizon VA's own retail records and Cox's customer 911 records, it was necessary for Verizon VA to insert "Cox" into the Location – Driving Instruction Field.

175. On March 14, 2001, Verizon VA introduced the PS/ALI Electronic Interface in Virginia. The PS/ALI Electronic Interface provides a secure electronic interface that enables Cox and other CLECs who provide their own switching to input and maintain their own customers' 911 records. Industry Letters were mailed to Cox and also posted to Verizon's Wholesale website on May 8, 2000 and again on December 26, 2000 announcing the introduction of the secure PS/ALI Electronic Interface for use in Virginia. The PS/ALI system prevents Verizon VA associates from viewing or modifying records belonging to Cox or other carriers that provide their own dialtone and enter their 911 data directly into Verizon VA's ALI database.[147] Verizon VA has been provided with no examples of where Verizon VA has omitted valid information on Cox records before or after the conversion to PS/ALI.

176. As noted above, Verizon VA did insert "Cox" into the records it maintained for Cox prior to the PS/ALI conversion in order to distinguish records for Cox's customers from those of Verizon VA's retail customers. Cox states that "After initially refusing to correct records in the Verizon database (which had been made

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[145] Clarke Testimony, p. 8, line 36 - p. 9, line 2.

[146] Clarke Testimony, p. 8, lines 34-36.

[147] There are instances where the locality (as the owner of the Master Street Address Guide "MSAG") directs Verizon VA (as the administrator of the MSAG on behalf of the locality), to modify information in their MSAG. In these cases, Verizon VA processes the changes in the MSAG as requested, and updates all of the ALI records (both Verizon VA and CLEC) in the 911/E911 database accordingly.

incorrect by Verizon's actions), Verizon did finally consent to making the changes."[148] This is a true statement. As previously discussed, at the date of conversion to the secure PS/ALI electronic database, Verizon VA associates were precluded by the PS/ALI system from viewing or modifying Cox's or other carriers' 911 customer records. Verizon VA did initially (and properly) refuse to touch Cox's 911 customer records for this reason. With Director level approval, Verizon VA did consent to make the requested changes with written authorization from Cox. Cox fails to mention that Verizon VA facilitated this process by providing a listing of all telephone numbers assigned to Cox that have Cox in the "Location – Driving Instructions" field for Cox's review.

177. Cox also suggests that the Commission order Verizon VA to unlock 911 records within 24 hours of the port, and to not make any changes to Cox's 911 record without authorization from Cox.[149] An order from the Commission is not needed on either count. Verizon VA presently unlocks 911 records within 24 hours of a completed port, and Cox has not provided evidence to the contrary that would be indicative of any type of systemic problem. Second, the PS/ALI system prevents Verizon VA's associates from viewing or making changes to Cox's records. Indeed, the example cited by Cox itself in its testimony actually proves that Verizon VA will not modify CLEC records without proper authorization.

### B. Directory Assistance/Operator Call Completion Services

178. Verizon VA performs DA database updates for CLEC customers with a high degree of accuracy. As reported in the Checklist Declaration, during the months of

[148] Clarke Testimony, p. 9, lines 22-25.

[149] Clarke Testimony, p. 10, lines 7-11.

November 2001 through January 2002, Verizon VA accurately completed 99.5%, 98.5% and 99.5%, respectively, of CLEC customer listings.[150] WorldCom criticizes December performance, pointing out that Verizon VA accurately performed 100% of DA database updates for retail customers.[151] There is no merit to WorldCom's claim, however, that Verizon VA therefore fails to meet this checklist item. As explained in the Reply Measurements Declaration, checklist compliance must be determined based on the totality of the evidence. Indeed, WorldCom makes no showing that a performance difference of 1.5% is of any competitive significance whatsoever. Moreover, special studies for the subsequent data months of February, March and April, show that Verizon VA is continuing to perform at or very close to parity in providing DA database listings for CLEC customers.

