B. Cross-Connects Between Collocators

In this subsection, we consider the responsibilities of ILECs and collocators when a collocator cross-connects with another collocator. The FCC outlined the responsibilities of the ILEC and collocators when a collocator cross-connects with another collocator in FCC Rule 47 C.F.R. §51.323(h). The Rule states:

> (h) An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

The FCC also requires the ILEC to permit the new entrant to construct its own cross-connect facilities, using either copper or optical facilities, subject only to the same reasonable safety requirements that the incumbent places on its own similar facilities. FCC Order 99-48 at Paragraph 33. Therefore, the FCC also concluded that ILECs may require that all equipment that a new entrant places on its premises meet safety requirements to avoid endangering other equipment and the ILECs' networks.

The FCC further prohibits ILECs from requiring competitors to purchase any equipment or cross-connect capabilities solely from the incumbent at tariffed rates. FCC Order 99-48 at Paragraph 33. For this reason, an ILEC may not refuse to permit collocation of equipment on the grounds that the Bellcore Network Equipment and Building Specifications (NEBS) are not met. Id.

MCI witness Martinez indicates that BellSouth's position has always been that if an ALEC wants to cross-connect with another ALEC, the ALEC must submit a subsequent application and any applicable fees. He states that the application fee is generally $1,600 or more in some instances. He believes that this is not a cost-effective process, because such fees will eliminate and disrupt the "self-construction" alternative for the ALEC community. He further states that the ILEC should not require any application or any fees, because the ALEC has the right to perform its own cabling.

MCI witness Martinez further states that the ALEC should be able to construct, run its cables, and interconnect its equipment with another ALEC. In return, the ALEC will inform BellSouth what type of work will be done. MCI witness Martinez also indicates that since the ILEC is not providing service and additional facilities, the ILEC should not require any application fee or charges related to cross-connection.

In response, BellSouth witness Hendrix states that for co-carrier cross-connects, there needs to be an application fee based on the expenses associated with cable racking or other problems that may occur when changes are made to the existing collocation space. BellSouth witness Hendrix also contends that in circumstances where the ALEC constructs, runs its cables, and interconnects its equipment with another ALEC, such work may cause potential problems.

ANALYSIS AND DETERMINATION

Upon consideration, we find that the FCC has provided sufficient guidance in its rules and orders, specifically FCC Order 99-48, FCC Order 96-325, FCC Order 96-333, FCC Order 97-208, and FCC Rule 47 C.F.R. §51.321(k)(1), regarding ILEC and ALEC responsibilities in collocator cross-connects. Therefore, ILECs and ALECs in Florida shall be required to follow those rules and orders regarding collocator cross-connects set forth by the FCC.

We note that FCC Rule 47 C.F.R. §51.323(h)(2) reads:

> An incumbent LEC shall permit collocating telecommunications carriers to place their own connecting transmission facilities within their the incumbent LEC's premises outside of the actual physical collocation space, subject only to reasonable safety limitations.

We find the phrase "subject only to reasonable safety limitations" somewhat vague and of little specific guidance on this matter. The record in this case does, however, demonstrate that in establishing cross-connects in non-contiguous collocation spaces, work must be done in common areas. Work done in these common areas appears to be of particular concern, because it could potentially affect not only the cross-connecting carriers, but the ILEC and all other ALECs collocated in the central office. Thus, this appears to be a legitimate safety concern. As such, and consistent with our other decisions set forth herein, all work in common areas must be performed by the ILEC. Because the ILEC will, ultimately, be required to perform some work regarding these types of requests, ALECs shall be required to submit an application to the ILEC for the ILEC to perform the work for ALEC cross-connects in non-contiguous collocation spaces.

We also find that the record supports that when ALECs cross-connect with each other in contiguous collocation spaces, no application fees are necessary, because the ALECs can establish their own cabling, but the ALECs must inform the ILEC of the type of work to be performed and the duration of such work. The ALECs must also use an ILEC-certified vendor to perform this work or submit an application to the ILEC to perform this task to ensure that the work is done safely.

VIII. <u>PROVISIONING INTERVAL FOR CAGELESS COLLOCATION</u>

Herein, we have also considered the provisioning interval for cageless physical collocation. The FCC has declined to adopt specific provisioning intervals, but it has encouraged "state commissions to ensure that incumbent LECs are given specific time intervals within which they must respond to collocation requests," because of the importance of ensuring timely collocation space. FCC Order 99-48 at Paragraph 54. This Commission has already established guidelines for provisioning of physical and virtual collocation in Order No. PSC-99-1744-PAA-TP, in which we stated:

> Upon firm order by an applicant carrier, the ILEC shall provision physical collocation within 90 days or virtual collocation within 60 days.

PSC-99-1744-PAA-TP at p.17.

We later clarified this Order in Order No. PSC-99-2393-FOF-TP to reflect that these time frames are calendar days. In this section, we address whether a different provisioning interval should apply to cageless physical collocation, as opposed to the 90 calendar days that applies to traditional caged physical collocation pursuant to our prior Orders.

BellSouth witness Hendrix states that BellSouth has found that its provisioning interval is not controlled by the time required to construct an arrangement enclosure. He maintains that:

> The controlling factors in the overall provisioning interval actually include the time required to complete the space conditioning, add to or upgrade the heating, ventilation, and air conditioning system for that area, add to or upgrade the power plant capacity and power distribution mechanism, and build out network infrastructure components such as the number of cross-connects requested. When the construction of an arrangement enclosure is not required or is not performed by BellSouth, all other collocation area and network infrastructure must still take place.

Witness Hendrix also argues that approximately 85 steps take place in the ordering process, as well as the other processes that BellSouth must follow to get collocation space to the customer in a timely manner. He emphasizes that with cageless collocation, only one step in that process is avoided, which is building the cage.

BellSouth witness Hendrix argues that virtual collocation and physical collocation, cageless or otherwise, are two different services, provisioned in two different ways. He states:

> With virtual collocation, the ALEC does not have direct access to its collocated equipment. BellSouth leases the ALEC's equipment and assumes the responsibility to maintain it. Since BellSouth technicians work on virtual collocation equipment, it is typically placed within BellSouth's lineup to provide more efficient access to the equipment. With physical collocation, however, the ALEC performs its own maintenance activities and therefore [sic] requires access to its equipment. Since the Advanced Services Order states that, "The incumbent LEC may take reasonable steps to protect its own equipment, such as enclosing the equipment in its own

> cage," (Paragraph 42) BellSouth typically places physical collocation arrangements outside its lineup, in unused space. This unused space often requires space preparation and infrastructure construction activities before equipment may be placed within it. Therefore, the provisioning activities for virtual and physical collocation are not the same, . . .

Similarly, GTEFL witness Ries states that the ALECs believe a much shorter interval for cageless collocation is appropriate because they believe it is similar to virtual collocation. He contends, however, that this comparison is unjustified because cageless is a physical collocation offering. The witness explains that except for cage construction, cageless collocation requires the ILEC to perform the same kinds of tasks to prepare the space. He adds that GTEFL has not found that the provisioning intervals for caged and cageless construction are a significant factor in determining provisioning intervals, and, therefore, reducing provisioning time frames by the amounts recommended by the ALECs would not be justified.

GTEFL witness Ries also states:

> The appropriate provisioning interval for cageless physical collocation is the same as for caged physical collocation. The only difference between caged and cageless physical collocation is construction of the cage itself. Extending power and providing overhead support and cable racking are typically the most time consuming aspects of the provisioning process. These tasks, which generally dictate the provisioning interval, are required whether cageless or caged physical collocation is being provisioned.

In response, Sprint witness Closz contends that a reduced interval appropriately reflects that the time required to construct cages is not needed for the provisioning of cageless arrangements. She further explains that:

> Sprint believes that the appropriate provisioning interval for cageless physical

> collocation is sixty (60) calendar days. Sprint's ILEC work processes for provisioning cageless physical collocation are essentially the same as its internal work processes for provisioning virtual collocation and accordingly, Sprint believes that the provisioning intervals for virtual collocation and cageless physical collocation should be the same.

Similarly, other ALEC witnesses, including witnesses for Intermedia, Supra, and Rhythms, maintain that cageless physical collocation mirrors virtual collocation; therefore, not constructing a cage should allow for a shorter provisioning interval than 90 calendar days.

Covad witness Moscaritolo contends:

> When space and power are readily available, an ILEC should provision cageless collocation space within 45 calendar days. When space and power is not readily available, an ILEC should provision cageless collocation space within 90 calendar days. US West presently provides these provisioning intervals to Covad under its interconnection agreement. (EX. A.) Because US West provides these intervals, such intervals are presumptively feasible in the regions of other ILECs, including BellSouth and GTE Florida.

He further contends that Southwestern Bell Telephone Company (SWBT) provides cageless collocation in active collocation space in 55 calendar days if an ALEC installs its own racking, and in 70 calendar days if the ILEC installs the racking. Witness Moscaritolo adds that if active collocation space is not readily available, SWBT provides cageless collocation in 140 calendar days. In addition, he disagrees with GTEFL witness Ries and BellSouth witness Hendrix regarding the impact of cage construction on the provisioning process. He argues that the construction of a cage is the interval-limiting task in the provisioning of caged collocation.

MGC witness Levy states that upon receipt of a firm order, cageless collocation should be provisioned within 30 calendar days.

He notes that in Las Vegas, all MGC collocations are cageless, and the space is consistently available within 30 days.

ANALYSIS AND DETERMINATION

As mentioned previously, this Commission has established the requirement that an ILEC shall provision physical collocation within 90 calendar days and virtual collocation within 60 calendar days after the receipt of a firm order from an applicant carrier. Most of the ALEC parties in this proceeding argue that cageless physical collocation mirrors virtual collocation and that without having to construct a cage, the provisioning interval should be less than caged physical collocation. Indeed, FCCA, AT&T, Covad, FCTA, Intermedia, MCI, MGC, MediaOne, Rhythms and Supra in their joint position statement contend that the ILECs should provision cageless collocation within 45 calendar days of receiving a request if space and power are readily available and 60 days if not readily available. These parties have, however, presented very little persuasive, substantive evidence to support this position.

As for BellSouth's and GTEFL's arguments that cageless collocation should have the same interval as caged collocation because it is a type of physical collocation, we do not find these arguments entirely persuasive. BellSouth and GTEFL's arguments do, however, suggest that there are differences between virtual and physical collocation, whether caged or not, that could cause the provisioning intervals to differ. We note that the FCC stated:

> Under virtual collocation, interconnectors are allowed to designate central office transmission equipment dedicated to their use, as well as to monitor and control their circuits terminating in the LEC central office. Interconnectors, however, do not pay for the incumbent's floor space under virtual collocation arrangements and have no right to enter the LEC central office. Under our virtual collocation requirements, LECs must install, maintain, and repair interconnector-designated equipment under the same intervals and with the same or better failure rates for the performance of similar functions for comparable LEC equipment. FCC Order 96-325 at Paragraph 559.

In physical collocation, other types of equipment may be installed besides transmission equipment, including equipment that may have switching functionality. These differences in equipment do bring about different technical aspects of provisioning the collocation space, such as grounding differentials, power and heat differentials, and different equipment footprint sizes. AT&T witness Mills agrees that these differences exist between equipment typically placed in a virtual collocation arrangement versus a physical collocation arrangement. Based on the evidence, we are persuaded that these differences between virtual and physical collocation may cause the provisioning intervals to differ.

The other argument presented by the ALECs was that construction of a cage increases the provisioning interval for caged physical collocation. While the evidence demonstrates that there is some time involved with construction of a cage, we are not persuaded that this time is substantial or the limiting factor in provisioning caged physical collocation. As pointed out in the hearing, construction of a cage may be done concurrently with the other work necessary to provision the collocation space. Therefore, we are not persuaded that construction of a cage significantly increases the time required for caged physical collocation and do not believe that the provisioning interval for cageless physical collocation should be reduced based on this argument.

Based on the foregoing, we, therefore, find that the provisioning interval for cageless physical collocation shall be 90 calendar days after an applicant carrier has submitted a firm order to the ILEC, which is the same as the provisioning interval for caged physical collocation. The evidence of record shows that there are differences between virtual and cageless physical collocation. It does not show that the provisioning interval for caged physical collocation is significantly impacted by the construction of a cage.

IX. DEMARCATION POINT BETWEEN ILEC AND ALEC FACILITIES

In this section, we consider the appropriate demarcation point between the ALEC and ILEC equipment in situations where the ALEC's equipment is connected directly to the ILEC's network, without an intermediate point of interconnection.

Prior to the issuance of the FCC Advanced Services Order, typically the ILEC required an ALEC to interconnect at a Point of Termination (POT) bay. However, Rhythms witness Williams states that the Advanced Services Order prohibits ILECs from requiring POT bays, because such arrangements increase an ALEC's costs of interconnection. As a result of removing this intermediate point, there is disagreement about the new location of the demarcation point.

MGC witness Levy explains:

> Without a point of termination ("POT") bay between the ALEC and ILEC, it is difficult to identify a demarcation point. In such case, each cable becomes a type of meet-point since the ALEC is not permitted to reach the ILEC end and the ILEC is not permitted to reach the ALEC end.

He further states:

> However, if there is no POT bay, establishing a demarcation point would be less important if the ALEC were permitted to do all of its wiring between its equipment and the ILEC termination destination: the MDF for DS0s; and DSX1 and DSX3 ports for the DS1 and DS3. . . .

GTEFL witness Reis argues, however, that the ALECs should not have access to the ILEC's main distribution frame [MDF] to perform end-to-end wiring, because the MDF is a cross-connect point for wiring or jumping numerous pieces of central office equipment. If ALECs could access the ILEC's MDF, witness Reis believes ILECs would not be able to keep accurate records of connections, which would affect network reliability. Also, he believes network security would be a concern.

BellSouth witness Milner proposes that an ILEC should be able to determine the demarcation point. He states:

> BellSouth will designate the point(s) of interconnection between the ALEC's equipment and/or network and BellSouth's network. Each party will be responsible for maintenance and

> operation of all equipment/facilities on its side of the demarcation point.

Witness Milner believes the point of interconnection should be the common block on an ILEC's conventional distribution frame (CDF), which is an intermediate frame located in the common area between the ILEC's main distribution frame and an ALEC's collocation space.

BellSouth witness Hendrix also asserts that any area located outside the ALEC's collocation space is common space. He adds that:

> It is BellSouth's responsibility to maintain and to make whatever changes are needed to equipment that are in the -- equipment or elements that are in the office that is outside of the space designated for a given ALEC customer.

However, BellSouth witness Milner states:

> The ALEC or its agent must perform all required maintenance to equipment/facilities on its side of the demarcation point and may self-provision cross-connects that may be required within the collocation space to activate service requests.

BellSouth witness Milner and witness Hendrix have presented conflicting positions, which would preclude ALECs from performing their own facility maintenance on their side of the demarcation point. BellSouth witness Milner is advocating that an ALEC or its agent would perform maintenance up to the CDF; however, BellSouth witness Hendrix apparently believes that the area outside of the ALEC's collocation space is common space, and only ILECs should maintain that area, including the resident cabling.

In response, however, Rhythms witness Williams argues that requiring ALECs to connect to the CDF does not provide any particular benefit to BellSouth and simply increases the ALECs' costs. Moreover, witness Williams states that BellSouth is requiring Rhythms to accept contract amendments, which designate the CDF as the point of interconnection. Witness Williams contends that BellSouth insists that Rhythms waive rights provided by the Advanced Services Order in order to obtain cageless collocation.

Sprint witness Closz contends that when a demarcation point is designated at an intermediate frame located at a distance from the collocation space, additional ALEC cabling would be required. Therefore, Sprint witness Closz proposes that an ALEC collocation site would be the appropriate demarcation point, because the ALEC's collocation site serves as a meet point for which maintenance and provisioning responsibilities are split, with each party assuming accountability on its side of the demarcation point. Witness Closz further asserts:

> The FCC has determined that under Sections 251(c)(2) and 251(c)(3), the requesting carrier may choose any method of interconnection or access to unbundled elements that is technically feasible at a particular point. (96-325 local Competition Order P. 549) Thus the ALEC, not BellSouth, is permitted to designate the point of interconnection.

However, BellSouth Witness Milner counters:

> . . . the ALEC collocation site is not "the" appropriate demarcation point, but "one" appropriate demarcation point. Second, Ms. Closz fails to indicate specifically where such a demarcation would be made, or upon what device the demarcation point would reside.

ANALYSIS AND DETERMINATION

Upon consideration of the arguments and the evidence presented, we are persuaded that an ILEC should not be obligated to offer access to its MDF. The MDF connects directly to the switch and provides an area for technicians to modify switch connection without actually altering the connections at the switch, which the evidence shows is very difficult due to the extremely large number of connections at any point at the switch. We agree with BellSouth and GTEFL that labeling and maintaining terminations is critical and should be performed by one party, the ILEC. Moreover, we are concerned that security and network accountability would be jeopardized by requiring ILECs to provide access to the MDF.

As for the CDF, there are two reasons why we shall not order that the CDF be the required demarcation point. First, the record demonstrates that the common area is not an appropriate demarcation point because, as we further explain in this Order, we believe only ILECs should perform work in common areas. Second, we agree with Sprint witness Closz that additional ALEC cabling would be required if the CDF were the demarcation point.

We are persuaded that the ALEC's collocation site is the appropriate demarcation point. The demarcation point is the point at which each carrier is responsible for all activities on its side. The evidence of record clearly shows that, currently, ALECs are not allowed to manage or control the area outside of their collocation space. Moreover, establishing a demarcation point outside of an ALEC's collocation space could prohibit ALECs from managing or maintaining their cabling on their side of the demarcation point without a BellSouth Certified Contractor. Therefore, we find that the ALEC's collocation space is the appropriate demarcation point.

Furthermore, we agree that because the ILECs manage the cabling and cable racking in the common area, the ILEC should designate the location of such a point at the perimeter of an ALEC's space; however, ILECs shall not be required to terminate the cabling onto any ALEC device or equipment because we agree with witness Levy that the ILEC may not reach the ALEC end. The ALEC shall be responsible for terminating the cable to its own equipment and notifying the ILEC when completed. Also, ILECs shall be required to provide an ALEC-specified cable extension from the demarcation point at the same costs at which ILECs provide cable to itself.

We have considered the fact that there are ALECs that prefer to use POT bays and other intermediate points as demarcation points. Based on the record, it appears that no ILEC was opposed to an ALEC's use of POT bays in an ALEC's space, or other intermediate points in an ILEC's space up to the CDF. We note that GTEFL witness Reis states that:

> GTE would allow Covad to put a POT Bay in their collocation space. What GTE would not be in favor of is GTE performing the wiring on equipment that is in the Covad space, that we would provide to the cable. . . .

Although the FCC prohibits ILECs from requiring POT bays or other intermediate points of interconnection, ALECs are not prohibited from choosing to use them. Therefore, ILECs and ALECs may negotiate other demarcation points up to the CDF. However, if terms cannot be reached between the carriers, the ALEC's collocation site shall be the default demarcation point.

X. PARAMETERS FOR RESERVING SPACE FOR FUTURE USE

Herein, we consider the appropriate length of time collocation space can be reserved once collocation space has been granted by an ILEC to a requesting party. While the positions of the parties varied as to the length of time collocation space should be allowed to be reserved, all but one party agreed that a provider should be allowed to reserve collocation space.

Several ALECs emphasize the need to have the ability to reserve space under the same terms and conditions as the ILECs. The FCC has addressed space reservation, to an extent, in FCC Rule 51.323(f)(4), which states:

> An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other communications carriers seeking to reserve collocation space for their own use.

Supra witness Nilson states that parameters for reserving collocation space should be applied equally to ALECs and ILECs, and neither party should be allowed to reserve space for a greater amount of time than the other.

MCI witness Martinez agrees that there should be parity among parties when reserving central office space. Witness Martinez contends that the maximum time for space reservation should be two years, and emphasizes that "[B]ased on industry practice, I believe that space reservation for all parties should be based on a planning horizon for the current year plus one."

Intermedia witness Jackson proposes that ILECs should be required to have a minimum amount of collocation space available in every central office. Intermedia witness Jackson further argues that "[I]f the space falls below this threshold, the ILEC should have to begin to create plans for expansion of the central office space.". While witness Jackson did not know how much collocation space should be required in each central office, he believes there should be enough space for two collocators at any given time. If space for two collocators is unavailable, the ILEC should relinquish its reserved space and make it available to requesting ALECs.

Covad is concerned about future growth and disclosure of the ILECs' future growth plans. Covad witness Moscaritolo asserts that if ILECs' plans for future growth lessen the amount of collocation space available in a central office, the ILEC should notify the ALECs waiting to collocate in that central office. He notes that no mechanism exists for ALECs to verify ILECs' future use of their reserved collocation space. Witness Moscaritolo suggests that the ILECs should be required to disclose this information on their websites or in a filing with the Commission. Witness Moscaritolo stated that the decision on this issue should result in parity among companies.

GTEFL witness Ries asserts that collocation space should be allowed to be reserved for an indefinite amount of time, as long as a documented, funded business plan accompanied the request for collocation space, because different types of equipment have different implementation and planning intervals. He indicates that GTEFL believes that limiting the time collocation space can be reserved would result in an inefficient and costly approach to accommodate network additions.

In defining what a documented, funded business plan is, the witness explains that GTEFL reviews and updates its forecasted future requirements on a quarterly basis to determine when a switch would require an addition. He further explains that the funded, documented business plan can delineate where future switch additions may be needed to accommodate growth two or three years into the future.

In addition, witness Ries clarifies that if space were available in the central office to accommodate new requests, then a documented, funded business plan would not be necessary. Witness Ries further contends that, "[I]f GTE were only able to reserve space on a one-year increment, for example, then it would be forced to plan and implement switch additions on a year-by-year basis." GTEFL witness Ries also asserts that once floor space is granted to an ALEC, the ALEC should be required to pay for items such as utilities, maintenance, and taxes on the space, and should be required to install their cage or bay at the time of reservation.

Sprint witness Hunsucker believes that FCC Rules 47 C.F.R. §§ 51.323(f)(4)-(6) serve as guidelines for the reservation of collocation space, but that the state commissions are responsible for taking the next step to ensure collocation occurs in a timely manner. The witness believes that ILECs and ALECs should be able to reserve collocation space for up to 12 months. Witness Hunsucker further states that an ILEC should be required to provide justification to the requesting party when denying collocation due to lack of space. This justification would come from the ILEC demand and facility charts, which should include three to five years' historical data and forecasted growth.

Witness Hunsucker also maintains that given the nature of the local telecommunications market and the deployment of advanced services, it is difficult to forecast space requirements beyond 12 months. He believes that a planning period longer than 12 months is just that, for planning, and the further plans are into the future, the more subject they are to change. He believes a 12-month reservation period should be adopted over the other alternatives presented because, " . . . we have got to ensure that there is a certainty that space is going to be used when we allow space to be reserved." While Sprint develops plans for periods of two years, three years, or four years into the future, " . . . those plans do not become funded and they are subject to change at any time." Witness Hunsucker adds that upon remittal of the collocation charges from the ALEC to the ILEC, the ALEC should be required to occupy the collocation space within six months. Failure to occupy the collocation space within six months would allow the ILEC to reclaim the collocation space and satisfy other collocation requests with the reclaimed space.

MGC witness Levy testified there should be no reservation of space in a central office by either an ILEC or an ALEC. The witness believes space reservation creates inefficiencies and adds delays and complications. Witness Levy does, however, state that " . . . if there must be a reservation policy, it should not in any way favor the ILEC or any affiliated companies or subsidiaries of the ILEC." Thus, witness Levy concludes that if MGC foresees future needs for collocation space, perhaps ten months in the future, MGC would immediately reserve it. The witness further indicates that MGC would be willing to pay for the space upon submitting the application, including submitting the application for collocation, the application fee, and all required capital outlay to have the space prepared for their intended use.

BellSouth witness Milner argues that BellSouth currently applies the same standards to an ALEC it applies to itself, and, as such, it allows an ALEC to reserve space for a two-year period. Witness Milner contends that BellSouth's retail division does not acquire space in a central office, but its network organization does plan future space usage. Witness Milner disagrees with Sprint witness Hunsucker's recommendation of a 12-month reservation policy, reaffirming his position that either BellSouth or an ALEC should be able to reserve space for up to two years.

Further, witness Milner contends that Intermedia's proposal to require ILECs to have space available for two collocators at any given time would put BellSouth at a disadvantage relative to the ALECs. First, he asserts that BellSouth would be disadvantaged if ALECs could reserve space without the possibility of being required to relinquish reserved space, while requiring BellSouth to surrender its reserved space to accommodate future collocators. Second, BellSouth witness Milner contends that BellSouth is not required to construct additional space to lease.

ANALYSIS AND DETERMINATION

The positions presented include not allowing collocation space to be reserved under any circumstance, allowing collocation space to be reserved for an indefinite amount of time, and allowing collocation space to be reserved for a period of time ranging from 12 to 24 months. Several parties also emphasize the need for nondiscriminatory treatment with respect to reserving collocation space. The FCC's Rule 51.323(f)(4)addresses this issue:

> An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other communications carriers seeking to reserve collocation space for their own use.

In order to comply with Rule 51.323(f)(4), we believe that the length of time an ILEC or a requesting carrier can reserve collocation space must be the same. Moreover, we are persuaded that an ILEC or a requesting carrier must be allowed to reserve collocation space subject to the same terms and conditions.

Although MGC Communications witness Levy has proposed there not be a time period in which collocation space can be reserved, we do not find this proposal reasonable. Given the costs incurred for preparing collocation space, this method could deter competitive entrants that do not have sufficient capital for short-term outlays, and impede competitive carriers from expanding into new markets. This approach would create a guessing game as to when and how long collocation space would be available in a central office and hinder future central office expansion plans.

We also do not agree with GTEFL's proposal that the existence of a funded, documented business plan warrants reserving collocation space for an indefinite amount of time. While GTEFL contends the reservation of collocation space varies by central office, this method provides little incentive for companies to install equipment and utilize collocation space in a timely manner. This proposal could accelerate space exhaustion and hinder the ability of other competitive carriers to obtain collocation space. Further, this proposal could create a situation where one ALEC could control all available collocation space in a particular central office simply by developing a well-documented business plan. This would lead to other ALECs having to accept the terms and conditions of the host ALEC. GTEFL should be able to sustain adequate forecasting and future growth planning while restricting the allowed period for space reservation.

While BellSouth and Sprint agree that both ALECs and ILECs should be able to reserve space under equal terms and conditions, they differ as to the length of time a requesting collocator is allowed to have space reserved. BellSouth proposes a 24 month period, while Sprint proposes a 12 month-period.

BellSouth witness Milner contends that a two-year planning horizon gives adequate notice to the parties as to their expected needs for space reservation. Witness Varner states that BellSouth currently reserves and allows ALECs to reserve space on a two-year basis. Although BellSouth reserves space on a two-year basis, we believe that this time period may be overstated somewhat, because we agree with witness Hunsucker that planning for the distant future is difficult due to the nature of the telecommunications industry.

As for Sprint, Sprint witness Hunsucker proposed 12 months as a sufficient period for the reservation of space. As stated above, witness Hunsucker contends that because of the nature of the telecommunications industry and the deployment of advanced services, it is difficult to forecast beyond 12 months. He also believes planning beyond twelve months is just that, planning.

Upon consideration, we find that an 18-month reservation period is appropriate for reserving space. This 18-month reservation period shall apply to all providers alike, ILECs and ALECs. The evidence is clear that space within a central office is a limited resource, and that limiting the length of time space is allowed to be reserved will promote efficient use of central office space and allow current and future collocators the ability to reserve space and enter new markets, thereby stimulating competition. We believe that this 18-month reservation policy will also allow requesting collocators to more accurately forecast and adjust space requirements. This requirement shall be implemented on a non-discriminatory basis such that ALECs and ILECs must be allowed to reserve space under the same terms and conditions.

We note that two other peripheral topics were raised by certain parties within the context of this issue. First, GTEFL witness Ries believes ALECs should begin paying for collocation space once the ALEC is granted collocation space by the ILEC. Second, Sprint witness Hunsucker believes the ILEC in a particular franchise area should have the ability to reclaim unused collocation space after a period of time has elapsed. While we agree that these appear to be legitimate issues, we believe there is insufficient evidence presented in this docket to address these concerns. Furthermore, these points are beyond the scope of the issue presented for our decision.

XI. GENERIC PARAMETERS FOR THE USE OF ADMINISTRATIVE SPACE

In this section, we address whether guidelines should be established to define when administrative space should be converted into physical collocation space if available collocation space has been exhausted. Suggested generic guidelines for converting administrative space into collocation space include relocating administrative personnel away from central offices, limiting the amount of space used in a central office for training purposes, and limiting the size of employee amenities, including break rooms and bathrooms. From all the testimony, two distinct opinions arose.

GTEFL witness Ries and BellSouth witness Milner both agreed that generic parameters cannot be established. GTEFL witness Ries states, "[T]rying to define such parameters would be futile. Each ILEC premise has its own, unique set of circumstances." He also contends that even if certain parameters were met, the ALECs would still dispute the availability of collocation space.

BellSouth witness Milner first defines administrative space as ". . . any space not directly supporting the installation or repair of both telephone equipment and customer service." He explains that examples of administrative space include storerooms, break rooms, training areas, and space used by workgroups performing functions not related to telecommunications equipment. BellSouth witness Milner indicates that generic parameters cannot be established for this space because of the differences between central offices. He maintains that these differences include variations in equipment requirements with respect to space and power needs, building codes that affect remodeling and building additions, and other unique characteristics. The witness contends that these unique characteristics also influence the number and types of people necessary to ensure the daily operations of the central office, the design and size of the facility, and differences among computer systems controlling each central office. Therefore, witness Milner further argues that we should affirm BellSouth's use of administrative space as a practical use of the available space within the central office.

Several other parties, however, believe that generic guidelines can and should be established with respect to when administrative space should be converted into physical collocation space. Sprint witness Hunsucker believes that establishing guidelines pertaining to space availability would promote competition. The witness states that Sprint is being denied physical collocation space in other ILEC facilities when space is being occupied by administrative personnel not essential to the daily functions of a central office.

We note that Sprint witness Hunsucker's definition of administrative personnel is slightly different from BellSouth's definition. Witness Hunsucker defines administrative personnel as those employees whose work is not directly related to the central office switching function that is provided in that location. The witness also believes ALECs should have the ability to locate their switching/transmission equipment in the same location the ILECs locate their comparable equipment. Sprint witness Hunsucker also believes ILECs should be required to relocate administrative personnel before denying physical collocation requests. Sprint believes the cost of relocating administrative personnel should be recoverable, and that recovery of a portion of the relocation cost should be based on the percentage of the requesting collocator's square footage to the total square footage of relocated administrative personnel. Furthermore, while witness Hunsucker does not contest the need for training areas or employee bathrooms in a central office, he does express concern over the size of such areas and believes that training rooms and bathrooms that are much larger than needed should be reduced in size.

In response, BellSouth witness Milner disagrees with Sprint witness Hunsucker and explains the necessity for certain types of administrative space, such as training areas. He stresses the need for training and quiet areas to facilitate the learning process. He also believes relocating training space would reduce the efficiency of the training process and impact the quality of service.

MGC witness Levy asserts that, " . . . there is no more economically efficient use of space within an ILEC central office than use for the purpose of housing telecommunications equipment." MGC witness Levy believes that all space in a central office should be used for this purpose with the exception of a minimal amount of space used for employee bathrooms and space needed by technicians. Witness Levy testifies that ILECs leave unused and old equipment sitting in central offices in an effort to absorb space.

MCI witness Martinez contends that there is no need for generic parameters to be established when collocation space exists in a central office. The witness believes parameters should be established to apply in instances when collocation requests are denied. Specifically, witness Martinez believes that guidelines are needed to address instances when collocation requests are denied on the basis of space exhaustion even when administrative personnel are housed in the same facility. Witness Martinez recommends that this Commission require " . . . that minimum office force, work area, and floor space guidelines should be identified for each class of wire center."

Likewise, Intermedia witness Jackson recommends that we act as a space administrator and assign collocation space in ILECs' central offices. Witness Jackson contends that whether collocation space is deemed available through creation, conversion, or reclamation of space, including administrative space, the Commission should be the administrator of such space. Intermedia also suggests that we require all ILECs to retain applications for physical collocation for a period not to exceed five years.

ANALYSIS AND DETERMINATION

While there have been various proposals, including limiting the size of employee bathrooms, break rooms, and training areas, no detailed guidelines for implementation were presented. Thus, based on the record and the lack of definitive, proposed guidelines, we do not believe that generic standards can be established for converting administrative space into physical collocation space due to the uniqueness of each central office. We also disagree with Intermedia witness Jackson's suggestion that we act as the administrator of physical collocation space within a central office. Building engineers and network managers have greater expertise than this Commission to manage central office facilities.

Therefore, upon consideration of the record, we agree with BellSouth and GTEFL that adequate generic parameters cannot be established. The record shows that each central office has a set of unique circumstances that factor into how much administrative space is essential to the daily operations of that office. The amount of administrative space necessary per central office varies by the types of equipment in use, building limitations and design, and the expertise and number of people necessary to ensure proper operation of the central office.

Notwithstanding our conclusion herein, we emphasize that we have already established procedures in Orders Nos. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP to address situations in which ILECs believe collocation space has been exhausted and to determine whether a waiver of the physical collocation requirements should be granted. Therefore, when an ILEC believes that no space exists for physical collocation, we will continue to follow the procedures outlined in our prior Orders to determine whether a waiver of the physical collocation requirements is warranted.

XII. EQUIPMENT OBLIGATIONS

We have also been asked to determine the types of equipment that an ILEC is obligated to allow an ALEC to place in a physical collocation arrangement. We emphasize that the FCC has addressed this issue on numerous occasions, including in FCC Rules 47 C.F.R. §§51.323(b)-(c), the First Report and Order, FCC Order 96-325, issued on August 8, 1996, and most recently in its First Advanced Services Order, FCC Order 99-48, issued on March 31, 1999.

BellSouth witness Milner cites Paragraph 28 of the Advanced Services Order which requires the collocation of Digital Subscriber Line Access Multiplexers (DSLAMs), routers, Asynchronous Transfer Mode (ATM) multiplexers, and Remote Switching Modules (RSMs). He states that BellSouth has allowed collocation of these types of equipment, plus "stand-alone" switching equipment. Witness Milner contends that because the FCC Advanced Services Order does not require collocation of equipment used solely for enhanced services, BellSouth believes that it is already in compliance with the FCC's requirements.

GTEFL witness Ries believes that the FCC has answered this issue and has provided enough direction for this Commission to determine ILECs' obligations in this area. In support of this, he cites Paragraphs 28 and 30 of the Advanced Services Order in which the FCC addressed this issue. Witness Ries also argues:

> Indeed, it would not be possible or desirable to draw up an exhaustive list of particular pieces of equipment that could be collocated, as the ALECs might advocate. Such a list would, no doubt, be obsolete as soon as it was established, and there would inevitably be ALEC requests to collocate equipment not on the list. If there are disputes about interpretation of the FCC rule as applied to a particular piece of equipment, the only

> practical approach is for the Commission to address them on a case-by-case basis.

Sprint witnesses Hunsucker and Closz both refer to FCC Rule 47 C.F.R. §51.323(b) and state that this rule requires an ILEC to permit collocation of any type of equipment used for interconnection or access to unbundled network elements. Witness Hunsucker states that the only limitation contained in the FCC Rules is that ILECs are not required to permit collocation of equipment used solely for switching or solely to provide enhanced services. He further contends:

> Additionally, if the ALEC places mixed use equipment, i.e., equipment used for interconnection or access to unbundled network elements that also provide switching or enhanced services functionality, the ILEC cannot place any limitations on the ability of the ALEC to use all the features, functions, and capabilities of the equipment, including, but not limited to switching, routing features and functions and enhanced services capabilities.

Sprint witness Closz contends that the FCC rules, which require ILECs to permit a broad range of telecommunications equipment deployment within collocation arrangements, provide flexibility to ALECs seeking to provide advanced telecommunications services.

MCI witness Martinez, Covad witness Moscaritolo, MGC witness Levy and Supra witness Nilson all cite to Paragraph 28 of the FCC's Advanced Services Order in addressing the equipment allowed in a physical collocation arrangement. MCI witness Martinez states that FCC Rules 47 C.F.R. §§51.323(b)-(c) require that an ILEC permit any equipment that is "used or useful" for either interconnection or access to unbundled network elements, regardless of the other functionalities inherent in such equipment. He also contends that the ILEC cannot impose safety or engineering standards that are more stringent than the standards that the ILEC applies to its own equipment located on the premises in question. MGC witness Levy believes that the ALEC should be permitted to install any equipment that meets the BellCore Network Equipment and Building Specifications (NEBs) Level 1 compliance, regardless of its functionality.

Intermedia witness Jackson adds:

> The FCC concluded in its Collocation Order that ILECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate . . . As a result, ILECs can no longer prohibit the types of equipment collocated by ALECs as long as it is used for interconnection or access to unbundled network elements.

ANALYSIS AND DETERMINATION

There appears to be very little disagreement among the parties on this issue. In fact, the parties do little more than cite relevant FCC orders. *Section 251(c)(6)of the Act addresses the* collocation obligation of collocation of ILECs:

> (6)Collocation.-The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, . . .

The FCC later clarified that "necessary does not mean 'indispensable' but rather 'used' or 'useful.'" FCC Order 96-325 at Paragraph 579.

The FCC also addressed equipment placement in FCC Rules 47 C.F.R. §§51.323(b)-(c), which require:

> (b) An incumbent LEC shall permit the collocation of any type of equipment used for interconnection or access to unbundled network elements . . . . Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

> (1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and
>
> (2) Equipment being collocated to terminate basic transmission facilities pursuant to §§64.1401 and 64.1402 of this chapter as of August 1, 1996.
>
> (c) Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services.

Further, the FCC clarified its positions on collocation equipment in its Advanced Services Order, when it stated:

> We agree with commenters that our existing rules, correctly read, require incumbent LECs to permit collocation of all equipment that is necessary for interconnection or access to unbundled network elements, regardless of whether such equipment includes a switching functionality, provides enhanced services capabilities, or offers other functionalities. Our rules obligate incumbent LECs to "permit the collocation of any type of equipment used for interconnection or access to unbundled network elements." Stated differently, an incumbent LEC may not refuse to permit collocation of any equipment that is "used or useful" for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment . . . We further agree with commenters that this rule requires incumbent LECs to permit competitors to collocate such equipment as DSLAMs, routers, ATM multiplexers, and remote switching modules. Nor may incumbent LECs place any limitations on the ability of competitors to use all features, functions, and capabilities of collocated equipment, including, but not limited to, switching and routing features and functions.

FCC Order 99-48 at Paragraph 28.

While MGC witness Levy states that the ALEC should be permitted to install any equipment that meets the BellCore Network Equipment and Building Specifications (NEBs) level 1 compliance, regardless of its functionality, the FCC has clearly stated that it continues to decline "to require incumbent LECs to permit the collocation of equipment that is not necessary for either access to UNEs or for interconnection, such as equipment used exclusively for switching or for enhanced services." FCC Order 99-48 at Paragraph 30. Therefore, we disagree with MGC's argument.

We do, however, agree with GTEFL witness Ries that it would not be possible, or desirable, to draw up an exhaustive list of equipment that could be collocated. Due to rapidly changing technology, such a list would be obsolete in very short order.

The only real point of contention seems to be who should bear the responsibility of proving to the state commission whether a particular piece of equipment should be collocated. Sprint witness Hunsucker and Intermedia witness Jackson believe that the burden of proof should be on the ILEC to prove that the equipment will not be used for interconnection or access to unbundled network elements. However, BellSouth witness Milner counters that it should be the ALEC's responsibility, because it would be the ALEC's equipment, which would make it difficult for the ILEC to try to prove a negative. He believes that ILECs could be faced with employing extensive technical resources to evaluate equipment not used for telecommunications purposes.

The FCC has also addressed this situation, stating:

> . . . Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements . . . .

47 C.F.R. §51.323(b).

It upheld this position in its Advanced Services Order. FCC Order 99-48 at Paragraph 28.

We are not persuaded by with witness Milner's logic. If the ILEC has denied collocation of a particular piece of equipment, presumably it has done whatever is necessary to determine that the equipment will not be used for interconnection or access to *unbundled network elements. Therefore, all it needs to do is* present this information to the state commission. Thus, we believe that this responsibility should belong to the ILEC. However, the ALECs shall be required to provide to the ILEC, upon request, any manufacturer specifications regarding the equipment in dispute.

Based on the foregoing, we conclude that the FCC has provided sufficient direction in determining the equipment that may be physically collocated. The FCC's rules require incumbent LECs to *permit collocation of all equipment that is necessary for* interconnection or access to unbundled network elements, regardless of whether such equipment includes a switching functionality, provides enhanced services capabilities, or offers other functionalities. The FCC has also stated that an incumbent LEC may not place any limitations on the ability of competitors to use all the features of its collocated equipment. Therefore, we shall require ILECs to allow the types of equipment in a physical collocation arrangement that are consistent with FCC rules and orders. We note, however, that the FCC has, thus far, declined to require the collocation of equipment that is used exclusively for switching or enhanced services. Also, the FCC has stated that it is the responsibility of the ILEC to prove to the state commission that equipment will not be used for interconnection or access to unbundled network elements.

XIII. PRICE QUOTES - TIMING AND DETAIL

In this Order, we have required ILECs to respond to a complete and accurate application for collocation with all information necessary for an ALEC to place a firm order, including information on space availability and a price quote, within 15 calendar days from the date the ILEC receives the collocation application. In this section, we simply address the timing and level of cost detail which should be included in the price quote.

Although there appears to be some agreement that the ILEC should be required to provide price quotes to an ALEC before receiving a firm order for collocation space, the appropriate response interval for the ILEC to provide such price quotes is a matter of some dispute, as well as whether or not the ILEC price quote for collocation space should provide detailed costs.

FCC Order 99-48 provides some guidance, but not a definitive ruling, on a reasonable response interval. In FCC Order 99-48, the FCC concluded that responses for collocation requests should be addressed in a ". . . timely and pro-competitive manner" and that 10 days for a response was "reasonable." The Advanced Services Order, however, gave state commissions the latitude to impose additional requirements. Id. at Paragraph 23.

The parties offer a range of answers regarding the appropriate response interval for collocation requests. Witness Williams, for Rhythms, contends that the ILEC should respond within 15 calendar days with all the information necessary for an ALEC to submit a firm order, including space availability and a price quote. Supra witness Nilson offers that a detailed response within 30 calendar days is reasonable.

The ILECs drew a distinction between the interval for the space availability response and the price quote response. Witness Closz, for Sprint, contends that the space availability response interval should be due within 10 calendar days. The witness contends that the price quote should be provided " . . . within 15 calendar days if the rates are established by tariff or the ALEC's interconnection agreement, or 30 days if individual case basis (ICB) rates need to be developed." BellSouth witness Hendrix states that the space availability response interval should be 15 calendar days and the price quote response interval should be 30 calendar days. GTEFL witness Reis contends that within 15 calendar days, the company will provide both space availability information and a price quote.

BellSouth witness Hendrix states that the interval for providing an ALEC price quote should be 30 business days, because each request submitted is very different, and as such, BellSouth treats each request as an ICB for price development. Witness Hendrix states that BellSouth provides an estimate that details the collocation construction charges for two broad categories: Space Preparation and Cable Installation. The witness acknowledged that these estimates are subject to "true up" with the ALEC, once actual prices are available. GTEFL and BellSouth witnesses assert that an order is made "firm" upon the ALEC's submission of 50 percent of the price estimate.

In addition, witness Hendrix was somewhat noncommittal as to whether BellSouth could provide a detailed quote summary sheet similar to the very detailed, 180-line item quote summary sheet used by Southwestern Bell. In contrast, GTEFL witness Reis contends that detailed information is not necessary, since pricing for collocation arrangements will be set by reference to a tariff most of the time.

Supra witness Nilson disputes the adequacy of BellSouth's price estimates, stating that he doubts that BellSouth actually provides an accurate estimate in response to a collocation application, which results in the ALEC having to deal with cost overruns. He states that BellSouth's price quote, which consists of a three-line document, is often erroneous, and that BellSouth has only offered to share detailed information with Supra during the "true up" process, and not up front, as his company would prefer.

Rhythms, Supra, and Intermedia agree that the more detailed the price quote is, the better. Witness Nilson explains that the detail is needed to review the elements that were compiled by the ILEC to render a collocation price quote. MGC witness Levy contends that ". . . the key is to get away from ICB pricing and make all such elements tariffed." FCCA witness Gillan agrees, stating that in a tariffed framework, an ALEC could simply order collocation with full information about availability, terms, conditions, and prices known in advance. Sprint, GTEFL, Supra, and the FCCA, whose members are mainly ALECs, all advocate the tariffing process as a vast improvement to BellSouth's ICB framework currently in place. FCCA witness Gillan states that tariffing, as opposed to ICB pricing, introduces a degree of certainty and accountability to the process for the competitive entrants. Witness Gillan believes that the detailed information would be in the tariff, and not in the traditional, outdated price quote.

ANALYSIS AND DETERMINATION

The record demonstrates that, as a general matter, the parties agree that the ILEC should be required to provide a price quote to the ALEC before receiving a firm order for collocation space. The record also demonstrates that a price quote is necessary before an ALEC can submit a firm order, because the order cannot be considered "firm" by the ILEC until the ALEC submits a 50 percent payment of the price estimate. The price quote should provide sufficient detail for the ALEC to submit a firm order, but we shall refrain at this time from specifying the quantity of detail which should be included in the price quote. We do, however, note the level of detail provided by Southwestern Bell in its the 180-line price quote summary. This leads us to believe that an ILEC, including BellSouth, should be capable of providing more detail than three line items in the price quote for collocation space.

Therefore, upon consideration, we find that the ILEC shall be required to respond to a complete and accurate application with all information necessary for an ALEC to place a firm order, including information on space availability and a price quote, within 15 calendar days from the date the ILEC receives the collocation application. Additionally, we emphasize that the collocation response interval begins on the date when the ILEC receives the complete and accurate application.

Furthermore, the price quotation from the ILEC shall contain detailed costs and sufficient detail for the ALEC to submit a firm order. We do not, however, specify the level of detail that should be included, because there is insufficient evidence in the record to support a specific level of detail. Nevertheless, we emphasize that we believe that an ILEC, including BellSouth, should be capable of providing more detail than three line items in the price quote for collocation space.

As for the arguments presented regarding standardization of the price development process, such as a tariffing platform, we agree that there are valid arguments supporting this position. However, we shall not determine whether or not a specific platform or process is appropriate at this time, because these arguments appear to address issues beyond the scope of this proceeding and to reach pricing issues which will be addressed in a subsequent phase of this proceeding.

XIV. ALEC PARTICIPATION IN PRICE QUOTE DEVELOPMENT

Herein, we have also addressed whether the ALEC should be allowed to participate in the development of the ILEC's price quote for collocation, as well as the appropriate time frame for any such participation.

BellSouth witness Hendrix argues that the price quote is an estimate for the cost of the work that will be done by the ILEC and that the ALEC's involvement would be inappropriate and inefficient. The witness explains that BellSouth prepares a unique, ICB price quote for all collocation applications. If required to develop price quotes with the ALEC's participation, witness Hendrix asserts that, from BellSouth's perspective, the application response process could take longer than it otherwise would take. Witness Hendrix states that it would only be reasonable for an ALEC to participate to the extent that it provide detailed and accurate information, including racking information, bay information, power and cable requirements, equipment layout and other specifics.

GTEFL and Sprint witnesses, Reis and Closz, respectively, reach a similar conclusion, albeit from a somewhat different perspective. Witnesses Reis and Closz support tariffing collocation prices, which would impact the development of the ILEC/ALEC price quote. Witness Reis states that if collocation prices were tariffed and the ALEC submitted its application with accurate information, there would be no need for involvement by the ALEC.

Sprint witness Closz argues that ALECs seem interested in participating in the price quote because:

> . . . the total cost to provision the space is perceived to be higher than appropriate. Sprint's assumption would be that the ALEC may believe that they could provide suggestions or alternatives that would serve to reduce the provisioning costs.

The witness states that Sprint supports a limited role for the ALEC in the ILEC/ALEC price quote development procedure, primarily for clarification, or perhaps a recalculation of a price quote. The ALEC's participation should be only to the extent of providing specific requests or development parameters. The witness cautions that further involvement by the ALECs would be ". . . cumbersome and would seriously impede the ILEC's ability to provide timely price quote responses." Witness Closz concludes by offering Sprint's support for ILEC tariffing by asserting that tariffing would expedite the price quote process and give ALECs a more defined level of certainty of the anticipated collocation costs.

Covad, MGC, and Supra advocate ALEC participation in the development of a price quote. MGC, Supra, and the FCCA also promote the tariffing of collocation rates. MGC witness Levy agrees with the Sprint and GTEFL witnesses that ". . . if all collocation elements were tariffed, there would be no need to develop price quotes."

Covad witness Moscaritolo and Supra witness Nilson each believe the ALEC should have an option to participate in the development of an ILEC's price quote, as a means to determine whether the amounts charged by the ILEC are reasonable. Witness Moscaritolo argues that the ILEC should be required to deliver to the ALEC copies of all invoices associated with a collocation request.

Supra witness Nilson further contends that ALEC participation in developing the price quote would lead to mutual agreement between the ILEC and the ALEC, and would serve to reduce the provisioning costs, the need for construction that requires permits, and the overall time to collocate. He states that the resulting ILEC/ALEC meetings and site visits could enable the ALEC to explain any misunderstandings or design errors before the ILEC commences work activities. The witness believes that this cooperation would decrease the ALEC's time to market.

In addition, witness Nilson submits contrasting examples of collocation provisioning experiences with BellSouth and Sprint. He states that Supra's experience with Sprint has been far more favorable in terms of site visits, engineering meetings, and vendor activities held during the application response process, when the price quote is being developed. On the other hand, he states that BellSouth has declined to allow Supra any involvement in developing its price quote. The witness contends that BellSouth holds no meetings and does not allow site visits until an order is firm, which occurs when " . . . the ALEC accepts a non-detailed three line item quotation of collocation costs and then pays fifty percent (50%) of those funds up front."

ANALYSIS AND DETERMINATION

Based on the foregoing, it appears to us that the development of the price quote for collocation space is primarily a function that the ILEC should perform. We recognize that ALEC participation may inhibit the price quote process, rather than improve it. We believe that the ALEC will be best served by providing a complete and accurate application to the ILEC when seeking a price quote for collocation, and the ILEC should seek clarification in a timely manner, if needed. Therefore, ILECs shall not be required to include ALECs in the development of the price quote. We note, however, that our decision on this point does not reach the issue of the reasonableness of the ILEC's price quote. Pricing issues will be addressed in another phase of this proceeding.

The record demonstrates that cooperative efforts can be beneficial, as indicated by Supra witness Nilson's references to Supra's experiences with Sprint. We encourage such cooperative efforts. Nevertheless, we shall not require ALEC participation in the price quote process, because the evidence demonstrates that participation by the ALEC may impede the process to the detriment of both parties.

XV. USE OF ILEC-CERTIFIED CONTRACTORS BY ALEC

In this section, we consider whether an ALEC should be permitted to use ILEC-certified individuals to perform construction activities associated with physical collocation. Title 47, Part 51 of the FCC's Code of Federal Regulations (C.F.R.) details certain interconnection obligations to which the ILECs are bound, and Section 323(j) addresses the ILEC certification issue. FCC Rule 47 C.F.R. §51.323(j) states:

> An incumbent ILEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent ILEC, provided, however, that the incumbent ILEC shall not unreasonably withhold approval of contractors. Approval by an incumbent ILEC shall be based on the same criteria it uses in approving contractors for its own purposes.

BellSouth witness Hendrix believes the ILEC/ALEC relationship is analogous to that of a landlord and a tenant in a multi-tenant environment. As such, he describes BellSouth's role as owner or steward of the central office, stating that an ALEC should be allowed to use ILEC-certified contractors to perform work within their own collocation space, but not outside of that space.

Witness Hendrix asserts that work activities of "tenants," or ALECs, should be limited to their own space, where they would be

> . . . allowed to build walls inside their space, add lighting and receptacles and install equipment, but they are not allowed to do major mechanical or electrical work that serves or runs through other tenant space . . . The landlord/BellSouth, however, performs all site readiness work that is outside of the tenant/ALEC's space and that could potentially affect the landlord/ILEC's and other tenants'/ALECs' working equipment. Such work includes, but is not limited to, space preparation . . . power work, cable and racking, and other code required common improvements.

Witness Hendrix cites three main justifications for BellSouth's position of not allowing ALECs to work on "common elements," or work outside of an ALEC's space: 1) BellSouth's concern that allowing multiple carriers to perform common area work would increase costs and create chaos in the central office; 2) BellSouth's commitment to protect against network outages; and 3) BellSouth's concern for safety. He emphasizes that BellSouth is responsible for assuring the operating environment of its own network, the public switched network, and that of other collocators. In order to do this, witness Hendrix states that BellSouth requires the use of ILEC-certified contractors for the engineering and installation of equipment and facilities in its central offices. This provides BellSouth the assurance that technical, safety, and quality standards are achieved and the work is done so that problems are not created for BellSouth, the ALEC, or other neighboring ALECs. Witness Hendrix concludes by declaring that BellSouth's vendor certification process is the appropriate mechanism for maintaining high standards and that it is in the public interest.

GTEFL witness Reis asserts that ALECs should not be permitted to hire ILEC-certified contractors to perform space preparation, racking, cabling, and power work, stating that GTEFL should maintain control of and responsibility for the contractor doing this work. He cites safety and efficiency concerns as support for GTEFL's centralized control, and believes that noncentralized, or ALEC-directed control could result in scheduling conflicts, liability issues, or longer installation intervals.

Sprint witness Closz argues that ALECs should be permitted to hire ILEC-certified contractors to perform space preparation, racking, cabling, and power work, but conditioned her approval on the ILEC's certification process being the same process the ILEC uses for its own purposes, as detailed in FCC Rule 47 C.F.R § 51.323(j). However, witness Closz asserts that in specific instances where a work activity could affect the entire building, the ILEC can and should be the party to perform such activities. The witness concludes that the ILEC is, after all, the overall steward of its central office buildings.

The ALECs, by and large, are in favor of being allowed to hire ILEC-certified contractors to perform space preparation, racking, cabling, and power work. Intermedia witness Jackson states that the ILECs should not be allowed to require the use of their own certified vendors, and that the present guidelines ALECs must follow are inadequate and monopolistic. The witness asserts that Intermedia and other ALECs should be permitted - although not required - to hire ILEC-certified contractors, but

> . . . that the activities of space preparation, racking, cabling, and power should be performed by the ILEC. All of these types of functions are the ultimate responsibility of the ILECs. ALECs should not have to assume the responsibility for performing these functions.

He concludes by declaring that Intermedia should be able to install and work on its own equipment.

MCG witness Levy and Supra witness Nilson state that an ALEC should have the option to do any installation work currently being done by ILEC personnel or ILEC-certified vendors. Witness Nilson argues that Supra should have the right to have an ILEC-certified contractor perform any and all collocation work. He cites FCC Rule 47 C.F.R. §51.323(j) as support for his argument.

MGC witness Levy testifies that it is immaterial whether the certified contractor performing the space preparation, racking, cabling, and power work is acting on behalf of the ILEC or ALEC. He states, however, that the ILEC should have the right to review any plans in advance of the actual construction work, and may be paid a nominal fee for its engineering review, if the ALEC manages the process rather than the ILEC.

MCI witness Martinez states that the ALEC should be given the option to have any work, whether inside or outside of the designated collocation space, performed by ILEC-certified contractors or by certified ALEC employees. The witness proposes the idea of self-certification as a component of MCI's own training for employees. He contends that the ILEC's certification material could be offered in combination with the ALEC's customary training, and states that the ALEC would maintain the appropriate documentation to support the employees' attendance. He acknowledges, though, that the certification procedure would differ from the ILEC's own certification.

ANALYSIS AND DETERMINATION

Upon consideration of the evidence presented, we find that the contractor certification process shall be no different for the ALEC's contractors or employees than for the ILEC's contractors or employees. This view is consistent with FCC Rule 47 C.F.R. §51.323(j), which provides that the ILEC should approve ALEC contractors based upon the same criteria it uses for its own purposes. An equal certification process gives the ILEC assurances that the individuals working in its central office buildings have obtained an identical degree of training, and because the same certification applies for non-ILEC individuals [i.e., contractors and/or ALEC employees], the ALEC should be permitted to hire them or use them to perform space preparation, racking, cabling, power work and all other collocation work activities, but only within their collocation space. We do, however, interpret that the "same criteria" passage applies to the certification process, not just the materials. Thus, we disagree with the MCI proposal to use just the ILEC's materials. We believe that the ILEC should be entitled to administer its own certification, and that it should be administered in an equal manner between ILEC and non-ILEC individuals.

We acknowledge that the uniform certification process gives the ILEC assurances that the individuals working in ILEC central offices - whether ILEC or ALEC employees or contractors - have the same degree of instruction on, among other things, network and personal safety. The certification does not, however, affect the ILEC's overall responsibility for operating the entire facility, which it owns. The record demonstrates that the ILEC has a responsibility to provide an environment to meet its own needs and the needs of ALEC tenants, particularly for major mechanical systems. The record also shows that work activities that involve major or common mechanical systems may be necessary, and that these types of functions are likely to be outside of a collocator's space. We believe those tasks should be coordinated and performed by the ILEC. As such, we agree with BellSouth witness Hendrix's assertions that the ALEC's work activities in the ILEC's central office facilities should be limited to their designated collocation space.

The ILECs contend that they are, and should continue to be, the overall stewards of their central office buildings. We agree, and believe that the ILECs have an obligation to oversee and maintain the entire facility. Allowing multiple ALECs to perform work activities outside of their designated collocation spaces could result in chaos, redundancy, or even compromise the integrity of the entire central office or network.

In addition, we are persuaded and so find that because the identical certification is obtained by the ILEC and non-ILEC contractors, the ALEC should be permitted to hire them or use them to perform space preparation, racking, cabling, power work for the construction of physical collocation arrangements, but they should be allowed to do so only within their collocation space. We believe, however, the distinction between work activities within and outside of a collocator's respective space is crucial.

XVI. AUTOMATIC EXTENSION OF PROVISIONING INTERVALS

In this section, we address whether there are any reasons that the provisioning intervals for virtual and physical collocation established by this Commission should be extended without the need for an agreement by the applicant ALEC or a filing by the ILEC of a request for an extension of time. In Order No. PSC-99-1744-PAA-TP, we stated:

> Upon firm order by an applicant carrier, the ILEC shall provision physical collocation within 90 days or virtual collocation within 60 days. If the ILEC believes that it will be unable to meet the applicable time frame and the parties are unable to agree to an extension, the ILEC shall seek an extension of time from the Commission within 45 calendar days of receipt of the firm order . . . The ILEC shall explain, in detail, the reasons

> necessitating the extension and shall serve the applicant carrier with its request. The applicant carrier shall have an opportunity to respond to the ILEC's request for an extension of time. The Commission will rule upon the request as a procedural matter at an Agenda Conference.

Order at p. 17.

BellSouth witness Milner states that BellSouth does not have total control over collocation provisioning intervals because there are several factors, such as the permitting interval, local building code interpretation, and unique construction requirements, that are outside of BellSouth's control. He contends:

> There are three (3) situations where provisioning intervals should be extended. They are: 1) provisioning of collocation arrangements encountering extraordinary conditions; 2) provisioning of collocation arrangements encountering unusual delays in the permitting process, and; 3) provisioning collocation arrangements associated with central office building additions.

Witness Milner further states that "[E]xtraordinary conditions include, but are not limited to, major BellSouth equipment rearrangements or additions; power plant additions or upgrades; major mechanical additions or upgrades; major upgrades for ADA compliance; environmental hazards or hazardous materials abatement."

Witness Milner also contends that much of the work required to provision collocation arrangements requires building permits before construction can commence, and that the time required to receive building permits is beyond BellSouth's control. He states that BellSouth has experienced permitting intervals that range from 15 days to in excess of 60 days. Witness Milner cites several examples of conflicts that BellSouth has had with local officials regarding obtaining permits.

GTEFL witness Ries states:

> If major system upgrades, such as those involving HVAC or power, are required in conjunction with a physical or virtual collocation request, provisioning may take longer than usual. In these instances, parties should be able to negotiate a date for completion of the collocation arrangement (based upon the extent of the required modifications, contractor availability, and the like) without the need to request a waiver.

Witness Ries, like BellSouth witness Milner, contends that issuance of building permits is out of the ILEC's control. However, he states that "[W]hen it is not possible to obtain building permits in a timely manner, an extended due date should be negotiated between GTE and the ALEC, based on the schedule of the permitting agency."

Concerning virtual collocation, witness Ries states that an ILEC should not be required to request a waiver in case of equipment delivery delays. He argues that "if the ALEC doesn't order its equipment early enough in the process, the 60-day interval may come and go before GTE even receives delivery of the ALEC's equipment."

Witness Ries concludes:

> Finally, there should be no need to seek a waiver when GTE and the ALEC agree to an extension for any reason; when the ALEC makes modifications to its application that will cause material changes in provisioning the collocation arrangement; or when the ALEC fails to complete work items for which it is responsible in the designated time frame.

Sprint witness Closz states:

> Sprint's perspective is that there are no reasons that should provide the ILEC with an opportunity to unilaterally extend collocation provisioning intervals. Rather, Sprint believes that *an open dialogue regarding* collocation provisioning scenarios will in

> most cases lead to mutual agreement between the parties regarding the appropriate provisioning interval. In such instances where the ILEC and the requesting collocator are unable to reach agreement, the ILEC may seek an extension from the Commission.

However, witness Closz does believe that major infrastructure upgrades and other factors beyond the control of the ILEC are appropriate reasons for the ILEC to seek an extension of the provisioning intervals from either the requesting collocator or this Commission.

All of the ALECs in this proceeding argue that an ILEC should not be able to unilaterally extend the provisioning intervals for permitting or any other reason. They state that if the ALEC and the ILEC cannot agree on extensions of time for provisioning intervals, the ILEC should be required to file for an extension with the Commission. Supra witness Nilson states that "[O]ther than acts of God, I cannot foresee a reason that would warrant an extension of time."

<u>ANALYSIS AND DETERMINATION</u>

Upon consideration, we are not persuaded that there are any reasons that the provisioning intervals established by this Commission should be extended without agreement by the ALEC or filing of a request for an extension of time by the ILEC. In Order No. PSC-99-1744-PAA-TP, we required that if an ILEC believes it will be unable to meet the applicable time frame, and the parties are unable to agree to an extension, the ILEC shall seek an extension of time from us within 45 calendar days of receipt of the firm order. We believe that these requirements provide enough guidance if extensions of time are truly required.

We accept the arguments of BellSouth witness Milner and GTEFL witness Ries that major system upgrades such as HVAC or power upgrades are extraordinary circumstances that may extend the provisioning intervals. They also argue that the permitting process is out of their control. It is clear to us that there may be times when major system upgrades are required to provision collocation. We are also persuaded that the actual approval of building permits is out of the ILEC's control and that there may be instances when ILECs have experienced extraordinarily long waits in receiving some building permits. However, the record suggests that these instances are exceptions rather than the rule. We believe that, under normal circumstances, the provisioning intervals established in Order No. PSC-99-1744-PAA-TP are adequate.

We also believe that we provided sufficient guidance in Order No. PSC-99-1744-PAA-TP to address situations in which an extension of time is required. We note that the Order also requires that the ILEC and ALEC attempt to discuss and agree to an extension of time before making a formal request to the Commission.

Regarding the permitting interval, BellSouth witness Milner states that:

> BellSouth has been increasingly successful in working with the various governmental agencies in reducing the permit approval interval. Further, BellSouth is communicating with the ALECs so that they have a good understanding of the issues faced in processing a collocation request.

Witness Milner also indicated that the negotiation process is working.

Likewise, GTEFL witness Ries agreed that the process we have previously established is working well.

Similarly, Sprint witness Closz indicated that the ILECs should simply follow the procedure this Commission has already established. Although Sprint is acting as both an ILEC and ALEC in this proceeding, it appears that all three ILECs seem to agree that the current procedures regarding extensions of provisioning intervals established by this Commission are workable. There is no evidence to suggest otherwise. Therefore, we do not believe any changes are necessary.

XVII. ALLOCATION OF COSTS BETWEEN MULTIPLE CARRIERS

In this section, we consider how various costs associated with the provisioning of collocation space should be allocated among multiple carriers. We note that the FCC addressed this issue in its First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 98-147:

> We conclude, based on the record, that incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation.

FCC Order at Paragraph 51.

GTEFL witness Ries does not agree with allocating the costs addressed in this issue over multiple carriers, and GTEFL has appealed this matter to the United States Court of Appeals for the District of Columbia. Witness Ries believes that such a cost allocation will prevent them from recovering their actual costs. GTEFL witness Ries further contends that many fixed costs associated with collocation space preparation do not depend on the number of competitors that wish to collocate, or the amount of space used by each.

GTEFL witness Ries supports a tariff approach and believes this will satisfy the FCC's requirements established in CC Docket 98-147. The witness contends that the tariff rates would be determined based on past collocation activity. Witness Ries further asserts that the relevant costs over a period of time would be totalled, then divided by the number of collocators (fill factor) over that same time period. The rates determined from this process would be applied to all collocation requests in the future.

We also note that GTEFL filed a collocation tariff with us on December 30, 1999. GTEFL witness Ries believes the tariff is consistent with the FCC's First Order in CC Docket 98-147. The witness testified that the costs identified in the Florida tariff for site preparation " . . .are based on GTE[FL]'s work on previous projects and coming up with some averages for what the site preparation would cost."

Contrary to GTEFL witness Ries, MCI witness Martinez believes that the cost of existing security arrangements should be included in the existing charges for collocation, and any additional security measures the ILEC takes to protect its own equipment should be absorbed by the ILEC. He also believes that in the rare instances when ALECs are required to pay security costs, these costs should have been included in a forward-looking cost model used when setting collocation rates. Witness Martinez also suggests that this Commission follow the Texas Commission and place the burden on the ILEC to justify when additional security measures are needed and recoverable from ALECs. MCI witness Martinez further argues that the entire cost of removing obsolete equipment should be borne by the ILEC. He believes that by allowing obsolete equipment to remain in place, the ILECs are able to recover their costs of removing obsolete equipment from the ALECs when requesting collocation space.

In response, GTEFL witness Ries disagrees with witness Martinez and contends that the FCC allows the ILEC to install security cameras and monitoring systems. The witness further asserts that state commissions can allow ILECs to recover these costs in a reasonable manner. Witness Ries believes the need for additional security costs are caused by the ALECs; therefore, cost recovery should be permitted.

BellSouth witness Hendrix believes that the costs addressed in this issue should be absorbed by the number of collocators in a central office. The witness contends that the ALECs, as the cost-causers, should absorb the costs of security and reporting. BellSouth proposes filing a cost study with the Commission for security access systems, site preparation and collocation space reports in an effort to limit the number of elements priced on an Individual Case Basis (ICB). Witness Hendrix further explains that this cost study will also include what he believes to be several new space preparation elements. The witness defines the various rate elements associated with security access including security systems, new access card activation, administrative changes to existing access cards, and replacement costs for lost or stolen cards. Witness Hendrix maintains that a definitive discussion of the rate elements and cost methodology associated with new site preparation and collocation space report elements would be premature at this time.

Witness Hendrix further asserts that standardized prices can be developed from the cost study and included in future interconnection agreements, rather than being filed as a tariff. He believes his customers would prefer to discuss the details of an interconnection agreement in person rather than work with a tariff. The witness further explains that BellSouth currently recovers these costs on an individual case basis (ICB) by pro-rating the cost of space preparation on a square footage basis, and charging the ALEC based on the number of square feet used. Currently, the pro-rated cost per square foot assessed to the ALECs varies among central offices based on the different costs of site preparation in each central office.

AT&T's witness Mills agrees in part with BellSouth's methodology, but believes actual cost studies must be examined to determine the appropriateness of the final rates. He further believes the costs of site preparation should be recovered based on each ALEC's square footage divided by the total central office square footage, including BellSouth occupied space.

Supra witness Nilson agrees with AT&T witness Mills and says:

> I believe the costs for collocation should be allocated based on the amount of space occupied by the ALEC and a portion should be shared by all ILECs since they also benefit from the upgrades, and profit from the ALEC's business expansion.

Supra witness Nilson also recommends that we determine the proper pricing methodology to ensure the ILECs do not impose unreasonable and unnecessary costs on the ALECs, and suggests this Commission may want to adopt the approach taken by Bell Atlantic that allows ALECs to pay collocation costs on an installment basis.

Sprint witness Hunsucker's position is consistent with AT&T witness Mills' methodology. He also believes costs should be recovered from collocating carriers in a reasonable manner and shared by the ALECs, as well as the ILEC, in a particular central office. Witness Hunsucker believes the costs of implementing security measures should be based on the relative square footage, which he believes is an appropriate basis for estimating the value of the equipment being protected. He further contends that the appropriate cost recovery method for space preparation and other collocation costs is on the basis of square footage occupied. Witness Hunsucker explains:

> For example, if an ILEC decides to make a general building modification (complete change out of the heating and cooling system), then the ALECs would be charged on the basis of their respective square footage to the total square footage associated with the building modification. If, however, the ILEC only prepares space sufficient to handle the specific ALEC request, then the ALEC would be responsible for 100% of the charges.

Furthermore, witness Hunsucker believes the cost of collocation space reports should be recoverable by the ILEC. Because ALECs can request this type of report at any time, he believes these costs should be recovered via a non-recurring charge to be assessed by the ILEC at the time of the ALEC request. He believes this charge should be independent of the collocation application fee.

Witness Hunsucker believes that a methodology based on the relative square footage used by a provider is fair to all collocating carriers. He also believes that GTEFL's allocation methodology is not consistent with the historical cost methods approved by state commissions relating to unbundled network elements. Sprint witness Hunsucker argues that GTEFL witness Ries' proposed cost allocation method is unfair. Witness Hunsucker explains that witness Ries' proposed method is based upon 100% utilization of the inputs, which places an unfair burden on collocators when 100% utilization is not achieved. He concludes his analysis by noting that GTEFL's proposal of using the number of collocators or actual users of the facility produces a totally different result and places an inappropriate burden on ALECs. He argues that this is not only unfair, but anticompetitive. Furthermore, while he agrees that it is appropriate to allocate a fair share of the costs to the ALECs, witness Hunsucker maintains that the ILEC should pay an appropriate percentage of the costs if benefits are also received by the ILEC.

Witness Hunsucker also believes that BellSouth witness Hendrix's methodology is inappropriate because it too will place an inappropriate burden on the ALECs. Witness Hunsucker is not in favor of any method that allocates cost only among the number of collocators in a central office.

Intermedia witness Jackson disagrees with GTEFL witness Ries' methodology that uses a statewide average of collocators to determine costs in a given central office. He believes that

> . . . collocators in one central office could end up paying more than their fair share of collocation costs because the costs are spread across all collocators as opposed to being divided amongst the collocators in a particular CO.

In contrast to any other options presented, MGC witness Levy believes all costs addressed in this issue should be paid for by the ILEC because the ILEC can generate revenues from wholesale customers. He believes other companies should not pay for the ILECs' business opportunities and that these costs should be absorbed by the ILEC as a cost of doing business.

Rhythms witness Williams agrees in part with MGC witness Levy that if the ILEC decides to install additional security measures, it should do so at its own expense. While he acknowledges the FCC's opinion granting the ILEC the right to protect its own equipment, he believes the ILEC should bear all the costs of additional security measures to protect its equipment if the ILEC chooses to do so.

FCCA witness Gillan believes this Commission should not reach a decision on this issue but should instead focus on establishing the ILECs' general obligations towards providing collocation. He does not agree with the positions presented by GTEFL witness Ries that collocation rates should be based upon a fill factor, nor does he agree with BellSouth witness Hendrix's suggested method of basing costs on the number of collocators in a central office. Witness Gillan observes that "It is useful to note the ILECs seem willing to adopt such a perspective when it comes to cost recovery, but not provisioning." He continues:

> It is not useful here to debate in the abstract the appropriateness of either specific suggestion (BellSouth and GTEFL positions). The larger point is that it makes little sense to embrace standardized pricing, while remaining committed to a world of customized provisioning.

Witness Gillan believes that the best way to handle such costs is through the development of a statewide collocation rate. He also believes a statewide collocation rate, or tariff, would benefit the ALECs in two ways: first, a tariff would introduce certainty into the process as to costs and the length of time required for preparing collocation space; second, it would provide ALECs with the ability to evaluate the terms, conditions, and prices for collocation space.

In addition, witness Gillan contends that the controversy over developing a statewide tariff is minimal. He notes that Sprint supports a statewide tariff, while GTEFL has filed a tariff in Florida. He believes that BellSouth is not willing to take this step, because BellSouth apparently believes the ALECs do not want a tariff. He emphasizes that every ALEC that is a party to this case supports a collocation tariff, which BellSouth should acknowledge. The witness further indicated that a collocation tariff need only be statewide, not at some lower level of aggregation. Even if a tariff were put in place, however, witness Gillan believes ALECs should retain the right to negotiate collocation rates. He explains that ALECs fall into two categories: those that are big enough and have the resources to enter into negotiations, and generally everybody else.

ANALYSIS AND DETERMINATION

We note that while our decision on this issue will not result in setting rates at this time, we do believe that it will dictate, to some extent, how certain rates are to be derived in future proceedings. Specifically, the recovery method dealt with in this issue must cover the cost of security arrangements, collocation space reports, and other costs associated with the provisioning of collocation space. The objective is to arrive at a method that neither favors nor discriminates against any carrier.

As a general matter, we agree with the FCC's decisions in CC Docket No. 98-147 at Paragraph 51, and believe that certain costs associated with collocation should be recovered on a pro-rated basis, so that the first collocator in a central office is not responsible for the entire cost of site preparation if it will benefit future collocators. We also acknowledge that the FCC stated that it expects state commissions to determine the proper pricing methodology to ensure that incumbent LECs properly allocate site preparation costs among new entrants. Thus, it appears to us that MGC witness Levy's proposal, that all costs associated with collocation should be absorbed by the ILEC, is in complete opposition to the FCC's statements on this issue.

While many parties presented arguments in support of standardized pricing or the creation of a statewide tariff, we emphasize that few parties suggested how the rates should be determined. We further emphasize that the issue presented for our determination only pertains to how certain costs should be allocated among multiple carriers consistent with previous FCC and Florida Commission orders.

A. Cost of Security Arrangements, Site Preparation, and Other Costs Necessary to the Provisioning of Collocation Space

At Paragraph 51 of the FCC's Advanced Services Order, the FCC provides general guidance as to how costs of these components should be "allocated" or, equivalently, how cost recovery should be structured:

> We conclude, based on the record, that incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation.

At the outset, we note that the above paragraph does not specifically refer to allocation of costs to multiple carriers. Second, we emphasize that it appears that this passage does not necessarily require that all costs referred to in therein must be allocated to more than one provider. Rather, the language appears to address only costs to prevent the first collocator in a particular incumbent premises from being held responsible for the entire cost. Accordingly, we infer that certain costs associated with space preparation, security measures, and other items may need to be allocated among multiple providers; what needs to be determined is which costs require this specific treatment. Key factors we have considered are cost causation and beneficiaries, as addressed by witnesses Hendrix and Hunsucker.

Upon consideration, we believe that the following scenarios best demonstrate how the costs of security arrangements, site preparation, and other costs of collocation should be handled:

1. Cost of security arrangements, site preparation, and other costs necessary to the provisioning of

collocation space incurred by the ILEC that benefit only one collocating party.

2. Cost of security arrangements, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC that benefit all current and future collocating parties.

3. Cost of security arrangements, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC that benefit all collocating parties and the ILEC.

Based on the evidence presented, we believe that determining how to allocate costs for each of these three scenarios among multiple carriers will ensure non-discriminatory treatment among carriers. We believe our following determinations achieve this goal.

First, we are persuaded and so find that the costs of security arrangements, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC that benefit only a single collocating party in a central office should be paid for by that collocating party. As argued by witnesses Hunsucker and Ries, recovering costs only from the party that benefits will eliminate the burden on ILECs and other collocators of paying for costs of collocation they did not cause to be incurred.

Second, we find it appropriate that the costs of security arrangements, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC that benefit both current and future collocating parties shall be recoverable by the ILEC from current and future collocating parties. In this case, these costs shall be allocated based on the amount of floor space occupied by a collocating party, relative to the total collocation space for which site preparation was performed.

Third, we find that the costs of security arrangements, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC that benefit current or future collocating parties and the ILEC shall be recoverable by the ILEC from current and future collocating parties, and a portion shall be attributed to the

ILEC itself. We note that the ALECs addressed their concerns over security issues that not only benefit collocating parties, but also benefit the ILEC. Acknowledging those concerns, we shall require that when multiple collocators and the ILEC benefit from modifications or enhancements, the cost of such benefits or enhancements shall be allocated based on the amount of square feet used by the collocator or the ILEC, relative to the total useable square footage in the central office.

B. Costs of Collocation Space Reports

GTEFL and BellSouth did not specifically address the cost of collocation space reports separately. It appears, however, from the testimony presented, that these parties would prefer to recover the costs of collocation space reports in the same manner they advocate for all other costs addressed in this issue. Sprint witness Hunsucker believes, however, that this cost should be recoverable by the ILEC through a non-recurring charge assessed upon the collocating party requesting the report.

Given the nature and the prescribed use of a collocation space report, we agree with witness Hunsucker that a non-recurring charge is the appropriate way to recover the costs of collocation space reports. A collocation space report must be made available to any requesting party, and the evidence demonstrates that it is typically used by the ALECs to assess whether collocation space is available in a particular ILEC facility. Further, a collocation space report is made available to ALECs before an application is submitted for collocation, and in many cases an actual application for collocation may not be forthcoming. As such, we agree with witness Hunsucker and find that a one-time non-recurring charge is the most reasonable means for an ILEC to recover the costs of producing these reports.

XVIII. <u>PROVISION OF INFORMATION REGARDING LIMITED SPACE AVAILABILITY</u>

While the parties all appear to agree that the ILEC should notify a requesting ALEC of the amount of collocation space available in a given CO when the collocation space is insufficient to meet the request, the parties disagree on the time frame for such notification. Thus, in this section, we consider the appropriate time frame for an ILEC to notify an ALEC of the amount of available space for collocation when the space is insufficient to meet the request. Limited or insufficient space is referred to herein as "partial collocation space."

BellSouth witness Hendrix asserts that BellSouth is not opposed to notifying the ALEC of what space is available, when there is insufficient space to fill the original request. Witness Hendrix states:

> The ALEC can then choose to either accept the space that is available; accept the space available and place the remaining amount of space it requested on the waiting list BellSouth maintains for that central office; choose not to accept the space and place its entire request on the waiting list; or simply choose not to accept the space.

Witness Hendrix further contends that BellSouth will not proceed to provision the available space without a firm order from the ALEC. He adds that there is no application fee or new application interval associated with the ALEC's acceptance of any partial collocation space. Witness Hendrix states that the ALEC will be given time to reassess its application and appropriately modify it to conform with the available space. Witness Hendrix also states that upon notification of the availability of partial collocation space, the ALEC can submit a firm order for the partial collocation space. At this same time, the witness explains, the ALEC would be required to pay for the accepted partial available space. BellSouth witness Hendrix contends that an ALEC on a waiting list will be afforded the same opportunity to accept or reject any partial collocation space, as its turn comes on the list. He further contends that if an ALEC is notified that there is no collocation space in a central office (CO) when the ALEC places a request for collocation space, the ALEC has ten days from the date of notification to request a physical tour of the CO.

GTEFL witness Reis states that GTEFL advises the ALEC of what space is available for collocation when there is insufficient space to meet the ALEC's request. He testifies that an ALEC can tour the CO when it is denied collocation space in that CO, but argues that a CO tour for an ALEC that has been granted partial collocation space is unnecessary. Witness Reis contends that such tours were not contemplated by the FCC or the Act. In cases where only partial space is available, witness Reis further argues that this Commission should not require space exhaustion verification tours, since such an expansive proposal is subject to ALEC abuse. Witness Reis argues:

> It is GTE's policy that we will grant a tour when we deny a request for collocation, not just - if we deny a request that says, "You do not have 400 feet; we can only give you 300 feet," it is GTE's policy that we would not provide a tour at that time, only when we totally deny the request.

Witness Reis further argues that such a proposal would potentially tie-up needed resources that could go toward implementing collocation requests. Witness Reis further explains that if the company were required to constantly conduct tours, the engineering installer technical representative would rarely be available to doing their work, including provisioning collocation space.

Sprint witness Closz asserts that if an ILEC can only provision a portion of the ALEC's requested collocation space, the ALEC and the ILEC must discuss options that are relevant to the particular ALEC's request. The witness argues that this discussion should be conducted within the FCC's established time frame for the ILEC's response to the collocation application.

Witness Closz further argues that in a case of insufficient or partial collocation space, the ALEC is entitled to a tour of the ILEC's premises, and asserts that prior to such a tour, the ILEC should be required to provide the ALEC with detailed engineering floor plans of the premises, showing detailed information that will enable the ALEC to review and make its determination of the available collocation space. Witness Closz argues that all of these provisions comport with FCC Rule 47 C.F.R. § 51.321 (h), which states in part:

> Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such document within ten days of the date at which a premises runs out of physical collocation space.

MCI witness Martinez argues that in addition to the ILEC informing the ALEC of the availability of partial collocation space, the ALEC should be given the opportunity to modify its request consistent with the amount of available space, without penalty.

Rhythms witness Williams argues that the ILEC should be required to notify the ALEC of the amount of space actually available at a CO when such collocation space is insufficient to satisfy the ALEC's initial request. Witness Williams argues that such notification may allow the ALEC to modify its plans for collocation at a particular CO, and contends that an ALEC cannot make such a determination unless the ILEC informs the ALEC of the availability of this partial collocation space at the particular CO. He asserts that website posting of CO availability is an important mechanism for ALECs to use in planning where to collocate.

Covad witness Moscaritolo believes that the ILEC should notify the ALEC if only a portion of the requested collocation space is available, and argues that the ILEC should proceed to provision such partial collocation space without delay, with no additional application fee, or new application interval. Witness Moscaritolo contends that once an ALEC has decided to collocate in a particular CO, it is the ALEC's ultimate desire to serve customers out of that CO; hence, the ability for the ALEC to collocate in lesser space than originally requested is acceptable. Witness Moscaritolo further argues that to prevent ILECs from abusing the partial space provision, any partial filling of any collocation request should trigger the space verification procedures of the FCC and this Commission.

MCG witness Levy states that the ILEC should advise the ALEC of any amount of partial collocation space, when the available space is insufficient to fill the submitted collocation request. Witness Levy argues that the process should be streamlined, whereby the ALEC can submit one application with three different choices of the ALEC's preferred mode of collocation, instead of revising the application based on rejections.

Supra witness Nilson argues that the ILEC should inform the ALEC of the amount of space available when there is insufficient space to fill the original space request, and further contends that the ILEC should then be required to demonstrate that sufficient space to fill the entire request has been depleted. Witness Nilson also argues that notification of insufficient space to meet a collocation request in any given CO should trigger a walk-through visit of the CO by Commission staff, the affected ALEC and the ILEC.

Intermedia witness Jackson similarly asserts that when there is insufficient space to fill the ALEC's initial collocation request, the ALEC should not be required to submit another application for the partial available collocation space; instead the original application should suffice. Witness Jackson argues that BellSouth's 10-day window for touring a CO seems to suggest that after the 10-day window, the ALEC loses the opportunity to tour the CO. Witness Jackson further argues that such an interpretation of the FCC's rules is not reasonable and maintains that:

> . . . specifically, the ten-day window requirement is for the protection of the ALECs. In other words, if the ALEC requests a tour of the facility within the ten-day window, the ILEC is obligated to allow the ALEC to tour the facilities within ten days of the denial of space. However, nothing in the FCC's rules precludes an ALEC from requesting a tour date beyond the ten-day window or, for that matter, from requesting a tour after the ten-day window has ended. Any other interpretation would punish those ALECs who may not have the flexibility of immediately rearranging their schedules to accommodate a tour.

ANALYSIS AND DETERMINATION

As previously stated, all parties appear to agree that the ILEC should notify the ALEC of the amount of space available for collocation when the space is insufficient to meet the request. However, most of the parties are silent with respect to what time frame is appropriate for the ILECs to notify the ALECs of any partial available space in a CO. Since the ILECs will, in this instance, be responding to a collocation request as they would if sufficient space were available to fill the entire request, we find that the evidence supports the 15-calendar day response period we have required for all initial requests as being appropriate as well as consistent with our prior decisions. We believe that the 15-calendar day response period will allow the ILEC to provide the ALEC with a more complete response to the ALEC's request for collocation. We agree with BellSouth witness Hendrix that "[U]pon notification of the availability of partial collocation space, the ALEC can submit a firm order for the partial collocation space." We also find that in order for an ALEC to submit a firm order for partial collocation space, the ILEC's response must be sufficiently detailed to enable the ALEC to proceed with a decision to accept the space and consequently submit a firm order.

We also note that BellSouth witness Hendrix proposes a ten-day ALEC response interval. No other parties commented on this subject, nor was any other evidence presented to support this proposal. Neither the FCC nor this Commission has contemplated any ALEC response interval; therefore, we shall not now require one.

We are also not persuaded that an ALEC should be allowed to tour a CO if it is offered partial collocation space because of insufficient collocation space in a CO. We do not believe that the FCC order suggests that the ILECs should allow tours when partial collocation is provisioned; instead, an argument can be made that the FCC only anticipated CO tours in cases where collocation requests are denied. It appears that the ALECs' proposed CO tours for partial collocation space are inconsistent with provisions of FCC Order 99-48, which reads in part:

> Specifically, we require the incumbent LEC to permit representatives of a requesting telecommunications carrier that has been denied collocation due to space constraints to tour the entire premises in question, ...

FCC Order 99-48 at Paragraph 57.

While we are not requiring an ILEC to conduct a tour when only partially filling a request for space, we do emphasize that a tour must still be conducted by the ILEC as part of the process of seeking a waiver of the collocation requirements, and in situations where an ILEC can only partially fill a request for space, it is expected that the ILEC will need to request a waiver due to lack of space in the CO. Therefore, the ALEC will have an opportunity to participate in a tour as a part of our previously defined waiver process.

XIX. PROVISION OF INFORMATION REGARDING POST-WAIVER SPACE AVAILABILITY

In this section, we are not addressing whether the ILEC should inform us and the ALEC community when collocation space becomes available in a central office (CO) for which the ILEC was previously granted a waiver of the physical collocation requirements due to space exhaustion. Instead, we consider herein the appropriate time frame in which the ILEC shall inform us, as well as the ALEC community, when space becomes available in a CO for which the ILEC was previously granted a waiver of the physical collocation requirements due to space exhaustion.

BellSouth witness Hendrix states that BellSouth will maintain a waiting list of all ALECs that have applied for physical collocation in a CO that does not have space available for physical collocation. Witness Hendrix states that an ALEC can get on the waiting list by sending a letter of intent or by sending in an application for physical collocation at the specific CO. He contends that as space becomes available in the given CO, BellSouth will offer the available space to the first ALEC on the waiting list, and the ALEC has a time certain to respond to the offered space. However, witness Hendrix was not definite as to whether the ALEC has 30 or 60 days to respond to the offer on the available collocation space. Witness Hendrix further explains:

> When space becomes available for physical collocation in a previously exhausted central office, BellSouth will notify the ALECs that can be accommodated in the newly available space, based on the square footage each customer has requested. BellSouth will notify these ALECs a maximum of 60 days prior to the space availability date.