| **Virginia DA Database Accuracy**<br><br>**2002** | | | |
|---|---|---|---|
| | | | |
| | **Feb** | **Mar** | **Apr** |
| **CLEC** | 99.00 | 96.50 | 95.50 |
| **VZ** | 100.00 | 95.00 | 96.00 |

## X. CHECKLIST ITEM 8: WHITE PAGE DIRECTORY LISTINGS

179. As Verizon VA demonstrated in its Checklist Declaration (¶¶284-301), the directory listings of CLEC customers are provided on a non-discriminatory basis. Four CLECs have challenged Verizon VA's compliance with this checklist item. However, these contentions are either based on out-of-date claims that do not reflect Verizon VA's

[150] *See* Checklist Declaration ¶274

[151] Declaration of Margaret Pearce at ¶24.

current White Pages process or they reveal a misunderstanding of the White Pages process and/or the requirements of the 1996 Act.

180. For the most part, CLECs do not complain about the accuracy of the published White Pages listing information. Instead, they complain about the Verizon systems and procedures used to create and manage the listing information. Accordingly, Verizon VA has responded in detail to these contentions in the OSS rebuttal testimony. The purpose of this response is to emphasize a number of essential points that should not be obscured by CLEC complaints.

181. First, Verizon VA recognized last year that it should take steps to improve its White Pages listing process, and so, in the fall of 2001, Verizon implemented a number of changes that addressed the issues raised by CLECs in this proceeding. Many of these changes were the result of a collaborative process with CLECs on this topic that was initiated by the Pennsylvania Public Utility Commission. These changes, which have improved the ease and accuracy of the White Pages process, are discussed in greater detail in the OSS rebuttal testimony.

182. In light of these changes, specific contentions raised by CLECs in their testimony that predate these improvements have little probative value about the *current* directory listings operation and should be given little weight.

183. Second, while still not perfect, the published directory listing information in Virginia is highly accurate. Only one CLEC, Cavalier, has contended that there are errors in the directory listings, as published, and the errors Cavalier has identified

constitute a small percentage of the relevant Cavalier listings. Moreover, Cavalier has conceded that they are responsible for at least some of these errors.[152]

184. That Verizon VA's directory listings contain accurate information is convincingly demonstrated by the available objective data, and thus, while CLECs have raised particular incidents, these incidents – even if accurate and even if current – are not at all typical, as the results of Verizon VA's OR 6-04 "listing accuracy metric" proves. This measurement, which takes a random sample of "listing affecting" LSRs and compares the directory information on these LSRs with the directory information contained in the corresponding service order, confirms that the "upstream" process for White Pages contain few, if any, errors. In the most recent month for which Verizon VA has tracked this data, fully 100 percent of the sampled service order directory information was accurate.

185. Faced with this data, CLECs have not surprisingly attempted to focus the Commission's attention on the "downstream" process, that is, the process between the generation of the confirmations and the production of the Listing Verification Report ("LVR"), and have suggested that errors are somehow being introduced during this portion of the White Pages process. But the objective data do not support this contention either. As set forth in the OSS rebuttal testimony, Verizon VA has performed a special

[152] Cavalier makes much of the fact that by its count, Verizon VA was responsible for 34 of the 51 errors, and by Verizon VA's count, it was responsible for 26 errors. This quibbling over who is at fault for 8 mistakes is beside the point, although Verizon VA did offer to sit down with Cavalier and jointly arrive at a count upon which both parties could agree. In addition, Verizon VA's undertook an analysis of the errors that Cavalier identified for which Verizon was responsible, and determined that over 60% were caused by human error. And contrary to Cavalier's assertion that Verizon VA has not offered a "fix" for this problem, Verizon VA introduced in October of 2001 a quality review audit that has greatly reduced the chances that such human errors will result in a faulty directory listing by the end of the process. The

study that has compared the accuracy of the directory information contained in the service orders that are used to calculate OR 6-04 with this same directory information as it is generated by the Verizon systems that produce the LVR at the very end of Verizon VA's White Pages process. That accuracy rate is also very good.

186. Third, there is no denying that the processing of directory listings information is complex and challenging, and its success depends on the vigilant efforts of both Verizon VA and CLECs. In fact, as a general rule, interconnection agreements require both Verizon VA and CLECs to use "commercially reasonable" efforts to ensure the accuracy of the White Pages listings.

187. There are a variety of alternatives as to how a customer's listing will appear in a directory. In addition to the typical "simple" listing – name, address, and telephone number – there are also "complex" listings that provide more information, such as a business listing with an "indented" list of departments (captions) or a residential listing with additional "indented" listings for children. A "caption package" can be very complex, with up to several levels of indention and a large number of listing elements. There are also a variety of listing types. For example, customers may request additional listings for the same telephone number, request that one telephone number be listed under more than one name, or that one telephone number and name combination be listed in more than one White Pages directory.

188. The White Pages process is also affected by the type of service the CLEC is using in order to provide service to its end user customer. If the CLEC is providing resale service or using the UNE Platform, Verizon is aware of the telephone number

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effectiveness of this process is reflected in the OR 6-04 measurement, which was 100 percent for the most recent month for which the data were available.

associated with the account, since it is Verizon that is providing the dial tone; in such cases, the listing process can be initiated by the same order that requests that actual service. For resale and UNE Platform service, when the CLEC initiates an order to disconnect a particular line, Verizon will automatically remove the listing associated with that line, since Verizon knows the telephone number associated with the particular line. For these types of service Verizon will also maintain the listing information on the same billing account that is linked to the associated (resale or UNE Platform) service. But if a CLEC leases loops from Verizon or provides service using its own switching facilities, Verizon does not know the particular telephone number that will be associated with the account. In these cases, therefore, a CLEC must make a specific request for a White Pages listing and then subsequently advise Verizon when the listing is to be changed or deleted. The directory listings information for CLEC service that is provided through Verizon's loops or without any of Verizon's facilities must also be maintained on a special bill number account used only for directory listings. As part of a migration of a customer from Verizon to a CLEC, if the CLEC so chooses, the CLEC can provide a simple instruction to Verizon that allows the CLEC to migrate all of the customer's listings "as is" without explicitly documenting all listings. Such a listing is also assigned an ALI Code to track the listing information. For all non-primary listings, the ALI Code that Verizon assigns to the listing is returned to the CLEC on the local service confirmation notice. The ALI Code, in conjunction with the Billing Telephone Number, ensures that each specific listing can be referenced with absolute clarity. It is imperative that the CLEC maintain this ALI Code information in its own records or systems, since

this information is needed when the CLEC subsequently wishes to change or delete the directory listing information for the associated account.[153]

189. While some CLECs have suggested that they should have little to do with the process other than submit an order, as the above description highlights, White Pages accuracy and efficiency depend on the active participation of CLECs. The fact that some of the published errors identified by Cavalier were Cavalier's responsibility vividly proves this point, as do some of the problems identified in the OSS Rebuttal Testimony, such as Cavalier's failure to notify Verizon to delete the listing information for Cavalier end users who had migrated to other CLECs, which resulted in duplicative listings.

190. Yet while CLECs have a role to play in the White Pages process, Verizon has not left them without the resources to perform the functions they need to accomplish. In order to track directory listing information, CLECs are provided with a local service order confirmation that includes directory listing information. A CLEC receives a second confirmation of this information at the time that Verizon sends a billing confirmation. In addition, prior to directory publication, Verizon automatically provides CLECs with the LVR so that the CLEC can review the listing information that will be published in the directory, and make any necessary changes to the listing information shortly before publication.