Witness Hendrix argues that BellSouth cannot commit to providing 90 days' notification prior to space availability, and contends that it is not reasonable to require ILECs to estimate what space will become available by modifications three months in the future, with the degree of accuracy necessary to support collocation requests. Witness Hendrix further explains that even if the company knew 90 days in advance that space might become available in an office, BellSouth would not notify the ALECs until there were only 60 days before the space would be available, because BellSouth wants to be sure it gives the ALEC an answer that will hold true. Witness Hendrix states that on the space availability date, BellSouth will inform this Commission that space has become available for physical collocation and also file to terminate the waiver in the specific CO.

GTEFL witness Reis states that GTEFL will post any changes regarding the exempt status of a CO at its exempt central office website within 10 business days of the status change. Witness Reis explains that:

> Within ten days of when the space becomes available, we put it on our website. And it is clearly marked that this office used to be exempt from having available space and now the space is available. And at that time the first party that comes forth with an application and with the 50 percent deposit for the nonrecurring charges would then have first-come, first-served for that available space.

Witness Reis further testifies that GTEFL would not maintain a waiting list while the CO waiver is active, because the waiting period would typically be very long. He contends that maintaining a waiting list would require GTEFL to check with every ALEC on the waiting list to see if each of the ALECs still has need for collocation in the CO in question.

Sprint witness Hunsucker argues that at the time a decision is made to increase available collocation space through any modifications, the ILEC should inform both the Commission and the ALEC community. Witness Hunsucker asserts:

> . . . the ILEC should provide a project plan and expected timeline of when the space will be available and should provide progress reports every thirty days as to the current status/activities. This information can be sent directly to each ALEC who has a request for collocation space pending or placed on an Internet web site.

Witness Hunsucker also states that it would be appropriate to notify ALECs of expected space availability further in advance than 60 days.

MCI witness Martinez states that ILECs should inform the Commission and all ALECs of space availability as soon as the

ILEC knows the approximate date which this space will become available. Witness Martinez argues that as part of obtaining a waiver, the ILEC would have shown what its plans are for relieving the space problem in the central office. Thus, the witness believes that the ILEC will have established a timetable for removing obsolete unused equipment, constructing additional space, etc. Witness Martinez contends that this type of relief work will need to start in advance; therefore, the ILEC should be able to estimate the space availability dates well before the date the space actually becomes available.

Witness Martinez further asserts that the ILECs should provide notification by letter to this Commission and to all ALECs that have filed requests for collocation in the CO. He argues that this information should also be posted on the ILEC's website as called for by the FCC. Witness Martinez contends that the new space should be offered on a first-come, first-served basis to ALECs who have previously been denied physical collocation space in the office.

Rhythms witness Williams argues that as collocation space becomes available at COs where ALECs were previously denied collocation, the ILEC should notify the ALECs that had previously requested space for collocation at the CO. Witness Williams asserts that the website posting of CO space availability is an important mechanism competitors utilize in planning where to collocate in a given market.

MGC witness Levy testifies that the ILEC should notify the Commission and any collocators who had previously been denied collocation, even if the collocator had proceeded with virtual collocation as an alternative. Witness Levy contends that the ILEC should be required to inform us and the ALECs of the pending availability at least three months before the additional space is ready for ALEC occupancy. Witness Levy argues that the advance notice will enable an ALEC to re-assess its interest in collocating in the specific CO and determine if the interest still remains.

Supra witness Nilson argues that if there is a physical collocation waiver in effect, as space becomes available in the CO, the ILEC should notify the Commission and any requesting carriers of the availability of space in the central office.

Intermedia witness Jackson argues that as space becomes available because of modifications in a CO, occupancy priority should be given to ALECs based on the order in which the ALECs originally applied for collocation in that CO. Witness Jackson argues that BellSouth's process of notifying ALECs on the waiting list that there is newly available space is unclear, defective and discriminatory.

AT&T witness Mills argues that BellSouth's proposal for notifying ALECs and the Commission when space becomes available in a CO that was under a waiver is unclear. Witness Mills contends that a simple letter to the ILEC should suffice for the ALEC to get on a waiting list, instead of the onerous process of filing an application along with the application fees. AT&T witness Mills further argues that BellSouth's proposal to notify the ALECs that can be accommodated based upon the square footage requested, suggests that the new space would be awarded based on the nature of the space requested and not on when the space was requested. Witness Mills contends that we should require the ILEC to provide a minimum 60-days' notice on new space availability, and argues that the minimum 60 days will allow ALECs sufficient time to evaluate their space needs.

ANALYSIS AND DETERMINATION

Based on the foregoing, it appears that most of the parties agree that the ILECs should inform us, as well as the ALECs, when space becomes available in a CO because of modifications, and that the newly available space should be assigned on a first-come, first-served basis.

While BellSouth and AT&T propose a 60-day notification period prior to the space becoming available, others suggest that an ILEC should inform the Commission and the collocators as soon as the ILEC becomes aware of the changed circumstance. We agree with BellSouth's witness Hendrix that there is merit in ensuring that the space is truly available before informing the ALECs and the Commission. We do, however, believe that notification should begin when the ILEC knows for certain that space will become available, because when an ILEC experiences a changed circumstance that may make space available, various factors could affect this potential space availability. There is greater benefit to be derived from earlier notification of the pending available space. Based on the evidence, we find that a 60-day notification period will allow the ALECs enough time to assess their collocation needs in relation to the particular CO.

With respect to the method of notification, it appears there is consensus for the FCC-prescribed website postings. However, there are differing opinions as to when an ILEC should post any updates on its public website. With the website postings, it is also unclear as to how this Commission will be made aware of any changed circumstances. Some parties have suggested notification by mail. We agree that this is a desirable notification requirement; therefore, in addition to the website postings, notification by mail shall be required.

In the event the ILEC's determination that space will be available does not allow for 60 calendar days' notice, the ILEC shall notify this Commission and requesting ALECs within two business days of the determination that space is available. Based on witness Martinez's testimony, we agree that in situations in which 60 calendar days' notice is not possible, this Commission and the requesting ALECs must be notified as soon as possible after the ILEC determines the approximate date that space will become available. Based on the evidence, we find that a maximum of two business days to make this notification is a reasonable approximation of "as soon as possible."

XX. <u>FORECASTING REQUIREMENTS FOR CO EXPANSIONS AND ADDITIONS</u>

In this section, we consider whether ILECs need to utilize a specific process to factor in ALECs' collocation space needs in CO forecasting.

BellSouth witness Milner argues that BellSouth factors in ALEC collocation space when planning CO additions or expansions. Witness Milner states that BellSouth factors in collocation space based on forecasts derived from:

> . . . space currently allocated for collocation, the amount of space requested in either current applications or collocators on a waiting list for that central office,

> and the amount of collocation space in central offices in the surrounding area.

Witness Milner also states that ALECs are encouraged to provide forecasts periodically for a planning horizon of two years, and explains that BellSouth uses these forecasts as an input when planning for CO additions, expansions, or replacements.

Witness Milner further asserts that forecasting collocation demand for CO addition or expansion is very different from forecasting network growth in the past, where network growth directly correlated with interoffice trunk and access line growth. He emphasizes that in the past, network planning relied on forecasts of line growth and interexchange carrier access growth. He maintains that this process has changed to account for increased demand on the telecommunications network, the introduction of ALEC's networks, and wireless communications interconnecting with the landline network. As a result, the witness asserts that the demand on the network is no longer stable or predictable. As such, witness Milner contends that BellSouth has been forced to rely heavily on trended demand to determine capacity exhaust and equipment relief timing. Witness Milner further explains that each central office has its own unique growth dynamics, which are generally driven by factors such as location, market, and historic growth rate.

GTEFL witness Reis states that GTEFL factors in requests received within a particular metropolitan area and other information about potential collocation demand when it forecasts collocation demand for a CO addition or expansion. Witness Reis further testifies that its current practice comports with the FCC's requirements. According to witness Reis, the FCC stated that:

> . . . incumbent LECs should be required to take collocator demand into account when renovating existing facilities and constructing or leasing new facilities, just as they consider demand for other services when undertaking such projects.

Witness Reis maintains that GTEFL does not oppose factoring in ALECs' collocation forecasts as one element in its planning process, along with all other available market and historical information, including applications on file. Witness Reis further asserts that GTEFL would, however, oppose any requirements for ILECS to expand or add space based on ALEC forecasts. He explains that ALECs do not have a financial commitment to such forecasts, therefore, they are unreliable.

GTEFL witness Reis further observes that any approach that relies heavily on ALECs' forecasts could underestimate the need for CO additions or expansions, and he argues:

> GTE believes ALECs would consider collocation forecasts to be competitively sensitive information. In GTE's experience, ALECs are reluctant to share this kind of information.

Sprint witness Hunsucker states that ILECs can reasonably anticipate ALECs' future demands for collocation space by either contacting the ALECs to request a forecast of future space requirements or by making an independent decision on the amount of space to be requested by ALECs. Witness Hunsucker contends that the ALECs should be required to provide the ILECs with annual 3-year forecasts for collocation space requirements by central office, and that the ILECs should be required to make a reasonable estimate of additional collocation space for those ALECs that are not covered by the ALECs' provided forecasts. He testifies that Sprint is not opposed to a shorter forecast period for ALECs.

Covad witness Moscaritolo argues that the ILEC should provide the ALECs with all information that will affect the ALECs' ability to collocate in a given CO, and conversely, the ALECs should provide the ILEC with future growth plans that will potentially affect the amount of available collocation space in a particular CO.

MGC witness Levy argues that forecasting ALECs' future space demand can be accomplished by requiring the ALECs to provide three to five year forecasts when collocation applications are submitted. Witness Levy further argues that this is being practiced by other ILECs. He contends that this should only be one of the inputs in the ILEC's planning as there are other factors that need to be considered.

Supra witness Nilson states that as the ILEC begins planning for a CO expansion, the ILEC should poll the ALECs to determine ". . . the level of interest in, and amount of, collocation space, . . ." for any particular central office. Witness Nilson further argues that with this information from the ALECS, the ILEC can better project the amount of additional space that is needed for each CO.

FCCA witness Gillan states that it is reasonable to get some forecast information from the ALECs, and contends that this is information that the ILEC can develop from its own in-house information based on historical data on existing collocation needs and the individual CO's characteristics. Witness Gillan argues that conditioned CO space is a commodity, and the largest purchaser of that collocation space in any central office is the ILEC itself. Witness Gillan further argues that since the ILEC is the largest purchaser of collocation space in any given CO, the ILEC's space demand and growth will determine most of the change in space requirements in that CO. Knowing the ILEC's space demand, witness Gillan argues that the ALECs' future demand for collocation space can simply be overlaid on the ILEC's own future space needs as an incremental effect. Witness Gillan further contends that the ILEC should have inventory space, ". . . because you should have space available and waiting for customers, just like you do for any other product."

ANALYSIS AND DETERMINATION

The evidence demonstrates that all the parties agree, to a degree, that an ILEC should factor in the ALECs' collocation needs when planning a CO addition or expansion. This comports with the FCC's requirement that ILECs take collocator demand into account as they plan for CO additions or expansions. FCC Order 96-325 at Paragraphs 585 and 605. Considering all of the evidence, we are persuaded by the arguments presented by BellSouth and Sprint. Therefore, we find that the ALECs shall provide the ILECs with two-year forecasts, on an annual basis, to assist the ILECs in CO planning.

While we agree with the ILECs that warehousing space is not what the FCC intended, we do, however, agree with FCCA witness Gillan that one can construe collocation space to be similar to any other product that the ILECs provide their customers and thus, the ILEC should carry an inventory. As such, another method of accounting for ALEC collocation space demand would be to use the ILEC's historical data to project the needed collocation space in the particular CO. By historical data we mean currently allocated collocation space.

We also agree with BellSouth that each CO is unique. Thus, we believe that the following factors can be useful in assisting the ILECs to accurately factor in ALECs' collocation space demands:

1. the location of the central office (rural, suburban, or urban);

2. the market service area (residential, office, industrial, etc);

3. the historic growth rate (stable, expanding, declining);

4. trending data (demand for wireline and wireless interconnection, increased network capacity to accommodate increasing internet demands); and

5. general technology effects (obsolescence and shrinking network equipment sizes).

We strongly encourage the ILECs to take these factors into consideration in planning CO expansion. The weighting of these factors in demand planning will, however, differ from CO to CO, just as it will differ from ILEC to ILEC.

Further, based on the evidence in this proceeding, the ILECs appear to be incorporating the ALECs' future space needs in planning for CO additions or expansions, as required by the FCC. Thus, we shall not establish a specific process for ILEC forecasting of collocation demand for CO additions or expansions. While the ILEC's forecasts of collocation demand must be based on historical collocation data, CO characteristics, and ALEC forecasts of collocation space needs, the process of weighing these factors is inherently subjective; therefore, we shall not prescribe a particular process.

XXI. APPLICATION OF THE FCC'S "FIRST-COME, FIRST-SERVED" RULE UPON DENIAL OF WAIVER OR MODIFICATIONS

In this final section, we consider who should be given priority for new collocation space, when such space becomes available in a central office due to modifications or a denied waiver. With few exceptions, the arguments presented by the parties were consistent on this point.

AT&T witness Mills contends that where an ILEC has denied a request for physical collocation within the preceding three years, and space is made available due to a modification to the central office, then the newly available space should be offered first to the carriers whose requests for physical collocation were denied. This should be done beginning with the first ALEC to be denied space.

Similarly, MCI witness Martinez contends:

> The ILEC should maintain a priority waiting list in any office where an ALEC is denied physical collocation. The ALEC's place on the list should be determined by the date of its firm order for space, or the date on which its application for space was rejected, if that date is earlier.

Witness Martinez asserts that the first-come, first-served rule should apply based on the date the ALEC's initial order was received. He also contends that accepting virtual collocation after being denied physical, should not affect an ALEC's priority when space for physical collocation becomes available.

Supra witness Nilson similarly states that "the ILEC should offer the available space to the first carrier that requested space." Witness Nilson states that the ILEC should be required to maintain a list of all carriers who have requested space in the order their requests were received.

Intermedia witness Jackson agrees, stating that "[P]riority should be given to the ALEC based on the order in which the ALECs originally applied for collocation in that specific central office - first come, first-served."

MGC witness Levy states that the company that submitted the first collocation request to be denied should be first in line and have first opportunity to submit a firm order for the new space. Witness Levy suggests that this process should continue with the next ALEC on the waiting list, until firm orders have been submitted for all the space that has become available. Once all formerly rejected applicants have had a chance to submit firm orders for space, then the remaining space should be published for any new collocators who are not on the waiting list.

BellSouth witness Hendrix states that "BellSouth maintains a waiting list that contains the ALECs and the amount of space each requested, in the order of BellSouth's receipt of each collocation application." Witness Hendrix further explains that when space for physical collocation becomes available in a central office, space is offered on a "first-come, first-right of refusal" manner. The witness maintains that ALECs that can be accommodated in the newly available space, based on square footage originally requested, are then notified and asked to contact BellSouth if still interested in the space. The newly available space is then distributed to these companies in the order they appear on the waiting list. BellSouth witness Hendrix also states that BellSouth does not require an ALEC to "re-up" its place on the waiting list. Once an ALEC is on the list, it remains there until space has been offered and subsequently turned down or accepted.

Sprint witness Hunsucker agrees that ILECs should maintain a waiting list of denied applicants based on date of application. He states that when space becomes available, the ILEC is supposed to make space available to ALECs on the wait list based upon the date of application until all space is exhausted. Witness Hunsucker disagrees, however, with BellSouth, contending that ALECs should be required to reaffirm their collocation request every 180 days. He argues that reaffirmation of an application should be required in order "to ensure that market plans have not changed and space is no longer required." He further asserts that if the request is not reaffirmed within 180 days the request date changes to the reaffirmation date, subsequently changing the applicant's order on the waiting list.

In contrast to the majority of testimony in the record, GTEFL witness Ries asserts that "[P]riority will be given to ALECs in the order in which they submit checks for 50% of the NRCs associated with their collocation requests." Witness Ries further explains that GTEFL does not keep a waiting list of ALECs that have been denied space. Instead, GTEFL posts information regarding newly available space on their websight, and the first party that submits an application with the 50 percent deposit for the nonrecurring charges, would then have first priority for the space.

Intermedia witness Jackson responds that GTEFL should be required to maintain a waiting list of collocators, and once space becomes available GTEFL should contact them immediately. He further argues that:

> priority should be given to the collocator with the oldest collocation request, followed by the next oldest, and so on. Priority should not be decided based on who gets to the bank first.

ANALYSIS AND DETERMINATION

Upon consideration, we agree with Intermedia's witness, as well as other parties, that all ILECs should be required to maintain a waiting list of ALECs that have been denied physical collocation in a particular central office.

We also believe that the process suggested by MGC witness Levy is appropriate. Therefore, we find that the first collocator request for physical collocation that was rejected shall be first in line and must be given first opportunity to submit a FOC for physical collocation in the new space. Furthermore, the evidence supports that the waiting list of denied ALECs must be kept in order of application denial date, with the first application to be denied being first on the list.

We also agree with MCI witness Martinez, who argues that: "the fact that the ALEC accepted virtual collocation should not affect its priority when space for physical collocation becomes available." Therefore, we shall require that an ALEC shall maintain its place on the waiting list, even if it has accepted virtual collocation after being denied physical.

We note Sprint witness Hunsucker's contention that ALECs should be required to reaffirm their application for collocation every 180 days, in order to maintain their place on the waiting list. We are, however, persuaded by BellSouth witness Hendrix's suggestion that once an ALEC is on the waiting list, it should remain until such time as collocation space is offered to that ALEC. Therefore, we find that once an ALEC is on the waiting list, it shall remain until such time as collocation space is offered to that ALEC

We also agree with BellSouth witness Hendrix's proposal that an ALEC should be placed on an existing waiting list by submitting a letter of intent, without having to file an actual application. This process appears to be reasonable. Therefore, we find that an ALEC shall be placed on an existing waiting list by submitting a letter of intent, without having to file an actual application, that letters of intent shall be accepted in a non-discriminatory manner, and that these letters of intent establish a requesting carrier's place in line on the waiting list.

Regarding application fees, we reference our prior decision in Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, in these Dockets, which reads in part:

> If the ILEC informs the applicant carrier that it intends to deny collocation in an ILEC premises, the ILEC shall return to the applicant carrier within 15 calendar days any fees over and above those necessary to cover the initial administrative costs associated with processing the carrier's application for that premises.

In addition, we find that when an ALEC submits a letter of intent in order to be placed on the waiting list for collocation space at a particular ILEC central office, the ILEC shall only be permitted to charge the ALEC for the administrative costs associated with placing the ALEC on the waiting list. The actual application fee may only be charged when space is offered to this ALEC, and an application is submitted for such space.

We emphasize that we disagree with BellSouth's procedure of offering newly available collocation space to ALECs according to the amount of space originally requested. Instead, we are persuaded by the arguments presented by AT&T, whose witness states that "any newly available collocation shall first be offered to the carriers whose request for physical collocation were denied, beginning with the first such denial." Thus, newly available space shall be offered to the first ALEC on the waiting list, regardless of whether the amount of space originally requested was greater than that which has become available. If the amount of newly available space is less than the amount originally requested by the first ALEC on the waiting list, this ALEC shall have first right to either accept or refuse this space.

Several parties have testified regarding time frames in which ALECs should be required to respond to an offer of newly available space. We emphasize, however, that response intervals are beyond the scope of the issue presented for our decision in this proceeding, and, therefore, we have not addressed this point.

In addition, we find that ILECs shall accept letters of intent to collocate in central offices where a waiver is granted and a waiting list already exists. This letter of intent will enable an ALEC to be placed on the waiting list, without being required to file an application for space that does not exist. The ILEC may charge a fee to recover only the administrative costs associated with placing the ALEC on the waiting list, when a letter of intent is submitted. The application fee shall not, however, be assessed until such time as the ALEC is offered space, and an application is submitted.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that each of the collocation requirements and procedures set forth in the body of this Order are approved. It is further

ORDERED that these Dockets shall remain open pending further proceedings to set collocation rates.

By ORDER of the Florida Public Service Commission, this 11th day of May, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)
BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

962-T 664A

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

ORDER

December 3, 2002

FORMAL CASE NO. 962, IN THE MATTER OF THE IMPLEMENTATION OF THE DISTRICT OF COLUMBIA TELECOMMUNICATIONS COMPETITION ACT OF 1996 AND IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996; Order No. 12608

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") establishes standards for central office collocation and remote terminal collocation in the District of Columbia. The Commission grants in part and denies in part Verizon Washington, DC, Inc.'s ("Verizon DC") Collocation Tariff Amendment Application ("Compliance Application") filed April 30, 2001,[1] and Verizon DC's Comprehensive Collocation Tariff Amendment Application ("Comprehensive Application"), filed August 15, 2002.[2] Verizon DC is directed to submit an amended collocation filing including revisions to its Comprehensive Application as indicated by this Order within five days of the date of this Order for expedited review by the Commission.

II. BACKGROUND

A. Central Office Collocation

2. On May 28, 1999, Verizon DC filed a collocation tariff amendment application in TT99-3.[3] Verizon DC stated that its application contained collocation

[1] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996;* Letter from J. Henry Ambrose, Vice President, Regulatory Affairs, Verizon DC to Jesse P. Clay, Jr., Commission Secretary ("Compliance Application"), filed April 30, 2001.

[2] *Formal Case No. 962, In The Matter of The Implementation of The District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996,* Letter to Sanford M. Speight, Acting Commission Secretary, from J. Henry Ambrose, Vice President for Regulatory Matters of Verizon DC, re: Formal Case No. 962, Collocation Tariff Revision ("Comprehensive Application" and "Comprehensive Application Letter"), filed August 15, 2002.

[3] *TT 99-3, In the Matter of the Application of Bell Atlantic-Washington DC, Inc. for Authority to Introduce the Network Services Interconnection Tariff, PSC-DC No. 218,* Bell Atlantic-Washington, D.C., Inc., TT 99-3, filed May 28, 1999. ("TT 99-3 Application").

provisions pursuant to the Federal Communications Commission's ("FCC") *Advanced Services First Report and Order*.[4] Verizon DC further argued that the collocation issues should be removed from Formal Case No. 962 and resolved in TT99-3 because the revised information submitted in TT 99-3 supplanted the conditions, rates and terms for collocation previously filed in Formal Case No. 962.[5] In addition to TT 99-3, Verizon DC filed an amended application in TT 00-16 on November 17, 2000, to update TT 99-3 based upon the FCC's *Collocation Reconsideration Order*.[6] In an attempt to settle some of the collocation issues, several parties involved in TT99-3, Verizon DC, AT&T Communications of Washington, D.C., Inc. ("AT&T"), Sprint Communications Company, L.P. ("Sprint"), and Worldcom, Inc. ("Worldcom"), filed a Joint Petition for Approval of a Settlement Agreement Addressing Collocation Rates, Terms, and Conditions ("Joint Petition") on December 18, 2000.[7] In Order No. 11891, the Commission decided to incorporate all of the collocation issues in TT99-3 and TT00-16 into Formal Case No. 962.[8]

3. On March 30, 2001, in Order No. 11959, the Commission indicated that it would seek to resolve all remaining collocation issues. For issues resolved in the Joint Petition, the Commission indicated that an Order on this Petition would be forthcoming. For issues left unresolved by the Joint Petition, the Commission requested parties to comment on these issues by May 4, 2001, with reply comments due on May 14, 2001.[9] The Commission subsequently approved the Joint Petition on April 20, 2001, and directed Verizon DC to file an amended collocation tariff amendment application.[10] On

[4] TT99-3 Application at 1.

[5] TT99-3 Application at 2.

[6] *In the Matters of the Deployment of Wireline Service Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 ("*Collocation Reconsideration Order*"), 15 FCC Rcd 17806, rel. August 10, 2000.

[7] *TT 99-3, In the Matter of the Application of Bell Atlantic-Washington DC, Inc. for Authority to Introduce the Network Services Interconnection Tariff, PSC-DC No. 218*, Verizon DC, AT&T, WorldCom, and Sprint, Joint Petition for Approval of Settlement Agreement Addressing Collocation Rates, Terms, and Conditions ("Joint Petition"), filed December 18, 2000.

[8] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996;* Order No. 11891, rel. December 21, 2000.

[9] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996;* Order No. 11959, rel. March 30, 2001, ¶ 51.

[10] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*; Order No. 11979, rel. April 20, 2000.

April 30, 2001, Verizon DC filed its Compliance Application. Notice of this application was published in the *D.C. Register* on May 11, 2001.[11]

4. On May 4, 2001, Verizon DC, AT&T, and Sprint filed comments on the unresolved collocation issues with the Commission.[12] Verizon DC, AT&T, and Sprint filed reply comments on May 14, 2001.[13]

5. In Order No. 11959, the Commission established May 31, 2001, as the hearing date for the Commission to hear testimony on the unresolved collocation issues.[14] On May 24, 2001, AT&T filed a Motion to Modify Procedural Schedule, requesting that the Commission reschedule the collocation hearing because its expert witness would be unavailable that day.[15] In Order No. 12017, the Commission canceled the collocation hearing scheduled for May 31, 2001, and directed the parties to submit alternative dates for a hearing.[16] On August 2, 2001, AT&T filed a motion to set a new hearing date for October 25, 2001.[17] By Order No. 12102, the Commission rescheduled the collocation hearing date for October 25, 2001.[18]

[11] 49 D.C. Reg. 4259 (May 11, 2001).

[12] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*; Comments of Verizon Washington DC, Inc. on Outstanding Collocation and Related Issues ("Verizon DC Unresolved Issues Comments"); Comments of Sprint Communications Company, L.P. ("Sprint Unresolved Issues Comments"), filed May 4, 2001.

[13] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996;* Reply Comments of Verizon Washington DC, Inc. on Outstanding Collocation and Related Issues ("Verizon DC Unresolved Issues Reply Comments"); Reply Comments of AT&T Communications of Washington, D.C., Inc. ("AT&T Unresolved Issues Reply Comments"), Reply Comments of Sprint Communications Company, L.P. ("Sprint Unresolved Issues Reply Comments"), filed May 14, 2001.

[14] Order No. 11959, ¶ 51.

[15] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996,* Motion of AT&T Communications of Washington, D.C., Inc. to Modify Procedural Schedule ("AT&T Procedural Schedule Motion"), filed May 24, 2001.

[16] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996,* Order No. 12017, ¶ 5, rel. May 29, 2001.

[17] *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Motion of AT&T Communications of Washington, D.C., Inc. to Set a Hearing Date ("AT&T Hearing Motion"), filed August 2, 2001.

[18] *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Order No. 12102, rel. August 17, 2001.

6. On October 15, 2001, AT&T and Verizon DC submitted a Joint Motion pursuant to Section 105.8 of the Commission's Rules of Practice and Procedure ("Commission Rules") requesting a modification of the collocation procedural schedule.[19] In Order No. 12215, the Commission granted the Joint Motion, rescheduling the collocation hearing until February 25, 2002.[20]

7. On February 13, 2002, Verizon DC and AT&T filed their Joint Motion to cancel the February 25, 2002, collocation hearing ("February 2002 Joint Motion").[21] They indicated that they were involved in settlement negotiations that they anticipated would result in resolution of many of the remaining open collocation issues. In Order No. 12333, the Commission canceled the hearing and requested the parties to submit a joint filing indicating the resolved issues and a list of the unresolved issues.[22] On April 8, 2002, Verizon DC notified the Commission that the parties were continuing to work on a settlement agreement and would be filing the agreement upon completion.[23]

8. On May 30, 2002, Verizon DC submitted a tariff amendment application proposing to modify the terms and conditions under which Verizon DC would provide DC power to a competitive local exchange carrier ("CLEC") collocation arrangement.[24] A Notice of Proposed Rulemaking ("Power NOPR") was published in the *D.C. Register* on June 14, 2002.[25] On July 11, 2002, Worldcom filed comments pursuant to the Public Notice.[26] Verizon DC filed reply comments on July 29, 2002.[27]

19 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act and Implementation of the Telecommunications Act of 1996*, Joint Motion of Verizon Washington, D.C., Inc. and AT&T Communications of Washington, D.C., Inc. to Modify Procedural Schedule, filed October 15, 2001 ("October 2001 Joint Motion") at 1.

20 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and the Telecommunications Act of 1996*, Order No. 12215, rel. October 19, 2001.

21 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act and Implementation of the Telecommunications Act of 1996*, Joint Motion of Verizon Washington, D.C., Inc. and AT&T Communications of Washington, D.C., Inc. to Cancel Collocation Hearing, filed February 13, 2002 ("February 2002 Joint Motion").

22 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and the Telecommunications Act of 1996*, Order No. 12333, rel. February 22, 2002.

23 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and the Telecommunications Act of 1996*, Letter from Natalie O. Ludaway, Counsel for Verizon DC to Sanford M. Speight. Acting Commission Secretary, filed April 8, 2002.

24 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and the Telecommunications Act of 1996*, Letter from J. Henry Ambrose, Vice President, Regulatory Matters, to Sanford M. Speight, Acting Commission Secretary ("Power Application"), filed May 31, 2002.

9. On June 13, 2002, Verizon DC filed a letter on behalf of itself and AT&T, indicating that they were still involved in settlement negotiations. Verizon DC anticipated filing a status report on the resolved and unresolved issues and proposed tariff language by the end of July 2002.[28]

B. Remote Terminal Collocation

10. On May 11, 2000, Verizon DC filed a request with the Commission to make certain additions and changes to its Network Interconnection Services Tariff ("TT 00-8") stating that the filing establishes rates and terms for CLEC collocation at Verizon DC's remote terminals,[29] as required by the FCC's *Line Sharing Order*.[30] On June 23, 2000, the Commission published a Notice of Proposed Rulemaking ("TT00-8 First NOPR") in the *D.C. Register*. After the publication of the TT00-8 NOPR in the *D.C. Register*, the Commission received comments from Sprint and AT&T.[31] On August 16, 2000, Verizon DC filed a Motion for Permission to File Reply Comments along with a draft Order approving the Motion and the Reply Comments.[32]

[25] 50 *D.C. Reg.* 5460 (June 14, 2002).

[26] *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and the Telecommunications Act of 1996*, Comments of Worldcom, Inc. ("Worldcom Power Comments"), filed July 11, 2002.

[27] *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and the Telecommunications Act of 1996*, Verizon DC's Reply to Comments of Worldcom, Inc. ("Verizon DC Power Reply Comments"), filed July 29, 2002.

[28] *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Letter to Sanford M. Speight, Acting Commission Secretary, from Natalie O. Ludaway, Counsel for Verizon Washington DC, Inc., filed June 13, 2002.

[29] A remote terminal or a digital loop carrier ("DLC") is the equipment that bundles a number of individual phone line signals into a single multiplexing, digital signal for local traffic between the telephone company's central office and a business complex or other outlying service area. The DLC helps to extend the service area outside of the pre-existing local loop.

[30] *Development of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Fourth Report and Order, 14 FCC Rcd. 20912, (1999) ("*Line Sharing Order*").

[31] *See TT 00-8, In the Matter of the Application of Verizon Washington, DC, Inc. for Authority to Amend the Network Interconnection Services Tariff, P.S.C.-D.C. No. 218*, Sprint, Comments of Sprint Communications Company L.P ("Sprint TT00-8 Comments")., filed July 20, 2000, and AT&T, Comments of AT&T Communications of Washington, D.C. Regarding Verizon Washington, D.C., Inc. Proposed Remote Terminal Equipment Enclosures Tariff ("AT&T TT00-8 Comments"), filed July 24, 2000.

[32] *TT 00-8, In the Matter of the Application of Verizon Washington, DC, Inc. for Authority to Amend the Network Interconnection Services Tariff, P.S.C.-D.C. No. 218*, Verizon DC, Motion to File Permission

11. After reviewing the comments from AT&T and Sprint and the reply comments from Verizon DC, the Commission issued a *second* NOPR ("TT00-8 Second NOPR") that requested copies of the parties' filings in the FCC's *Collocation Reconsideration Order*.[33] The TT00-8 Second NOPR further requested that the parties discuss certain issues relating to collocation.[34] On December 11, 2000, Verizon DC, AT&T, and Sprint filed comments on the TT00-8 Second NOPR.[35] On December 22, 2000, Verizon DC filed Reply Comments.[36] On December 26, 2000, AT&T filed its response to Verizon DC's December 22 Reply.[37] By Order No. 11975, the Commission rejected Verizon DC's proposed remote terminal collocation tariff application.[38] The Commission moved all remote terminal collocation issues into Formal Case No. 962 and sought comments and reply comments on these issues. On May 14, 2001, Verizon DC and Sprint filed remote terminal collocation comments.[39] Verizon DC filed reply comments on the remote terminal collocation issues on May 22, 2001.[40]

to File Reply Comments ("Verizon DC Motion"), Order, and Reply Comments of Verizon Washington, DC Inc. ("Verizon DC TT00-8 Reply Comments") simultaneously filed August 16, 2000.

33 47 *D.C. Reg.* 9036-9039, ("Second TT00-8 NOPR").

34 Second TT00-8 at 9038.

35 *TT 00-8, In the Matter of the Application of Verizon Washington, D.C., Inc. for Authority to Amend the Network Interconnection Services Tariff, P.S.C.-D.C. No. 218,* Comments of AT&T Communications of Washington, D.C., Inc., filed December 11, 2000 ("AT&T December 11 Comments"); Sprint, Letter with Attachments to Jesse P. Clay, Jr. from Cathy Thurston, Attorney for Sprint Communications Co. L.P., filed December 8, ("Sprint December 11 Comments"); Reponses of Verizon Washington DC, Inc., filed December 11, 2000 ("Verizon DC December 11 Comments").

36 *TT 00-8, In the Matter of the Application of Verizon Washington, D.C., Inc. for Authority to Amend the Network Interconnection Services Tariff, P.S.C.-D.C. No. 218,* Reply of Verizon Washington, DC Inc., filed December 22, 2000 ("Verizon DC December 22 Reply").

37 *TT 00-8, In the Matter of the Application of Verizon Washington, D.C., Inc. for Authority to Amend the Network Interconnection Services Tariff, P.S.C.-D.C. No. 218,* Reply Comments of AT&T Washington, DC, Inc., filed December 26, 2000 ("AT&T December 26 Reply Comments").

38 *TT 00-8, In the Matter of the Application of Verizon Washington, D.C., Inc. for Authority to Amend the Network Interconnection Services Tariff, P.S.C.-D.C. No. 218*, Order No. 11975, rel. April 17, 2001.

39 *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996;* Comments of Verizon Washington DC, Inc. on Outstanding Remote Terminal Collocation Issues ("Verizon DC Remote Terminal Collocation Comments"); Comments of Sprint Communications Company, L.P. ("Sprint Remote Terminal Collocation Comments"), filed May 14, 2001. AT&T included its comments on remote terminal collocation in its reply comments filed on May 14.

40 *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996;* Reply Comments of Verizon Washington D.C. on Outstanding Remote Terminal Collocation Issues ("Verizon DC Remote Terminal Collocation Reply Comments"), filed May 22, 2001.

C. Microwave Collocation

12. On September 28, 2001, Verizon DC filed an Application requesting authority to establish microwave collocation terms and conditions for District of Columbia CLECs ("Microwave Application").[41] On November 2, 2001, a Notice of Proposed Rulemaking ("Microwave NOPR") was published in the *D.C. Register* to obtain comments from interested persons.[42] In addition, the Commission released Order No. 12215 to request comments on Verizon DC's Microwave Application from the parties in Formal Case No. 962.[43] The Commission further requested that any comments be filed in both proceedings.[44] No comments were received by the Commission pursuant to the Microwave NOPR or Order No. 12215. The Commission approved Verizon DC's microwave collocation tariff provisions in Order No. 12308, issued January 24, 2002.[45]

D. Amendments Based on FCC's *Advanced Services Fourth Report and Order*

13. On September 28, 2001, Verizon DC filed an Application ("TT01-9 Application") requesting authority to amend its collocation tariff pages to comply with the FCC's *Fourth Report and Order*.[46] A Notice of Proposed Rulemaking ("TT01-9 NOPR") was published in the *D.C. Register* on November 9, 2001.[47] No comments on this Application were filed. By Order No. 12331, issued February 20, 2002, the Commission moved the issues in TT01-09 to Formal Case No. 962 and closed TT01-9.[48]

[41] *TT01-9, In the Matter of the Application of Verizon Washington, DC Inc. to Amend Network Interconnection Services Tariff, P.S.C.-D.C.-No. 218*, Letter to Jesse P. Clay, Jr., Commission Secretary, from J. Henry Ambrose, Vice President for Regulatory Matters of Verizon DC, re: TT01-09 and Formal Case No. 962, filed September 28, 2001 ("TT01-9 Application").

[42] 48 *D.C. Reg*. 10062 (2001).

[43] *See,* Order No 12215.

[44] Order No. 12215 at 4.

[45] *TT01-08, In the Matter of the Application of Verizon Washington, DC Inc. for Authority to Amend Network Interconnection Services Tariff, P.S.C.-D.C.-No. 218; and Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and the Telecommunications Act of 1996*, Order No. 12308, rel. January 24, 2002.

[46] TT01-9 Application at 1. *See also, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order ("Advanced Services Fourth Report and Order"), 16 FCC Rcd. 15435 (August 8, 2001).

[47] 48 *D.C. Reg*. 10356-10357.

[48] *Formal Case No. 962 In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996 and TT01-09 In the Matter of the Application of Verizon Washington DC Inc. for Authority to Amend Network Interconnection Services Tariff P.S.C. D.C. No. 218*, Order No. 12331, rel. February 20, 2002.

E. Comprehensive Application

14. On August 15, 2002, Verizon DC filed a new collocation tariff amendment application, consolidating previously filed tariff pages into one comprehensive document ("Comprehensive Application").[49] A Notice of Proposed Rulemaking ("Comprehensive Application NOPR") was published in the *D.C. Register* on August 30, 2002.[50] Sprint filed comments on the Comprehensive Application NOPR on September 30, 2002.[51] Verizon DC filed reply comments on the Comprehensive Application on October 15, 2002.[52] Because Verizon DC's reply comments contained proposed revisions to the Comprehensive Application, the Commission sought comments and reply comments on these proposed changes in Order No. 12576, released October 22, 2002.[53] Sprint filed comments on November 6, 2002.[54]

III. DISCUSSION

A. Joint Settlement Agreement Issues

15. In the Joint Petition, the Joint Parties indicated that they had resolved numerous issues, including cross-connect rates, planning, land and building, cage preparation, and power delivery and consumption rates, non-price terms and conditions, such as central office tours, inspection of competitive local exchange carrier ("CLEC") facilities, the exemption renewal process, and the removal of obsolete equipment, and deferral of certain cageless collocation issues until resolution by the FCC.[55] The Joint

49 Comprehensive Application.

50 49 *D.C. Reg.* 8372 (August 30, 2002).

51 *Formal Case No. 962, In The Matter of The Implementation of The District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996*, Letter to Sanford M. Speight, Acting Commission Secretary from Jennifer A. Duane, Sprint Communications Company, L.P. ("Sprint Comprehensive Application Comments"), filed September 30, 2002.

52 *Formal Case No. 962, In The Matter of The Implementation of The District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996*, Reply of Verizon Washington DC, Inc. to Sprint's September 30, 2002 Comments ("Verizon DC Comprehensive Application Reply Comments"), filed October 15, 2002.

53 *Formal Case No. 962, In The Matter of The Implementation of The District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996*, Order No. 12576, rel. October 22, 2002.

54 *Formal Case No. 962, In The Matter of The Implementation of The District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996*, Letter to Sanford M. Speight, Acting Commission Secretary, from Jennifer A. Duane, Attorney, Spring Communications Company, L.P. ("Sprint Notice Comments"), filed November 6, 2002.

55 Joint Petition at 5-6.

Petition included consensus tariff language and rates for these issues, but did not represent a full settlement of all collocation issues.[56] Upon approval of the Joint Petition, the Commission requested that Verizon DC file a collocation tariff amendment application that would include the language in the Joint Petition for Commission review and approval.[57] The Compliance Application filed pursuant to Order No. 11979 included proposed language to effectuate the Joint Petition as well as proposed provisions on the unresolved issues.

16. When Verizon DC filed its Comprehensive Application, it asserted that this application contained all previously filed collocation tariff pages, including those contained in the Compliance Application, as well as new tariff language that allegedly resolves many of the remaining issues raised by the parties.[58] Thus, the Commission now reviews both the Compliance Application and the Comprehensive Application to determine whether the language contained in each of these documents is consistent with the provisions of the Joint Petition.

1. Sections Containing Consistent Language

17. In comparing the language contained in the Joint Petition with the language contained in the relevant provisions of the Compliance Application and Comprehensive Application, the Commission determines that, for the most part, Verizon DC has incorporated the exact language found in the Joint Petition into the Compliance Application and the Comprehensive Application. Because Verizon DC has incorporated the same language that the Commission has already approved into both its Compliance and Comprehensive Applications, the Commission approves the following tariff sections: 1.B.8.a, 2.B.1.g, 2.B.1.q, 2.B.5.e, 2.B.8.a(1), 2.B.8.d, 2.B.8.e, 2.B.8.f, 2.B.8.g, 2.E.4, 2.F.3.c, 2.F.5, 2.I.2.a-b, 2.I.3.i, 2.I.7, 2.J.1, and 2.J.4. The Commission also approves Section 2.I.8 of the Compliance and Comprehensive Applications,[59] because it incorporates the exact cross-connect language from an unnumbered portion of the Joint Petition into the proposed tariff in the Compliance and Comprehensive Applications.[60]

2. Inconsistent Language

a. Tours and Access to Central Office Space

56 Joint Petition, Exhibits 2 and 3.

57 Order No. 11979, ¶ 40.

58 Comprehensive Application at 1.

59 Compliance Application, Section 2.I.8; Comprehensive Application, Section 2.I.8.

60 Joint Petition, Exhibit 2 at 4-5. These provisions were given a section number in Verizon DC's Comprehensive Application, not in the Joint Petition.

18. Verizon DC's proposed language included in its Compliance Application and its Comprehensive Application for Sections 2.B.3.b(2) and 2.B.3.b(3), regarding tours and access to central office floor plans, does not comply with the Joint Petition's approved language.[61] Instead of supplying the new language contained in the Joint Petition and approved by the Commission in Order No. 11979, Verizon DC submitted the previous language that had been expressly rejected by the parties.[62] In order to correct these errors, Verizon DC shall submit the corrected language for this section that was included in the Joint Petition in its amended collocation filing due within 10 days of the date of this Order.

b. Space Exhaustion

19. Verizon DC's proposed Section 2.B.3.c,[63] dealing with central office space exhaustion, also differs from the language included in the Joint Petition.[64] In this section, Verizon DC does include the new language included in the Joint Petition in paragraph two of the section. However, Verizon DC also includes two additional paragraphs (the first and third paragraphs) that are not in the Joint Petition's agreed upon language.[65] These two paragraphs involve the creation of a web listing of central office space exhaustion and the interval for turnover of collocation space to a CLEC. Because Sprint and Verizon DC subsequently reached an agreement on space exhaustion issues that changed the Joint Petition space exhaustion language, the Commission considers the new proposed language in its resolution of Issue 43.20, in paragraphs 153-170, *infra*.

c. Central Office Manhole

20. The Compliance Application and the Comprehensive Application contain a proposed section 2.B.8.b(2),[66] which concerns the central office manhole. The Joint Petition has only one paragraph in this section, including a new phrase agreed to by the parties.[67] The Compliance Application and the Comprehensive Application have three paragraphs in this proposed section, the second of which is the paragraph included in the Joint Petition. The Commission approves only the paragraph in the Compliance Application and the Comprehensive Application that was agreed to by the parties in the Joint Petition. Therefore, Verizon DC will include in its amended collocation filing to be

61 *See*, Joint Petition, Exhibit 2, Section 2.B.3.b(2), Section 2.B.3.b(3); Application, Section 2.B.3.b(2), Section 2.B.3.b(3).

62 Compliance Application, Section 2.B.3.b(2), Section 2.B.3.b(3); Comprehensive Application, Section 2.B.3.b(2), Section 2.B.3.b(3).