191. While some CLECs have complained that the LVR review is time-consuming, it does result in improved White Pages accuracy. It is a review process that is an inherent part of any professional printing job, and thus, while tedious, is a

[153] Given the importance of retaining ALI Codes, it is unfortunate that some carriers appear to have decided not to track this information through their own systems but have instead attempted to use the Web GUI as a storage repository for this information.

commercially reasonable request. Moreover, the LVR is not the only method available to CLECs to verify listings information; CLECs can view all of the listings associated with an end user's caption package by using the Web GUI.

192. Nor is it the case, as some CLECs have suggested, that during the White Pages process they are periodically "in the dark" about their end users' listing information. CLECs have available to them a mechanized transaction, a Directory Listing Request, that allows the CLEC to retrieve and review existing listing data for a specific end user customer at any time. Since the service provider is not associated with this view of the listing information, any CLEC can view all of the listings associated with a caption, regardless of the service provider of the individual listing or line.

193. Recognizing the complexity of the White Pages process and the critical role that CLECs play in this process, Verizon provides CLECs with extensive documentation regarding directory listings and the procedures CLECs should follow to ensure that the listing information for their end user customers accurately appears in the White Pages. Verizon has documents on such topics as the relevant business rules, test deck ordering scenarios that include directory listings, the production/closing schedules for directories, information regarding regional NXX, and directory titles and designations. In addition, the CLEC and Resale Handbooks each contain a section on the directory process.

194. Likewise, Verizon has conducted regular CLEC education workshops and training sessions regarding the White Pages process. In addition to an overview of the directory listings process, topics have included training on "foreign" listings, additional listings, and listings for 800 service. Since January of 2001, Verizon has held eleven

such workshops. The training workshop on simple listings has been made available on an interactive display and is available for review at the Verizon wholesale website. And just last week, Verizon held a workshop on the provisioning and view of "caption" listings.

195. Along with these training and educational opportunities, Verizon has trained representatives at the Wholesale Customer Care Center and the Customer Inquiry Response Team available to aid CLECs in solving any White Pages problems a CLEC may be experiencing.

196. As mentioned above, Verizon recognized that it should improve the White Pages process, and so in October of 2001, it implemented a quality audit to verify that the directory listing information contained in a service order matches the information contained in the corresponding LSR. This audit, which was initially done manually and now is done electronically, not only enables Verizon to catch any errors early in the process, but also demonstrates that the accuracy of service orders is very, very high – as the results for the OR 6-04 "listing metric" have proven.

197. Cavalier also raises issues related to Verizon's Yellow Pages. But such a review is far outside the scope of section 271. In fact, Yellow Pages are not a regulated activity, which is why the checklist item is expressly limited to White Pages.

198. Cavalier is apparently concerned that it and other CLECs are left out of the Yellow Pages process and their customers are not treated as well. But end user customers are treated identically by the Yellow Pages entity, Verizon Information Services ("VIS"), regardless of whether they utilize Verizon VA's telephone service or that of a CLEC.

199. Cavalier's unsupported assertions about the activities of Yellow Pages employees, suggesting that these employees somehow favor Verizon VA retail customers, are also unfounded. All Yellow Pages issues are handled in the same manner by VIS Customer Relations, regardless of local service provider, and any "favoritism" would be flatly inconsistent with the express policy of VIS, which states that all employees "will recognize and respect our customers' selection of a local service provider."

200. Finally, Cox complains that one of its customers was told that the customer had to pay for Yellow Pages advertising in a lump sum, and that Verizon VA no longer arranges for monthly billing for CLEC customers. This is not VIS policy for either Verizon VA retail or CLEC customers in good standing. However, if the end user customer is in bankruptcy or has failed to make payment arrangements for delinquent amounts, it might be asked to pay for its advertising up front. Directory Advertising billing arrangements are negotiated between VIS and the end user regardless of the end user's local service provider, and VIS has processes in place that allow any advertiser to request that their charges be arranged on a monthly basis. Regardless of which carrier provides the customer's local telephone service, Verizon will create the proper billing arrangements for this installment billing.