63 Compliance Application, Section 2.B.3.c; Comprehensive Application, Section 2.B.3.c.

64 Joint Petition, Exhibit 2, Section 2.B.3.c.

65 Compliance Application, Section 2.B.3.c.

66 Compliance Application, Section 2.B.8.b(2).

67 Joint Petition, Exhibit 2, Section 2.B.8.b(2)

submitted within 10 days of the date of this Order the corrected language for this section that was included in the Joint Petition but not in the Compliance and Comprehensive Applications.

d. SPOT Bay Termination Rates

21. In Section 2.J.3, dealing with cageless collocation rates, Verizon DC's Application substitutes a footnote in the subsection outlining rates for SPOT Bay Termination. In the Joint Petition, the footnote indicates that the "rates for Equipment bays containing non-standard equipment will be determined on an Individual Case Basis."[68] This footnote is deleted from the Compliance Application and the Comprehensive Application. The Commission requires Verizon DC to add the footnote back into this section in its amended collocation filing due to the Commission within 10 days of the date of this Order.

e. Technical Changes

22. In the Comprehensive Application, Verizon DC has made technical changes to delete repetitious language and renumber subsections. Additionally, the cross-references to other sections contained in proposed sections 2.J.3.f and 2.J.3.g are changed from those included in the Joint Petition to include more specific cross-references.[69] These deviations from the Joint Petition are reasonable because they provide more specificity, which assists the reader in finding the cross-references more quickly. Thus, Verizon DC is not required to change these provisions in the Comprehensive Application.

23. In Section 2.J.2.f, Verizon DC adds a clarification of the DC Power Charge that was not included in the Joint Petition.[70] Verizon DC adds a qualifier, indicating that the DC power charge will be assessed per load, per amp.[71] Because this charge clarifies the power charge, the Commission accepts this change and does not require Verizon DC to file the Joint Petition's original language.

B. Unresolved Issues - Central Office Collocation

24. In Orders No. 11959 and 11975, the Commission requested the parties to respond to questions regarding the unresolved collocation issues on the Formal Case No. 962 Issues List ("Issues List"). On some of these issues, the respondents were able to agree. For the most part, however, the parties had widely differing opinions.

[68] Joint Petition, Exhibit 3, Section 2.J.3.c.

[69] Compliance Application, Section 2.J.3.f, Section 2.J.3.g.

[70] Comprehensive Application, Section 2.J.2.f.

[71] Comprehensive Application, Section 2.J.2.f.

25. In its Comprehensive Application, Verizon DC asserts that it added many new provisions to its proposed collocation tariff that were not included in the Compliance Filing. Many of the new tariff provisions were submitted as a result of settlement negotiations involving Verizon and Sprint in Maryland. Verizon DC also states that the provisioning intervals adopted in New York have been proposed in the Comprehensive Application. Finally, Verizon DC indicates that it has added language regarding leasing of CLEC equipment for virtual collocation.[72] While Verizon DC, AT&T, and Sprint commented extensively on the unresolved issues in their May 4, 2001, and May 14, 2001, comments and reply comments, only Sprint filed brief comments on the issues allegedly resolved in the Comprehensive Application. Discussion of the parties' comments and the Commission's resolution of these issues follows.

1. <u>Issue 43</u>: What are the appropriate non-price terms for collocation with Verizon DC?

26. This is a general question, amalgamating all of the collocation issues. The parties did not provide any generic responses to this question, since each of the important unresolved collocation rates, terms, and conditions is addressed separately below in specific questions. Because the Commission resolves most of the specific issues in the Order, there is no reason to leave this generic issue on the Issues List. Therefore, the Commission deletes this issue from the Issues List.

2. <u>Issue 43.1</u>: Should the proposed terms include additional locations in which collocation will be provided?
<u>Issue 43.2</u>: Should Verizon DC provide collocation at locations other than its central offices?

27. No comments were filed on these issues, because they have already been resolved by the FCC. The FCC has stated that interconnection shall occur at any technically feasible point in the incumbent local exchange carrier's ("ILEC") network, not merely central offices. Interconnection includes physical or virtual collocation at any ILEC premises.[73] The term "premises" is defined as

[72] Comprehensive Application Letter at 1.

[73] 47 C.F.R. § 51.321(b). *See also, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, ("*Advanced Services Order*"), 14 FCC Rcd 4761, 4781-82, ¶ 35-36. *See also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking ("*UNE Remand Order*"), 15 FCC Rcd 3696, 3798, ¶ 221 (1999). The United States Court of Appeals for the District of Columbia Circuit remanded the *UNE Remand Order* to the FCC in *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), but the rules in the *UNE Remand Order* remain in effect until the FCC develops new rules. *See, Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expedited Arbitration; Petition of Cox Virginia, Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration; Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the*

> An incumbent LEC's central offices and serving wire centers; all buildings or similar structures owned, leased, or otherwise controlled by an incumbent LEC that house its network facilities; all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these central offices, wire centers, buildings, and structures.[74]

This definition clearly provides for collocation at ILEC locations other than central offices. To implement the FCC's rules, Verizon DC has submitted provisions for collocation at central offices and remote terminals in its Compliance and Comprehensive Applications.[75] Because these issues have been resolved by the FCC, they are removed from the Commission's Issues List.

3. <u>Issue 43.3</u>: Should Verizon DC be responsible if it misses due dates because of its own negligence? What penalties should be imposed on Verizon DC for failure to provision collocation spaces in a timely manner?

a. Compliance and Comprehensive Application Provisions

28. In the Compliance Application, Verizon DC exempts itself from any liability for failure to provide collocation in a timely manner, provided that Verizon DC used reasonable efforts to provide the collocation space by the due date. If the turnover date is delayed for reasons other than CLEC acts or omissions, Verizon DC will not charge the CLEC for the building space and conditioning charges for the space until the date that Verizon DC provides the space to the CLEC.[76] Verizon DC deletes these provisions from the Comprehensive Application and does not replace these provisions. Thus, there are no provisions in the Comprehensive Application regarding any Verizon DC failure to meet collocation provisioning intervals.[77]

b. Parties' Comments

Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., Memorandum Opinion and Order ("Non-Cost Issues Order") at 5, ¶ 4, rel. July 17, 2002.

74 47 C.F.R. 51.5 (2001).

75 *See*, TT99-3, TT0-8, TT0-16 Applications, Compliance Application; Comprehensive Application.

76 Compliance Application, Section 2.B.1.h.

77 Comprehensive Application, Section 2.B.1.h.

29. Verizon DC asserts that because it consistently meets provisioning intervals, no performance incentives are necessary.[78] Additionally, Verizon DC asserts that the Commission has no authority to impose any types of penalties on Verizon DC absent Verizon DC's approval. Verizon DC contends that self-executing penalties may not be imposed because Section 34-1103 of the D.C. Code requires a hearing before any penalty may be imposed. Verizon DC also argues that the Commission cannot require Verizon DC to make payments to CLECs, since all penalties must be paid into the District of Columbia General Fund pursuant to Section 34-710 of the D.C. Code. Likewise, Verizon DC contends, the federal Telecommunications Act of 1996 ("Telecommunications Act") does not grant state commissions the authority to assess penalties. Therefore, Verizon DC argues, the Commission cannot impose penalties on Verizon DC for failure to comply with any collocation rules that the Commission may implement.[79] Because Verizon DC has agreed to a performance assurance plan ("PAP") in the context of a Section 271 proceeding,[80] Verizon DC urges the Commission to impose any collocation penalties as part of the PAP, which is being considered in Formal Case No. 990.[81]

30. AT&T contends that the Commission should hold Verizon DC responsible for failing to miss collocation provisioning dates. AT&T proposes a two tier penalty system. First, if Verizon DC fails to meet its provisioning deadline by one to 30 days, Verizon DC would compensate the CLEC for its out of pocket expenses, including the application fee, and the down payment for the nonrecurring space and facilities fee. If Verizon DC is over 30 days late in provisioning collocation space, Verizon DC would pay the CLEC liquated damages of $500 per day for each day over the 30th day. AT&T argues that payments would encourage Verizon DC to meet collocation provisioning deadlines.[82]

31. In its Reply Comments, Verizon DC argues again that no penalties are needed, since Verizon DC has met every collocation deadline in the District of Columbia.[83] Alternatively, Verizon DC asserts that CLECs experiencing collocation provisioning delays should file a complaint with the Commission. Verizon DC asserts that the damages requested by AT&T are excessive and unjustified.[84] Verizon DC also

78 Verizon DC Unresolved Issues Comments at 2.

79 Verizon DC Unresolved Issues Comments at 3.

80 Under Section 271 of the Telecommunications Act of 1996, a regional bell operating company such as Verizon DC may obtain approval to provider InterLATA service if it demonstrates to the FCC that it has opened its local market for competition. A Section 271 proceeding is the proceeding in which this evaluation occurs.

81 Verizon DC Unresolved Issues Comments at 4.

82 AT&T Unresolved Issues Comments at 4-5.

83 Verizon DC Unresolved Issues Reply Comments at 4, Appendix A.

84 Verizon DC Unresolved Issues Reply Comments at 4-5.

reiterates its position that the Commission cannot adopt either self-executing penalties or penalties paid to the CLECs absent Verizon DC approval. Verizon DC reiterates its argument that self-executing performance penalties cannot be imposed in the District of Columbia because a hearing must precede any imposition of penalties. Additionally, Verizon DC contends that because Section 34-710 of the D.C. Code requires that all penalties be paid into the District of Columbia Treasury, the Commission cannot permit penalty payments to CLECs. Verizon DC reiterates its position that performance penalties should be considered only during the Section 271 application process.[85]

32. AT&T counters Verizon DC's arguments by explaining that the Commission satisfies the D.C. Code's requirements by determining whether self-executing penalties should be imposed in a hearing. Therefore, individual hearings on each violation are not necessary according to AT&T. Additionally, AT&T asserts that self-executing penalties can be imposed without relying on federal law.[86] AT&T does not oppose considering collocation metrics and penalties in Formal Case No. 990.[87]

c. Decision

33. Formal Case No. 990 deals with quality of service issues in the District of Columbia. In this Formal Case, the Commission has established guidelines ("DC Guidelines") designed to measure Verizon DC's performance in providing CLECs access to collocation space, unbundled network elements ("UNEs"), and Operations Support Systems ("OSS").[88] Additionally, the Commission has also adopted a PAP ("DC PAP"), which requires Verizon DC to make incentive payments to CLECs when Verizon DC misses its performance standards.[89] The collocation standards are included in the "Critical Measures" section of the DC PAP due to their importance in determining whether Verizon DC is providing acceptable service quality to CLECs.[90] Therefore, Verizon DC will compensate CLECs if it fails to provide timely collocation provisioning.

34. The issues relating to collocation standards and Verizon DC's liability for failing to meet these standards have been resolved in Formal Case No. 990 by the adoption of the DC Guidelines and DC PAP. Thus, Verizon DC is not required to include provisions regarding penalties for failing to meet provisioning intervals in its collocation tariff. The omission of penalty provisions from the Comprehensive

85 Verizon DC Unresolved Issues Reply Comments at 5.

86 AT&T Unresolved Issues Reply Comments at 3.

87 AT&T Unresolved Issues Reply Comments at 4.

88 *See, Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 12230, Attachment 1, rel. November 9, 2001.

89 *See, Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 12451, rel. September 9, 2002.

90 DC PAP at 2.

Application was appropriate. Additionally, because these issues have been resolved in Formal Case No. 990, the Commission removes Issue 43.3 from the Commission's Issues List.

4. Issue 43.4: Should virtual collocation be available at all existing locations?

a. Compliance and Comprehensive Application Provisions

35. Verizon DC proposes virtual collocation provisions in its Compliance and Comprehensive Applications, but these provisions differ in the two applications.[91] The Compliance and Comprehensive Applications do not limit Verizon DC's virtual collocation to central offices in which collocation space has been exhausted.[92] In its Comprehensive Application, Verizon DC has altered its proposed virtual collocation offering in some respects, changing the ownership provisions. Instead of Verizon DC owning the virtually collocated equipment, as the Compliance Application provides, the Comprehensive Application proposes that Verizon DC lease the virtually collocated equipment from the CLEC.[93] Verizon DC indicates that these changes were made to show that Verizon DC leases, but does not own, CLEC equipment in virtual collocation arrangements.[94] No party commented on this change.

b. Parties' Comments

36. Verizon DC asserts that it has sufficient space in all of its central offices for physical and virtual collocation at this time, and it projects that no central office will run out of space in the near future.[95] AT&T and Sprint argue that virtual collocation should be made available at all locations unless the Commission determines that virtual collocation is not technically feasible.[96] Sprint argues that Verizon DC should not use virtual collocation as a substitute for physical collocation when collocation space is still available.[97]

37. In its Reply Comments, Verizon DC argues that this issue is moot because Verizon DC offers virtual collocation at every central office, even those offices where

91 Compliance Application, Section 2.H.

92 Compliance Application, Section 2.B.1.a, Section 2.H.

93 Compliance Application, Section 2.H; Comprehensive Application, Section 2.H.

94 Comprehensive Application Letter at 1.

95 Verizon DC Unresolved Issues Comments at 4.

96 AT&T Unresolved Issues Comments at 5-6; Sprint Unresolved Issues Comments at 2.

97 Sprint Unresolved Issues Comments at 2.

space is not exhausted. Verizon DC indicates that neither AT&T nor Sprint object to Verizon DC's virtual collocation offering.[98]

c. Decision

38. Physical and virtual collocation are two different forms of collocation. Physical collocation occurs when a CLEC leases space at an ILEC's premises for its equipment. Virtual collocation occurs when the CLEC designates the equipment to be placed at the ILEC premises, but does not have physical access to the ILEC premises or its equipment after installation.[99] In the *Local Competition Order*, the FCC required ILECs such as Verizon DC to provide virtual collocation when "physical collocation is not practical for technical reasons or because of space limitations."[100] However, the FCC also determined that ILECs could not prohibit virtual collocation in central offices when physical collocation is available.[101]

39. In its Comprehensive Application, Verizon DC changed its proposed offering to clarify that it will be leasing virtually collocated equipment from the CLEC. This change complies with the FCC's definition of virtual collocation. Verizon DC also offers virtual collocation at all central offices, not just those at which physical collocation is technically impractical or barred by space limitations. The virtual collocation tariff language in Section H of the Comprehensive Application is in compliance with FCC regulations. Thus, the Commission approves Section H of the Comprehensive Application. Because this issue has been resolved by Verizon DC's proposed tariff language, the Commission deletes it from the Issues List.

5. Issue 43.5: Should Verizon DC control the collocation inspection process?

a. *Compliance and Comprehensive Application Provisions*

40. Verizon DC proposes the same inspection terms in both its Compliance Application and Comprehensive Application. Specifically, Verizon DC's proposed tariff language indicates that it will inspect a CLEC's collocation space when construction is completed to ensure compliance with Verizon DC's collocation tariff provisions.

98 Verizon DC Unresolved Issues Reply Comments at 22.

99 *Advanced Services Order* at 4771, ¶ 19, n. 27; *Collocation Order* at 7, ¶ 9.

100 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order ("*Local Competition Order*"), 11 FCC Rcd 15499, 15833, ¶ 585, (1996), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) & *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, reversed in part, and remanded sub nom. AT&T v. Iowa Util. Bd.*, 525 U.S. 366 (1999), *aff'd in part and vacated in part on remand*, 2000 WL 979117 (2000), *aff'd in part, reversed in part, and remanded sub nom. Verizon v. FCC*, 535 U.S. ___ (2002).

101 *Local Competition Order* at 15770-15771, ¶ 551-552.

Verizon DC will also undertake periodic inspections of CLEC collocation spaces on two weeks' notice to ensure continued compliance with the tariff, as long as CLEC representatives are present for the inspection. If, upon inspection, Verizon DC finds that the CLEC has not complied with the tariff provisions, Verizon DC will charge the CLEC for the inspection costs.

41. Verizon DC also notes that inspections may occur in emergency situations. In these cases, Verizon DC will inform the CLEC as soon as possible after the inspection about the inspection and the nature of the emergency that precipitated the inspection. Verizon DC indicates that in cases in which outside agencies inspect the CLEC's space, it will inform the CLEC in writing prior to the inspection so that the CLEC can be present, if Verizon DC is provided sufficient advanced notice of the inspection. Verizon DC will inform the CLEC as soon as possible after the emergency inspection or the inspection by the outside agency.[102]

b. Parties' Comments

42. In responding to this issue, the parties' Comments discussed two different types of "inspections;" inspections occurring at the end of the collocation construction process and inspections occurring during a dispute concerning space availability at a particular premises. Verizon DC responds to this issue by asserting that it should continue to control the collocation inspection process, contending that the FCC permitted it to do so in its June 1997 *Expanded Interconnection Order*.[103] Verizon DC argues that its collocation tariff comports with this FCC Order by giving Verizon DC the right to inspect the completed collocation installation and make subsequent inspections upon two weeks' notice. Verizon DC also accuses certain CLECs of installing equipment that does not comply with Network Equipment and Building Specifications ("NEBS") standards in their collocation spaces.[104]

43. In its response to this issue, AT&T argues that Verizon DC should facilitate, but not control, inspections. AT&T contends that the central office inspection process should be established as the Commission determines the exemption process. Verizon DC should schedule the inspection during a Commission-established time frame and provide all necessary documents for the inspection.[105] Sprint contends that the Commission should control the inspection process, ensuring that Verizon DC complies with all FCC requirements.[106]

102 Compliance Application, Section 2.B.5.e; Comprehensive Application, Section 2.B.5.e.

103 *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 and Order ("*Expanded Interconnection Order*"), 12 FCC Rcd 18730 (1997),

104 Verizon DC Unresolved Issues Comments at 5.

105 AT&T Unresolved Issues Comments at 6.

106 Sprint Unresolved Issues Comments at 2.

44. In its Unresolved Issues Reply Comments, Verizon DC asserts that AT&T and Sprint discuss collocation inspections in the context of exemption petitions, while Verizon DC discusses inspections occurring after the completion of collocation provisioning. Verizon DC asserts that its current inspection process meets all FCC requirements, and has been altered to accommodate CLEC requests. Verizon DC asserts that the inspection questions are moot.[107]

45. In its Unresolved Issues Reply Comments, AT&T indicates that it does not object to tariff language permitting reasonable inspections of CLEC collocation space, as long as these inspections are not designed to delay competition.[108] Sprint denies Verizon DC's allegation that it has installed non-NEBS-compliant equipment in collocation spaces in its Unresolved Issues Reply Comments.[109]

c. Decision

46. The first issue to be addressed is the issue of the types of inspections to which this question refers. As evidenced by the parties' comments, the language of Issue 43.5 is apparently unclear. In their Unresolved Issues Comments, the parties discussed two different inspection processes, but in their Unresolved Issues Reply Comments, AT&T and Sprint appear to address their comments to address inspections occurring after the end of collocation space construction. To clarify, this Issue refers to Verizon DC inspections of collocation spaces. The parties' comments regarding the inspection requirements for exemption petitions are addressed in paragraphs 153-170, *infra*.

47. Verizon DC asserts that its inspection tariff provisions comply with the *Expanded Interconnection Order*, which permits Verizon DC to control the inspection process. While the FCC relied on decisions made in its *Expanded Interconnection* docket as the foundation for its collocation rules based on the local competition provisions of Section 251 of the Telecommunications Act[110] ("Section 251 collocation"), the FCC also altered some of the *Expanded Interconnection* collocation rules in the *Local Competition Order*.[111] Because of these changes, the FCC now has two different sets of collocation rules, one for expanded interconnection[112] and one for Section 251 collocation.[113]

107 Verizon DC Unresolved Issues Reply Comments at 23.

108 AT&T Unresolved Issues Reply Comments at 4, citing Settlement Agreement provision 2.B.5.e.

109 Sprint Unresolved Issues Reply Comments at 1.

110 47 U.S.C. § 251 (2000).

111 *Local Competition Order* at 15832, ¶ 565.

112 47 C.F.R. § 64.1401 *et seq.*

113 47 C.F.R. § 51.321 *et seq.*

Additionally, the *Expanded Interconnection Order*, upon which Verizon DC relies, was issued after the *Local Competition Order*. The FCC did not indicate in any subsequent local competition order that it was adopting the decisions made in the *Expanded Interconnection Order*. Thus, decisions made in the *Expanded Interconnection Order* are not binding on this Commission's determination of Section 251 collocation issues.

48. There are no Section 251 collocation rules regarding ILEC inspections of CLEC collocation spaces. Therefore, while not binding on this Commission, the decisions regarding inspection issues reached in the *Expanded Interconnection Order* may provide guidance to this Commission in its review of Verizon DC's proposed tariff provisions. In the *Expanded Interconnection Order*, the FCC permitted local exchange carriers ("LECs") such as Verizon DC to inspect competitors' collocation spaces, within reason. In particular, LECs can inspect collocation spaces after the initial equipment installation, additional equipment installation, and reconfiguration of collocation space. LECs can also conduct regular inspections of collocation spaces, as long as the inspections do not occur more often than once a month. LECs may also conduct emergency inspections of collocation spaces.[114]

49. The *Expanded Interconnection Order* requires LECs to provide competitors with two weeks advance notice of any LEC inspection of the collocation space. If an outside agency is to inspect the CLEC collocation space, the LEC must provide competitors with sufficient notice to permit the CLEC to be present for the inspection. However, in an emergency, LECs may inspect the collocation space without prior notice, although they must notify competitors of the emergency inspection as soon as reasonably possible.[115] LECs may only charge for an inspection if the CLEC is in violation of the collocation tariff.[116]

50. The Commission believes that the inspection parameters outlined in the *Expanded Interconnection Order* are reasonable. Verizon DC's proposed inspection provisions track the requirements of the *Expanded Interconnection Order*. Additionally, none of the parties have objected to Verizon DC's collocation space inspection provisions. AT&T recognizes that Verizon DC has a right to inspect CLEC collocation, as long as the inspection process does not delay the use of collocation facilities and impede competition. In reviewing Verizon DC's inspection provisions, it appears that they are reasonable. Conducting inspections upon completion of a collocation space permits Verizon DC to ensure that CLEC collocation provisioning activities comply with Verizon DC's tariff requirements. Providing advance notice of and the opportunity for CLEC presence at subsequent inspections benefits both Verizon DC and CLECs. Verizon DC also provides for reasonable notice for emergency inspections and

114 *Expanded Interconnection Order*, ¶ 340.

115 *Expanded Interconnection Order*, ¶ 342.

116 *Expanded Interconnection Order*, ¶ 341.

inspections by outside entities. Therefore, the Commission approves Section 2.B.5.e of the Comprehensive Application and resolves Issues 43.5.

51. The Commission also determines that any allegation by Verizon DC that Sprint has not installed NEBS-compliant equipment should be addressed in a separate complaint brought to the Commission in another proceeding. Verizon DC has the right to require that all collocation equipment complies with NEBS safety specifications [117] as long as Verizon DC's equipment also complies with the same rules.[118] Any complaints that a CLEC is installing non-compliant or unsafe equipment should be addressed in a specific complaint, not in this proceeding.

6. Issue 43.6: Is Verizon DC permitted to take back collocation space that is not "efficiently used" or not used within a certain period of time?

a. Compliance and Comprehensive Application Provisions

52. In both Applications, Verizon DC requires floor space in CLEC collocation arrangements to be "efficiently used," so that "substantially all" of the floor space in a collocation area is occupied by CLEC equipment. Verizon DC indicates that the standard for efficient floor space will be no greater than 20 percent above the minimum distribution permitted by NEBS Generic Equipment Requirements (GR-63-CORE). If the CLEC has a Cageless Collocation – Open Environment ("CCOE"), Verizon DC's cageless collocation offering,[119] or Secured Collocation Open Physical Environment ("SCOPE")[120]arrangement, then the equipment frame placement must adhere to minimum aisle spacing standards. Verizon DC indicates that it will reclaim space that is not being used or is not being "efficiently used" if Verizon DC or another CLEC needs collocation space. The CLEC will have 180 days from the date of notice of the space reclamation to ensure that the collocation space in question is being "efficiently used."[121]

b. Parties' Comments

53. Verizon DC contends that it should be permitted to reclaim unused space from CLECs. Verizon DC asserts that its proposed tariff language mirrors FCC language

117 *Advanced Services Order* at 4782, ¶ 35.

118 *See*, 47 C.F.R. § 51.323(c) (2001).

119 Cageless collocation occurs when a CLEC physically collocates its equipment on Verizon DC premises without enclosing the equipment in a cage. 47 C.F.R. § 51.323(k)(2).

120 SCOPE permits CLECs to install their equipment in a secure area in Verizon DC facilities that is not separated from other CLECs' equipment. *See*, Comprehensive Application, Section 2.E.

121 Compliance Application, Section 2.B.7; Comprehensive Application, Section 2.B.7.

in the *Expanded Interconnection Order*.[122] Verizon DC also asserts that it has not reclaimed space in the District, and if it were to do so, it would provide the CLEC with six months notice and involve the Commission.[123]

54. AT&T objects to Verizon DC's proposed space reclamation procedures. AT&T argues that Verizon DC has not shown a need for processes providing for a unilateral decision to reclaim space, without Commission involvement. AT&T would not object if the provision were altered to provide for Commission involvement in the space reclamation process.[124] Sprint also argues that Commission involvement in the space reclamation process is necessary.[125]

55. Verizon DC reiterates in its Unresolved Issues Reply Comments that the FCC permits it to reclaim space after giving CLECs 180 days' notice of reclamation. Verizon DC asserts that it has never sought to reclaim space in the District of Columbia. Verizon DC objects to AT&T and Sprint's proposals to have the Commission review every space reclamation petition, arguing that this would waste the Commission's resources. Verizon DC contends that it would be sufficient if any CLEC aggrieved by Verizon DC's space reclamation decision were to then petition the Commission. Verizon DC argues that a Pennsylvania Administrative Law Judge (PA ALJ") has supported Verizon DC's proposal.[126]

c. Decision

56. The FCC's Section 251 collocation rules permit Verizon DC to "impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers." However, ILECs may not set maximum space limitations unless they prove to a state commission that establishing maximum limitations is necessary.[127] The FCC's Section 251 collocation rules do not provide specific terms for space reclamation policies, but the *Expanded Interconnection Order* does. Verizon DC argues that its space reclamation provisions are based on the *Expanded Interconnection Order* and have been approved in Pennsylvania. While, as explained above, the *Expanded Interconnection Order* is not binding on this Commission, an examination of this Order's provisions may be helpful.

122 Verizon DC Unresolved Issues Comments at 6.

123 Verizon DC Unresolved Issues Comments at 7.

124 AT&T Unresolved Issues Comments at 6-7.

125 Sprint Unresolved Issues Comments at 3.

126 Verizon DC Unresolved Issues Reply Comments at 24-25.

127 47 C.F.R. § 51.523(f)(6).

57. In the *Expanded Interconnection Order*, the FCC indicated that LEC space reclamation was not unreasonable when space is not being used or being used inefficiently.[128] Related requirements, such as mandating the use of a given percentage of floor space, also pass muster with the FCC. The FCC requires LECs to provide competitors with 180 days notice to ensure that collocation floor space is being efficiently used.[129]

58. Many other Verizon jurisdictions have dealt with this issue. A PA ALJ approved this section of Verizon Pennsylvania's ("Verizon PA") collocation application, which included the same language that Verizon DC submitted to this Commission.[130] The PA ALJ reasoned that this provision was reasonable and benefited all of the parties by encouraging efficient use of collocation space.[131] The PA PUC approved this language with one modification, permitting the parties to seek resolution of any space reclamation issues on an expedited basis.[132] In Massachusetts, the Department of Telecommunications and Energy ("MA DTE") required Verizon Massachusetts ("Verizon MA") to provide CLECs with prior written notice of any proposed reclamation activity. The MA DTE also created procedures by which Verizon MA or a CLEC could petition the MA DTE for a resolution of space reclamation issues.[133] The Public Service Commission of Delaware ("DE PSC") ruled that Verizon Delaware ("Verizon DE") must provide notice and 180 days for the CLEC to correct any allegation of inefficient use of space.[134]

59. The Commission agrees that space reclamation is reasonable. Verizon DC and the CLECs have an interest in ensuring that collocation space is efficiently used, so that all CLECs seeking collocation space may install or expand their collocation equipment. If the first CLECs installing equipment do not use their space efficiently,

128 *Expanded Interconnection Order*, ¶ 331.

129 *Expanded Interconnection Order*, ¶ 332.

130 *Pennsylvania Public Utility Commission v. Verizon Pennsylvania, Inc.*, Docket No. R-00994697; *Rhythms Links, Inc. v. Verizon Pennsylvania, Inc.*, Docket No. R-00994697C0001, Recommended Decision ("*PA Recommended Decision*"), rel. March 7, 2001.

131 *PA Recommended Decision*, at 54.

132 *Pennsylvania Public Utility Commission v. Verizon Pennsylvania, Inc.*, Docket No. R-00994697; *Rhythms Links, Inc. v. Verizon Pennsylvania, Inc.*, Docket No. R-00994697C0001, Opinion and Order ("PA Order") at 94-95, rel. June 21, 2001.

133 *Investigation by the Department on its own Motion as to the Propriety of the Rates and Charges set forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to Become Effective on September 27, 1999, by New England Telephone Telegraph Company, d/b/a Bell Atlantic – Massachusetts*, D.T.E. 98-57, Final Order ("*MA Final Order*") at 55, rel. March 24, 2000.

134 *In the Matter of the Application of Bell Atlantic – Delaware, Inc. for Approval of CLEC Collocation Interconnection Services*, PSC Docket No. 99-251, Order No. 5726 ("*DE PSC Order*") at 24, rel. May 22, 2001.

later CLECs cannot install their equipment, which impedes competition. Thus, Verizon DC may reclaim space if CLECs do not efficiently use their collocation space.

60. Verizon DC's proposed space reclamation provisions permit space reclamation when space is not being efficiently used. These provisions also provide for a 180-day notice period for the CLEC to use its collocation space efficiently before it is reclaimed. These provisions are similar to those permitted in the *Expanded Interconnection Order* and approved in Delaware. These provisions provide a reasonable balance between Verizon DC's need to ensure that collocation space is efficiently used so that more collocators can install their equipment, and the CLECs' need to have notice and an opportunity to correct any inefficient use of collocation space.

61. The Commission does require Verizon DC to make one revision to Section 2.B.7. AT&T's major reason for opposing this section is that it does not provide for Commission involvement in the space reclamation process. Both AT&T and Sprint indicate that they would have no objection if the Commission were involved in this process. Verizon DC argues that the Commission should be involved only if there is a conflict between Verizon DC and the CLEC(s) that would lose collocation space. The Commission feels that it should be involved in the space reclamation process if a dispute arises. Therefore, either Verizon DC or the CLEC that is subject to the reclamation action will be able to petition the Commission for a determination on the issues involved in the reclamation action. However, the Commission will only become involved in space reclamation proceedings if requested by at least one of the parties to the dispute. In that way, the Commission can conserve its resources to adjudicating space reclamation disputes. The Commission directs Verizon DC to add a provision to Section 2.B.7 indicating that either party to any space reclamation dispute may petition this Commission for resolution of the dispute. This language shall be incorporated into the amended collocation tariff due within 10 days of the date of this Order.

7. Issue 43.7: Should interconnection be provided at both electrical and optical levels?

a. Compliance and Comprehensive Application Provisions

62. Verizon DC offers interconnection on four levels in both Applications. These four levels are the fiber optic, DS3, DS1, and voice grade levels.[135] It appears that Verizon DC's proposed interconnection is provided at both the electrical and optical levels.

b. Parties' Comments

63. AT&T argues that interconnection should be provided at both electrical and optical levels.[136] Sprint asserts that interconnection should be provided at all

135 Compliance Application, Section 2.B.1.a; Comprehensive Application, Section 2.B.1.a.

136 AT&T Unresolved Issues Comments at 7.

technically feasible levels. Sprint contends that CLECs should be able to order interconnection as a circuit or as a system.[137] Verizon DC argues that this issue is moot because Verizon DC provides interconnection at both electrical and optical levels.[138]

c. Decision

64. The parties agree that interconnection should be provided at both electrical and optical levels. However, there are differences among the parties as to whether other types of interconnection are "technically feasible."[139] Sprint seeks interconnection on all technically feasible levels, as well as interconnection as a circuit or a system. Sprint does not provide any information concerning the existence of other technically feasible levels. While Verizon DC has the burden to prove that a particular type of interconnection is technically infeasible,[140] Sprint must first inform Verizon DC, the other parties in this proceeding, and the Commission of the types of interconnection that it seeks. Sprint (and any other party) is requested to provide the Commission with a list of interconnection levels within five days of the date of this Order. Verizon DC (and any other party) is directed to respond within 10 days of such filing.

8. Issue 43.8: Should Verizon DC be required to make multiplexing available to CLECs as it does to itself?

65. No comments on this issue were filed. However, the Commission notes that in the *UNE Remand Order*, the FCC includes multiplexing equipment attached to the loop as part of the loop UNE, which must be unbundled for CLECs.[141] The Telecommunications Act requires that all UNEs must be provided to CLECs on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[142] Because multiplexing equipment attached to the loop is part of the loop UNE, Verizon DC must provide access to this facility to CLECs on the same terms and conditions that it provides to itself. Therefore, this issue has been resolved by the FCC, and the Commission deletes it from the Issues List.

9. <u>Issue 43.9</u>: How much time should CLECs be allowed to remove collocated equipment upon termination of interconnection agreements?

137 Sprint Unresolved Issues Comments at 3.

138 Verizon DC Unresolved Issues Comments at 7; Verizon DC Reply Comments at 29.

139 If a form of interconnection is technically feasible, then it must be permitted by the ILEC upon request, pursuant to 47 U.S.C. § 251(c)(2)(B).

140 *Local Competition Order* at 15600, ¶ 198.

141 *UNE Remand Order* at 3778-3779, ¶ 175.

142 47 U.S.C. § 251(c)(3).

a. Compliance and Comprehensive Application Provisions

66. In its Compliance and Comprehensive Applications, Verizon DC proposes a 30-day period for CLECs to remove their equipment when vacating a collocation space. If the collocation space can no longer be used for collocation, then the CLEC will pay Verizon DC reasonable costs to restore the collocation space to its original condition.[143]

b. Parties' Comments

67. Verizon DC and Sprint agree that the Commission should require CLECs to remove their equipment within 30 days.[144] Verizon DC asserts that most CLECs have taken less than 30 days to remove their equipment. Verizon DC also asserts that no CLEC has complained about the timeframe in which to remove equipment.[145] AT&T counters by arguing that CLECs should have 60 days to remove their equipment.[146]

68. In its Unresolved Issues Reply Comments, Verizon DC reiterates its support for the 30-day equipment removal deadline. Verizon DC indicates that CLECs often remove their equipment within this timeframe. Additionally, no CLEC has complained about this deadline.[147]

c. Decision

69. There are no FCC rules governing equipment removal at the termination of a collocation arrangement. The Commission determines that CLECs vacating collocation space should be granted a 30-day period to remove their equipment. Both Verizon DC, the ILEC, and Sprint, a CLEC, agree that this is a reasonable time. Additionally, Verizon DC has indicated that no CLEC removing equipment has taken longer than 30 days to remove the equipment. Verizon DC has also not received complaints about this deadline. In the absence of any information demonstrating that a 30-period is insufficient time, the Commission establishes a 30-day deadline for CLECs to remove equipment upon the termination of an interconnection agreement. The Commission approves Section 2.B.8.e of Verizon DC's Comprehensive Application. Additionally, because there are no remaining issues in Issue 43.9, the Commission removes it from the Issues List.

143 Compliance Application, Section 2.B.8.e; Comprehensive Application, Section 2.B.8.e.

144 Sprint Unresolved Issues Comments at 4; Verizon DC Comments at 7.

145 Verizon DC Unresolved Issues Comments at 7.

146 AT&T Unresolved Issues Comments at 7.

147 Verizon DC Unresolved Issues Reply Comments at 26.

10. **Issue 43.10: Are the indemnification provisions of Verizon DC's tariff appropriate and, if not, what changes should be adopted?**

a. **Compliance and Comprehensive Application Provisions**

70. Verizon DC's Compliance and Comprehensive Applications contain several indemnification provisions. Verizon DC limits its liability for collocation damage in the absence of gross negligence or willful misconduct. Additionally, Verizon DC limits its damages to the amount equal to the proportionate charge for Verizon DC service for the period during which the CLEC's service was affected. [148] Verizon DC also exempts itself from liability for the actions of third parties.[149]

71. Verizon DC also proposes to be indemnified by the CLEC and any CLEC end user against the following charges: libel, slander, invasion of privacy, copyright infringement, patent infringement, personal injury, and property damage. Verizon DC will not be liable for indirect, incidental, consequential, reliance, or special damages.[150] Verizon DC indicates that it makes no warranties, and grants no licenses.[151] Any failure by Verizon DC to provide collocation services to CLECs is excused if caused by difficulties, government orders, civil disturbances, criminal actions against Verizon DC, acts of God, or circumstances reasonably beyond Verizon DC's control.[152]

72. The proposed tariff also provides that any collocating CLEC will indemnify Verizon DC against any claim for personal injury or property damage, including any claim for workers' compensation or employee benefits, arising under any collocation activity, unless the injury was caused by Verizon DC's gross negligence or willful misconduct. CLECs are also required to indemnify Verizon DC for any costs arising out of a requirement to relocate conduits due to a loss of right-of-way or property owner consent.[153] CLECs also indemnify Verizon DC against any damage arising from the installation of CLEC equipment in the multiplexer node, roof space, and transmitter space.[154]

148 Compliance Application, Section 2.B.11.a, Section 2.B.11.c; Comprehensive Application, Section 2.B.11.a, Section 2.B.11.c.

149 Compliance Application, Section 2.B.11.b; Comprehensive Application, Section 2.B.11.b.

150 Compliance Application, Section 2.B.11.d; Comprehensive Application, Section 2.B.11.d.

151 Compliance Application, Section 2.B.11.e, Section 2.B.11.f; Comprehensive Application, Section 2.B.11.e, Section 2.B.11.f.

152 Compliance Application, Section 2.B.11.g; Comprehensive Application, Section 2.B.11.g.

153 Compliance Application, Section 2.B.11.k; Comprehensive Application, Section 2.B.11.k.

154 Compliance Application, Section 2.B.11.l; Comprehensive Application, Section 2.B.11.l.

73. In some instances, Verizon DC will indemnify CLECs. Verizon DC indemnifies CLECs against any claim for personal injury or property damage, including any claim for workers' compensation or employee benefits arising under any Verizon DC provision of service, unless caused by CLEC gross negligence or willful misconduct.[155]

74. The indemnification provisions of the proposed tariff are contingent upon several factors. First, the indemnified party must notify the indemnifying party of the action for which indemnification is sought. Second, the indemnifying party has the sole responsibility for defending any legal action. Third, the indemnifying party may not enter into a settlement without the written authorization of the indemnified party. Fourth, the indemnified party will assert all provisions in its tariffs that limit liability to third parties as a bar to recovery in excess of the limitation of liability.[156]

75. In the proposed tariff, Verizon DC and the collocating CLEC warrant to each other to comply with applicable federal or District laws. Each party indemnifies the other against any damages that occur because of a violation of federal or District law. These warranties will last until 18 months after the termination of the collocation agreement.[157] Verizon DC and the collocating CLECs will be responsible for the actions of the personnel under their control.[158]

b. Parties' Comments

76. No party commented on this issue. Additionally, no party commented on Verizon DC's proposed indemnification tariff language.

c. Decision

77. The FCC does not provide any guidance on proposed indemnification provisions. No party objects to Verizon DC's proposed indemnification provisions. Verizon DC's proposed provisions protect both Verizon DC and the CLECs from certain types of damage. Upon review of Verizon DC's proposed language, it appears that these provisions protect both Verizon DC and CLECs and are reasonable. The Commission approves Section 2.B.11 of the Comprehensive Application. Additionally, because there are no outstanding issues regarding indemnification, the Commission resolves and deletes Issue 43.10 from the Issues List.

11. Issue 43.11: Should Verizon DC be obligated to keep collocator's confidential information from its marketing people?

155 Compliance Application, Section 2.B.11.j; Comprehensive Application, Section 2.B.11.j.

156 Compliance Application, Section 2.B.11.j; Comprehensive Application, Section 2.B.11.j.

157 Compliance Application, Section 2.B.11.m, Section 2.B.11.n; Comprehensive Application, Section 2.B.11.m, Section 2.B.11.n.

158 Compliance Application, Section 2.B.11.o; Comprehensive Application, Section 2.B.11.o.

a. Compliance and Comprehensive Application Provisions

78. In Verizon DC's Compliance and Comprehensive Applications. Verizon DC indicates that it will keep CLEC competitive information confidential. Verizon DC also obligates CLECs to keep Verizon DC central office information confidential. Verizon DC provides exemptions to this general prohibition on revealing competitive information: if the party revealing the information already knew the information due to non-confidential information sharing; if the information becomes publicly available through means other than the authorized disclosure; or if the information was rightly obtained from a third party that has no obligation to keep the information confidential.[159]

b. Parties' Comments

79. All responding parties agree that Verizon DC must not share CLEC confidential business information with Verizon DC's marketing employees.[160] Verizon DC contends that its tariff requires it to keep CLEC information confidential. Verizon DC asserts that no CLEC has complained of breaches in confidentiality.[161] AT&T asserts that a tariff provision should be inserted that specifically prohibits Verizon DC from sharing CLEC information with its marketing staff.[162]

80. In its Reply Comments, Verizon DC argues that its current tariff language should be adopted, since it provides the protections the CLECs seek. Verizon DC asserts that AT&T's proposed language is duplicative and unnecessary.[163]

c. Decision

81. The parties agree that CLEC confidential information must not be transmitted to Verizon DC marketing and other staff. The Commission concurs with the parties. The Commission also believes that Verizon DC confidential information should not be shared with CLEC marketing and other staff. The language in the Compliance and Comprehensive Applications provides that information about CLEC collocation arrangements and Verizon DC's central offices will be kept confidential by the parties. AT&T's proposed language specifically restricting the dissemination of CLEC confidential information to Verizon DC marketing staff is duplicative and unnecessary because Verizon DC is already bound not to disseminate this information to any

159 Compliance Application, Section 1.B.10, Comprehensive Application, Section 1.B.10.

160 Verizon DC Unresolved Issues Comments at 8; AT&T Unresolved Issues Comments at 7-8; Sprint Unresolved Issues Comments at 4.

161 Verizon DC Unresolved Issues Comments at 8.

162 AT&T Unresolved Issues Comments at 7-8.

163 Verizon DC Unresolved Issues Reply Comments at 26-27.

personnel by the proposed provisions. Therefore, the Commission approves Section 1.B.10 of Verizon DC's Comprehensive Application and resolves Issue 43.11, deleting it from the Issues List.