## XI. CHECKLIST ITEM 10: ACCESS TO DATABASES AND SIGNALING

201. Section 271(c)(2)(B)(x) of the Act requires Verizon VA to provide nondiscriminatory access to database and associated signaling necessary for call routing and completion. In prior Verizon state 271 proceedings, there has never been a serious challenge to Verizon's compliance with this checklist item. As explained in some detail

in Verizon VA's original filing, Verizon VA provides competing carriers with nondiscriminatory access to its (a) signaling networks, including signaling links and signaling transfer points, (b) call-related databases, and (c) service management systems. Verizon VA also allows requesting carriers to design, create, test, and deploy advanced Intelligent Network ("AIN") based services by accessing the AIN Service Creation ("ASC") Service. Verizon VA offers access to its AIN-based services per the Commission's Final Order in Case No. PUC970005, dated April 15, 1999.[154]

202. Only one carrier (WorldCom) has challenged Verizon VA's compliance with this checklist requirement, and this challenge is nothing more than a repeat of a legal argument that WorldCom has raised in a pending arbitration before the FCC.[155] While WorldCom blithely assumes that it will prevail on this issue, Verizon is equally confident of its position. The FCC has repeatedly affirmed that Verizon complies with its obligations for this checklist item, and in fact has done so while the arbitration that WorldCom references is pending – a fact that refutes WorldCom's fundamental claim that this arbitration allegation means that Verizon VA has not complied with the requirements of this checklist item. Moreover, WorldCom's theory regarding the Line Information Database offered up here by an attorney, not a fact witness, has no relevance to a section 271 review. As the FCC has stated numerous times:

> As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not

[154] *Id.*, ¶¶311.

[155] *See* MCIW Freifeld Testimony, page 10.

appropriately dealt with in the context of a section 271 proceeding.[156]

## XII. CHECKLIST ITEM 11: LOCAL NUMBER PORTABILITY

203. Verizon VA demonstrated in its Checklist Declaration, ¶¶349-352, that it has satisfied its obligations under Checklist Item 11. Cox's claims referencing local number portability are, in fact, OSS issues and are accordingly addressed in the OSS Reply Declaration.

## XIII. CHECKLIST ITEM 13: RECIPROCAL COMPENSATION

204. Three CLECs raise reciprocal compensation claims, all of which are irrelevant to this proceeding and inappropriate to consider here.[157] CLEC claims concerning the payment of reciprocal compensation on Internet-bound traffic are irrelevant to this proceeding. In addition, authorizing Verizon to provide competitive long distance service in Virginia should not be delayed until reciprocal compensation issues are resolved in pending arbitrations.

205. The FCC has determined that traffic bound for the Internet is not subject to reciprocal compensation provisions of the Act.[158] The FCC has accordingly

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[156] *Pennsylvania Order* ¶ 92.

[157] *See* Declaration of Robert J. Kirchberger on behalf of AT&T Corp. ("AT&T Kirchberger Declaration"), p. 8; Direct Testimony of Ms. Mary Clarke on behalf of Cox Virginia Telcom, Inc. ("Cox Clarke Declaration"); Declaration of Allen Freifeld on behalf of WorldCom, Inc. ("WorldCom Freifeld Declaration"). Although Cavalier asserted what it characterized as a "reciprocal compensation" claim, its claim is an interconnection issue that is addressed in this Reply in the discussion of Checklist Item 2.

[158] *See* CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131, released April 7, 2001, paras. 45-46 ("Order on Remand"). Relevant provisions of the Order on Remand became effective on June 14, 2001. (Order on Remand, para. 112.) The Order on Remand was appealed to the United States Court of Appeals for the District of Columbia Circuit. On May 3, 2002, the Court decided that the provision of the Act relied on by the FCC did not authorize the FCC to exclude Internet-bound traffic from reciprocal compensation

consistently held that whether a BOC pays reciprocal compensation for Internet-bound traffic is "irrelevant to checklist item 13."[159] The FCC reaffirmed this holding in an order released as recently as May 15, 2002.[160]

206. AT&T complains that Verizon VA has failed to state how many of the 14 billion minutes of traffic exchanged with CLECs "were calls from Verizon customers to Internet Service Providers for which Verizon refuses to pay reciprocal compensation."[161] That information is irrelevant in light of the FCC holdings cited above, and AT&T's complaint should not be considered by the Commission.

207. WorldCom contends that the Commission "should not opine, positively or negatively" on Verizon VA's compliance with Checklist Item 13 until the FCC rules on a reciprocal compensation issue that it is considering in a pending interconnection agreement arbitration.[162] However, the FCC's own precedents show that the pending arbitration is no reason to delay the 271 process.

208. The purpose of this proceeding is to prepare the Commission to provide a consultative report to the FCC when Verizon applies for authority to provide competitive

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arrangements required by the Act. (*WorldCom, Inc. v. FCC,* No. 01-1218 (DC Cir. May 3, 2002).) However, the Court expressly declined to overrule or vacate the Order on Remand, stating that "there may well be other legal bases" for the action taken by the FCC in the Order on Remand. (*Id*., slip op. at 3.) The relevant provisions of the Order on Remand thus remain in effect pending further action by the FCC.

[159] *See Pennsylvania Order*, ¶ 119; *New York Order*, ¶ 377.

[160] *See* In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, Memorandum Opinion and Order, Rel. May 15, 2002. In this order, the FCC noted that the Order on Remand has not been vacated, and that the FCC's reciprocal compensation rules therefore remain in effect.

[161] AT&T Kirchberger Declaration, para. 9.

[162] *See* WorldCom Freifeld Declaration, paras. 3, 28-30, 36.

long distance service in Virginia. Neither the FCC, nor the Commission, is legally required -- nor would it be possible as a practical matter -- to resolve all pending disputes before long distance authority can be granted. Dispute resolution, and the negotiation and arbitration of interconnection agreements, is an on-going process, which continues in all Verizon states, including those where long distance authority has already been granted by the FCC.

209. The FCC has observed that "the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligation to its competitors."[163] The FCC has accordingly rejected CLEC attempts to use issues in arbitration to delay the 271 process. A carrier opposed the Verizon PA 271 application at the FCC, claiming that Verizon PA failed to meet the reciprocal compensation requirement of the competitive checklist. The FCC observed that the issue raised by the carrier was the subject of a pending arbitration. The FCC declined to disrupt the 271 process, or to "preempt the orderly disposition of intercarrier disputes" through the arbitration process.[164] The FCC accordingly did not consider the issue, nor did it delay decision on the Verizon PA application pending completion of the arbitration proceeding. This Commission should likewise not allow WorldCom to delay this proceeding pending the outcome of the arbitration.

210. Finally, Cox asserts that Verizon VA fails to meet Checklist Item 13 because it allegedly fails to pay reciprocal compensation on Internet-bound traffic as

[163] *See, e.g.*, Pennsylvania Order, para. 101.

[164] *See* Pennsylvania Order, para. 118.

required by a Commission order.[165] As shown above, this issue is irrelevant to checklist compliance and Cox's claim therefore has no place in this 271 proceeding.

211. Moreover, even if Cox's claim were to be considered in this proceeding, it should be rejected on its merits. The terms of the interconnection agreement between Cox and Verizon VA clearly authorize Verizon VA to implement the FCC's rate regime for ISP-bound traffic in the Order on Remand.