12. Issue 43.12: Should Verizon DC be permitted to restrict a collocator to no more than one-half the space initially available for collocation? Should minimum space increments be established, and if so, what should they be?

a. Compliance and Comprehensive Application Provisions

82. In its Compliance and Comprehensive Applications, Verizon DC establishes minimum and maximum space increment requirements. For SCOPE collocation, the collocating CLEC must install at least a minimum of one shelf of working equipment equipped with plug-ins.[164] Additionally, Verizon DC will not provide a CLEC with more than one half of the space originally available for collocation.[165]

b. Parties' Comments

83. Verizon DC asserts that its tariff permits a CLEC to order up to one half of the available collocation space, which is more generous than the FCC guidelines. Verizon DC also contends that it would seek the Commission's involvement for disputes arising under this tariff provision. Verizon DC also contends that it offers two forms of cageless collocation, which complies with the FCC's *Advanced Services Order*.[166]

84. AT&T argues that Verizon DC cannot restrict the percentage of available space being sought by a collocator because such a policy would be inconsistent with nondiscrimination provisions of the federal Telecommunications Act. AT&T contends that Verizon DC should provide collocators with the amount of space requested, not setting minimum or maximum amounts of space.[167] Sprint argues that CLECs should be served on a first-come, first-served basis. Any minimum increments should be established according to FCC guidelines.[168]

85. In response, Verizon DC argues that the FCC permits Verizon DC to limit initial orders. Verizon DC asserts that it permits CLECs to reserve more space than the

164 Compliance Application, Section 2.E.2; Comprehensive Application, Section 2.E.2.

165 Compliance Application, Section 2.C.1.b; Comprehensive Application, Section 2.C.1.b.

166 Verizon DC Unresolved Issues Comments at 9.

167 AT&T Unresolved Issues Comments at 8.

168 Sprint Unresolved Issues Comments at 4.

FCC requires.[169] Verizon DC also indicates that it allows CLECs to install the minimum of one equipment bay, in compliance with the FCC's requirements.[170]

86. AT&T's Unresolved Issues Reply Comments focus on Verizon DC's determination of the size of CLEC collocation arrangements, to which AT&T is opposed. AT&T asserts that Verizon DC relies on provisions in the *Expanded Interconnection Order* to support its maximum space limitation policy, which does not apply to central office collocation for local exchange carriers.[171]

c. **Decision**

87. The FCC has ruled on maximum and minimum space requirements. The FCC's rules permit Verizon DC to impose reasonable restrictions to prevent warehousing of unused space by collocators.[172] However, Verizon DC is incorrect in asserting that the FCC permits it to prohibit CLECs from reserving more than one-half of the space originally set aside for collocation. In fact, the FCC's rules prohibit ILECs such as Verizon DC from setting maximum space limitations unless Verizon DC proves to this Commission that space constraints in the central offices make such restrictions necessary.[173] Verizon DC has not made such a showing; to the contrary, Verizon DC asserts that all of its central offices have sufficient space for physical and virtual collocation. Therefore, Verizon DC cannot establish maximum space limitations. The Commission rejects Verizon DC's proposed Section 2.C.1.b. Verizon DC shall refile Section 2.C.1.b, deleting the redlined language:

> b. Additional space will be provided on a per request basis, where feasible, and where space is being efficiently used as specified in B.7, preceding. Additional space can be requested by the CLEC by completing and submitting a new Collocation Application Form. ~~The Telephone~~ Company will not provide a single CLEC more than half of the initial space available for Physically Collocated Interconnection.

Verizon DC shall submit the revised Section 2.C.1.b to the Commission within 10 days of the date of this Order with the rest of the amended collocation filing.

88. The FCC has also addressed the issue of minimum space requirements, prohibiting Verizon DC from imposing unreasonable minimum space requirements on CLECs seeking cageless collocation arrangements. The FCC requires ILECs to permit

169 Verizon DC Unresolved Issues Reply Comments at 27.

170 Verizon DC Unresolved Issues Reply Comments at 27-28.

171 AT&T Unresolved Issues Reply Comments at 5.

172 47 C.F.R. § 51.323(f)(6) (2001). *See also, Local Competition Order* at 335, ¶ 586.

173 47 C.F.R. § 51.323(f)(6) (2001).

CLECs to install a single bay in cageless collocation arrangements.[174] In permitting CLECs to install a minimum of a single bay, Section 2.E.2 of Verizon DC's Application complies with the FCC's minimum space requirements. Because Verizon DC follows the FCC guidelines on minimum space requirements and none of the parties objects to Verizon DC's minimum space requirements, the Commission declines to adopt other minimum space requirements. Should the FCC issue new minimum space requirements, the Commission will reevaluate this determination at that time. The Commission approves Section 2.E.2.

13. Issue 43.13: How much or-gated or redundant power should Verizon DC be required to provide to collocators?

a. Compliance, Power, and Comprehensive Application Provisions

89. Verizon DC proposes in its Compliance and Comprehensive Application that, for all collocation arrangements, Verizon DC will assess monthly recurring power charges based on per load amp, per feed. The power charge will be based upon the total power feeding the collocation arrangement.[175] For Cageless Collocation Open Environment ("CCOE") collocation, Verizon DC indicates that it will provide 48V DC power per load amp, per feed. Verizon DC also indicates that it will provide collocating CLECs with access to junction boxes so that they may work directly with a Verizon DC-approved contractor for the installation of AC convenience outlets, lighting, and equipment superstructure.[176]

90. Verizon DC's Power and Comprehensive Applications add several new requirements for obtaining power from Verizon DC. Verizon DC will charge CLECs per load amp based on the total number of load amps ordered per feed. Verizon DC will permit CLECs to designate fuse capacity up to 2.5 times the power load that they have ordered, and only pay for the power ordered. Verizon DC reserves the right to conduct random inspections to verify the actual power load of any collocation arrangement. For any power inspection that would require entry onto CLEC collocation space, Verizon DC will schedule a joint meeting with the CLEC. Verizon DC has proposed detailed procedures for handling situations in which a CLEC has drawn more power than it previously has requested from Verizon DC. The proposed provisions include penalties for CLECs that are found to have used more power than ordered. No Commission action or approval is necessary for these self-executing penalties.[177]

174 47 C.F.R. § 51.323(k)(2) (2001). *See also, Advanced Services Order*, 14 FCC Rcd at 4785-86, ¶ 43.

175 Compliance Application, Section 2.I.1.d; Comprehensive Application, Section 2.I.1.d.

176 Compliance Application, Section 2.F.6.b; Comprehensive Application, Section 2.F.6.b.

177 Power Application, Section 2.B.8.h.1 through Section 2.B.8.h.3; Comprehensive Application, Section 2.B.8.h.1 through Section 2.B.8.h.3.

91. Verizon DC will also require each CLEC to file an annual attestation that it is not exceeding the total amount of power sought in its collocation application. If a CLEC does not submit the attestation after a grace period, Verizon DC will charge the CLEC for the total amps fused.[178] Verizon DC may also require CLECs to submit non-scheduled attestations if Verizon DC finds that they are using more power than they ordered. There are penalties for failure to submit the non-scheduled attestation.[179]

92. Verizon DC proposes to charge CLECs to change their power usage. Verizon DC will assess a nonrecurring charge if a CLEC seeks a reduction in power requirements requiring changes to the CLEC collocation space.[180] Verizon DC will assess a nonrecurring augment charge if a CLEC requires new 48 volt DC power feeds or the deployment of power cables to another power distribution point.[181]

b. *Parties' Comments*

93. In its Unresolved Issues Comments, Verizon DC contends that this issue has been resolved because Verizon DC has agreed in other jurisdictions to charge for load amps rather than fused amps. Verizon DC also states that it has agreed to charge CLECs only for the load amps listed on the CLEC collocation application. Verizon contends that it has resolved this issue in other jurisdictions, so that this issue is moot in the District.[182]

94. AT&T and Sprint assert that, as a general matter, Verizon DC should only charge CLECs for the number of amps provided to and used by the CLEC.[183] Sprint also argues that the Commission should not set arbitrary limits on the provision of redundant power.[184]

95. In its Unresolved Issues Reply Comments, Verizon DC indicates that it has submitted a revised tariff provision agreeing with AT&T's position that a CLEC should be charged for the number of amps ordered.[185] Verizon DC opposes Sprint's position that CLECs should be charged for only the amps used. Verizon DC argues that measuring this power would be impossible because DC power cannot be metered.

178 Power Application, Section 2.B.8.h.4; Comprehensive Application, Section 2.B.8.h.4.

179 Power Application, Section 2.B.8.h.3.c.vii; Comprehensive Application, Section 2.B.8.h.3.c.vii.

180 Power Application, Section 2.B.8.h.5; Comprehensive Application, Section 2.B.8.h.5.

181 Power Application, Section 2.B.8.h.6; Comprehensive Application, Section 2.B.8.h.6.

182 Verizon DC Unresolved Issues Comments at 10.

183 AT&T Unresolved Issues Comments at 8-9.

184 Sprint Unresolved Issues Comments at 5.

185 Verizon DC Unresolved Issues Reply Comments at 11.

Verizon DC also avers that its power rate includes the costs to provide the infrastructure to convert AC power to DC power, which Verizon DC asserts should be collected from the CLECs.[186]

96. While AT&T concurs that Verizon DC has taken significant steps in resolving this issue, with the release of an industry letter explaining the new charges, AT&T asserts that this issue is not resolved until Verizon DC has proposed and the CLECs have reviewed, tariff language to this effect.[187]

97. In its Power Application Comments, Worldcom objects to two aspects of Verizon DC's proposed power sections contained in the Power Application and subsequently in the Comprehensive Application. Worldcom objects to the requirements of providing scheduled and non-scheduled attestations concerning the amount of power needed for each collocation arrangement. Worldcom argues that CLECs already provide Verizon DC with the amount of power that they need in their collocation applications. To require an annual attestation is burdensome and duplicative.[188] Worldcom claims that the penalty provisions for failure to submit attestations is a way for Verizon DC to enrich itself unjustly.[189] Worldcom avers that the penalties assessed by Verizon DC resulting from a power usage audit are sufficient to deter excessive power usage by CLECs.[190]

98. Worldcom also objects to the language in proposed Section 2.B.8.h.3.f, which exempts CLECs from penalties for exceeding their power load if they have requested an augment and the augment is provisioning late "due to the fault of [Verizon DC]."[191] Worldcom argues that this language is vague. Worldcom proposes that this language be changed to indicate that if the CLEC has not caused the augment to be late, then the penalty will not apply.[192] For these reasons, Worldcom requests the Commission to reject the proposed power provisions contained in the Power Application.

99. Verizon DC opposes Worldcom's proposed changes. Verizon DC asserts that the Power Application reflects an agreement reached in other jurisdictions among Verizon, Sprint, and Covad.[193] Verizon DC asserts that the provisions in the Power Application have been adopted in many jurisdictions, including Delaware, Maine,

186 Verizon DC Unresolved Issues Reply Comments at 11-12.

187 AT&T Unresolved Issues Reply Comments at 5.

188 Worldcom Power Comments at 1.

189 Worldcom Power Comments at 2.

190 Worldcom Power Comments at 2-3.

191 Power Application, Section 2.B.8.h.3.f; Comprehensive Application, Section 2.B.8.h.3.f.

192 Worldcom Power Comments at 3.

193 Verizon DC Power Reply Comments at 2.

Massachusetts, New Hampshire, New Jersey, Pennsylvania, Virginia, and West Virginia.[194] Verizon DC asserts that no party seeking collocation under Verizon DC's local competition collocation tariff has objected to these provisions because Worldcom seeks collocation through Verizon DC's federal collocation tariff, not this tariff.[195]

100. Verizon DC asserts that its attestation provisions are necessary. Verizon DC indicates that its proposed provisions permit CLECs to provide redundant power to their collocation arrangements by being fused at a higher amperage than the load amount charged. However, fusing at higher amperages can lead to CLEC use of more power than ordered. If enough CLECs overdraw power, then there may not be sufficient power to maintain the network.[196] To avoid risks to the network, Verizon DC proposed the attestation provisions. Verizon DC argues that it should not be required to monitor the power usage of all CLEC collocation installations. Thus, Verizon DC argues, it relies on CLEC representations of their power usage. Verizon DC argues that attestation is a simple self-auditing measure.[197] Verizon DC also contends that annual attestation is necessary because CLEC power needs vary between years. Annual attestation provides a current list of power needs. Verizon DC claims that non-scheduled attestations are necessary because Verizon DC needs to have an accurate figure of the amount of power used by each collocation arrangement. Verizon DC also indicates that the MA DTE rejected similar Worldcom arguments in its determination of this tariff language.[198]

101. Verizon DC also objects to Worldcom's proposed language in Section 2.B.8.h.3.f, exempting CLECs from payments if augments are not performed in a timely manner. Verizon DC argues that there is no difference between the language proposed by Worldcom and its own proposed language. Verizon DC contends that Worldcom has not explained why such a change is necessary. In the absence of such an explanation, Verizon DC asserts that its language should be adopted to keep Verizon DC's tariff language consistent with language adopted in other jurisdictions.[199]

c. *Decision*

102. In the Joint Petition, the Joint Parties agreed to specific language regarding power charges. They first agreed to assess power based on per load amp, per feed, deleting the requirement that only the per feed be fused.[200] The Joint Petition also deleted

194 Verizon DC Power Reply Comments at 2-3.

195 Verizon DC Power Reply Comments at 2, 8.

196 Verizon DC Power Reply Comments at 3.

197 Verizon DC Power Reply Comments at 4-5.

198 Verizon DC Power Reply Comments at 6.

199 Verizon DC Power Reply Comments at 7.

200 *Joint Petition, Exhibit 2, Section 2.J.d.*

charges for the AC convenience outlet, overhead lighting construction, and the network cable rack.[201] Verizon DC made these changes to its proposed power sections in its Compliance and Comprehensive Applications.[202]

103. In section 2.J.2 of its Applications, Verizon DC includes a charge for DC power. The Applications' language is slightly inconsistent with the language agreed to in the Joint Petition. While the Joint Petition states that this is a "DC power charge,"[203] the Compliance and Comprehensive Applications state that this charge is the "DC power charge per load amp, per feed."[204] In the Compliance and Comprehensive Application, the cross-reference in Section 2.J.2.f to the rate is more specific; "J.1.c" instead of "J.1" included in the Joint Petition. The Commission believes that these changes are technical in nature, since they clarify that DC power is to be charged per load, per amp, which is spelled out in the cross-referenced Section J.1.c, as well as Section 2.I.1.d. The change increases the consistency among the three sections. Therefore, the Commission finds that the provisions in the Joint Petition and the Compliance and Comprehensive Applications are sufficiently similar so that the Commission can find that Verizon DC complied with the provisions of the Joint Petition in its Compliance and Comprehensive Applications. The Commission approves Sections 2.I.1.d-f and 2.J.2.f.

104. Section 2.B.8.h of the Power and Comprehensive Applications was submitted pursuant to settlement of redundant power issues by Verizon, Sprint, and Covad. This section permits CLECs to obtain redundant power but creates penalties for those CLECs that use more power than they order. As part of the verification process to determine that CLECs are not actually using more power than they order, Verizon DC seeks to have CLECs provide an annual attestation of their power usage. Worldcom opposes this provision, arguing that the attestation seeks identical information to that provided in the collocation application. Verizon DC argues that power requirements may vary from year to year, so that annual attestations provide a more accurate picture of the amount of power actually used.

105. Verizon DC indicates that the MA DTE approved the same attestation provisions. The MA DTE noted that the attestations were necessary for Verizon DC to properly forecast its and CLECs' power needs.[205] The MA DTE also found that these provisions did not place an undue burden on CLECs.[206]

201 Joint Petition, Exhibit 2, Section 2.I.e-h.

202 Compliance Application, Section 2.I; Comprehensive Application, Section 2.I.

203 Joint Petition, Exhibit 2, Section 2.J.2.f.

204 Compliance Application, Section 2.J.2.f; Comprehensive Application, Section 2.J.2.f.

205 *Investigation by the Department on its own motion as to the propriety of rates and changes set forth in the following tariff MDTE No. 17, filed with the Department on April 6, 2001, to become effective May 6, 2001, by Verizon New England Inc .d/b/a Verizon Massachusetts,* D.T.E. 98-57 Phase IV, Order on Joint Motion for Approval of Settlement Agreement and Final Order ("*MA DTE Settlement Order*") at 18 (May 14, 2002).

106. The Commission concurs with Verizon DC's attestation language. In order to protect the integrity of Verizon DC and CLEC networks, Verizon DC needs to have an accurate count of the amount of power used by CLECs. Due to changing circumstances, CLEC power use may vary. Thus, requiring CLECs to submit attestations provides Verizon DC with more accurate information on power use, permitting it to forecast future power needs for itself and for the CLECs. In this way, Verizon DC will be more able to ensure that the network will not fail due to an inadequate power supply. Attestation will not be administratively burdensome to accomplish because the CLECs are in the best position to know their power usage and can easily report that usage.

107. Regarding Worldcom's proposed change to section 2.B.8.h.3, Verizon DC asserts that there is no difference in the language permitting exemptions from penalties for augments not completed on time "due to the fault of [Verizon DC]" (Verizon DC's proposed language) and "the CLEC is not responsible for the lateness" (Worldcom's proposed language). There is a difference between these two phrases, which would become apparent in circumstances in which the augment is not completed due to factors outside Verizon DC's and the CLEC's control, so that neither is at fault. Under Verizon DC's proposed language, the CLEC would still have to pay the penalty under these circumstances, but under Worldcom's proposed language, the CLEC would not have to pay the penalty in the same circumstances. However, Worldcom's reason for this change, to avoid the definitional problems regarding whether Verizon DC is at fault, would still apply with Worldcom's proposed changes. The definitional issue would then switch to whether the CLEC was responsible for the delay. Thus, Worldcom has not provided a sufficient reason to change Verizon DC's proposed language, particularly when this language was agreed to by Verizon and several CLECs and incorporated into several state tariffs.[207] The Commission approves Section 2.B.8.h of the Comprehensive Application. Because all of the power issues have been resolved, the Commission deletes this Issue from the Commission's Issues List.

14. Issue 43.14: Should Verizon DC be required to provide shared-use Analog and Digital High Capacity Services?

108. Verizon DC and Sprint do not provide a response to this question, since they indicate that they do not understand what "shared use analog and digital high capacity services" are.[208] AT&T argues that Verizon DC should provide these services in the District of Columbia.[209] In its Reply Comments, Verizon DC indicates that it will provide a response to this question if the term is more fully defined.[210]

206 *Id.* at 19.

207 *See*, *MA DTE Settlement Order* at 24.

208 Sprint Unresolved Issues Comments at 5; Verizon DC Unresolved Issues Comments at 10.

209 AT&T Unresolved Issues Comments at 9.

210 Unresolved Issues Reply Comments at 28.

109. This question, like many on the Commission's Issues List, was developed in 1997, when the technology and terminology of new services were not well defined. Now, it appears that "shared-use analog and digital high capacity services" refers to line sharing and line splitting, in which loops are shared by Verizon DC and the CLECs to provide both analog and digital services.[211] "High capacity" appears to mean high speed, which would refer to advanced services and issues with Digital Subscriber Line services ("xDSL").[212] The Commission determines that this question refers to Verizon DC's obligations to provide access to the high frequency portion of the loop in line sharing and line splitting. Because these issues are being addressed in other portions of Formal Case No. 962, Issue 43.14 is duplicative and redundant. The Commission deletes Issue 43.14 from the Issues List.

15. Issue 43.15: Should the collocation terms allow collocators to self-insure?

a. Compliance and Comprehensive Application Provisions

110. In its Compliance and Comprehensive Applications, Verizon DC permits CLECs that are worth over $100 million to self-insure instead of obtaining the required comprehensive liability, umbrella/excess liability, all risk property, contractual liability, automobile liability, and employer's liability insurance, as well as worker's compensation.[213] Verizon DC requires that any CLEC opting to self-insure must furnish and update information regarding its net worth to Verizon DC. Any self-insuring CLEC must comply with the entirety of Verizon DC's liability and indemnification provisions.[214]

b. Parties' Comments

111. AT&T argues that collocators should be allowed to self-insure, provided that they meet a reasonable threshold for demonstrating that they are financially secure. AT&T proposes that Verizon DC could use the Standard & Poors rating system to determine financial stability.[215] Verizon DC asserts that the FCC rules in the *Expanded Interconnection Order* do not require ILECs to permit CLECs to self-insure. However, Verizon DC allows CLECs with a net worth of over $100 million to self-insure. Verizon

211 *See, Line Sharing Order* at 20921, ¶ 9 (1999).

212 *See, Line Sharing Order* at 20927, ¶ 26.

213 Compliance Application, Section 2.B.6.2; Comprehensive Application, Section 2.B.6.2.

214 Compliance Application, Section 2.B.6.8; Comprehensive Application, Section 2.B.6.8.

215 AT&T Unresolved Issues Comments at 9.

DC indicates that no CLEC has complained about this provision.[216] In reply, Verizon DC also argues that this issue is moot, since AT&T appears to agree with Verizon DC's position and Sprint takes no position on this issue.[217]

c. Decision

112. *The FCC's Section 251 collocation rules do not discuss self-insurance.* In the *Expanded Interconnection Order*, the FCC encouraged LECs to permit collocators to self-insure, but did not require self-insurance.[218] Verizon DC and AT&T appear to agree that financially secure CLECs should be permitted to self-insure. The Commission finds that providing CLECs with the option to self-insure provides them with greater flexibility. Verizon DC proposes that the measure of financial security should be a net worth of over $100 million. No CLEC has objected to this standard. The Commission believes that this threshold appropriately assures sufficient financial stability to permit self-insurance. Thus, the Commission finds Verizon DC's self-insurance proposals *reasonable and approves Section* 2.B.6.8 of its Comprehensive Application. The Commission also deletes Issue 43.15 from the Issues List, as this issue has been resolved.

16. Issue 43.16: Should access by collocator personnel to virtually collocated equipment be limited to installation only?

a. Compliance and Comprehensive Application Provisions

113. For virtual collocation, Verizon DC offers to install, maintain, and perform all ancillary activities relating to the equipment provided by the CLEC to be installed at a central office. CLECs opting for virtual collocation will be required to install their fiber optic cable to the Verizon DC-designated virtual collocation area in the central office. Except to perform any equipment installations in the virtual collocation area of the central office, CLECs will not have access to the central office.[219] CLECs can choose whether Verizon DC or a Verizon DC-approved vendor installs the equipment. A CLEC can also apply to become a Verizon DC-approved vendor, so that it can install its own equipment.[220] Access to CLEC virtually collocated equipment is limited under Verizon DC's Compliance and Comprehensive Applications. CLEC personnel must be escorted by Verizon DC personnel to view the virtually collocated equipment. CLECs must also pay Verizon DC for the escort.[221]

216 Verizon DC Unresolved Issues Comments at 11.

217 Verizon DC Unresolved Issues Comments at 29.

218 *Expanded Interconnection Order*, ¶ 350.

219 Compliance Application, Section 2.H.d; Comprehensive Application, Section 2.H.d.

220 Compliance Application, Section 2.H.h; Comprehensive Application, Section 2.H.h.

221 Compliance Application, Section 2.H.i; Comprehensive Application, Section 2.H.i.

b. Parties' Comments

114. In support of its proposed provisions, Verizon DC argues that the FCC has determined that ILECs retain exclusive control over collocated equipment in virtual collocation arrangements. Verizon DC permits CLECs that engage in virtual collocation to have their own vendor install virtual collocation equipment. Verizon DC also permits CLECs escorted access to inspect the collocation equipment. When a technical problem is detected in virtually collocated equipment, Verizon DC will escort the CLEC's technical team to the equipment to resolve the problem. Verizon DC argues that because virtually collocated equipment is located in unsecured areas, no further access is necessary.[222] Sprint argues that access by the CLECs to virtually collocated equipment should be limited to installation only.[223]

115. AT&T argues that the Settlement Parties agreed to defer this issue until the FCC issues its order in the collocation remand proceeding.[224] Verizon DC contradicts AT&T's argument, asserting that this matter is not currently under consideration by the FCC.[225]

116. In its Unresolved Issues Reply Comments, Verizon DC reiterates its position that it permits CLECs to install virtual collocation equipment using an authorized vendor and permits CLECs escorted access to view the completed installation or to correct serious trouble. Verizon DC argues that these procedures are more than the FCC required, so that the issue is moot.[226]

c. Decision

117. In virtual collocation, as opposed to physical collocation, CLECs designate equipment to be placed in a Verizon DC central office. CLECs lease the equipment to Verizon DC for a nominal fee, and Verizon DC installs, maintains, and repairs the equipment for CLECs. CLECs do not have access to virtually collocated equipment because the equipment is under the control of Verizon DC.[227]

118. Under Verizon DC's tariff provisions, CLECs may be present when virtually collocated equipment is being installed, even if they do not actually install the equipment. Additionally, Verizon DC's tariff provisions permit CLECs to access their

222 Verizon DC Unresolved Issues Comments at 12.

223 Sprint Unresolved Issues Comments at 5.

224 AT&T Unresolved Issues Comments at 9.

225 Verizon DC Unresolved Issues Reply Comments at 22, n. 52.

226 Verizon DC Unresolved Issues Reply Comments at 22.

227 *Collocation Reconsideration Order* at 17813, ¶ 9.

virtually collocated equipment after installation if CLECs pay for the escort. Therefore, Verizon DC's tariff provisions permit access to virtually collocated equipment on more occasions than installation. Verizon DC's tariff provision is reasonable, since virtually collocated equipment is installed next to Verizon DC's equipment. Verizon DC is entitled to protect its equipment from any potential damage caused by collocating CLECs. Having escorts accompany CLEC personnel to view the virtually collocated equipment protects Verizon DC equipment (as well as CLEC personnel against charges of tampering with Verizon DC equipment). Additionally, Verizon DC's virtual collocation offering complies with or exceeds the FCC's virtual collocation requirements. Therefore, the Commission approves the virtual collocation portions regarding access to Verizon DC property after installation of virtually collocated equipment contained in Section 2.H of Verizon DC's Compliance and Comprehensive Applications.

119. AT&T asserts that the FCC is still considering issues relating to access to virtually collocated equipments. AT&T contends that the Joint Settlement Parties (Verizon, AT&T, Sprint, and Worldcom) all agreed to defer this issue until the FCC reached a decision on these issues. However, the FCC did not seek comments on this issue in either the *Collocation Reconsideration Order* or the *Advanced Services Fourth Report and Order*, which included Further Notices of Proposed Rulemaking. Furthermore, the Joint Petition does not mention that this issue was deferred until the release of an FCC decision. AT&T is incorrect in its assertion that the Joint Settlement Parties did not seek resolution of this issue at this time. For the foregoing reasons, the Commission resolves Issue 43.16.

17. Issue 43.17: With respect to each proposed change to Verizon DC's tariff, is Verizon DC legally required to revise its tariff to reflect the proposed change?

120. No Comments on this issue were filed. In discussing this issue, the Commission turns to its general provisions regarding tariffs because Verizon DC's local competition collocation offerings are tariffed by the Commission. If Verizon DC seeks to change its collocation offerings, it must file an amended tariff application with the Commission and obtain the Commission's approval before changing any provision of its tariff.[228] Because Verizon DC is required to amend its tariffs if any provisions change, this issue has been resolved. The Commission deletes Issue 43.17 from the Commission's Issues List.

18. Issue 43.18: For what activities should provisioning intervals be established? How long should these intervals be?

a. Compliance and Comprehensive Application Provisions

121. Verizon DC's Compliance Application contains different provisioning intervals, depending on the type of collocation sought. Verizon DC proposes a 120-day

228 *See*, D.C. Code, 2001 Ed. § 34-601

interval for physical collocation.[229] For CCOE, Verizon DC offers a provisioning interval of 76 business days in areas where Verizon DC's equipment is secure. In areas in which Verizon DC's equipment is not secure, then Verizon seeks a 105-business day provisioning interval for CCOE.[230] Verizon DC suggests a 60-day provisioning interval for virtual collocation.[231]

122. Verizon DC's Comprehensive Application changes many of the collocation intervals. For all types of physical collocation, Verizon DC proposes a 76-business day provisioning interval, provided that the CLEC gave Verizon DC six months' notice of its intent to submit a collocation application. Major construction or special CLEC requirements will extend that interval to 91 business days. Virtual collocation arrangements will take 105 business days to complete. Intervals for non-standard arrangements, including adjacent collocation, are not established; Verizon DC and the CLEC will negotiate to determine the appropriate interval.[232]

123. If a CLEC wishes to change its collocation space or equipment requirements, it must file an augment application with Verizon DC. The general standard for provisioning collocation augments is 45 business days in the Comprehensive Application. This interval is available when the CLEC has provided Verizon DC with six months' notice of the augment, and the infrastructure needed for the augment is installed and available for use. Additionally, the 45-day augment interval applies only to augments of specific listed types of equipment. In large central offices, Verizon DC may seek to extend the augment interval because of the complexity of the augment.[233]

124. Verizon DC provides a general schedule of provisioning events (in business days):

> Day 1 – CLEC submits application and fee;
> Day 8 – Verizon DC informs CLEC of its ability to accommodate the request and provides a due date;
> Day 17 – CLEC informs Verizon DC of its intent to proceed and provides 50 percent of the installation or augment cost;
> Day 45 – Augment completed;
> Day 76 – Installation completed.[234]

229 Compliance Application, Section 2.B.1.h.

230 Compliance Application, Section 2.F.4.

231 Compliance Application, Section 2.B.1.h.

232 Comprehensive Application, Section 2.B.1.h.

233 Comprehensive Application, Section 2.B.1.h.

234 Comprehensive Application, Section 2.B.1.h.

Verizon DC and the CLEC will also develop specific schedules upon submission of collocation applications.

125. For CCOE, Verizon DC provides two intervals. For a collocation arrangement in which Verizon DC equipment is secure, the provisioning interval is 76 business days. For collocation in an area in which Verizon DC equipment is not secure, the interval is 105 business days.[235]

b. Parties' Comments

126. In its Unresolved Issues Comments, Verizon DC proposes a 76-business day interval for physical collocation and a 60-business day period for virtual collocation. Verizon DC argues that the 76-day interval is similar to that adopted in New York and has been approved by the FCC. Verizon DC argues that the 60-day interval is considerably shorter than the interval adopted in New York.[236] Verizon DC argues that shorter intervals are impossible to meet, since Verizon DC relies on outside vendors, which Verizon DC cannot control, to perform the necessary work.[237]

127. Verizon DC also proposes a 76-business day provisioning interval for most augments, including cable augments to line sharing arrangements, because the differences between a new arrangement and a line sharing augment is insignificant.[238] Verizon DC opposes the 45-day augment period adopted in New York, because it is too short. Verizon DC also argues that the 76-day interval is not burdensome to the CLECs, because they must prepare for the new collocation arrangement, which takes more than 45 days.[239]

128. Verizon DC also indicates that it has agreed to provision lines for line sharing within three business days, unless there are five or more arrangements to be provisioned or the order requires special conditioning. Verizon DC asserts that it provisions lines for its affiliate in the same interval.[240] Verizon DC argues that there should be a three-business day interval for line sharing arrangements, especially since AT&T and Sprint did not comment on this interval.[241]

129. AT&T argues that the Commission should adopt the provisioning intervals established in the *Collocation Reconsideration Order*, including the 90-calendar day

235 Comprehensive Application, Section 2.F.4.

236 Verizon DC Unresolved Issues Comments at 13.

237 Verizon DC Unresolved Issues Comments at 15.

238 Verizon DC Unresolved Issues Comments at 16.

239 Verizon DC Unresolved Issues Comments at 17.

240 Verizon DC Unresolved Issues Comments at 18.

241 Verizon DC Unresolved Issues Reply Comments at 6.

provisioning interval.[242] AT&T proposes several different provisioning intervals. For traditional caged collocation, AT&T's proposed interval is 90 days. For SCOPE collocation, AT&T proposes that the interval for the first collocator should be 90 days, but for subsequent collocators, the interval should be 60 days. AT&T contends that after the first SCOPE collocation, much of the work to be performed for subsequent installations has been performed.[243] For cageless collocation, AT&T suggests a 60-day interval, although in cases in which Verizon DC has not yet made the necessary security arrangements for the first cageless collocator, the interval would be extended 10 days. AT&T proposes an interval of 30 days for augments.[244]

130. Sprint proposes the following collocation intervals:

- Simple augments (Duplex AC convenience outlets and DC power requirements if only a fuse change) – 20 days
- Minor augments (up to 2 DS3s (cabling only), up to 400 copper cable pairs (blocks and cabling only), additional overhead lighting, cage-to-cage interconnection conduit in the same collocation area, cable pull within same collocation area) – 45 days
- Intermediate augments (Up to 400 copper cable pairs, arrange/install fiber cable through inner duct, arrange/install timing leads, arrange/install up to 12 fiber pairs – 60 days
- Major augments (power cables added to accommodate additional DC amperage requests within existing power panels, cage expansion of 300 feet as long as no reconfiguration and no HVAC work, arrange/install bay lighting) – 60-90 days[245]

131. In its Reply Comments, Verizon DC objects to AT&T's proposed 90-calendar day provisioning interval, arguing that this interval is too short. Verizon DC reiterates that the FCC has permitted Verizon DC to establish longer intervals.[246] Verizon DC asserts that the amount of Verizon DC work required to provision any type of physical or virtual collocation arrangement is basically the same, requiring the same provisioning intervals. Verizon DC argues that it has demonstrated the length of time required for provisioning collocation. According to Verizon DC, no party has contradicted this evidence. Verizon DC contends that since AT&T has indicated neither how it would be harmed by Verizon DC's provisioning intervals nor how Verizon DC

242 AT&T Unresolved Issues Comments at 9.

243 AT&T Unresolved Issues Comments at 10.

244 AT&T Unresolved Issues Comments at 11-12.

245 Sprint Unresolved Issues Comments at 6-7.

246 Verizon DC Unresolved Issues Reply Comments at 6.

could meet shorter intervals, Verizon DC's proposed provisioning intervals should be adopted.[247]

132. Verizon DC also argues that the Commission should adopt its augment provisioning intervals because the same amount of work is generally required for augments as for provisioning collocation space initially.[248] Alternatively, Verizon DC suggests that the augment intervals can be shortened by having the CLECs do most of the augmentation work. Verizon DC indicates that the parties in New York are discussing ways to reduce this interval. Verizon DC recommends that the Commission defer its decision until the New York collaborative completes its work in this area, so that Verizon DC can propose using these intervals in the District.[249]

133. In its Unresolved Issues Reply Comments, AT&T objects to Verizon DC's 76-business day provisioning interval. AT&T argues that the FCC established a maximum provisioning interval of 90 calendar days. AT&T asserts that the FCC permits commissions to set shorter provisioning intervals.[250] AT&T argues that Verizon DC's assertion that it has not missed a collocation provisioning deadline in the District of Columbia does not indicate that Verizon DC would be unable to meet the 90 day standard. AT&T contends that the Pennsylvania and Delaware Commissions have rejected Verizon's 106-calendar day provisioning.[251] AT&T argues that Verizon DC is wrong in asserting that the collocation provisioning intervals in the District are the same as those in New York. AT&T notes that Verizon DC has excluded the 45-day augment interval adopted in New York from its Compliance Application.[252]

134. In its Unresolved Issues Reply Comments, Sprint indicates that its proposed collocation provisioning intervals are similar to those proposed by Verizon DC, contrary to Verizon DC's assertion. Sprint argues that Verizon DC should be required to make network connections available to the CLECs within 15 days of provisioning completion. Otherwise, CLECs will not be able to provide service in a timely manner.[253] Sprint does not oppose Verizon DC's intervals for central office, adjacent, or remote

[247] Verizon DC Unresolved Issues Reply Comments at 8.

[248] Verizon DC Unresolved Issues Reply Comments at 9.

[249] Verizon DC Unresolved Issues Reply Comments at 10.

[250] AT&T Unresolved Issues Reply Comments at 7.

[251] AT&T Unresolved Issues Reply Comments at 7-8.

[252] AT&T Unresolved Issues Reply Comments at 8.

[253] Sprint Unresolved Issues Reply Comments at 2.

terminal collocation, but does oppose Verizon DC's intervals for collocation augments.[254] Sprint reiterates its support for its own collocation provisioning intervals.[255]

135. In its Comprehensive Application, Verizon DC asserts that it has changed the proposed provisioning intervals to reflect provisioning intervals approved by the New York Public Service Commission ("NYPSC").[256] Sprint indicates that it believes that the Pennsylvania Public Utilities Commission ("PA PUC") is currently considering collocation provisioning intervals. Sprint believes that Verizon DC will submit these intervals in the District of Columbia after they are finalized in Pennsylvania.[257] Verizon DC does not address this issue in its Comprehensive Application Reply Comments.

c. Decision

136. The FCC has established a national physical collocation provisioning standard of 90 calendar days. Within ten calendar days after receiving a collocation application, the ILEC must inform the requesting carrier if the application has been accepted or rejected. If the application is rejected, the ILEC must provide a sufficiently detailed explanation of the rejection, so that the CLEC can cure the deficiencies of its application. The CLEC has ten calendar days from the notification of the rejection to cure the application.[258] The ILEC must then perform collocation space design, planning, and price quotation expeditiously, although the FCC has set no specific interval for these processes.[259] Once the CLEC receives this information from the ILEC, the CLEC has seven calendar days in which to approve the plans and price quotation.[260] The ILEC has 90 days from the receipt of an acceptable collocation application to provision the collocation space.[261]

137. These standards apply in jurisdictions in which no standard is set, or in circumstances in which the ILEC and the requesting carrier have agreed on different standards.[262] Contrary to AT&T's assertions, jurisdictions may set either longer or shorter provisioning standards, depending on the evidence presented.[263] The FCC

254 Sprint Unresolved Issues Reply Comments at 2.

255 Sprint Unresolved Issues Reply Comments at 3.

256 Comprehensive Application Letter at 1.

257 Sprint Comprehensive Application Comments at 1.

258 *Collocation Reconsideration Order* at 17821, ¶ 24.

259 *Collocation Reconsideration Order* at 17821-17822, ¶ 25.

260 *Collocation Reconsideration Order* at 17822, ¶ 25.

261 *Collocation Reconsideration Order* at 17822, ¶ 26.

262 *Collocation Reconsideration Order* at 17820, ¶ 23.

263 *Collocation Reconsideration Order* at 17824, ¶ 29.

encourages jurisdictions to set shorter intervals in circumstances in which setting shorter intervals are appropriate.[264]

138. Notwithstanding the FCC's national 90-day provisioning rule, the FCC has granted Verizon DC a waiver of this national rule when Verizon DC proposes the New York provisioning intervals in other jurisdictions.[265] The New York rules require Verizon to notify a requesting CLEC within eight business days of whether its collocation request can be accommodated. Normal physical collocation must be completed within 76 business days. If major construction or special requirements apply, then Verizon has 91 business days in order to provision the collocation space. The intervals can be extended for up to 20 business days if collocation space is not readily available. If the CLEC has not properly forecast its collocation needs, then the provisioning process could be delayed for up to three additional months. Verizon must provision augments to existing collocation space within 45 business days.[266] The FCC approved most of the New York provisioning intervals, but shortened the period for which Verizon could delay provisioning due to improper CLEC forecasting from three months to 60 calendar days.[267] With the exception of that provision, the FCC found that the New York standards met the FCC's criteria for waiving the national requirements. In approving New York's provisioning intervals, the FCC expressly included the 45-day augment provisioning standard.[268]

139. Delaware, Massachusetts, and Pennsylvania have established or proposed to establish differing collocation provisioning intervals. Massachusetts follows the New York 76-business day interval for physical or virtual collocation. The MA DTE declined to establish a provisioning interval for adjacent location. Instead, the MA DTE decided to wait until an adjacent collocation application had been filed before determining the appropriate interval.[269] The PA ALJ, PA PUC, and the DE PSC, on the other hand, followed the FCC's 90-calendar day physical collocation provisioning interval.[270] The PA ALJ recommended and the DE PSC approved a 10-calendar day interval for

264 *Collocation Reconsideration Order* at 17828, ¶ 37.

265 *Deployment of Advanced Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order ("*Verizon Waiver Order*") 16 FCC Rcd 3748, 3756, ¶ 16 (Nov. 7, 2000).

266 *Verizon Waiver Order* at 7, ¶ 13, citing *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, Opinion No. 00-12*, Opinion and Order Concerning Verizon's Provision of DSL Capabilities, 8-10 (New York PSC, Oct. 31, 2000).

267 *Verizon Waiver Order* at 3756, ¶ 16.

268 *Verizon Waiver Order* at 3756, ¶ 17.

269 *MA Final Order* at 56.

270 *DE PSC Order* at 7; *PA Recommended Decision* at 24; *PA Order* at 35.

responding to CLEC collocation requests.[271] The PA ALJ also recommended that the start date for the provisioning intervals should be the date of the application, not the deposit date.[272] Provisioning intervals in Pennsylvania for caged and initial SCOPE collocations would be 90 calendar days, while it would be 60 calendar days for subsequent SCOPE collocations.[273] The PA ALJ also proposed a 60-calendar day provisioning interval for cageless collocation, adding 10 calendar days if the cageless collocation is in an unsecured location.[274] The PA ALJ suggested and the DE PSC adopted a 60-calendar day provisioning interval for virtual collocation arrangements.[275] The DE PSC determined that CLECs seeking collocation should inform Verizon 30 days in advance of their collocation application. If CLECs did not do so, then Verizon's provisioning deadline would be increased by the number of days that a CLEC was late in providing advance notice.[276]

140. Pennsylvania and Delaware differ on augment provisioning intervals. The PA ALJ recommended a 30-business day interval to provision cable only augments,[277] but the PA PUC decided to defer its decision on that issue.[278] The DE PSC ordered Verizon DE to amend its collocation tariff application to indicate the types of collocation augments that could be completed in less than 90 days. For those augments, the Commission would adopt the shorter interval. For augments that could not be provisioned in less than 90 days, the Commission would set the augment interval at 90 days.[279]

141. The Commission approves the provisioning intervals included in the Comprehensive Application. These intervals are based upon those in New York, which the FCC has approved. Many of the intervals contained in the Comprehensive Application are shorter than those in the Compliance Application. While other Verizon jurisdictions have selected shorter provisioning intervals, no party in this proceeding has objected to the provisions in the Comprehensive Application. No party has presented a reason for which Verizon DC's provisioning intervals should be shorter.

271 *DE PSC Order* at 12; *PA Recommended Decision* at 20.

272 *PA Recommended Decision* at 21.

273 *PA Recommended Decision* at 21; *PA Order* at 36.

274 *PA Recommended Decision* at 24; *PA Order* at 37-38.

275 *DE PSC Order* at 9; *PA Recommended Decision* at 25; *PA Order* at 39.

276 *DE PSC Order* at 13-14.

277 *PA Recommended Decision* at 31.

278 *PA Order* at 48.

279 *DE PSC Order* at 11.

142. The Commission also notes that the provisioning intervals adopted in this Order may be short-lived. Sprint asserts that there is an agreement to seek adoption of new provisioning intervals established in Pennsylvania. Verizon DC has not contradicted this assertion. Thus, if different provisioning intervals are adopted in Pennsylvania, Verizon DC will be seeking to amend these sections of its tariff to make those changes in the District of Columbia. The Commission directs Verizon DC to submit the collocation provisioning intervals adopted in Pennsylvania to this Commission within 10 days of the release of any PA PUC order establishing provisioning intervals. For these reasons, the Commission adopts the provisioning intervals in the Comprehensive Application. The Commission deletes Issue 43.18 from the Issues List because it has been resolved.