212. The Order on Remand expressly authorizes carriers such as Verizon VA to implement the FCC's new rate structure through change-of-law provisions in existing interconnection agreements.[166] Verizon VA's interconnection agreement with Cox contains a change-of-law provision that requires the parties to implement the FCC's new rates for Internet-bound traffic. Section 28.3 of that agreement obligates Verizon VA and Cox to make "only the minimum changes" necessary to conform the Agreement to the FCC's Order on Remand, and here *no changes to the agreement are necessary*. Section 28.3 provides:

> The Parties recognize that the FCC has issued *and may continue to issue* the FCC Regulations implementing Sections 251, 252, and 271 of the Act that affect certain terms contained in this Agreement. In the event that any one or more of the provisions contained herein is inconsistent with any applicable rule contained in such FCC Regulations, or in [Verizon's] reasonable determination, affects [Verizon's] application pursuant to Section 271(d) of the Act, the ***Parties agree to make only the minimum revisions necessary to eliminate the inconsistency*** or amend the application-affecting provision(s). Such minimum revisions shall not be considered material, ***and shall not require further Commission approval***

[165] *See* Cox Clarke Declaration, pages 11-12.

[166] *See* Order on Remand, para. 82 (The Order "does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions.").

> (beyond any Commission approval required under Section 252(e) of the Act). (Emphasis added.)[167]

The agreement with Cox is "inconsistent" with the Order on Remand because, as interpreted by the Virginia Commission, it requires the parties to pay reciprocal compensation rates, rather than the lower FCC rates, for Internet-bound traffic. There is nothing for the parties to negotiate and nothing for the Commission to approve. No separate provision is made in the agreement for compensation for Internet-bound traffic. The key definitions of Local Traffic and reciprocal compensation do not need to be modified in light of the Order on Remand, and no changes are required to the pricing schedule, which sets out the reciprocal compensation rates for Local Traffic.

213. In any event, the parties are addressing this dispute pursuant to the dispute resolution provisions of their interconnection agreement, so this issue need not -- and should not -- be addressed in this proceeding. On May 14, 2001, Verizon VA sent a letter to Cox and all other carriers, informing them of the Order on Remand and notifying them that Verizon was invoking the change-of-law provisions in the parties' interconnection

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[167] The "FCC Regulations" in section 28.3 include the *Order on Remand*. The Agreement defines "FCC Regulations" as

> the amendments to Title 47 of the Code of Federal Regulations adopted in, and the additional requirements of, the First Report and Order In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, adopted on August 1, 1996 and released on August 8, 1996, and the Second Report and Order and Memorandum Opinion and Order, CC Docket Nos. 96-98, 95-185, and 92-237, adopted and released on August 8, 1996, as each may be amended, stayed, voided, repealed, *or supplemented* from time to time.

Section 1.25 (emphasis added). The *Order on Remand* was part of CC Docket No. 96-98 and "supplemented" the orders released in 1996 by defining the scope of the reciprocal compensation obligations in section 251(b)(5) of the Act.

agreements to implement the Order. On June 14, 2001, the effective date of the Order on Remand, as is appropriate under the agreement, Verizon VA began paying Cox the FCC rate, rather the reciprocal compensation rate, for Internet-bound traffic. On October 17, 2001, Cox disputed Verizon's refusal to pay reciprocal compensation for Internet-bound traffic and invoked the dispute resolution provisions of the agreement. The parties negotiated to attempt to resolve the dispute. Although Verizon VA continued to maintain that no amendment was necessary to implement the Order on Remand, in response to Cox's claim that an amendment was necessary, Verizon VA sent a letter to Cox on December 13, 2001 attaching a proposed amendment. Cox has not responded to Verizon VA's letter. Pursuant to the dispute resolution provisions of the agreement, Cox remains free to continue negotiations with Verizon VA, or, if it so chooses, to file a complaint. But as noted above, this proceeding is not the appropriate forum for such disputes.

214. As described in the Checklist Declaration, Verizon VA meets requirements of the Act to provide reciprocal compensation. For the reasons stated above, there is no merit to CLEC claims that Verizon VA fails to meet this checklist item.