19. Issue 43.19: How should collocation space be reserved in a nondiscriminatory manner?

a. Compliance and Comprehensive Application Provisions

143. While the Compliance Application contains no provision for space reservation, The Comprehensive Application adds space reservation language. In the Comprehensive Application, Verizon DC indicates that it shall not reserve space for itself on terms that are more favorable than those terms it offers to CLECs. Verizon DC indicates that it has the right to reserve space for transmission, switching, and other miscellaneous equipment for three years, petitioning this Commission if more than three years is necessary. Verizon DC will reserve space for power areas, distribution frame space, and cable vault areas for seven years.[280]

b. Parties' Comments

144. In its Unresolved Issues Comments, Verizon DC argues that the FCC permits ILECs to reserve space for their future needs. Verizon DC seeks to be allowed to reserve space for general transport equipment for three years, the same period of time that it permits CLECs. Verizon DC proposes to retain space for switching equipment for five years. Verizon DC contends that this five-year space reservation policy is not applicable to the CLECs because they do not collocate switching equipment. Verizon DC also argues that it should be able to reserve space for network infrastructure equipment for seven years. Verizon DC argues that the seven-year policy is necessary because any new equipment must be built next to existing infrastructure equipment. Verizon DC also contends that collocators cannot collocate in the space contiguous to network infrastructure equipment because this collocation would pose grave security risks.[281] According to Verizon DC, restricting its ability to reserve space would jeopardize Verizon DC's ability to serve District of Columbia consumers. Verizon DC indicates that the MA DTE accepted Verizon MA's space reservation standards and agreed to review the policy on a case-by-case basis when facility space is exhausted. Verizon DC

280 Comprehensive Application, Section 2.B.1.r.

281 Verizon DC Unresolved Issues Comments at 19.

proposes the same approach in the District of Columbia, if the Commission chooses not to accept Verizon DC's space reservation proposals.[282]

145. AT&T argues that Verizon DC should be limited to two years for space reservation in its Unresolved Issues Comments. AT&T contends that permitting Verizon DC to reserve space for over five years crowds out collocators. AT&T argues that several states have limited space reservation, a lead that the Commission should follow.[283] In particular, AT&T proposes using the Virginia State Corporation Commission's ("VA SCC") space reservation rules.[284] AT&T and Sprint argue that Verizon DC should apply the same space reservation policies to CLECs as it does to itself or its affiliates.[285] Sprint proposes that Verizon DC and CLECs should be permitted to reserve space for two years, regardless of the type of equipment to be installed, because differences among the various technologies are beginning to disappear.[286]

146. In its Unresolved Issues Reply Comments, Verizon DC argues that two year space reservation policies would jeopardize its ability to serve District of Columbia residents and reserve additional space for later collocators. Verizon DC argues that the VA SCC permitted Verizon DC to reserve space for more than two years upon demonstration of the necessity of the space reservation. Other states also permit longer space reservation intervals. If the Commission chooses not to adopt Verizon DC's three, five, and seven year proposals, Verizon DC recommends that the Commission adopt the space reservation rules established in Massachusetts.[287]

147. In response, AT&T argues that Verizon DC's space reservation policies are not reasonable and contrary to what is required by the FCC.[288] AT&T also indicates that its two-year space reservation policies have been adopted in Delaware and Pennsylvania.[289]

148. In its Comprehensive Application, Verizon DC argues that its proposed space reservation provisions are based on negotiations that resolved Sprint's outstanding

282 Verizon DC Unresolved Issues Comments at 20.

283 AT&T Unresolved Issues Comments at 12-13.

284 AT&T Unresolved Issues Comments at 13, n.24.

285 AT&T Unresolved Issues Comments at 13; Sprint Unresolved Issues Comments at 7.

286 Sprint Unresolved Issues Comments at 8.

287 Verizon DC Unresolved Issues Reply Comments at 14.

288 AT&T Unresolved Issues Reply Comments at 10.

289 AT&T Unresolved Issues Reply Comments at 11.

issues.[290] Sprint agrees to the inclusion of the proposed space reservation language.[291] No other party commented on this proposed language.

c. Decision

149. The FCC has deferred the determination of appropriate space reservation policies to state commissions, reasoning that state commissions are in the best position to determine whether excessive space requirements are impeding physical collocation.[292] The FCC encouraged states to establish space reservation polices.[293] The FCC ruled that an ILEC may not reserve space for itself or its affiliate on more preferential terms than for the CLECs.[294]

150. Various Verizon jurisdictions have addressed this issue in different ways. The VA SCC established a general rule that the ILEC may not reserve space in its central offices for more than two years. However, in special circumstances, the ILEC may petition the VA SCC for permission to establish longer space reservation periods, if it provides sufficient detailed information explaining why alternative space arrangements would not accommodate future space needs.[295] The DE PSC has adopted provisions similar to those in Virginia.[296] The PA ALJ also recommended and the PA PUC adopted a two-year nondiscriminatory space reservation policy.[297]

151. The MA DTE established different space reservation rules. In Massachusetts, Verizon proposed a three year space reservation policy for itself, while effectively limiting CLECs to six months for space reservation.[298] Because there was insufficient evidence to support any space reservation policy that would be greater than six months and less than three years, the MA DTE did not shorten Verizon's three year policy. The MA DTE did determine that for situations in which Verizon's space

290 Comprehensive Application Letter at 1.

291 Sprint Comprehensive Application Comments at 1.

292 *Collocation Reconsideration Order* at 17834-17835, ¶ 51-52

293 *Collocation Reconsideration Order* at 17834-17835, ¶ 51-52.

294 47 C.F.R. § 51.323(f)(4). *See also, Collocation Reconsideration Order* at 17835, ¶ 53.

295 *Application of Bell Atlantic-Virginia Inc. for Exemption from Physical Collocation*, PUC960164, Order Adopting Rules and Ruling on Exemption Requests ("*VA Collocation Order*"), rel. January 7, 2000, at 3.

296 *DE PSC Order* at 21.

297 *PA Recommended Decision* at 52; *PA Order* at 90.

298 *MA DTE Final Order* at 41.

reservation policy caused space exhaustion in a central office, the MA DTE would evaluate the space reservation policy for that central office at that time.[299]

152. In this instance, Verizon DC and Sprint assert that the proposed three- and seven-year space reservation terms in the Comprehensive Application result from negotiations between at least some of the parties participating in this proceeding.[300] These terms comply with the FCC's requirements that Verizon DC may not reserve space for itself or its affiliates on better terms than it reserves space for competitors. For these reasons, the Commission approves Section 2.B.1.r of the Comprehensive Application. Issue 43.19 is now resolved, so the Commission deletes it from the Issues List.

20. Issue 43.20: When should exemption petitions be filed and what information should be included in these petitions?

153. The exemption process is the process through which Verizon DC requests permission from this Commission to deny collocation space to CLECs on the basis that there is no additional space in the central office. Verizon DC must demonstrate to the Commission that physical collocation is not practical for technical reasons or because of space limitations before it can deny space for physical collocation.[301]

a. *Compliance and Comprehensive Application Provisions*

154. In its Compliance Application, Verizon DC offers several provisions outlining the exemption process. The Compliance Application provides that Verizon DC will respond within eight business days to a request of whether collocation space is available at a particular central office.[302] If there is insufficient space to accommodate a collocation request, then Verizon DC will permit the CLEC to tour the central office within 10 business days of denying the request. Verizon DC will also provide its central office floor plan for inspection by the CLEC and Commission staff.[303] Verizon DC will also petition this Commission for exemption of that central office from the Section 251 collocation requirements.[304] If Verizon DC's exemption petition is granted by this Commission, then Verizon DC will keep a waiting list for CLECs seeking space at that

299 *MA DTE Final Order* at 47.

300 It is unclear as to the identity of the parties agreeing to these terms beyond Verizon and Sprint.

301 47 U.S.C. § 51.321(e) (2001).

302 Compliance Application, Section 2.B.3.b.1.

303 Compliance Application, Section 2.B.3.b.2.

304 Compliance Application, Section 2.B.3.b.3.

particular central office.[305] Verizon DC will also post a list of central offices for which space is exhausted on the Verizon web site.[306]

155. In its Comprehensive Application, Verizon DC changes some of the exemption process provisions. Verizon DC indicates that if it informs a CLEC that space in a central office is available, it will provide a collocation provisioning schedule in the same eight-day period required to notify the CLEC of space availability.[307] Verizon DC also adds a detailed description of its exemption petition, to be submitted to the Commission within 45 days of denying space for physical collocation.[308] The exemption petition will include: the central office common language identifier ("CLLI"); a written description of the central office; the total amount of space, administrative space, and reserved space in the central office; detailed description of central office rearrangement and expansion plans; identification of obsolete unused equipment and a timeline for the removal of that equipment; and a detailed description of efforts to avoid space exhaustion.[309]

156. The Comprehensive Application provides that CLECs may request Verizon DC to provide additional central office information after a central office tour. Verizon DC will respond to the request within five business days. After Verizon DC provides the requested information, the CLEC and Verizon DC will schedule a meeting to discuss the new information. If the parties are unable to agree upon the amount of additional information to be provided, then the CLEC will petition the Commission for resolution of the issue.[310]

b. Parties' Comments

157. Verizon DC argues in its Unresolved Issues Comments that the existing space exemption processes adequately accommodate CLEC space requests. Verizon DC argues that no further action on this issue is necessary because all Verizon DC central offices have adequate space. Verizon DC also contends that its proposed tariff contains adequate provisions for inspecting floor plans and touring central offices.

158. In its Unresolved Issues Comments, Verizon DC proposes that no new provisions are needed at this time. If the Commission should decide at a later time that Verizon DC's policies are inadequate, then the Commission could establish those processes at that time. If the Commission decides to implement new space exemption

305 Compliance Application, Section 2.B.3.c.

306 Compliance Application, Section 2.B.3.b.5.

307 Comprehensive Application, Section 2.B.3.b.1.

308 Comprehensive Application, Section 2.B.3.b.3.a.

309 Comprehensive Application, Section 2.B.3.b.3.b.

310 Comprehensive Application, Section 2.B.3.b.3.c.

procedures at this time, Verizon DC proposes to file exemption petitions within 30 days of denying a CLEC's request for collocation space.[311] (Sprint agrees with the 30-day filing requirement.)[312] Verizon DC provides the following information in its petitions, which exceeds the amount of information required by the FCC in the *Advanced Services Order*:

- information on types of physical collocation present or pending in the particular office;
- the reasons why Verizon DC could not accommodate the CLEC's request;
- information on office space Verizon DC uses for administrative purposes;
- any plans to expand the central office building, rearrange switching, transmission, or power equipment.[313]

159. In its Unresolved Issues Comments, AT&T argues that Verizon DC should file an exemption petition within 10 days after it becomes aware that there is a potential space limitation in a central office. AT&T contends that a petition filed later than this time period should be considered *per se* unreasonable.[314] AT&T proposes the following contents for an exemption petition:

- CLLI, if possible;
- identity of the requesting CLEC and the amount of space requested;
- written inventory of active, inactive, and underutilized equipment, verified by Verizon personnel;
- color coded floor plans that identify office space work areas, provide spatial dimensions to calculate square footage, and locate inactive or underused equipment;
- narrative of the central office floor space use;
- total amount of space occupied by CLECs for interconnection;
- total amount of space occupied by third parties for purposes other than interconnection and a narrative of such space use;
- total number of central office employee and job titles;
- central office expansion/renovation plans;
- description of conversion of administrative, maintenance, equipment, and storage space plans; and
- description of internal policies for conversion of administrative, maintenance, equipment, and storage space in central offices.

311 Verizon DC Unresolved Issues Comments at 23.

312 Sprint Unresolved Issues Comments at 8.

313 Verizon DC Unresolved Issues Comments at 23.

314 AT&T Unresolved Issues Comments at 15.

AT&T also requests the Commission to require Verizon DC to indicate the amount of space it is reserving and provide a detailed description of the future uses for which the space is reserved. AT&T argues that the VA SCC adopted requirements similar to these, and that the Commission should follow Virginia's example.[315]

160. Sprint proposes the following contents for the exemption petition:

- exchange, wire center, central office common language identifier, address, brief description of the premises, V&H coordinates;
- identity of the requesting CLEC, including amount of space requested;
- total amount of space at the premises;
- detailed explanation of the reasons for the exemption request;
- floor plan showing: space housing Verizon DC's network in use, including lines wired, equipped, and in-service and its function; space housing non-regulated services and administrative offices; space housing obsolete equipment; space occupied by Verizon DC affiliates; space reserved for later Verizon DC use and expected time frame of use; space occupied by CLECs for interconnection; space utilized by third parties, identifying the uses for such space; identification of turnaround space for switching equipment, with removal times, and planned renovation/expansion plans;
- description of any plans to alleviate space exhaustion;
- detailed description of any equipment rearrangements, administrative office collocation and/or building expansion plans, including timelines;
- detailed description of efforts or plans to avoid space exhaustion;
- demand and facility forecast including three to five years of historical data; and forecasted growth for functional type of equipment.[316]

Sprint argues that the detailed information is necessary for the Commission and CLECs to determine whether space exhaustion exists at a particular central office.[317]

161. In its Unresolved Issues Reply Comments, Verizon DC indicates that the current practice in the District of Columbia is not to file exemption requests. Verizon DC indicates that since the CLECs have not indicated any problems with this lack of space exemption procedures, Verizon DC indicates that no such procedures are necessary and indicates that exemption petitions would needlessly burden the Commission. Verizon DC proposes that CLECs petition the Commission when an actual dispute about space availability arises.[318]

315 AT&T Unresolved Issues Comments at 16-18.

316 Sprint Unresolved Issues Comments at 9-10.

317 Sprint Unresolved Issues Comments at 11.

318 Verizon DC Unresolved Issues Reply Comments at 14.

162. Alternatively, if the Commission should develop an exemption process, Verizon DC argues in favor of its own proposal. Verizon DC objects to AT&T's proposal that Verizon DC file an exemption petition for central offices in which space may potentially, but is not actually, limited.[319] Verizon DC also opposes AT&T's time period of 10 days to file an exemption petition, arguing that it could not draft a complete petition within that time frame.[320] Verizon DC also opposes providing most of the information requested by AT&T and Sprint. Verizon DC agrees to provide the following information:

- CLLI, wire center address, brief description of the premises, and V&H coordinates;
- Name of requesting CLEC and amount of space requested;
- Information about active equipment and the removal of obsolete unused equipment, although no information about underused equipment, a term it finds vague;[321]
- Floor plans to the Commission. Verizon DC will arrange with the CLECs a mutually convenient time to view the floor plans.
- Description of the central office floor space, indicating overall square footage and portions in use or reserved;
- Indication of what space is used by a third party;
- Description of central office renovation/expansion plans.[322]

163. Verizon DC does not agree to provide certain information. Verizon DC refuses to indicate the number of employees assigned to the central office and job title, deeming this information irrelevant.[323] Verizon DC will not give a description of any plans to convert administrative space to collocation space, asserting that there is no requirement to convert administrative space to collocation space. Finally, Verizon DC will not provide demand facility forecast, arguing that this information is unnecessary. According to Verizon DC, it provides CLECs with adequate information to determine whether there is adequate space in its facilities. Additionally, no other jurisdiction requires this information.[324]

164. Verizon DC asserts that it provides sufficient information for a CLEC (and the Commission) to determine space availability in a central office. Verizon DC opposes AT&T's and Sprint's requests for additional information because the information is

319 Verizon DC Unresolved Issues Reply Comments at 14-15.

320 Verizon DC Unresolved Issues Reply Comments at 15.

321 Verizon DC Unresolved Issues Reply Comments at 15-16.

322 Verizon DC Unresolved Issues Reply Comments at 17.

323 Verizon DC Unresolved Issues Reply Comments at 17.

324 Verizon DC Unresolved Issues Reply Comments at 18.

irrelevant and burdensome to produce, particularly since, in most cases, there will not be a dispute about the space availability in the central office.[325] If additional information is necessary, then the Commission and CLECs can seek this information through the normal discovery process.[326]

165. In its Comprehensive Application, Verizon DC asserts that its new language regarding space reservation has been added to resolve Sprint's outstanding space reservation issues.[327] Sprint agrees with the language included in the Comprehensive Application.[328]

c. ***Decision***

166. The FCC addressed the contents of an exemption petition in its *Advanced Services Order* and the rules adopted pursuant to that Order. The FCC required ILECs to provide CLECs with information concerning the space availability in a particular ILEC location within 10 days after the CLEC's initial request. This report must include information about the collocation space available at the site, the number of collocators at the premises, any updated information since the ILEC developed the last report for the particular site, and measures the ILEC is taking to increase the amount of collocation space at the site. ILECs must also post a list of full premises on its web site, and must update that list within 10 days after a premises runs out of physical collocation space.[329] The FCC indicated that state commissions would be the most appropriate fora to resolve issues of space exhaustion.[330] The ILEC must also permit the CLEC to tour the premises within 10 calendar days of the denial of collocation space.[331]

167. Many Verizon jurisdictions have already developed exemption procedures. In Pennsylvania, the ALJ proposed to require Verizon PA to file with the PA PUC floor plans and diagrams of the premises at issue within ten days of denying a CLEC collocation space because of space exhaustion. The CLEC could then request a tour of the premises within ten days of the PA PUC's receipt of the floor plans. If Verizon PA informed a CLEC that physical collocation was impractical, then the CLEC could file a Petition for Dispute Resolution ("PDR") with the PA PUC. Verizon then must provide a report to the PA PUC within 25 days of service of the PDR, including the following information: the use of floor space, the amount of space used for collocation, the amount of space used by third parties for purposes other than collocation, a

325 Verizon DC Unresolved Issues Reply Comments at 18.

326 Verizon DC Unresolved Issues Reply Comments at 19.

327 Comprehensive Application Letter at 1.

328 Sprint Comprehensive Application Comments at 1.

329 *Advanced Services Order* at 4794, ¶ 58.

330 *Advanced Services Order* at 4793, ¶ 56.

331 *Advanced Services Order* at 4793, ¶ 57; *Collocation Reconsideration Order* at 32, ¶ 64.

description of plans for office renovation or expansion, and a description of plans to convert space to collocation space. The ALJ also recommended that Verizon PA be required to post information on any locations that could no longer accommodate collocation requests on its web site and update this information within ten days of the time that a premises runs out of collocation space.[332] Because Verizon PA indicated that it already provided the CCLI, the name of the requesting CLEC, the collocation space sought by the requesting CLEC, information about active and unused obsolete equipment, narratives of central office floor use, floor space used by third parties for purposes other than collocation, and a description of central office renovation and expansion plans, the PA ALJ recommended and the PA PUC approved that no further information should be included in the exemption petition.[333] The PA ALJ also suggested rejecting the CLEC's proposal to have Verizon PA file an exemption petition within ten days after space exhaustion occurs. The ALJ recommended approving Verizon PA's practice of filing the exemption petition within ten days after it denies a CLEC collocation application based on space exhaustion.[334] The PA PUC modified the PA ALJ's recommendations and required that Verizon PA file an exemption petition within 45 days after Verizon PA has initially denied space and after the CLECs have provided input regarding this denial of space to Verizon PA.[335]

168. The DE PSC required that Verizon file an exemption petition with the DE PSC within 30 days after Verizon denies a collocation application based on space exhaustion reasons. The DE PSC determined that Section 251(c)(6) of the Telecommunications Act requires the DE PSC to make an affirmative determination that space is unavailable in a given premises. The DE PSC required that Verizon DE include in its petition detailed information concerning the space exhaustion, the good faith efforts made to accommodate the CLEC, and alternative collocation arrangements.[336]

169. The VA SCC also required Verizon VA to submit an exemption petition to the VA SCC within 30 days of a denial of a CLEC application based on space exhaustion or within 45 days of a Verizon VA determination that space in a central office is exhausted independent of a CLEC request for collocation space.[337] A CLEC may also petition the VA SCC regarding the denial of collocation space.[338] In its exemption application, Verizon VA is required to identify the premises for which the request is

[332] *PA Recommended Decision* at 45.

[333] *PA Recommended Decision* at 46-47, *PA Order* at 76.

[334] *PA Recommended Decision* at 47-49.

[335] *PA Order* at 79.

[336] *DE PSC Order* at 18.

[337] 20 VAC 5-400-200(A)(3), included in the *VA Collocation Order.*

[338] 20 VAC 5-400-200(A)(4).

made, including the exchange, wire center, CLLI code, brief description, V&H coordinates, and address. The petition also must include the reasons for which Verizon VA is filing the petition and the expected duration of the exemption.[339] Verizon VA must file floor plans with the petition, clearly labeling the equipment in use, equipment being phased out, not used, or stored, space reserved for Verizon VA use, collocation space, and administrative space.[340] Verizon must also explain any efforts made to renovate the premises,[341] avoid space exhaustion,[342] and overcome any security or access constraints.[343]

170. Verizon DC and Sprint indicate that the language in the Comprehensive Application resolves the outstanding exemption petition issues. No party has contested this claim. The exemption petition provisions in the Comprehensive Application are more detailed than those in the Compliance Application, reflecting later agreement between Verizon and Sprint that replaces the Compliance Application provisions. Section 2.B.3.b in the Comprehensive Application comports with the FCC's requirements in Section 51.321(f) and (h) of the FCC's rules.[344] Because the Commission approves Verizon DC's proposed exemption process contained in the Comprehensive Application, Issue 43.20 has been resolved. The Commission deletes this issue from the Issues List.

21. Issue 43.21: What procedures should be established for collocators to obtain access to Verizon DC floor plans and/or diagrams?

a. Compliance and Comprehensive Application Provisions

171. In its Compliance Application, Verizon DC indicates that it will provide Commission staff and the CLEC with access to floor plans. These floor plans would specify the future use plans for unused space.[345] In its Comprehensive Application, Verizon DC expands upon this section, indicating that the provision of floor plans will occur at a mutually agreeable location.[346]

b. Parties' Comments

339 20 VAC 5-400-200(B)(1).

340 20 VAC 5-400-200(B)(2).

341 20 VAC 5-400-200(B)(6).

342 20 VAC 5-400-200(B)(7).

343 20 VAC 5-400-200(B)(8).

344 47 C.F.R. § 51.321(f) and (h) (2001).

345 Compliance Application, Section 2.B.3.b.2.

346 Comprehensive Application, Section 2.B.3.b.2.

172. Because the floor plans in Verizon DC's central offices are highly proprietary, Verizon DC proposes to have CLECs inspect the floor plans at any Verizon DC office convenient to them.[347] Conversely, AT&T and Sprint argue that CLECs should have access to the floor plans subject to proprietary protection.[348] AT&T argues that the floor plan information is similar to fiber routing information, which Verizon provides to CLECs in other jurisdictions, subject to proprietary agreements.[349]

173. In its Unresolved Issues Reply Comments, Verizon DC reiterates its position that it will provide copies of its floor plans to the Commission under seal and permit CLECs to inspect them at its offices or other mutually convenient locations.[350] Verizon DC reiterates its assertion that its floor plans are highly confidential and that Verizon DC's confidentiality concerns outweigh the "inconvenience" suffered by the CLECs in viewing them only at Verizon DC's offices. Verizon DC vehemently objects to the electronic dissemination of floor plans.[351] Verizon DC indicates that CLECs may view the floor plans before any tour of the central office.[352]

174. In response, AT&T indicates that Verizon PA has voluntarily provided copies of floor plans to CLECs.[353] AT&T notes that the DE PSC has ordered Verizon DE to provide copies of its floor plans. AT&T also argues that Verizon DC has not provided any reason for which floor plans should be treated differently from other confidential information.[354]

175. Verizon DC indicates that its new language in Section 2.B.3.b.2 regarding floor plans reflects the settlement of Sprint's outstanding issues regarding floor plans.[355] Sprint agrees with this assertion.[356] No other party commented on this issue.

c. Decision

347 Verizon DC Unresolved Issues Comments at 24.

348 AT&T Unresolved Issues Comments at 18-19; Sprint Unresolved Issues Comments at 11.

349 AT&T Unresolved Issues Comments at 20.

350 Verizon DC Unresolved Issues Reply Comments at 19-20.

351 Verizon DC Unresolved Issues Reply Comments at 20.

352 Verizon DC Unresolved Issues Reply Comments at 21.

353 AT&T Unresolved Issues Reply Comments at 11.

354 AT&T Unresolved Issues Reply Comments at 12.

355 Comprehensive Application Letter at 1.

356 Sprint Comprehensive Application Comments at 1.

176. In several orders, the FCC has ruled that the ILEC must provide the state commission with detailed floor plans of the premises in dispute,[357] as well as identification of space the ILEC has reserved for future use and a detailed description of the specific future uses.[358] The ILEC must also permit CLECs to inspect the floor plans, subject to any nondisclosure requirements that the state commission deems appropriate.[359]

177. The DE PSC and the VA SCC have rejected Verizon's proposal to permit CLECs to inspect floor plans at its offices, but not to obtain copies of these floor plans.[360] These decisions have been based on the determination that Verizon has not demonstrated any reason for a higher level of confidentiality to be applied to floor plans, as opposed to other confidential documents.[361] These jurisdictions require CLECs to complete confidentiality agreements prior to obtaining the floor plans, which has been deemed sufficient protection against unauthorized dissemination.[362] On the other hand, the PA ALJ and the PA PUC rejected CLEC requests for Verizon PA to provide them with electronic copies of Verizon PA floor plans, reasoning that confidentiality could not be ensured when the floor plans were in electronic format. The ALJ and the PA PUC did not discuss distribution of paper copies of the floor plans.[363]

178. Verizon DC and Sprint have now apparently resolved the issues regarding access to floor plans. The resolution permits Commission staff and the requesting CLECs to inspect the floor plans at a mutually agreeable location, which could be, but is not limited to, a Verizon DC or Verizon affiliate location. The Comprehensive Application contains no provision for the CLEC to retain copies of the floor plans. These provisions are compatible with FCC requirements.

179. The Commission determines that CLECs should not be permitted to retain copies of the Verizon DC floor plans at this time. The FCC permits CLECs to inspect floor plans; it does not require ILECs to provide CLECs with copies of those plans. Additionally, the parties have agreed that CLEC possession of Verizon DC floor plans is not necessary. For the foregoing reasons, the Commission approves Section 2.B.3.b.2 of Verizon DC's Comprehensive Application. Because the issues regarding access to floor plans have been resolved, the Commission deletes Issue 43.21 from the Commission's Issues List.

357 *Advanced Services Order* at 32, ¶ 57.

358 *Collocation Reconsideration Order* at 31, ¶ 61.

359 *Collocation Reconsideration Order* at 32, ¶ 62.

360 *DE PSC Order* at 19; 20 VAC 5-400-200(A)(5).

361 *DE PSC Order* at 19.

362 *DE PSC Order* at 19; *see also* 20 VAC 5-400-200(A)(5).

363 *PA Recommended Decision* at 50; *PA Order* at 86.

22. Issue 43.22: How much advance notice must a collocator give Verizon DC to enter onto Verizon DC's premises to service the collocator's collocation space?

a. Compliance and Comprehensive Application Provisions

180. Verizon DC's proposed Section 2.F.7.e in its Compliance Application provides that CLECs with CCOE collocation arrangements will have access to their equipment 24 hours a day, seven days a week ("24/7 access") without a security escort. In the Joint Petition, the Joint Parties indicated that while they agreed on the first sentence of Section 2.F.7.e, they could not agree on the second sentence,[364] which would require CLECs to provide notice to Verizon DC thirty minutes before a CLEC visit to a staffed central office. Sixty minutes' notice would be required for a CLEC visit to an unstaffed central office.[365]

181. In the Comprehensive Application, Verizon DC alters this proposed language. Under the new proposed language, CLECs will have 24/7 access to their CCOE collocation arrangements. Verizon DC requests thirty minutes' notice of the CLEC entry unless an emergency exists.[366] There is no other provision for notifying Verizon DC before accessing other types of collocation arrangements.

b. Parties' Comments

182. In its Unresolved Issues Comments, Verizon DC indicates that it proposes that the CLECs notify Verizon DC 30 minutes prior to entering a staffed central office and 60 minutes prior to entering an unstaffed central office. Verizon DC provides exceptions for emergencies. Verizon DC asserts that this requirement is not burdensome to the CLECs.[367] AT&T objects to the advance notice requirements, asserting that Verizon DC has not justified them.[368] Sprint argues that the *Advanced Services Order* requires Verizon DC to permit access to collocation space on equal terms for CLECs, Verizon DC, and Verizon DC affiliates.[369]

183. In response, Verizon DC indicates that it requests notice of CLEC entry into central offices. Verizon DC argues that notification does not delay entry into central

[364] Joint Petition, Exhibit 2, Section 2.F.7.e.

[365] Compliance Application, Section 2.F.7.e.

[366] Comprehensive Application, Section 2.F.7.e.

[367] Verizon DC Unresolved Issues Comments at 24-25.

[368] AT&T Unresolved Issues Comments at 20.

[369] Sprint Unresolved Issues Comments at 12-13.

offices. Verizon DC indicates that notification will permit Verizon DC to contact CLEC personnel in emergencies.[370]

184. Verizon DC maintains that the new language requiring 30 minutes' advance notice before entry onto Verizon DC premises to visit CCOE arrangements in its Comprehensive Application resolves Sprint's issues regarding advance notice.[371] Sprint agrees with Verizon DC's statement.[372] No other party commented on this issue.

c. Decision

185. FCC rules require Verizon DC to permit CLECs 24/7 access to their collocation arrangements, without delaying CLEC entry onto Verizon DC premises.[373] Some Verizon jurisdictions have required that CLECs provide ILECs with advance notice of their visits to Verizon premises.[374] They have reasoned that providing advance notice of visits is reasonable and does not burden the CLECs, particularly since these requirements do not bar CLECs from having access to their collocated equipment on a 24/7 basis.[375] The DE PSC approved Verizon DE's proposed notice requirements of 30 minutes for staffed premises and 60 minutes for unstaffed premises.[376] The MA DTE determined that Verizon MA did not provide any reason to differentiate between staffed and unstaffed premises so that a longer time interval was necessary, requiring 30 minutes' advance notice for both types of facilities.[377] The PA ALJ recommended rejecting the notice requirement, finding no need for it. The PA ALJ and the PA PUC indicated that notifying Verizon PA either before or at the time of entry was sufficient to provide the type of notice needed.[378]

186. The Comprehensive Application's proposed language contains a requirement that CLECs be permitted access to their collocated equipment on a 24/7 basis. Verizon DC and Sprint have agreed to a 30-minute notification window. This notification window appears reasonable because 30 minutes is a short enough timeframe to permit Verizon DC to know that CLEC personnel will be on its property, but not long

370 Verizon DC Unresolved Issues Reply Comments at 30.

371 Comprehensive Application Letter at 1.

372 Sprint Comprehensive Application Comments at 1.

373 47 C.F.R. § 51.323(i).

374 *DE PSC Order* at 25; *MA Final Order* at 31.

375 *DE PSC Order* at 25; *MA Final Order* at 31.

376 *DE PSC Order* at 25.

377 *MA Final Order* at 31.

378 *PA Recommended Decision* at 56; *PA Order* at 99.

enough to constitute a delay. The Commission approves Verizon DC's proposed Section 2.F.7.e included in its Comprehensive Application. The Commission resolves and deletes Issue 43.22 from the Commission's Issues List.

23. Escorts at Verizon DC Premises

187. In their Unresolved Comments and Reply Comments, the parties addressed issues that are not on the Commission's Issues List. However, because the parties raised these issues, the Commission now addresses them.

a. Compliance and Comprehensive Application Provisions

188. In its Compliance and Comprehensive Applications, for CCOE collocation arrangements, Verizon DC reserves the right to require a security escort, but will not charge for the escort.[379] In its Compliance and Comprehensive Applications, Verizon DC indicates that it will require CLECs to be accompanied by an escort whenever they install equipment in areas outside of the collocation area.[380] Verizon DC's Compliance and Comprehensive Applications also grant CLECs limited access to central offices. Verizon DC permits the unrestricted use of shared building facilities such as elevators specified corridors, and designated restrooms, where CLECs and Verizon DC share an entrance. Verizon DC indicates that it will attempt to secure its portion of the network so that unescorted access to restroom facilities is available, although it indicates that it may have to require escorted access to restrooms in some circumstances.[381] The Comprehensive Application adds a provision providing that Verizon DC employees may escort CLEC personnel in other parts of the premises if the CLEC personnel request and are granted such access, but CLECs do not have to pay for the escort.[382]

b. Compliance and Comprehensive Applications

189. In the Joint Petition, the Joint Parties agreed to specific language regarding access to Verizon DC facilities outside of the collocation space and sharing building facilities. The Commission approved the language contained in the Joint Petition.[383] Verizon DC submitted the exact language contained in the Joint Petition in its Compliance and Comprehensive Applications.

c. Decision

379 Compliance Application, Section 2.F.7.d; Comprehensive Application, Section 2.F.7.d.

380 Compliance Application, Section 2.B.8.b.2; Comprehensive Application, Section 2.B.8.b.2.

381 *Compliance Application, Section 2.B.8.g; Comprehensive Application, Section 2.B.8.g.*

382 Comprehensive Application, Section 2.B.9.a.

383 Order No. 11979, ¶ 30.

190. The FCC requires Verizon DC to permit CLECs 24/7 access to their collocation equipment without a security escort.[384] Additionally, Verizon DC must permit reasonable access to basic facilities, such as restrooms and parking.[385] These proposed provisions comply with the FCC's requirements. The provisions contained in the Compliance Application were agreed to by the Joint Parties, while the provisions in the Comprehensive Application were part of the settlement of Sprint's outstanding issues.[386] Thus, for the foregoing reasons, the Commission approves Sections 2.B.8.b(2) and 2.B.8.g of the Compliance and Comprehensive Applications.

24. Security

a. Compliance and Comprehensive Application Provisions

191. In its Compliance and Comprehensive Applications, Verizon DC requires CLECs to provide Verizon DC with a list of all CLEC and CLEC-vendor employees who would access the CLEC's collocation space, including social security numbers.[387] Verizon DC will permit only those CLEC and CLEC-vendor employees that it has approved to access the CLEC's collocation space. If required by law, Verizon DC will permit entry only to U.S. citizens.[388] CLEC personnel must obtain an identification card from Verizon DC.[389] Verizon DC reserves the right to revoke identification cards upon findings of violations of Verizon DC's security policy, upon termination of the collocation arrangement, and upon termination of the employee or vendor relationship with the CLEC.[390] Verizon DC also reserves the right to deny any CLEC employee access to the CLEC's collocation space upon good cause shown.[391]

192. During Verizon DC work stoppages, Verizon DC will attempt to create separate entrances for CLEC personnel. However, Verizon DC exempts itself from any liability for damages if a separate entrance cannot be created. CLECs will inform Verizon DC of any CLEC work stoppage.[392]

[384] 47 C.F.R. § 51.323(i) (2001).

[385] *Advanced Services Order* at 4790, ¶ 49.

[386] Comprehensive Application Letter at 1; Sprint Comprehensive Application Comments at 1.

[387] Compliance Application, Section 2.B.9.b, Section 2.F.7.f; Comprehensive Application, Section 2.B.9.b, Section 2.F.7.f.

[388] Compliance Application, Section 2.B.9.b; Comprehensive Application, Section 2.B.9.b.

[389] Compliance Application, Section 2.B.9.b, Section 2.F.7.g; Comprehensive Application, Section 2.B.9.b, Section 2.F.7.g.

[390] Compliance Application, Section 2.B.9.b; Comprehensive Application, Section 2.B.9.b.

[391] Compliance Application, Section 2.B.9.c; Comprehensive Application, Section 2.B.9.c.

[392] Compliance Application, Section 2.B.9.d; Comprehensive Application, Section 2.B.9.d.

193. Verizon DC proposes a section in its Compliance and Comprehensive Applications clarifying that if Verizon DC has a complaint of security violations by a particular CLEC employee, Verizon DC will provide a written summary of the violations at least four days prior to barring the particular employee from the property, unless this person poses an immediate threat. The CLEC has two days to respond to the summary. Any employee barred from Verizon DC central offices may be permitted entry at a later time if agreed upon by the parties.[393]

194. Verizon DC's Comprehensive Application adds new proposed security provisions. Verizon DC proposes that it can require CLEC personnel to enter Verizon DC premises through separate entrances, but only if Verizon DC employees are required to use that same separate entrance. Verizon DC may require a separate entrance if the following conditions are met: construction of a separate entrance is technically feasible; legitimate security constraints or operational constraints unrelated to competitive constraints, require the separate entrance; construction will not artificially delay collocation provisioning; and construction will not materially increase CLEC costs.[394]

b. *Decision*

195. The FCC permits ILECs to develop reasonable security arrangements to protect its premises and equipment. However, any security arrangement must apply equally to CLECs and to Verizon DC and its affiliates. Additionally, Verizon DC may not require CLECs to pay for any security option but the least expensive, most effective security option.[395] The FCC permits Verizon DC several security options, including: installing security cameras on Verizon DC premises; requiring badges for CLEC personnel; or requiring CLEC personnel to undergo security training (although Verizon DC may not provide the security training).[396] Verizon DC may also require the separation of physical collocation space from space used for Verizon DC's equipment, provided that: legitimate security concerns or operational constraints unrelated to competitive concerns require the separation; physical collocation space assigned to a Verizon DC affiliate is separated from Verizon DC equipment in the same manner as CLEC equipment is separated from Verizon DC equipment; separated space will be provisioned in the same time period as would normal physical collocation spaces; the cost of separated space is not materially greater than the cost for non-separated space; and separated space is technically comparable to a non-separated space.[397] Verizon DC may also require CLEC personnel to use separate entrances, as long as Verizon DC personnel

393 Compliance Application, Section 2.F.7.k; Comprehensive Application, Section 2.F.7.k.

394 Comprehensive Application, Section 2.B.9.a.

395 47 C.F.R. § 51.323(i) (2001).

396 47 C.F.R. § 51.323(i)(1) – (3) (2001).

397 47 C.F.R. § 51.323(i)(4) (2001).

must also use these same entrances.[398] Another option is for Verizon DC to require the construction of a separate entrance, as long as: construction is technically feasible; legitimate security concerns or operational constraints unrelated to competitive restraints, require the construction; construction will not artificially delay collocation provisioning; and construction will not materially increase CLEC collocation costs.[399]

196. The Commission approves Verizon DC's proposed security sections. These sections track the FCC collocation security regulations, providing Verizon DC with the flexibility permitted by these regulations and protecting CLECs from discriminatory treatment. The language in the Compliance Application tracks the language agreed to by the Joint Parties in their Joint Petition.[400] The new language in the Comprehensive Application was included after the addition of new regulations to the FCC's security rules, which occurred after the filing of the Compliance Application.[401] The addition of this new language tracks these new rules. Because these provisions comply with the FCC's security regulations, the Commission approves sections 2.B.9, 2.F.7.f, and 2.F.7.g.

25. *Discontinuance of Collocation Arrangements*

a. **Compliance and Comprehensive Application Provisions**

197. In Section 1.B.6 of the Compliance and Comprehensive Applications, Verizon DC proposes circumstances for which it would terminate a CLEC collocation arrangement. Verizon DC will provide 30 days' notice of its intent to terminate a collocation arrangement based on non-payment of fees or violations of any collocation terms or conditions. Collocation arrangements will be terminated without notice if the CLEC violates any regulation governing collocation service or any law, rule, or regulation of any governmental entity regulating service. Verizon DC also indicates that collocation will be terminated without notice if a CLEC is fraudulently using Verizon DC's network. Verizon DC will also seek legal recourse for fraudulent activity.[402]

b. **Parties' Comments**

198. In its Comprehensive Application Comments, Sprint objects to the provisions in Section 1.B.6.a that permit Verizon DC to terminate collocation arrangements without notice. Sprint argues that Verizon DC's reasons for termination

398 47 C.F.R. § 51.323(i)(5) (2001).

399 47 C.F.R. § 51.323(i)(6)(2001).

400 Joint Petition, Exhibit 2, Section 2.F.7.k.

401 Subsections four, five, and six were added to 47 C.F.R. § 51.323(i) by the *Advanced Services Fourth Report and Order*, Appendix B.

402 Compliance Application, Section 1.B.6.a; Comprehensive Application, Section 1.B.6.a.

without notice are poorly defined and overbroad.[403] Sprint proposes that this section be modified to require Verizon DC to provide at least thirty days' advance notice before termination of any collocation arrangement for any reason. Sprint also maintains that no collocation arrangement termination or refusal to provide a collocation arrangement should occur absent Commission approval.[404]

199. In response, Verizon DC proffers a revised Section 1.B.6.a, which provides for 30 days' advance notice of any collocation arrangement termination. Verizon DC seeks an exception to the advance notice requirement for an emergency.[405] Verizon DC also requests rejection of Sprint's proposal to require Commission approval before a collocation arrangement can be terminated. Verizon DC argues that this proposed requirement would be inefficient and unnecessary, particularly with the new proposed advance notice provisions and the dispute resolution procedures in interconnection agreements.[406] In its Notice Comments, Sprint agrees that these provisions are acceptable, even though it still asserts that Verizon DC's reasons for terminating a collocation arrangement are overbroad.[407]

c. Decision

200. There are no FCC rules governing the termination of collocation arrangements. The Commission agrees with Sprint that Verizon DC should not be permitted to unilaterally terminate a collocation arrangement without notifying the CLEC. Verizon DC has recognized this problem and its proposed new language provides for 30 days' notice before termination for any reason. The Commission approves this language. Sprint agrees with this language. The Commission also approves Verizon DC's exception for emergency situations threatening safety of personnel or the network, because there may be emergency circumstances in which immediate termination of a collocation space is necessary. For these reasons, the Commission approves Verizon DC's section 1.B.6.a as proposed in its Comprehensive Application Reply Comments. Verizon DC shall file this new language in its amended collocation filing within 10 days of the date of this Order.

201. The Commission denies Sprint's request to have the Commission review every termination of a collocation arrangement. To accept Sprint's proposal would be inefficient for the Commission and the parties. Interconnection agreements contain dispute resolution provisions to govern any dispute arising from collocation arrangement termination. The parties should first use these procedures to attempt to resolve their

403 Sprint Comprehensive Application Comments at 1.

404 Sprint Comprehensive Application Comments at 2.

405 Verizon DC Comprehensive Application Reply Comments at 1-2; Attachment.

406 Verizon DC Comprehensive Application Reply Comments at 2-3.

407 Sprint Notice Comments at 1-2.

dispute before coming to the Commission for assistance. The Commission will intervene upon request of a party after the exhaustion of those remedies.

C. Remote Terminal Collocation

202. AT&T, Sprint, and Verizon DC addressed remote terminal collocation issues in their comments and reply comments submitted May 14, 2001, and May 22, 2001, respectively. In its Comprehensive Application, Verizon DC includes a new section L specifically for collocation at remote terminal equipment enclosures ("CRTEE"). Sprint indicates that this new section resolves many of the remote terminal collocation issues.[408] No other party filed comments regarding this portion of Verizon DC's Comprehensive Application.

1. Issue 43.23: Discuss whether the FCC has made a determination that the 90-day interval for provisioning applies to remote terminal collocation as well as the other forms of collocation. *Please explain your answer fully and cite the relevant FCC Order(s) and rule(s).*

a. Parties' Comments

203. In its Remote Terminal Comments, Verizon DC asserts that this Commission does not need to set a collocation interval for CRTEE. Verizon DC argues that the FCC did not establish any collocation interval for CRTEE in the *Collocation Reconsideration Order*; it only established default collocation intervals for physical collocation. Verizon DC maintains that because the FCC did not mention any collocation interval for CRTEE, the FCC did not include CRTEE in its default rule.[409] Further, Verizon DC maintains that when it received its exemption from the national default collocation rules in favor of the New York collocation rules, this exemption did not include any interval for CRTEE provisioning.[410]

204. Verizon DC argues that the Commission should not establish an end-to-end provisioning interval for CRTEE because no party, including Verizon DC, has experience with remote terminal collocation in the District of Columbia.[411] Verizon DC requests that the Commission defer any consideration of remote terminal collocation provisioning intervals until Verizon DC has experience with CRTEE provisioning. Verizon DC avers that no other commission in the Verizon East footprint has established a remote terminal collocation provisioning interval.[412]

408 Sprint Comprehensive Application Comments at 1.

409 Verizon DC Remote Terminal Comments at 2.

410 Verizon DC Remote Terminal Comments at 3.

411 Verizon DC Remote Terminal Comments at 2.

412 Verizon DC Remote Terminal Comments at 4.

205. Additionally, Verizon DC claims that remote terminal collocation is very different from central office collocation. Verizon DC asserts that in many cases, CLECs will not be able to collocate their equipment in Verizon DC's remote terminal due to space limitations. Instead, CLECs will have to build their own adjacent facilities, telecommunications carrier outside plant interface cabinets ("TOPICs") to connect to Verizon DC's FDI. The TOPIC construction process differs greatly from central office collocation, so different provisioning timeframes will be necessary, Verizon DC contends.[413] Verizon DC also claims that the FCC declined to set a provisioning interval for collocation arrangements that would create additional design work. Verizon DC asserts that every CRTEE request will require additional design work because every remote terminal is different.[414]

206. AT&T argues that the *Collocation Reconsideration Order* set a default collocation provisioning interval of 90 days for all forms of collocation. AT&T argues that while the Commission does not have to follow the 90-day period, it urges the Commission not to set a remote terminal collocation interval longer than 90 days.[415] On the other hand, Sprint asserts that the FCC did not discuss the need for any collocation provisioning interval for remote terminal collocation.[416]

207. In its Remote Terminal Reply Comments, Verizon DC disagrees with AT&T's argument that the FCC ruled that the provisioning intervals in the *Collocation Reconsideration Order* should apply to remote terminal collocation. Verizon DC argues that these provisioning intervals only apply to caged and cageless collocation, not virtual, adjacent, microwave, and remote terminal collocation.[417]

208. In its Remote Terminal Collocation Reply Comments, Verizon DC argues that the same provisioning intervals cannot apply to both remote terminal and central office collocation. Verizon DC contends that different activities must be performed to provision central office and remote terminal collocation. Verizon DC reiterates its position that no party can determine the actual time required for remote terminal collocation, so no intervals should be established.[418] Verizon DC avers that many additional activities are required to provision a remote terminal, such as: determination of the best method of interconnection; review of easements and rights-of-way; addition of power and HVAC systems. CLECs may also have to perform additional activities, such

413 Verizon DC Remote Terminal Comments at 3.

414 Verizon DC Remote Terminal Comments at 3-4.

415 AT&T Unresolved Issues Reply Comments at 13.

416 Sprint Remote Terminal Comments at 1.

417 Verizon DC Remote Terminal Reply Comments at 2.

418 Verizon DC Remote Terminal Reply Comments at 2.

as obtaining easements and building TOPICs, which will take a longer period of time. Verizon DC asserts that there is no way to calculate the amount of time needed to complete the tasks. Thus, Verizon DC maintains, the Commission should not establish any remote terminal collocation provisioning intervals.[419]

b. Comprehensive Application Provisions

209. There are no provisioning intervals listed in Verizon DC's Comprehensive Application. However, the Comprehensive Application indicates that the terms and conditions in sections C, D, F, H, and I of the Comprehensive Application apply to remote terminal collocation, unless altered by section L, which pertains to remote terminal collocation.[420] In Section F of the Comprehensive Application, which refers to CCOE, a form of physical collocation, there are provisioning intervals of 76 business days when Verizon DC equipment is secure and 105 business days when Verizon DC equipment is not secure.[421] There is nothing in Section L that changes these intervals, as Section L does not mention provisioning intervals. Thus, it appears that for physical collocation at remote terminals, the provisioning interval is now 76 business days when Verizon DC can secure its equipment and 105 business days when Verizon DC cannot secure its equipment at a remote terminal.