## XIV. CHECKLIST ITEM 14: RESALE

215. As it has demonstrated in its initial filing, Verizon VA makes telecommunications services available for resale in accordance with the requirements of Section 251(c)(4) and 252(d)(3). Verizon VA offers to CLECs for resale, at the wholesale rates established by this Commission, all of the telecommunications services it provides at retail to subscribers who are not telecommunications carriers. Other carriers can and do purchase these services to compete directly with Verizon VA. [168]

[168] *Id.* ¶ 364.

216. Only one carrier (WorldCom) has challenged Verizon VA's compliance with this checklist requirement. It has challenged Verizon VA's contention that it is satisfying its obligations to resell DSL, and it has alleged that Verizon VA is providing poor resale provisioning performance. These claims are meritless.

217. The challenge regarding the resale of DSL is nothing more than a repeat of a legal argument that WorldCom has raised in a pending arbitration before the FCC regarding the resale of DSL.[169] While WorldCom blithely assumes that it will prevail on this issue, Verizon VA is equally confident of its position. And for good reason – the FCC has previously concluded that Verizon satisfies its resale obligations regarding DSL.[170] In its pending arbitration case, WorldCom seeks to impose an additional requirement - that Verizon VA be required to provide resold DSL over unbundled loop facilities.[171] "But for Verizon VA to resell DSL on such a line (unbundled loop facility), it would have to obtain exclusive control over the high frequency portion of the loop, leaving the CLEC holding only the low frequency portion of the loop, which the Commission has made clear is not a UNE."[172] Verizon VA provides for resale of DSL in the same manner as its sister companies do in all the states for which the FCC has already granted 271 authority. Moreover, for purposes of checklist compliance, the novel theories of CLECs are not relevant for section 271 purposes. As the FCC has stated numerous times:

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[169] *See* MCIW Freifeld Testimony, page 12.

[170] *Rhode Island Order*, ¶¶ 95-96.

[171] *See* Verizon VA's Port Hearing Reply Brief at Resale - 1, filed December 11, 2001, CC Docket Nos. 00-218, 00-249, 00-251.

> As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.[173]

218. WorldCom also claims that Verizon VA has demonstrated poor performance on a number of resale provisioning metrics.[174] As Verizon VA noted above in Checklist Section 4 (the "Loop Section"), is a very simple matter to scan the C2C reports and pick out every missed metric. It is quite another matter to assess the operational impact of these metric scores. In this case, the metrics that WorldCom has highlighted do not represent discriminatory treatment. Rather, WorldCom has highlighted a number of metrics that are flawed. For example, as we discussed in the Loop Section, *supra*, the interval metrics are flawed due to substantial differences in the product mix – and the associated provisioning intervals – between the retail and wholesale products that are compared in these metrics. In the case of four metrics that WorldCom highlights (PR 1-01, PR 2-01, PR 3-01 and PR 3-02) the retail products to which wholesale performance is compared include simple feature changes, which because of their simplicity, have normal provisioning intervals of less than a day. By contrast, the majority of Resale products that are being compared to these retail products are for full service migrations that have 1-2 day intervals. Accordingly, these metrics do not produce an apples-to-apples comparison.

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[172] *Id*., Resale –2.

[173] *Pennsylvania Order* ¶ 92.

[174] See WorldCom Pearce ¶ 22,

219. As for the PR 6-01 and PR 6-02 metrics, Verizon VA is continuously reviewing its metric performance, and it identified an operation problem related to the provisioning of certain resale products. Modifications were made to the procedures, and the results for these metrics for the February to April 2002 time-period indicate that Verizon VA is providing parity service.

220. Accordingly, WorldCom's claims are meritless, and the Commission should conclude that Verizon VA has satisfied its Checklist Fourteen obligation.

## XV. CONCLUSION

221. This concludes our Declaration.