210. In its Comprehensive Application Comments, Sprint indicates that the Comprehensive Application contains language to which Verizon and Sprint have agreed. No party has commented on the language in the Comprehensive Application relating to provisioning intervals for physical collocation.

c. Decision

211. The FCC has established default national provisioning intervals for certain forms of collocation, which would apply in the absence of any state intervals.[422] Because state commissions may set either longer or shorter intervals,[423] the FCC's default rules are not binding on this Commission, although they may be helpful. In the *Collocation Reconsideration Order*, the FCC set application processing and provisioning intervals for physical collocation.[424] Where space is available on the ILEC's premises, the FCC established a 90-day provisioning interval for physical caged, cageless, shared, or adjacent collocation.[425] If specific design or planning work is required, however, the

419 Verizon DC Remote Terminal Reply Comments at 3.

420 Comprehensive Application, Section 2.L.1.b.

421 Comprehensive Application, Section 2.F.4.c.

422 *Collocation Reconsideration Order* at 17820, ¶ 22.

423 *Collocation Reconsideration Order* at 17824, ¶ 29.

424 *Collocation Reconsideration Order* at 17820-17828, ¶ 23-39.

425 47 C.F.R. § 51.321(l); *Collocation Reconsideration Order* at 17822, 17825, ¶¶ 27, 33.

FCC has not set any intervals. The FCC also declined to set provisioning intervals for virtual collocation.[426]

212. Whether the 90-day default rule applies to remote terminal collocation depends on the definitions of "physical collocation" and "premises." Physical collocation occurs when a CLEC places its own property on ILEC premises; uses the equipment to interconnect with the ILEC's network, enters ILEC premises to maintain its equipment, and obtains space in the ILEC premises for its equipment.[427] The FCC has ruled that remote terminals are included within its definition of the term "premises" and so must be made available for physical collocation.[428] Therefore, contrary to Verizon DC's assertion, the default provisioning rules would apply in the absence of state provisioning intervals.

213. To bolster this conclusion, the Commission looks to a further provision in the *Collocation Reconsideration Order*. There, the FCC suggested that "a state would be free to set shorter provisioning intervals for cageless collocation arrangements, augments to existing collocation arrangements, and collocation within remote terminals."[429] The FCC's use of the term "shorter" in the above citation appears to indicate that the FCC envisioned collocation at remote terminals as a type of physical collocation that would fall under the 90-day default rule.

214. In the Comprehensive Application, Verizon DC has now proposed to use the same provisioning intervals for remote terminal collocation as for physical collocation. The Commission has already approved these intervals for physical collocation. Verizon and Sprint have agreed to the use of these intervals for remote terminal collocation. No party objects to the use of these provisioning intervals. The Commission finds that adopting these intervals for remote terminal collocation will provide CLECs with some certainty concerning the completion of remote terminal provisioning. Thus, the Commission approves the use of the physical collocation provisioning intervals for remote terminal collocation. Issue 43.23 is deleted from the Issues List because it has been resolved.

2. Issue 43.24: If the Commission decides to apply the 90-day provisioning interval for remote terminal collocation, should Verizon DC be allowed additional time to perform certain up-front activities? Please explain your answer fully and include the additional up-front activities and additional number of days.

426 *Collocation Reconsideration Order* at 17825, ¶ 32.

427 47 C.F.R. § 51.5 (2001).

428 *Collocation Reconsideration Order* at 17831, ¶ 47.

429 *Collocation Reconsideration Order* at 17827-17828, ¶ 37.

a. Parties' Comments

215. In general, Verizon DC commits to working with CLECs to satisfy their remote terminal collocation needs. If the parties have a dispute regarding timely remote terminal collocation provisioning, Verizon DC indicates that the Commission could always become involved in resolving the dispute.[430]

216. More specifically, in its Remote Terminal Comments, Verizon DC indicates that it has offered a 20-business day interval for the initial work to be performed, and urges the Commission to set that interval if an interval is needed.[431] Within this period, Verizon DC commits to perform the following tasks: receive and review the CRTEE application; log the application; determine the type of necessary enclosure; determine easement issues; determine the FDI served from the remote terminal; determine the service area address from the FDI; determine spare feeder lugs in the FDI; perform a site survey to determine physical constraints; verify exterior space for CLEC equipment; determine if conduit and interduct are available; determine if DC and AC power and current HVAC are adequate for CLEC equipment; notify the CLEC if the space or conduit are not available; determine whether jobs in progress will affect the CLEC application; collect information in a log; and transmit information to Wholesale Network Services.[432] After this process, Verizon DC asserts that the time to perform additional provisioning activities will vary dramatically.[433]

217. AT&T argues that all up-front provisioning activities should be included in the interval set by the Commission. AT&T claims that setting a different time period for Verizon DC to complete up-front activities extends the provisioning interval. AT&T contends that the FCC does not permit ILECs to extend provisioning intervals by including up-front activities in a separate interval.[434] Sprint agrees with AT&T that Verizon DC should be required to follow the same timelines for provisioning central offices and remote terminals. Sprint avers that the work activities outlined by Verizon DC in its Remote Terminal Comments for remote terminal collocation are basically the same as those needed for central office collocation.[435]

218. In its Unresolved Issues Reply Comments, Verizon DC reiterates its support for its 20-business day preparation interval. Verizon DC argues that its proposal provides for Verizon DC to complete its portion of the provisioning work within 20

430 Verizon DC Remote Terminal Comments at 5.

431 Verizon DC Remote Terminal Comments at 2.

432 Verizon DC Remote Terminal Comments at 5-6.

433 Verizon DC Remote Terminal Comments at 6.

434 AT&T Unresolved Issues Reply Comments at 13.

435 Sprint Remote Terminal Comments at 1-2.

business days, with the CLEC completing its activities at its convenience. Verizon DC requests the Commission to either set no provisioning intervals or, alternatively, establish the intervals in its Remote Terminal Comments.[436]

b. Comprehensive Application Provisions

219. The Comprehensive Application lists several information searches, such as a serving address inquiry, a preliminary engineering records review, a site survey, and a determination of property ownership, that Verizon DC will conduct after it receives an application for remote terminal collocation.[437] The Comprehensive Application does not provide any timeline for completing these searches. Sprint indicates that it has agreed to the language in the Comprehensive Application for remote terminal issues.[438]

c. Decision

220. The *Collocation Reconsideration Order* includes a default requirement that an ILEC will inform a CLEC of the acceptance or rejection of its collocation application within 10 calendar days.[439] The FCC's rules require the ILEC to provision the collocation space within 90 days after application receipt.[440] The FCC does not list the types of activities that would need to be performed in order for the ILEC to accept or reject a collocation application. However, many of the preparatory activities in the Comprehensive Application are activities that would need to be undertaken in order to determine whether certain prerequisites are met so that the CLEC can collocate at the remote terminal. Thus, these activities can be equated to the activities needed to accept or reject a collocation application.

221. As noted above, the Commission has approved provisioning intervals that differ from the FCC's default rules (although they comply with the *New York Waiver Order*). Thus, the Commission is not bound by the FCC's 10-day acceptance interval. Verizon and Sprint's settlement language does not propose a separate timeframe for completing remote terminal collocation preparatory activities. The language in Section F of the Comprehensive Application (incorporated into Section L of the Comprehensive Application by reference) indicates that provisioning will be completed in either 76 or 105 business days. There is no separate interval for preparatory activities in Section F of the Comprehensive Application. Because no separate interval for preparatory activities is included in the Comprehensive Application, it appears that Verizon DC and Sprint have agreed that the preparatory activities will be completed during the provisioning interval.

436 Verizon DC Remote Terminal Reply Comments at 3.

437 Comprehensive Application, Section 2.L.3.

438 *Sprint Comprehensive Application Comments* at 1.

439 *Collocation Reconsideration Order* at 17821, ¶ 24.

440 47 C.F.R. § 51.323(l)(2) (2001).

Thus, no separate preparatory activity interval is necessary. Issue 43.24 is thus resolved and removed from the Issues List.

3. Issue 43.25: Discuss whether security measures are appropriate for protection of Verizon DC's remote terminal equipment enclosures? Please explain your answer fully. If your answer to the above question is yes, please propose appropriate security measures.

a. Parties' Comments

222. Verizon DC argues that the only way to secure its remote terminals is to require escorts. Verizon DC asserts that it cannot separate its equipment from CLEC equipment in remote terminals. Verizon DC also contends that the other parties have agreed to the use of security escorts in central offices where Verizon DC cannot physically secure areas in which Verizon DC equipment is located. Thus, Verizon DC argues, it should be permitted to require security escorts at remote terminals.[441]

223. In its Remote Terminal Comments, AT&T agrees with Verizon DC that Verizon DC may protect its equipment. However, AT&T opposes any security measures that would limit CLEC access to its equipment or hinder efficient collocation.[442]

224. Because of space constraints in most remote terminals, CLECs will not be able to collocate in them. Sprint argues that there should be no security concerns in these situations because no CLEC will be able to collocate equipment in these remote terminals. For remote terminals in which there is available space, Sprint proposes that CLECs be provided with keys to the remote terminals for 24/7 access., Sprint equates keys with security badges at central offices. Sprint also advocates virtual collocation of CLEC line cards in remote terminals in which the next generation digital loop carrier ("NGDLC") can handle advanced services.[443]

225. In its Reply Comments, Verizon DC reiterates its position that escorts are the only way to provide secure access to its CRTEEs. Verizon DC avers that its CRTEEs are too small to permit the alternative security measures that exist in central offices. Verizon DC opposes Sprint's proposal to provide each collocating CLEC with the keys to the CRTEE because that would not permit Verizon DC to secure its equipment, which the FCC permits. Finally, Verizon DC avers that because neither AT&T nor Sprint has provided any alternative security method that protects Verizon DC's equipment, the Commission should require escorts.[444]

441 Verizon DC Remote Terminal Comments at 7-8.

442 AT&T Unresolved Issues Reply Comments at 13.

443 Sprint Remote Terminal Comments at 2.

444 Verizon Remote Terminal Reply Comments at 4.

b. Comprehensive Application Provisions

226. The Comprehensive Application provides that Verizon DC employees will escort CLEC personnel to the remote terminal, without material delay as long as the CLEC provides Verizon DC with reasonable notice. The CLEC will pay Verizon DC for this escort.[445] The Comprehensive Application proposes no other security measure. In its comments, Sprint indicates that these provisions have been included in the Comprehensive Application pursuant to settlement discussions in Maryland.[446]

c. Decision

227. The FCC's rules regarding security arrangements indicate that ILECs have the right to make reasonable security arrangements to protect their equipment and the network.[447] The FCC has recognized the need for some separation between CLEC equipment and ILEC equipment for security reasons.[448] However, the FCC's rules also state that ILECs cannot prevent CLECs from accessing their collocated equipment. Additionally, ILECs cannot require security escorts.[449] The FCC concluded that other security arrangements could address ILEC security concerns without being as burdensome or as expensive.[450]

228. Verizon DC has argued that requiring security escorts is the only way to adequately protect its remote terminal equipment because it will not be able to separate its equipment from CLEC equipment in remote terminals. The Commission agrees that the small size of remote terminals will make it difficult, if not impossible, to separate CLEC equipment from Verizon DC equipment. Therefore, stricter security measures are needed to ensure the integrity of Verizon DC equipment and the network. Verizon DC and Sprint have agreed to a provision that will require Verizon DC security escorts and that CLECs will pay for the escorts. It appears that Verizon DC and Sprint have agreed that there are no other feasible alternatives to providing security escorts. No party has objected to this proposal. However, the proposed security escort provision directly contradicts FCC rules.[451] Thus, the Commission cannot approve the security provisions in Section L, even though Sprint and Verizon have agreed to them. The Commission directs

445 Comprehensive Application, Section 2.L.2.d. *See also*, Comprehensive Application, Section 2.L.4.

446 Sprint Comprehensive Application Comments at 1.

447 47 C.F.R. § 51.323(i) (2001).

448 *Local Competition Order* at 15839, ¶ 598.

449 47 C.F.R. § 51.323(i) (2001).

450 *Advanced Services Order* at 4790, ¶ 49.

451 47 C.F.R. § 51.323(i) (2001).

Verizon DC to remove its security escort provision from Section 2.L.2 when it files its amended collocation filing within 10 days of the date of this Order.

4. Issue 43.26: Discuss whether applying the decision reached by the New York Public Service Commission in Opinion No. 00-12 of Case 00-C-00127, the Section entitled "Linesharing in the Digital Loop Carrier Environment"[452] would be appropriate for the District.

a. Parties' Comments

229. In its Remote Terminal Comments, Verizon DC argues that application of this New York decision would not be appropriate because Verizon DC's remote terminals currently do not support asymmetric digital subscriber line ("ADSL") services. Verizon DC claims that it does not have the infrastructure and OSS in place to support xDSL services at remote terminals.[453] Verizon DC offers to make xDSL services available from remote terminals to CLECs if Verizon DC chooses to modify its network so that xDSL services are available over digital loop carrier equipment. Verizon DC will also provide the Commission with the same information it provides to the NYPSC regarding the status of its digital loop carrier ("DLC") and remote terminal plans.[454]

230. AT&T claims that the New York decision would be appropriate in the District of Columbia. AT&T contends that it is critical for CLECs to be able to provide xDSL services to customers that are served by remote terminals.[455]

231. Sprint also supports adoption of this New York line sharing decision in the District of Columbia. Sprint asserts that there are four ways for CLECs to provide line sharing services: through Verizon DC's wholesale provision of xDSL to CLECs; through CLEC virtual collocation of line cards in remote terminals that contain NGDLC, with Verizon DC making packet switching available; through migration of a customer to an all-copper loop; and through CLEC collocation at the remote terminal and purchase of dark fiber transport back to the central office.[456]

232. Sprint argues that NGDLC installation in a remote terminal simplifies line sharing by eliminating the need to install a CLEC digital subscriber line access multiplexer ("DSLAM") in a remote terminal because line cards that plug into NGDLC

452 *Case 00-C-0127 Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities ("New York Line Sharing Order"), State of New York Public Service Commission, Opinion No. 00-12, rel. October 31, 2000.

453 Verizon DC Remote Terminal Comments at 8.

454 Verizon DC Remote Terminal Comments at 9.

455 AT&T Unresolved Issues Reply Comments at 13.

456 Sprint Remote Terminal Comments at 3.

can include the functionality of the splitter and the DSLAM. CLECs could then utilize line sharing to provide service to customers that are served by remote terminals without having to collocate at the remote terminal.[457] Sprint avers that this line sharing could be accomplished in one of two ways. First, Verizon DC could install xDSL-capable line cards in the NGDLG. The CLEC could then order the high frequency portion of the loop, as the FCC *Line Sharing Order* permits it to do. The packet switching involved would be a part of the high frequency portion of the loop. Alternatively, if Verizon DC does not deploy xDSL-capable line cards in its NGDLC, the CLEC could collocate its own xDSL line cards in Verizon DC's NGDLC. Then the CLEC could purchase the link from the DLC to Verizon DC's packet switch as well as the packet switching itself. In either situation, there would be no adjacent collocation.[458]

233. Sprint opposes the option of migrating the customer to an all-copper loop. Sprint argues that all-copper loops are more expensive than mixed fiber and copper loops. Sprint also claims that using all-copper loops may prevent CLECs from serving certain groups of customers that are located farther away from the central office. Sprint also argues that if Verizon DC is using NGDLC to provide advanced services, then CLECs should not be limited to all-copper loops to provide advanced services.[459]

234. Sprint also opposes physical collocation at remote terminals, arguing that because of the size constrains inherent in Verizon DC's remote terminals, most remote terminal collocation would have to be adjacent collocation. Sprint argues that adjacent remote terminal collocation is expensive and time-consuming.[460]

235. Verizon DC reiterates its position that it cannot currently offer advanced services from its remote terminals in its Remote Terminal Reply Comments. Verizon DC avers that none of Sprint's scenarios for providing advanced services at remote terminals are technically feasible. Thus, Verizon DC contends, its proposals regarding DSL service at remote terminals should be adopted.[461]

b. Comprehensive Application Provisions

236. The Comprehensive Application contains no provisions regarding the provisioning of remote terminals to provide advanced services. Sprint indicates that the remote terminal collocation provisions in the Comprehensive Application reflect the agreement between Sprint and Verizon.[462] Thus, it appears that these parties have agreed

457 Sprint Remote Terminal Comments at 3.

458 Sprint Remote Terminal Comments at 3-4.

459 Sprint Remote Terminal Comments at 4-5.

460 Sprint Remote Terminal Comments at 5.

461 Verizon DC Remote Terminal Reply Comments at 5.

462 Sprint Comprehensive Application Comments at 1.

not to include language regarding CLEC collocation at remote terminals for the provision of advanced services at this time. No other party has commented on this exclusion.

c. Decision

237. The NYPSC ruled in its Line Sharing Order that Verizon NY could not offer advanced services such as ADSL from remote terminals because xDSL services could not be provided over DLC. However, the NYPSC ruled that once Verizon NY's data affiliate[463] was able to provide xDSL services over DLC, Verizon NY could not prohibit CLECs from providing xDSL services over DLC.[464] The NYPSC offered several proposals for providing xDSL services over DLC technology: customer migration to an all-copper loop; virtual collocation of CLEC line cards in Verizon NY's NGDLC remote terminals; and a UNE combination that would provide access to DLC.[465]

238. In their comments, Sprint and AT&T urge the Commission to adopt the provisions in the NY Line Sharing Order. Verizon DC objects, arguing that it does not currently offer advanced services to customers served by DLC technology. No party contests that claim. Additionally, the NYPSC found that Verizon NY could not provide advanced services over DLC facilities. Taken together, it is clear to this Commission that Verizon DC has met its burden of proving that it is currently technically infeasible to provide advanced services over DLC.[466] To this Commission, the issue of applying the NY Line Sharing Order is not yet ripe because Verizon DC does not yet deploy the technology that would make the provision of xDSL services over DLC possible. If and when Verizon DC does deploy this technology in the District of Columbia, the parties may petition this Commission to make determinations on ways in which to promote CLEC nondiscriminatory access to this technology. This conclusion is bolstered by the fact that Verizon and Sprint have agreed to exclude any provisions based on the NY Line Sharing Order from the Comprehensive Application. Because the Commission will not address Issue 43.26 in this proceeding, the Commission deletes it from the Issues List.

5. Issue 43.27: Discuss whether the Commission should require Verizon DC to work cooperatively with CLECs to obtain rights-of-way and easements pursuant to Verizon DC's pre-existing rights-of-way and easement agreements.

463 When the *NY Line Sharing Order* was issued, Verizon was providing data services through a separate affiliate, Verizon Advanced Data Inc. ("VADI"). After the release of this Order, Verizon dissolved VADI and began providing data services itself again. *See, In the Matter of the Application of Verizon Washington, DC Inc. For Authority to Reintegrate Advanced Data Services, TT 01-10*, Order No. 12278, rel. December 27, 2001.

464 *NY Line Sharing Order* at 25.

465 *NY Line Sharing Order* at 26.

466 *See, Line Sharing Order* at 20957, ¶ 92.

a. Parties' Comments

239. Verizon DC argues that the *UNE Remand Order* clearly states that CLECs, not the ILEC, have the obligation to resolve easement disputes with the affected municipality. Verizon DC contends that the Commission should not place the burden to resolve CLEC rights-of-way or easement issues on Verizon DC because Verizon DC is not in a better position to resolve these issues than the CLECs themselves.[467]

240. AT&T avers that the Commission should require Verizon DC to work cooperatively with the CLECs to resolve rights-of-way and easement issues. AT&T also asserts that because CLECs must contend with these issues, remote terminal collocation is not economically viable.[468]

241. Sprint agrees with AT&T that Verizon DC should be required to work cooperatively with CLECs in resolving easement and rights-of-way issues. Sprint argues that any public easement involving rights-of-way should be available to CLECs.[469] If a CLEC seeks to use a private easement created between Verizon DC and a property owner, Sprint contends that Verizon DC must obtain permission from the property owner for the CLEC to use the easement. The CLEC must become involved in negotiations if additional fees are involved. Finally, if the CLEC needs its own easement, then Verizon DC should provide the CLEC with the name and contact information for the property owner. Verizon DC should also inform the property owner that it does not object to the creation of the new easement. Sprint asserts that in all circumstances, Verizon DC should provide copies of its easement for the remote terminal to the CLEC requesting interconnection at the remote terminal.[470]

242. In response, Verizon DC does not object to Sprint's request to provide the property owner's contact information and a statement indicating that Verizon DC does not object to a CLEC's request for an easement adjacent to the remote terminal. Verizon DC does oppose Sprint's request for Verizon DC to obtain permission from the property to share Verizon DC's easement. Verizon DC asserts that this proposal violates the FCC's rules requiring a CLEC to resolve its own rights-of-way or "similar impediment" issues. Verizon DC claims that there is no other legal basis for requiring Verizon DC to resolve the CLEC's rights-of-way or easement problems.[471]

b. Comprehensive Application Provisions

467 Verizon DC Remote Terminal Comments at 9.

468 AT&T Unresolved Issues Reply Comments at 14.

469 Sprint Remote Terminal Comments at 7.

470 Sprint Remote Terminal Comments at 8.

471 Verizon DC Remote Terminal Reply Comments at 6.

243. The Comprehensive Application contains several provisions regarding easements and rights-of-way. Verizon DC proposes that it will not renegotiate leases or easements to expand remote terminals to accommodate CLEC equipment.[472] However, if a third party has a right-of-way or easement agreement with Verizon DC regarding the property underneath or adjacent to the remote terminal, Verizon DC will determine whether its rights under the easement would permit assignment of the rights under the easement to the CLEC.[473] Verizon DC will also work cooperatively with the CLEC requesting remote terminal collocation to provide space availability and technical feasibility information so that the CLEC can secure permission to install equipment in that area from the property owner.[474] Sprint indicates that the remote terminal collocation provisions in the Comprehensive Application reflect the agreement between Verizon and Sprint.[475] No other party has commented on these provisions.

c. Decision

244. The FCC has left many decisions regarding adjacent collocation for state commissions to decide, in part because of the zoning and other land use issues.[476] In reviewing the Comprehensive Application, it is apparent that Verizon and Sprint have each compromised on these easement and rights-of-way issues. Verizon DC agrees to assist CLECs in obtaining permission from third party property owners or municipalities by providing their contact information to the CLECs. Verizon DC will also determine whether its own easements can be used by the CLEC. However, Verizon DC will not become involved in procuring any easement for the CLEC. The Commission finds that these terms are reasonable. Verizon DC is in the best position to know the identity of the property owner or municipality and can easily provide that information to the CLEC. Additionally, Verizon DC is in the best position to know whether its easement can be expanded to accommodate the CLEC. But the Commission agrees that Verizon DC should not be required to assist the CLEC in obtaining easements or access to rights-of-way. The FCC has also indicated that easement and rights-of-way issues relating to obtaining access to subloops are issues for CLECs to resolve with the affected municipality or other third party.[477] Additionally, CLECs are the entities gaining the right to access rights-of-way or private property, and they should be required to negotiate the terms and conditions of that entry for themselves. Thus, the Commission approves the Comprehensive Application's easement and rights-of-way provisions contained in Section L. Because this issue has been resolved, the Commission deletes it from the Issues List.

472 Comprehensive Application, Section 2.L.2.c.

473 Comprehensive Application, Section 2.L.3.b.

474 Comprehensive Application, Section 2.L.2.g.

475 Sprint Comprehensive Application Comments at 1.

476 *Advanced Services Order* at 4787, ¶ 44.

477 *UNE Remand Order* at 3796, ¶ 213.

6. Issue 43.28: *Whether the Commission should establish a space reservation policy for remote terminal collocation. Please explain your answer fully. If your answer is yes, please include a suggested policy.*

a. Parties' Comments

245. Verizon DC claims that it currently does not have a space reservation policy at remote terminals for itself or its affiliates.[478] Currently, Verizon DC maintains that it provides space at remote terminals on a first-come, first-served basis. In the future, Verizon DC will take CLEC forecasts of needed space into account as it builds remote terminals. When needed, Verizon DC indicates that it will follow the same space reservation policies that it does for central offices.[479]

246. AT&T claims that Verizon DC is obligated to provide non-discriminatory access to remote terminals. AT&T avers that this requirement may have little effect because Verizon DC has already asserted that it has no space in its remote terminals for collocation.[480]

247. When there is sufficient space in a remote terminal to create a space reservation policy, Sprint advocates the establishment of a policy that is similar to that for central offices. Sprint argues that Verizon DC should be able to reserve space for two years.[481]

248. Verizon DC objects to Sprint's two-year space reservation proposal, arguing that it is premature to establish such a policy. Verizon DC argues that there are currently few remote terminals at which there would be sufficient collocation space to be reserved for future use. Verizon DC avers that when it does create a space reservation policy for remote terminals, it will offer space reservation on the same terms that it reserves space for itself, as required by the FCC. At this time, no such policy is necessary, Verizon DC claims.[482]

b. *Comprehensive Application Provisions*

249. There are no space reservation policies in the remote terminal collocation section of the Comprehensive Application. Verizon DC provides that collocation space

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478 Verizon DC Remote Terminal Comments at 9.

479 Verizon DC Remote Terminal Comments at 10.

480 AT&T Unresolved Issues Reply Comments at 14.

481 Sprint Remote Terminal Comments at 8-9.

482 Verizon DC Remote Terminal Reply Comments at 7.

will be provided on a first-come, first-served basis subject to space availability.[483] Sections C, D, F, H, and I also do not contain any space reservation policies. Thus, there appears to be no space reservation policies for remote terminal collocation in the Comprehensive Application. Sprint avers that it agrees with Verizon DC's proposed remote terminal collocation provisions.[484]

c. Decision

250. As noted above, Verizon DC may not reserve space in its remote terminals at terms more favorable to itself than to CLECs.[485] Verizon DC avers that it does not reserve space for itself in remote terminals because there is not a great deal of additional available space in remote terminals. Verizon DC does not propose any space reservation policy in its Comprehensive Application; Verizon DC merely indicates that all remote terminal collocation will be on a first-come, first-served basis. This is what is required by the FCC rules.[486] Because Verizon DC does not reserve any space for itself in remote terminals, it does not need to have a space reservation policy for CLECs. The Commission approves the language in the Comprehensive Application.

251. The Commission does note, however, that if Verizon DC develops a space reservation policy for remote terminals in the future, it must apply that policy equally to itself and to CLECs. Verizon DC must also notify the Commission of the adoption of the policy and update its collocation tariff as necessary. The Commission deletes Issue 43.28 from the Issues List because this issue has been resolved.

7. Issue 43.29: Identify and discuss any additional issues that will help facilitate collocation at remote terminal equipment enclosures by CLECs.

a. Parties' Comments

252. The only additional issue addressed by the parties was the amount and type of information to be provided CLECs by Verizon DC in response to a request for remote terminal collocation. Sprint argues that Verizon DC should be required to provide demographic, facility, and space availability information about remote terminals to CLECs seeking to collocate in these remote terminals. Sprint avers that Verizon DC provides this information regarding central offices.[487] Specifically, Sprint requests the following, in Excel or similar format: service wire center CLLI; serving wire center

483 Comprehensive Application, Section 2.L.2.b.

484 Sprint Comprehensive Application Comments at 1.

485 47 C.F.R. § 51.323(f)(4) (2001).

486 47 C.F.R. § 51.323(f)(1) (2001).

487 Sprint Remote Terminal Comments at 9.

CLLI address; remote terminal CLLI; remote terminal address; remote terminal equipped and working lines; remote terminal to central office transport; remote terminal type; remote terminal housing size and type; serving area interface CLLIs for each remote terminal; serving area interface addresses; number of terminal connections available in each serving area interface; all service addresses for each serving area interface.[488]

253. In response, Verizon DC indicates that Sprint has made this proposal in other jurisdictions. Verizon DC agrees to implement any decision made in these other proceedings. For each specific request for information, Verizon DC has various responses. Verizon DC offers to provide remote terminal CLLI information. For remote terminal and serving area interface addresses, Verizon DC indicates that remote terminal address information is not always the same as postal addresses. To correct this problem, Verizon DC will not provide zip codes. Verizon DC and Sprint agree that Verizon DC will provide information regarding the types of facilities that it feeds to each remote terminal, without guaranteeing that these facilities would be available when Sprint submits a UNE order for any facility. Verizon DC claims that information regarding the remote terminal type and size is currently available. Verizon DC and Sprint have agreed that Verizon DC does not need to provide serving area interface CLLIs because this information is not currently available.[489] Regarding the number of terminal connections, Verizon DC indicates that Sprint may currently obtain that information. Verizon DC also maintains that it will revise the process for obtaining this information.[490] Finally, Verizon DC offers to provide a serving area interface ("SAI") report that provides a range of addresses served by the SAI. Verizon DC will investigate to determine whether additional information can be produced. Verizon DC also avers that it is working with Sprint to determine the proper format and pricing for the remote terminal reports. Verizon DC claims that no Commission action is necessary because the parties are working to resolve these issues.[491]

b. Comprehensive Application Provisions

254. The Comprehensive Application contains several provisions regarding the type and amount of information to be provided CLECs during the remote terminal collocation application process. Verizon DC proposes to provide CLECs with the identity of the FDIs that come from the CRTEE and a range of the customer addresses served by those FDIs.[492] Upon CLEC request, Verizon DC will perform a preliminary engineering records review for a particular CRTEE location. Verizon DC will provide information regarding the type of remote terminal built at a particular location. Verizon

488 Sprint Remote Terminal Comments at 10.

489 Verizon DC Remote Terminal Reply Comments at 8.

490 Verizon DC Remote Terminal Reply Comments at 8-9.

491 Verizon DC Remote Terminal Reply Comments at 9.

492 Comprehensive Application, Section 2.L.3.a.

DC will also indicate whether the remote terminal and the adjacent land are on public or private property. Verizon DC will also determine whether a CLEC can be assigned any of Verizon DC's rights under any easement agreement. Verizon DC will charge a nonrecurring charge for each request.[493] Also upon CLEC request, Verizon DC will perform a site survey to determine whether there is sufficient space at the remote terminal to accommodate the collocation.[494] Sprint indicates that this language conforms to the agreement between Verizon and Sprint.[495]

c. **Decision**

255. In its Unresolved Issues Comments, Sprint requests Verizon DC to provide a great deal of information to facilitate its determination of whether to collocate at a particular remote terminal. Some of this information, particularly information pertaining to the site survey, is required by FCC rules.[496] Verizon and Sprint have agreed to the provision of other information, which will be useful to CLECs in determining whether collocation at a specific remote terminal is economically practical for them. Provision of this information at an early stage of the collocation process will eliminate inefficiencies, so CLECs can determine whether to collocate before they have invested significant resources at a particular remote terminal. The Commission approves these provisions. Because there are no other outstanding remote terminal collocation issues, the Commission removes this issue from the Issues List.

D. Microwave Collocation

256. In the Comprehensive Application, Verizon DC included Section M, which refers to Microwave Collocation. This Section contains no changes from the microwave collocation provisions approved in Order No. 12308. Therefore, the Commission approves Section M.

E. New Issues List

257. In this Order, the Commission resolves many of the outstanding collocation issues. The Commission deletes the following issues from the Issues List in this Order: 43.1, 43.2, 43.4, 43.9, 43.11, 43.14, 43.15, 43.16, 43.17, 43.19, 43.20, 43.21, 43.23, 43.24, 43.25, 43.26, 43.27, 43.28, and 43.29. Many of the remaining collocation issues will be resolved when Verizon DC submits tariff language that complies with the Commission's directives in this Order. These issues will be deleted by Order when the

493 Comprehensive Application, Section 2.L.3.b.

494 Comprehensive Application, Section 2.L.3.c.

495 Sprint Comprehensive Application Comments at 1.

496 *Advanced Services First Report and Order*, 14 FCC Rcd at 4793, ¶ 58; *Collocation Reconsideration Order* at 17838, ¶ 64.

CLECs to install a single bay in cageless collocation arrangements.[174] In permitting CLECs to install a minimum of a single bay, Section 2.E.2 of Verizon DC's Application complies with the FCC's minimum space requirements. Because Verizon DC follows the FCC guidelines on minimum space requirements and none of the parties objects to Verizon DC's minimum space requirements, the Commission declines to adopt other minimum space requirements. Should the FCC issue new minimum space requirements, the Commission will reevaluate this determination at that time. The Commission approves Section 2.E.2.

13. Issue 43.13: How much or-gated or redundant power should Verizon DC be required to provide to collocators?

a. Compliance, Power, and Comprehensive Application Provisions

89. Verizon DC proposes in its Compliance and Comprehensive Application that, for all collocation arrangements, Verizon DC will assess monthly recurring power charges based on per load amp, per feed. The power charge will be based upon the total power feeding the collocation arrangement.[175] For Cageless Collocation Open Environment ("CCOE") collocation, Verizon DC indicates that it will provide 48V DC power per load amp, per feed. Verizon DC also indicates that it will provide collocating CLECs with access to junction boxes so that they may work directly with a Verizon DC-approved contractor for the installation of AC convenience outlets, lighting, and equipment superstructure.[176]

90. Verizon DC's Power and Comprehensive Applications add several new requirements for obtaining power from Verizon DC. Verizon DC will charge CLECs per load amp based on the total number of load amps ordered per feed. Verizon DC will permit CLECs to designate fuse capacity up to 2.5 times the power load that they have ordered, and only pay for the power ordered. Verizon DC reserves the right to conduct random inspections to verify the actual power load of any collocation arrangement. For any power inspection that would require entry onto CLEC collocation space, Verizon DC will schedule a joint meeting with the CLEC. Verizon DC has proposed detailed procedures for handling situations in which a CLEC has drawn more power than it previously has requested from Verizon DC. The proposed provisions include penalties for CLECs that are found to have used more power than ordered. No Commission action or approval is necessary for these self-executing penalties.[177]

174 47 C.F.R. § 51.323(k)(2) (2001). *See also*, *Advanced Services Order*, 14 FCC Rcd at 4785-86, ¶ 43.

175 Compliance Application, Section 2.I.1.d; Comprehensive Application, Section 2.I.1.d.

176 Compliance Application, Section 2.F.6.b; Comprehensive Application, Section 2.F.6.b.

177 Power Application, Section 2.B.8.h.1 through Section 2.B.8.h.3; Comprehensive Application, Section 2.B.8.h.1 through Section 2.B.8.h.3.

Commission approves Verizon DC's submissions. The Commission attaches a revised Issues List containing currently outstanding issues as Attachment A.

IV. CONCLUSION

258. The Commission approves in part and rejects in part Verizon DC's Comprehensive Application, the most current and comprehensive collocation tariff amendment application. The Commission directs Verizon DC to submit an amended Collocation Tariff, deleting the portions of the tariff that have been rejected, and amending the tariff as required in this Order within 10 days of the date of this Order. The Commission will then review this new filing to ensure that all modifications have been made within the five-day window of Section 296 of the Commission's Rules.[497] The Commission will then issue an order accepting or rejecting the new filing. If approved, Verizon DC's amended collocation tariff will become effective upon publication in the *D.C. Register*.

THEREFORE, IT IS ORDERED THAT:

259. With the exception of the sections listed in paragraph 260, Verizon Washington DC, Inc.'s Comprehensive Application is **APPROVED** as currently drafted;

260. Verizon Washington DC, Inc. shall submit an amended collocation filing containing all approved tariff sections as well as Sections 1.B.6, 2.B.8.b(2), 2.C.1.b, 2.J.2, 2.J.3, 2.J.3.f, 2.J.3.g, and 2.L.2 revised pursuant to this Order to the Commission within five days of the date of this Order;

261. Verizon Washington DC, Inc. shall add a provision to Section 2.B.7 incorporating the decisions made in paragraph 61 in the Amended Collocation Tariff;

262. Issues 43.1, 43.2, 43.3, 43.4, 43.5, 43.8, 43.9, 43.11, 43.14, 43.15, 43.16, 43.17, 43.19, 43.20, 43.21, 43.23, 43.24, 43.25, 43.26, 43.27, 43.28, and 43.29 are resolved and **DELETED** from the Formal Case No. 962 Issues List; and

263. Pursuant to Issue 43.7, the parties shall provide Comments on the types of levels on which interconnection should be provided within five days of the date of this Order. Reply Comments are due within 10 days after any such filing.

A TRUE COPY: BY DIRECTION OF THE COMMISSION:

Sanford M. Speight

CHIEF CLERK SANFORD M. SPEIGHT
ACTING COMMISSION SECRETARY

497 15 D.C.M.R § 296 (1987).

Revised Formal Case No. 962 Issues List

Issue 1.1: Deleted
Issue 1.2: Resolved and Deleted

Issue 2: Resolved and Deleted
Issue 2.1: Resolved and Deleted
Issue 2.2: Resolved and Deleted
Issues 2.3: Resolved and Deleted

Issue 3: What is the proper application of the methodology for determining the wholesale discount rate?
Issue 3.1: Direct Costs
Issue 3.1.1: Product Management
Issue 3.1.2: Sales (Account 6612)
Issue 3.1.3: Product Advertising (Account 6613)
Issue 3.1.4: Call Completion Services (Account 6621)
Issue 3.1.5: Number Services (Account 6622)
Issue 3.1.6: Customer Services (Account 6623)
Issue 3.1.7: Other Direct Costs
Issue 3.2: Indirect Costs
Issue 3.2.1: Calculation Methodology
Issue 3.2.2: General Support Expenses (Accounts 6121-6124)
Issue 3.2.3: Corporate Operations Expenses (Accounts 6711, 6712, 6721-6728)
Issue 3.2.4: Uncollectibles (Account 5301)
Issue 3.2.5: Plant-specific and plant non-specific expenses

Issue 4: What cost onsets will Verizon DC incur under the appropriate wholesale discount methodology?

Issue 5: What is the appropriate treatment for taxes in the calculation of the wholesale discount?

Issue 6: What is the appropriate wholesale discount rate for resale for Verizon DC's retail (bundled) services?
Issue 6.1: Assuming the use of Verizon DC's operator services?
Issue 6.2: Not assuming the use of Verizon DC's operator services?

Issue 7: Should Verizon DC be required to offer its individual customer contracts for resale at the wholesale discount?

Issue 8: Should the wholesale discount rate apply the Verizon DC's additional directory services?

Issue 9: Should Verizon DC be required to make its technical and market trials available for resale and, if so, should the wholesale discount rate apply?

Issue 10: Are charges for operations support systems ("OSS") appropriate in a resale environment and, if so, are Verizon DC's proposed charges appropriate?

Issue 11: Resolved and Deleted
- Issue 11.1: Resolved and Deleted
- Issues 11.2: Resolved and Deleted
- Issue 11.3: Resolved and Deleted

Issue 12: What cost model(s) and cost studies should serve as the basis for setting permanent rates, and why?
- Issue 12.1: What network capabilities are being studied?
- Issue 12.2: How do the models and studies estimate costs in accordance with the appropriate methodology?
- Issue 12.3: Do the models reflect the economies of scope and/or scale available from serving the existing level of demand?
- Issue 12.4: Which model properly assumes efficient acquisition of assets?
- Issue 12.5: Generally, describe the methods used to derive prices from cost model(s) recommended, and is there room for interpretation involved in the price deviations?

Issue 13: *What inputs should be used?*
- Issue 13.1: Which inputs reflect forward-looking costs?
- Issue 13.2: What is the appropriate fill factor input for the following elements:
  - Issue 13.2.1: Fiber cable
  - Issue 13.2.2: Electronic equipment for fiber cable
  - Issue 13.2.3: Copper feeder cable
  - Issue 13.2.4: Copper distribution cable
  - Issue 13.2.5: Land and buildings
- Issue 13.3: What is the appropriate input for structural sharing?
  - Issue 13.3.1: Aerial
  - Issue 13.3.2: Underground
  - Issue 13.3.3: Buried
- Issue 13.4: What is the appropriate input for the cost of capital?
  - Issue 13.4.1: What is the appropriate capital structure?
  - Issue 13.4.2: What is the cost of equity?
  - Issue 13.4.3: What is the cost of debt?
- Issue 13.5: What are the appropriate depreciation lives for the following network elements and investment categories?
  - Issue 13.5.1: Fiber electronics
  - Issue 13.5.2: Aerial copper cable
  - Issue 13.5.3: Underground copper cable
  - Issue 13.5.4: Buried copper cable
  - Issue 13.5.5: Aerial fiver cable

Issue 13.5.6: Underground fiber cable
Issue 13.5.7: Buried fiber cable
Issue 13.5.8: Poles
Issue 13.5.9: Conduit
Issue 13.5.10: Switching

Issue 13.6: Are FCC depreciation lives appropriate for the above network elements and investment categories?

Issue 13.7: Are depreciation lives used for financial reporting purposes appropriate for the above network elements and investment categories?

Issue 13.8: Should Verizon DC's proposed lives be approved?

Issue 13.9: *What are the appropriate inputs for the switching cost issues?*

Issue 13.9.1: What is the appropriate mix of new switches and add-on lines?

Issue 13.9.2: What are the appropriate price discounts for the purchase of new switches?

Issue 13.9.3: What is the appropriate costing of vertical features?

Issue 13.9.4: What are the appropriate costs to consider for customized routing?

Issue 13.10: What are the appropriate cost inputs and assumptions for the following:

Issue 13.10.1: Copper/fiber breakpoint
Issue 13.10.2: Maximum distance from a digital loop carrier
Issue 13.10.3: Measure of loop length
Issue 13.10.3.1: Maximum distribution cable length
Issue 13.10.4: Minimum cable size for copper distribution
Issue 13.10.5: Cable costs
Issue 13.10.6: Appropriate mix of integrated digital loop carrier and universal digital loop carrier

Issue 13.11: What are the appropriate costs for transport facilities?

Issue 13.12: What is the appropriate input for shared, joint, and common costs?

Issue 13.12.1: What is the appropriate methodology for determining shared, joint, and common costs?

Issue 13.12.2: Should Verizon DC's shared, joint, and common costs account for future efficiencies?

Issue 14: What rate should the Commission approve with respect to the following elements and why is each such rate appropriate?

Issue 14.1: Unbundled loops
Issue 14.2: End office switching ports
Issue 14.3: End office switching usage
Issue 14.4: Tandem switching
Issue 14.5: Call terminations
Issue 14.5.1: LEC to Verizon DC
Issue 14.5.2: Verizon DC to LEC

Issue 14.6: *Any other recurring rates proposed by the parties in the completed charts required by this Order?*

Issue 15: What are the appropriate rates for the following elements:

Issue 15.1: Loop distribution (per pair per month)

Issue 15.2: Loop concentrator (per line per month)

Issue 15.3: Loop feeder (per line per month)

Issue 16: Resolved and Deleted

Issue 16.1: Should the Commission adopt the FCC's definition of line sharing or expand its definition to include other functionalities or equipment?

Issue 16.2: Should the Commission require line splitting?

Issue 16.3: How should the Commission set permanent rates for the high frequency portion of the loop, the incremental costs of OSS, cross connects, splitters, and line conditioning?

Issue 16.4: What cost methodology should the Commission use to set permanent rates for the high frequency portion of the loop, the incremental costs of OSS, cross connects, splitters, and line conditioning?

Issue 16.5: What types of cost studies and cost models are needed to determine permanent rates?

Issue 16.6: Should the Commission require that Verizon DC charge no more to CLECs for access to shared local loops than the amount of loop costs Verizon DC allocated to xDSL services when Verizon DC established its interstate retail rates for these services? If so, why? If not, why not?

Issue 16.7: Should Verizon be permitted to recover the charge of installing splitters? If so, why? If not, why not?

Issue 16.8: What provisioning intervals should the Commission establish for line sharing (If different from those required by the Bell Atlantic/GTE merger conditions)?

Issue 16.9: What penalties should the Commission establish for failure to meet the Commission's provisioning intervals?

Issue 16.10: What other additional requirements should the Commission impose for obtaining access to the high frequency portion of the loop?

Issue 17: What economic principles should guide this Commission in determining nonrecurring costs and charges, and why should the Commission follow these principles?

Issue 18: Which cost model(s) and cost studies should serve as the basis for setting permanent rates for nonrecurring charges, and why?

Issue 19: What rate should the Commission approve with respect to each of the following items, and why is each such rate appropriate:

Issue 19.1: Service Order Charges

Issue 19.2: Installation charges

Issue 19.2.1: Existing customer – no premises visit

Issue 19.2.2: Existing customer – premises visit

Issue 19.2.3: New customer

Issue 19.3: OSS charges

Issue 19.4: DS-O cross connect
Issue 19.5: Other types of interconnection
Issue 19.6: Any other nonrecurring charges proposed by the parties in the completed charts required by this Order

Issue 20: Should there be a rate for a "coordinated cutover" and, if so, what should it be and why?

Issue 21: Should there be a rate for "customer specified signaling" and, if so, what should it be and why?

Issue 22: What OSS rates, if any, should apply in a resale environment and why?

Issue 23: Resolved and deleted.

Issue 24: Deleted

Issue 25: Deleted

Issue 26: Should CLECs be given full access to unbundled network elements and must CLECs be allowed to combine unbundled network elements in any way they choose at TELRIC-based rates?

Issue 26.1: Does the Federal Act, the FCC Order, and/or the D.C. law require the recombination of unbundled elements at TELRIC-based rates?
Issue 26.2: Can recombined elements be priced the same way as resold local exchange service, and if so, should they be priced in that manner?
Issue 26.3: Deleted

Issue 27: Deleted

Issue 29: Moved to Formal Case No. 993
Issue 29.1: Moved to Formal Case No. 993
Issue 29.2: Deleted

Issue 30: Moved to Formal Case No. 990

Issue 31: Resolved and deleted

Issue 32: Resolved and deleted

Issue 33: Resolved and Deleted
Issue 33.1: Deleted
Issue 33.2: Resolved and Deleted

Issue 34: Deleted

Issue 35: Deleted

Issue 36: Deleted

Issue 37: Does Verizon DC provide non-discriminatory access to poles, ducts, conduits, and rights of way, and if not, what terms and conditions are needed to ensure non-discriminatory access?

Issue 37.1: What are the appropriate rates, terms, and conditions for access to Verizon DC's poles, ducts, conduits, and rights of way?

Issue 38: Deleted

Issue 39: Deleted

Issue 40: Should the Commission approve Verizon DC's proposed collocation ~~tariff~~ terms and is it in accordance with the FCC's most recent orders and regulations regarding collocation? If not, what changes are needed?

Issue 41: What are the recurring and non-recurring costs and charges for infrastructure elements, including costs for the following:

Issue 41.1: Cable racking;
Issue 41.2: Cable Installation; and
Issue 41.3: Cage construction.

Issue 42: Should the rates proposed in Verizon DC's collocation tariff be approved? Why or why not? If not, what are the appropriate rates, and how should they be determined?

Issue 43: What are the appropriate non-price terms for collocation with Verizon DC?

Issue 43.1: Resolved and Deleted
Issue 43.2: Resolved and Deleted
Issue 43.3: Resolved and Deleted
Issue 43.4: Resolved and Deleted
Issue 43.5: Resolved and Deleted
Issue 43.6: Is Verizon DC permitted to take back collocation space that is not "efficiently used" or not used within a certain period of time?
Issue 43.7: Should interconnection be provided at both electrical and optical levels?
Issue 43.8: Resolved and Deleted
Issue 43.9: Resolved and Deleted
Issue 43.10: Are the indemnification provisions of Verizon DC's tariff appropriate and, if not, what changes should be adopted?
Issue 43.11: Resolved and Deleted
Issue 43.12: Should Verizon DC be permitted to restrict a collocator to no more than one-half the space initially available for collocation? Should minimum space increments be established, and if so, what should they be?

Issue 43.13: How much or-gated or redundant power should Verizon DC be required to provide to collocators?
Issue 43.14: Resolved and Deleted
Issue 43.15: Resolved and Deleted
Issue 43.16: Resolved and Deleted
Issue 43.17: Resolved and Deleted
Issue 43.18: For what activities should provisioning intervals be established? How long should these intervals be?
Issue 43.19: Resolved and Deleted
Issue 43.20: Resolved and Deleted
Issue 43.21: Resolved and Deleted
Issue 43.22: How much advance notice must a collocator give Verizon DC to enter onto Verizon DC's premises to service the collocator's collocation space?
Issue 43.23: Resolved and Deleted
Issue 43.24: Resolved and Deleted
Issue 43.25: Resolved and Deleted
Issue 43.26: Resolved and Deleted
Issue 43.27: Resolved and Deleted
Issue 43.28: Resolved and Deleted
Issue 43.29: Resolved and Deleted

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

DISSENT OF COMMISSIONER ANTHONY M. RACHAL III

Order No. 12608

December 3, 2002

FORMAL CASE NO. 962, IN THE MATTER OF THE IMPLEMENTATION OF THE DISTRICT OF COLUMBIA TELECOMMUNICATIONS COMPETITION ACT OF 1996 AND IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996; Order No. 12608

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") establishes standards for central office collocation and remote terminal collocation in the District of Columbia. The Commission grants in part and denies in part Verizon Washington, DC, Inc.'s ("Verizon DC") Collocation Tariff Amendment Application ("Compliance Application") filed April 30, 2001,[1] and Verizon DC's Comprehensive Collocation Tariff Amendment Application ("Comprehensive Application"), filed August 15, 2002.[2] Verizon DC is directed to submit an amended collocation filing including revisions to its Comprehensive Application as indicated by this Order within 10 days of the date of this Order for expedited review by the Commission. For the reasons stated below, I must respectfully dissent from the majority opinion with respect to Issue Number 43.3 and Issue Number 43.25.

[1] *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996;* Letter from J. Henry Ambrose, Vice President, Regulatory Affairs, Verizon DC to Jesse P. Clay, Jr., Commission Secretary ("Compliance Application"), filed April 30, 2001.

[2] *Formal Case No. 962, In The Matter of The Implementation of The District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996,* Letter to Sanford M. Speight, Acting Commission Secretary, from J. Henry Ambrose, Vice President for Regulatory Matters of Verizon DC, re: Formal Case No. 962, Collocation Tariff Revision ("Comprehensive Application" and "Comprehensive Application Letter"), filed August 15, 2002.

II. DISCUSSION

A. Issue Number 43.3: Should Verizon DC be responsible if it misses due dates because of its own negligence? What penalties should be imposed on Verizon DC for failure to provision collocation spaces in a timely manner?

2. Verizon DC asserts that the Commission has no authority to impose any types of penalties on Verizon DC absent Verizon DC's approval. Verizon DC contends that self-executing penalties may not be imposed because Section Number 34-1103 of the D.C. Code requires a hearing before any penalty may be imposed. Verizon DC also argues that the Commission cannot require Verizon DC to make payments to Competitive Local Exchange Carriers, ("CLECs") since all penalties must be paid into the District of Columbia General Fund pursuant to Section Number 34-710 of the D.C. Code. Likewise, Verizon DC contends, that the Federal Telecommunications Act of 1996 ("Telecommunications Act") does not grant state commissions the authority to assess penalties. Therefore, Verizon DC argues, the Commission cannot impose penalties on Verizon DC for failure to comply with any collocation rules that the Commission may implement.[3] I concur with this position.

3. In Formal Case Number 990, Order Number 12451, the Commission adopted a performance assurance plan ("PAP") for the District of Columbia ("DC PAP").[4] The adoption of the DC PAP was an essential compliment to the DC Guidelines,[5] because the PAP delineates the amounts of incentive payments that Verizon DC will make if it fails to meet the performance standards and benchmarks set forth in the DC Guidelines. Because Verizon DC has agreed to a PAP in the context of its Section 271 proceeding,[6] Verizon DC urges the Commission to impose any collocation penalties as part of the PAP, which is being considered in Formal Case Number 990.[7] The majority opinion here agrees with Verizon DC and concludes that issues related to collocation standards and Verizon DC's liability for failing to meet those standards have been resolved in Formal Case Number 990 by the adoption of the DC Guidelines and the DC PAP, and therefore do not need to be addressed again in this proceeding.

4. Order Number 12451 also states that "damages are generally defined as "a sum of money which the law awards or imposes as pecuniary compensation, recompense,

[3] Verizon DC Unresolved Issues Comments at 3.

[4] *See, Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 12230, rel. November 9, 2001.

[5] Id.

[6] Under Section 271 of the Telecommunications Act of 1996, a regional bell operating company such as Verizon DC may obtain approval to provider InterLATA service if it demonstrates to the FCC that it has opened its local market for competition. A Section 271 proceeding is the proceeding in which this evaluation occurs.

[7] Verizon DC Unresolved Issues Comments at 4.

or satisfaction for an injury done of a wrong sustained as a consequence of either a breach of a contractual obligation or a tortuous act."[8] Therefore, for a monetary payment to be considered damages, there must be an occurrence of injury or wrong that is caused by a tortuous action or a breach of contract.

5. The DC Guidelines were established to measure Verizon DC's performance in providing Operation Support Systems to CLECs. Under the PAP, Verizon DC must make the incentive payments if it fails the prescribed metric(s). Verizon DC's failure of a specific metric does not automatically mean that any CLEC has actually been harmed by the failure; it only means that Verizon DC has not met the applicable performance standard. No injury to the CLECs must be proven in order for Verizon DC to be liable for the incentive payments. Because the incentive payments are due under the PAP regardless of whether a CLEC has sustained an injury, the incentive payments damages are derived from a strict liability occurrence without a need to consider actual damages. Thus, the majority opinion in Formal Case Number 990 concludes that incentive payments are not damages. Consequently, unlike penalties that must be paid into the District of Columbia General Fund pursuant to Section No. 34-710 of the D.C. Code, incentive payments could be made directly to CLECs. I disagree with this logic. I view this as liquidated damages.

6. In Order Number 12451, the majority relies upon Section No. 1-204 of the D.C. Code that provides the Commission with the authority to ensure that Verizon DC provides safe, adequate, just and reasonable service. Although I appreciate the majority's reliance on this provision, I believe that proper statutory construction warrants a different result. Particularly in light of the fact that the penal statute is clear with respect to the treatment of "penalty" funds or other similar payments ordered by the Commission. Furthermore, I believe that the Commission's reliance on "incentive payments" is simply an exercise in semantics designed to circumvent Section No. 34-710 of the D.C. Code. I believe that the Commission lacks the authority to establish other means for enforcement of its rules and orders in this instance, other than by "fines, forfeitures, or penalties." This specific authority curtails the Commission's general powers pursuant to limiting language under Section No. 34-710. However, if the proper statutory authority does exist for this Commission act, then the funds collected through this process should rightfully be deposited in the District of Columbia General Fund pursuant to Section No. 34-710 of the D.C. Code. This is the case since Section No. 34-711 does not permit waiver of the District of Columbia's rights and interests in such Commission ordered payments as a matter of public policy set down by our legislative branch.

7. Since there is no statutory basis under sound statutory construction principles to deviate from this specific statutorily derived power, any payments for failure to comply with the rules and standards should be made to the General Fund to benefit all ratepayers generally. The consumers are ultimately impacted by Verizon's noncompliance with less competition. The CLEC should not be granted a windfall at the

[8] 22 Am. Jur. 2d Damages § 1.

expense of the ratepayers. This is the public policy behind the application of Section No. 34-710 for penal payments in general.

B. Issue 43.25: Discuss whether security measures are appropriate for protection of Verizon DC's remote terminal equipment enclosures? Please explain your answer fully. If your answer to the above question is yes, please propose appropriate security measures.

8. Verizon DC has argued that requiring security escorts is the only way to adequately protect its remote terminal equipment because it will not be able to separate its equipment from CLEC equipment in remote terminals. The Commission agrees that the small size of remote terminals will make it difficult, if not impossible, to separate CLEC equipment from Verizon DC equipment. Therefore, stricter security measures are needed to ensure the integrity of Verizon DC equipment, CLEC equipment, and the network in its entirety. Verizon DC and Sprint have agreed to a provision that will require Verizon DC security escorts and that CLECs will pay for the escorts. It appears that Verizon DC and Sprint have agreed that there are no other feasible alternatives to providing security escorts. No other party has objected to this proposal. However, the majority opines that the proposed security escort provision directly contradicts Federal Communication Commission ("FCC") rules; thus, the Commission cannot approve the security provisions in Section L, even though Sprint and Verizon have agreed to them. However, neither Verizon DC nor Sprint, nor both jointly, are given an opportunity to develop alternative security measures within 10 days of the date of this Order. Rather, the majority only directs Verizon DC to remove its security escort provision from Section 2.L.2 when it files its amended collocation filing within 10 days of the date of this Order. This leaves Verizon DC in the position of having no alternative security procedure or systems in place of security escorts.

9. While I agree with the majority that this Commission cannot order Verizon DC to take any action that is contrary to FCC rules, the majority opinion fails to provide any direction to the parties regarding how to resolve this matter. One possible recommendation that I support is that the parties could file a joint request for a waiver of the FCC rule regarding security escorts. In light of both the unique circumstances that exist within the Verizon DC central offices, and the fact that the parties in this proceeding have agreed to the use of security escorts, a waiver may be deemed reasonable and granted. Additionally, the parties could meet to discuss other interim solutions to this dilemma while the request for a waiver is pending before the FCC, and report back to this Commission regarding any proposals that may result from this effort.

III. THEREFORE, IT IS ORDERED THAT:

10. For the aforementioned reasons, I must respectfully dissent with the majority opinion in this order with respect to Issue Number 43.3 and Issue Number 43.25.

D.T.E. 02-45 December 12, 2002

Petition of Global NAPs, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration to establish an interconnection agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts.

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I. INTRODUCTION

This arbitration proceeding between Global NAPs, Inc. ("GNAPs" or "Global") and Verizon New England, Inc. d/b/a Verizon-Massachusetts ("Verizon") (collectively, "Parties") is held pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 252 ("Act").[1] By this Order, the Department of Telecommunications and Energy ("Department") makes findings necessary to finalize an interconnection agreement between the Parties.

Verizon is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts. GNAPs is a competitive local exchange carrier ("CLEC") with an approved tariff to provide local exchange service to residential and business customers throughout Massachusetts.

II. PROCEDURAL HISTORY

On July 30, 2002, GNAPs filed a Petition for Arbitration of an interconnection agreement with Verizon ("Petition"). Verizon responded to GNAPs' Petition on August 22, 2002 ("Response"). On September 4, 2002, the Department held a procedural conference and technical session. On September 10, 2002, the Parties filed direct testimony. GNAPs filed the testimony of William J. Rooney, Vice President and General Counsel of GNAPs; and Lee L. Selwyn, President of Economics and Technology, Inc. Verizon filed the testimony of Terry Haynes, Manager, State Regulatory Policy and Planning Group; Karen Fleming, Manager - Risk Management; Jonathan B. Smith, Executive Director - Local Interconnection Billing and

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1 Section 252(b) of the Act permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. 47 U.S.C. § 252(b)(1).

Wholesale Billing Support; William Munsell, Negotiator - Interconnection Contracts; and Peter J. D'Amico, Senior Product Manager - Interconnection Product Management Group. Pursuant to the arbitration schedule, the Parties filed a First and Second Stipulation of Issues on September 10 and September 25, 2002, respectively.[2] The evidentiary hearing was held on October 9, 2002, at which GNAPs presented its witness, Lee Selwyn, and Verizon presented Terry Haynes and Peter D'Amico as witnesses.[3] On October 17, 2002, the Parties filed record request responses.[4] Finally, on October 21 and 28, 2002, the Parties filed their initial and reply briefs, respectively.

The twelve issues for the Department's resolution are related to: (1) the designation of a single Point of Interconnection; (2) responsibility for the costs associated with transporting telecommunications traffic to the single Point of Interconnection; (3) the definition of local calling areas; (4) the use of virtual NXX codes; (5) the "change of law" provisions; (6) two-way trunking; (7) the appropriateness of incorporating by reference other documents into the interconnection agreement; (8) insurance requirements; (9) audit rights; (10) reciprocal

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2 The Parties did not reach any additional agreements in the Second Stipulation of Issues since the filing of the First Stipulation of Issues.

3 The Parties presented witnesses on only the first four issues raised in the Petition, and agreed to waive cross-examination on the remaining issues.

4 Also on October 17, 2002, pursuant to G.L. c. 25, § 5D, Verizon filed a Motion for Protective Treatment of Confidential Information contained in its responses to RR-DTE-4. The Department has reviewed the response to RR-DTE-4 and agrees that the data contained therein include specific customer proprietary information for Massachusetts and other Verizon states relating to Verizon's interstate Internet Protocol Routing Service ("IPRS") that may properly be protected from public disclosure under § 5D. Accordingly, the Department grants Verizon's motion.

collocation; (11) the "applicable law" provision; and (12) obligations during network upgrades and maintenance.[5]

III. STANDARD OF REVIEW

The standards for arbitrations by state commissions are set forth in 47 U.S.C. § 252(c), which states, in relevant part, that a state commission shall:

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission ("FCC")] pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to [section 252(d).]

Additionally, § 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Specifically, each ILEC has the duty:

> [T]o provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

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5 The first nine issues were presented by GNAPs in its Petition. Verizon raised the three additional issues in its Response.

IV. UNRESOLVED ISSUES

Each of the nine issues GNAPs presents to the Department contains a general policy question. The nine issues also present specific disputes over precise contract language. Many of these disputes Verizon challenges as unrelated to the broad policy questions identified. The three additional issues Verizon presents to the Department focus on specific contract language in dispute. As to the resolution of the issues presented by GNAPs, GNAPs requests that the Department render decisions only on the broad policy issues it identifies in its Petition, and then order the Parties to implement contract language embodying these policy decisions (GNAPs Petition ¶ 13). Verizon opposes this approach and asks the Department to rule on the specific contract language in dispute (Verizon Brief at 2).

Resolving the general policy issues and as many as we can of the particular contract language disputes is the better approach. Resolution of only the policy issues would leave a significant portion of the disputed contract language unresolved, and thus would only delay finalization of the Parties' interconnection agreement. Accordingly, in this Order, we seek to resolve all disputed contract language. At a minimum, we endeavor to provide sufficient direction to allow the Parties to resolve their differences.[6] Lastly, we note the Department will

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6 For contract language that we do not directly address, because, for instance, the record is insufficient to address, or, for contract language that cannot be resolved based upon the direction we provide in this Order, we direct the Parties to continue to negotiate these provisions with particular attention to any relevant policy findings contained herein. In the event that the Parties are unable to craft mutually-agreeable contract language for such provisions, if any, for submission during the compliance phase of this arbitration proceeding, each party shall present its proposed contract language and provide specific support for its position in the compliance filing.

review all modified contract language during the compliance phase of this proceeding.

A. Should Either Party be Required to Install More Than One Point of Interconnection ("POI") per LATA? (Arbitration Issue No. 1)

Should Each Party Be Responsible for the Costs Associated with Transporting Telecommunications Traffic to the Single POI? (Arbitration Issue No. 2)

1. Introduction

For Arbitration Issue No. 1, the Parties do not disagree that GNAPs has the right to designate a single POI[7] ("SPOI") per LATA. In fact, the Parties state that while they have reached conceptual agreement on this issue, they have not arrived at contract language to implement that agreement. See First and Second Stipulation of Issues.

Arbitration Issue No. 2 involves the issue of financial responsibility for transporting telecommunications traffic. GNAPs argues that each carrier is responsible for transporting telecommunications traffic to the GNAPs-determined SPOI and Interconnection Point[8] ("IP"). Verizon, however, argues that consistent with Department precedent, GNAPs must compensate Verizon, in accordance with prior Department orders, for GNAPs-originated traffic that Verizon transports from the SPOI to Verizon's multiple IPs located at its tandem or end offices.

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7 The POI is the point where Verizon's network physically interconnects with the CLEC's network (see Tr. at 23).

8 The IP is the "point on the terminating carrier's network from which the terminating carrier will provide transport and terminate on its network a call delivered by an originating carrier." See MediaOne/Bell Atlantic Arbitration, D.T.E. 99-42/43-A at 4, n.6 (March 15, 2001) ("MediaOne Supplemental Order"). In other words, the IP is the rating point that determines financial responsibility for transport and termination costs, including reciprocal compensation. See id.; see also Tr. at 24.

GNAPs contends that it is necessary to integrate Arbitration Issue Nos. 1 and 2 because "if the effect of Verizon's position on Issue 2 is to impose financial penalties on Global NAPs for electing a single point of interconnection, then [GNAPs] believe[s] that operates to undermine the true characterization of Verizon's position on Issue 1" (GNAPs Brief at 15, citing Tr. at 21). Because we find that Arbitration Issue Nos. 1 and 2 are intertwined, the Department addresses them together.

2. Positions of the Parties

a. GNAPs

GNAPs claims that each party should be responsible for transporting its own traffic on its side of the POI (GNAPs Brief at 14). According to GNAPs, the reciprocal compensation rules and the ISP Remand Order[9] "mirroring rule" prohibit imposition of a transport charge on intra-exchange traffic (id. at 16). GNAPs claims that Verizon should not be able to impose a transport charge on intra-exchange traffic above and beyond the reciprocal compensation it recovers because such an approach violates Rule 703(a)[10] and also constitutes double recovery (id. at 17). GNAPs further argues that because Verizon accepted the FCC's rate cap for traffic

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[9] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001) ("ISP Remand Order").

[10] Rule 703(a) states that "[e]ach carrier shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting carrier."

bound for Internet Service Providers ("ISPs"),[11] "Verizon is required to exchange its traffic at the FCC rate, and cannot impose additional transport charges" (id. at 18).

GNAPs cites to the Virginia Order[12] issued by the Wireline Competition Bureau of the FCC to support its position (GNAPs Brief at 18). According to GNAPs, the Virginia Order rejected Verizon's virtually geographically relevant interconnection points ("VGRIPs")[13]

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11 The FCC adopted an intercarrier compensation rate cap for ISP-bound traffic as an interim measure to resolve problems associated with the current intercarrier compensation regime for ISP-bound traffic. Specifically, the rate cap for ISP-Bound traffic applies "only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate." ISP Remand Order at ¶¶ 77, 89 (emphasis in original) (footnote omitted).

12 In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration; Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration; and Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., CC Dockets Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002) ("Virginia Order").

13 Under Verizon's VGRIPs proposal, geographically relevant CLEC-IPs would be located at a collocation site at each Verizon tandem office in a multiple-tandem LATA, at each Verizon end office in a single-tandem LATA, or at other Verizon-designated wire centers in LATAs with no tandem offices. Virginia Order at ¶ 37. VGRIPs is similar to Verizon's geographically relevant interconnection points ("GRIPs") proposal, which Verizon has proposed in Massachusetts and other jurisdictions in the past. GRIPs is based on the "proposition that the parties should exchange local traffic with each other within a reasonable geographic proximity to the terminating end user customer, defined by Bell Atlantic as a 'geographically relevant point.' According to Bell Atlantic, each party would be responsible for the transport to and from the geographically relevant point, and once traffic is delivered to an IP, reciprocal

(continued...)

proposal, i.e. that the CLEC be financially responsible for all transport between the SPOI and Verizon designated IPs, based on an interpretation that Verizon cannot assess charges on its side of the POI (id., citing Virginia Order at ¶ 53).

GNAPs acknowledges that Verizon's proposal in this proceeding differs from the one proposed in Virgina in that Verizon's proposal in Virginia "contemplated that the CLEC was responsible for all transport costs between the Verizon designated IP and the CLEC," while "Verizon's proposal here [in Massachusetts] simply requires that Global be responsible for all transport costs from Global to the Verizon designated IPs" (id. at 19). GNAPs claims that, notwithstanding this difference, Verizon's proposal in this proceeding "violates the reciprocal compensation rules and the reasoning of the Virginia Order applies" (id.).

Moreover, GNAPs claims that the authority on which Verizon relies for its position rests on orders that "generally predate the Virginia Order" (GNAPs Brief at 19). GNAPs states that the Virginia Order "dealt expressly with the transport issue and ruled in favor of the CLEC against imposition of transport charges" (id. at 21). GNAPs further argues that in arbitrations brought by GNAPs in New York, Illinois, Rhode Island, Connecticut, and Florida, the decisions have been uniformly against imposing transport charges on CLECs (id. at 23).

Additionally, GNAPs argues that "there is no reasonable basis for imposing transport costs on Global" because Verizon's size allows it to realize significant economies of scale and scope that make its transport costs de minimis (GNAPs Brief at 24). GNAPs further states that

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13 (...continued)
compensation charges would apply." D.T.E. 99-42/43, 99-52, at 10 (August 25, 1999) ("MediaOne") (citations omitted).

the use of fiber optics has caused the cost of transport to decline (id. at 24-25). GNAPs argues that Verizon seeks to impose transport charges that are in excess of its costs (id. at 26-27). In support of this position, GNAPs submits a "proxy model to evaluate the degree to which Verizon may be over-recovering its transport costs" (id.). GNAPs claims that the transport costs that Verizon seeks to impose are "excessive and discriminatory" and in violation of §§ 251(c)(2)(C) and (D) of the Act (id. at 27). GNAPs concludes by stating that requiring Verizon to pay for all transport on its side of the POI is consistent with rulings of other state commissions (id.).

b. Verizon

Verizon does not dispute that GNAPs has the option to designate a SPOI in the LATA within Verizon's network (Verizon Brief at 8). Verizon contends that GNAPs need only interconnect "at any technically feasible point within" Verizon's network, as required by applicable law (id., citing 47 U.S.C. § 251(c)(2)(B)). Verizon states that the Parties appear to have reached "substantive agreement" on this issue, yet GNAPs's contract proposals "do not confine GNAPs' choice of [POI] to any technically feasible point on Verizon's network" (id.) (emphasis in original).

On the other hand, Verizon claims that its proposed contract language permits GNAPs to physically interconnect with Verizon at a single point on Verizon's existing network (Verizon Brief at 7). Verizon further argues that its proposed language allows the Parties to establish IPs for purposes of determining financial responsibility in accordance with the Department's prior rulings (id. at 8). Verizon states that "the issue in dispute is whether

GNAPs must compensate Verizon in accordance with the Department's orders for GNAPs' originated traffic" (id. at 8-9).

Verizon argues that valid Department decisions support its position. Specifically, Verizon contends that the Department's Tariff No. 17 Order[14] and MediaOne Supplemental Order found that all local exchange carriers in Massachusetts are responsible for transporting their originating traffic all the way to the terminating end user or paying for transport provided by another carrier to accomplish the same (Verizon Brief at 9). Verizon further argues that the MediaOne Supplemental Order is "exactly on point in this issue" because Verizon and GNAPs are at present interconnected by an End Point Fiber Meet ("EPFM")[15] at GNAPs' Quincy switch (id., citing Exh. VZ-GNAPs-9). Verizon insists that, "[c]onsistent with [the MediaOne Supplemental Order], GNAPs is responsible for compensating Verizon for the transport of GNAPs' traffic that Verizon provides between the EPFM and Verizon's IP which, pursuant to Verizon's proposed contract language, will be located at Verizon's tandems or end offices serving the terminating end user" (id. at 10) (footnotes omitted).

Regarding GNAPs' argument that Verizon's transport costs are de minimis, Verizon states that this two-party arbitration is not the appropriate proceeding to reconsider the TELRIC-based unbundled network element ("UNE") rates for dedicated and common transport

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14 Tariff No. 17 Order, D.T.E. 98-57 (March 24, 2000) ("Tariff No. 17 Order").

15 An EPFM is a type of mid-span meet (see Verizon Brief at 10). For an EPFM, the POI is designated at the physical location of either the CLEC's or the ILEC's switching point; for a mid-span meet, the POI is designated on the transport facility between the CLEC's and ILEC's switching points (see Tr. at 48).

recently established in the Department's UNE Rates Order[16] (Verizon Brief at 11). Verizon states that the Department, in the D.T.E. 01-20 proceeding, conducted an extensive review of Verizon's costs and established new rates for unbundled dedicated and common transport (id.). Verizon claims that GNAPs, however, is apparently not satisfied with the results of the UNE Rates Order and seeks, in this arbitration proceeding, to collaterally attack the rates established in that order (id. at 11-12). Verizon argues that the Department should not reach conclusions in this proceeding contrary to those it recently reached in the rate proceeding specifically designed to examine Verizon's costs (id. at 12).

3. Analysis and Findings

Section 251(c)(2) of the Act requires the incumbent to provide for interconnection with the local exchange carrier's network:

> (A) for the transmission and routing of telephone exchange service and exchange access;
> (B) at any technically feasible point within the carrier's network;
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
> (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

Furthermore, the FCC established additional rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier.[17] These rules, which were identified by the Wireline Competition Bureau of the FCC in its Virginia Order, establish that:

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16 UNE Rates Investigation, D.T.E. 01-20 (July 11, 2002) ("UNE Rates Order").

17 See, e.g., In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶¶ 209, 1062 (rel. August 8, 1966) ("Local Competition Order").

(1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network;
(2) competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA;
(3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination; and
(4) competitive LECs may refuse to permit other ILECs to collocate at their facilities.

Virginia Order at ¶ 67 (footnotes omitted). Rules 1, 2, and 3 are at the crux of the Parties' dispute for Issues 1 and 2.

Before turning to the issues at hand, we find it appropriate to comment on the weight of the Virginia Order in this arbitration proceeding. The Wireline Competition Bureau of the FCC preempted the jurisdiction of the Virginia State Corporation Commission to arbitrate disputes between Verizon Virginia, Inc. and WordCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Inc., and issued its Virginia Order, standing in the stead of the Virginia State Corporation Commission. Thus, the Virginia Order is analogous more to another state commission decision than an order issued by the FCC.

As a general rule, the Department does not find other state commission decisions to be dispositive on proceedings conducted in Massachusetts. In fact, the Department "ordinarily place[s] little weight on the decisions reached in other states, since we rely for our decisions on the record presented here." Phase 4 Order[18] at 23.[19] But, the Virginia Order is unique.

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18 Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 4) (December 4, 1996) ("Phase 4 Order").

19 See also UNE Rates Order at 24 ("[T]he Department will not make findings on any issue based solely on the fact that another state (or any number of states) made a similar
(continued...)

Although the Wireline Competition Bureau explicitly stated that it was acting in place of the Virginia State Corporation Commission, we nonetheless find it reasonable to place greater weight on the Wireline Competition Bureau's interpretation on the intent and application of FCC rules than we would another state commission's interpretation of the same FCC rules, which we view as merely instructive. In addition, unlike most state arbitration decisions, the Wireline Competition Bureau of the FCC did not consider Virginia law when it rendered its decision. Thus, potential conflicts between another state's law and Massachusetts law are absent. Accordingly, we find the Virginia Order to be persuasive authority; however, we do not consider it binding on the Department because of the fact that it is not a mandate from the FCC.[20] With this in mind, we turn to Arbitration Issue Nos. 1 and 2.

GNAPs is entitled to interconnect at any technically feasible point, which includes the right to select a SPOI in each LATA. But, as noted above, the Parties do not dispute this. Rather, it is the issue of responsibility for transport costs on each carrier's side of the POI that is driving the dispute in Arbitration Issues No. 1 and 2.

As to the issue of financial responsibility raised in Arbitration Issue No. 2, GNAPs

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19 (...continued)
finding, however useful or instructive other states' actions may be").

20 In contrast, in D.P.U./D.T.E. 97-88/97-18-A [Phase II] (August 8, 2001) ("Payphone Reconsideration Order"), the Department found that the Common Carrier Bureau's decision in In the Matter of Wisconsin Public Service Commission Order Directing Filings, 14 FCC Rcd. 9978 (Com. Car. Bur. 2000) ("Wisconsin Order") was binding on state regulators, unless stayed or reversed. Unlike the Wisconsin Order, the Virginia Order is an arbitration decision issued by the Wireline Competition Bureau acting on behalf of the Virginia State Corporation Commission. Thus, we find it appropriate to consider it persuasive, but not binding, authority.

suggests that the Department's precedent on these issues, which predate the Virginia Order, no longer apply. GNAPs is wrong. The Virginia Order rejected Verizon's language requiring AT&T, Cox, and WorldCom to establish GRIPs or VGRIPs with Verizon at designated or agreed upon points on the carriers' networks. Virginia Order at ¶¶ 37, 51-53. This finding mirrors the Department's own finding which rejected Bell Atlantic's [now Verizon's] GRIP proposal in MediaOne by concluding that "neither the Act nor the FCC's rules require MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points." MediaOne at 41. Nevertheless, GNAPs' argument misses the mark, because Verizon proposes neither GRIPs nor VGRIPs in this arbitration -- an important point of distinction that GNAPs concedes (see GNAPs Brief at 19).

Accordingly, the Department's precedent on these issues is relevant and on point, as Verizon has argued. We further note that our precedent is in accord with Rule 3 contained in the Virginia Order, referenced above. The Department first articulated its policy of shared financial responsibility in MediaOne when the Department found that "[t]he FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules." MediaOne at 42. The Department elaborated in its Tariff No. 17 Order that:

> [W]here the parties interconnect and exchange traffic at a mid-span meet, Bell Atlantic would be forced to provide transport of its originating traffic up to the mid-span meet, and, for CLEC originating traffic, Bell Atlantic would have to provide transport from the mid-span meet to the Bell Atlantic end-user customers. In the latter case, reciprocal compensation payments only compensate Bell Atlantic for the portion of the call from Bell Atlantic's end

> office or tandem switch to the end-user customers -- Bell Atlantic's costs to transport CLEC-originated traffic from the mid-span meet to its end office or tandem switch are left "stranded."

Tariff No. 17 Order at 130-131. To resolve this transport cost recovery issue, the Department found as follows:

> Transport costs should be assigned in a competitively neutral manner. Carriers are responsible to provide transport or pay for transport of their originating calls, including reciprocal compensation, between their own originating and the other carrier's terminating end-user customers. This is regardless of where the carriers choose to physically interconnect. CLECs may decide where to interconnect with the LEC, but each carrier is responsible to transport its own traffic or to pay the costs of transporting its originating traffic all the way to the terminating end user. Carriers may choose the most efficient method to accomplish this task.

Id. at 133-134. The Department further explained that:

> In the MediaOne situation, if MediaOne chooses to interconnect with Bell Atlantic only at a single mid-span meet in the LATA, then MediaOne shall arrange or pay for transport of MediaOne-originated calls from the meet point to Bell Atlantic's end or tandem office.

MediaOne Reconsideration Order[21] at 16-17. Additionally, the Department stated in the MediaOne Supplemental Order that:

> Both carriers are responsible for delivering their traffic (either through self-provisioning or leasing another carrier's transport) from the Mid-Span Meet to the terminating carriers' appropriate interconnection point ("IP"), which may be located at a remote tandem or end office.

MediaOne Supplemental Order at 4, n.6. Our precedent is directly on point for Arbitration Issue Nos. 1 and 2, and the Department finds that GNAPs has not presented a convincing

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21 MediaOne/Greater Media/Bell Atlantic Arbitration, D.T.E. 99-42/43, 99-52 (March 24, 2000) ("MediaOne Reconsideration Order").

argument to disturb settled precedent.

GNAPs challenges Verizon's imposition of transport costs, alleging that these costs are de minimis and, based on a GNAPs-produced "proxy [cost] model," are in excess of Verizon's costs. The Department recently conducted an 18-month investigation into Verizon's UNE costs in the UNE Rates Order. Our investigation determined that Verizon's transport costs are not de minimis, as GNAPs would have us believe, and we are establishing transport rates accordingly. Moreover, we agree with Verizon that this two-party arbitration is not the appropriate proceeding to reconsider the TELRIC-based UNE findings in the Department's UNE Rates Order. Accordingly, we reject GNAPs' argument.

We now turn to the contract language raised by the Parties. First, the Department agrees with Verizon that Interconnection Attachment §§ 5.2.2 (Trunk Group Connections and Ordering) and 5.3 (Switching System Hierarchy and Trunking Requirements) are not related to any issue being arbitrated in this proceeding. Nor is there any record evidence upon which to make a determination. Accordingly, we make no findings on the disputed language in these provisions.

Second, Verizon's proposed definitions for IP and POI in Glossary §§ 2.46 (IP) and 2.67 (POI),[22] and its proposed language in Interconnection Attachment §§ 2.1.1 and 2.1.2, are consistent with the Department's precedent, as discussed above. For that reason, and the

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22 GNAPs refers to Glossary §§ 2.45 and 2.66 in its Petition, but these sections do not contain any disputed language. Therefore, the Department assumes GNAPs intended to refer to §§ 2.46 and 2.67, which do contain disputed text related to Arbitration Issue Nos. 1 and 2.

reasons discussed below, Verizon's proposed findings are adopted. GNAPs' proposed language attempts to make the IP and the POI one and the same, to give GNAPs the sole discretion in determining the IP for itself and for Verizon, and to shift the burden of transport costs onto Verizon, all in contravention of Department precedent. The IP is the financial demarcation point for termination and transport costs, including reciprocal compensation, while the POI refers to the physical point of interconnection; GNAPs' proposal confuses these concepts and is therefore rejected. Furthermore, GNAPs proposes, without explanation, to define the POI in Glossary § 2.67 by citing to 47 C.F.R. § 51.319(b) in which the FCC defines the Network Interface Device ("NID"). Because the definition of a NID has nothing to do with a POI, GNAPs' proposal is rejected.

Third, GNAPs' proposed language in Interconnection Attachment § 7.1.1.1 attempts to force Verizon to accept as its IPs, for the delivery and termination of reciprocal compensation traffic to Verizon's customers, those IPs that GNAPs selects for itself. That proposal is in violation of our precedent. Verizon's proposal, however, is consistent with Department precedent in that each carrier has the right to select its own IPs for this traffic. Accordingly, we adopt Verizon's language.

Similarly, we find GNAPs' proposal, to strike in its entirety Interconnection Attachment § 7.1.1.2, to be more consistent with Department policy. More precisely, Verizon's proposal seeks to circumvent Department precedent by forcing GNAPs to forfeit its right to select its IP or IPs. For instance, if GNAPs establishes a collocation site at a Verizon end office wire center, GNAPs may elect, at its sole discretion, that such collocation site be established as the

GNAPs IP for traffic originated by Verizon customers served by that end office. Verizon, however, may not dictate that GNAPs designate this collocation arrangement as its IP for Verizon-originated traffic. Accordingly, we adopt GNAPs' proposal.

Additionally, we find that GNAPs' proposal for Interconnection Attachment § 7.1.1.3 is more consistent with our precedent, as well as with our findings on Interconnection Attachment §§ 7.1.1.1 and 7.1.1.2, which permit each party to choose its own IP. Verizon's proposed § 7.1.1.3 seeks to force GNAPs to forgo a portion of the intercarrier compensation to which it is entitled if an agreement to transition pre-existing GNAPs IPs to IPs that conform to Interconnection Attachment § 7.1.1.1[23] is not reached within 30 days. But, we see no basis under such circumstances to impose a financial penalty for the transition of existing IPs, which were presumably properly established between the Parties. Accordingly we adopt GNAPs' proposed language.

Finally, the Department adopts Verizon's proposed language in Interconnection Attachment §§ 3.4 and 3.5 regarding alternative interconnection arrangements; namely, end point meet arrangements. Given the number of technical and operational aspects that can vary between two different end point meet arrangements, a case-by-case approach is preferable to the boilerplate language that GNAPs proposes and also is consistent with Department and FCC precedent. See MediaOne at 39; Local Competition Order at ¶ 553.

B. Should Verizon's Local Calling Area Boundaries be Imposed on GNAPs, or May GNAPs Broadly Define its Own Local Calling Areas? (Arbitration Issue

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23 Verizon's proposed language also requires the IPs to conform with § 7.1.1.2, which we rejected above.

No. 3).

1. Introduction

Arbitration Issue No. 3 concerns whether Verizon's local calling areas[24] are binding on GNAPs on a retail and wholesale basis. GNAPs proposes to offer LATA-wide local calling to its customers; however, the Parties disagree as to whether Verizon's proposed language would bar GNAPs from offering LATA-wide retail calling areas, and whether, for the purpose of intercarrier compensation, GNAPs-originated LATA-wide traffic is properly considered local or toll.

2. Positions of the Parties

a. GNAPs

GNAPs argues that it should be permitted to define its own local calling areas because there is no economic or technical reason for local calling areas to be smaller than a LATA (GNAPs Petition ¶ 41; Exh. GNAPs-1, at 62). But, GNAPs contends, Verizon's proposed Template Agreement forces GNAPs to adopt an inefficient network architecture and prevents GNAPs from offering an economically-viable LATA-wide local calling area service (GNAPs Petition ¶ 44). GNAPs asserts that it is not attempting to dictate the manner in which Verizon divides its retail offerings into "local" and "toll," and thus, by the same token, Verizon should not be permitted to force GNAPs to mirror Verizon's calling areas (id. ¶ 42).

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24 A "local calling area" is the area within which a customer with basic exchange service can place a call without incurring a toll charge. The Department has defined local calling areas as comprising a customer's home and contiguous exchanges. See New England Telephone and Telegraph Company, D.P.U. 89-300, at 69-70 (1990) ("D.P.U. 89-300").

Moreover, GNAPs argues that the ISP Remand Order established a new regulatory regime that controls all of the intercarrier compensation issues in this arbitration (GNAPs Brief at 5). GNAPs asserts that under the ISP Remand Order, all telecommunications traffic that is not exchange access or information access traffic is subject to the reciprocal compensation rules (id.). GNAPs contends that because the Act defines exchange access traffic or toll traffic as traffic that is subject to a separate toll charge imposed by the originating carrier, and because GNAPs proposes to offer its customers LATA-wide retail calling areas without the imposition of a separate toll charge, GNAPs-originated calls from one end of a LATA to the other are therefore local calls subject to reciprocal compensation and not to the imposition of access charges by Verizon (Exh. GNAPs-1, at 51; GNAPs Reply Brief at 10).

Consequently, GNAPs contends that Verizon's proposal violates the ISP Remand Order by imposing access charges on local calls (GNAPs Brief at 44). More specifically, GNAPs asserts that traffic originated by GNAPs' customers and terminated by Verizon is reciprocal compensation traffic, not subject to the imposition of access charges (Exh. GNAPs-1, at 53; GNAPs Brief at 45). In addition, GNAPs argues, when Verizon picks up a GNAPs-originated call at the SPOI and delivers it to its own customer within the LATA, Verizon is wholly compensated through the assessment of reciprocal compensation (GNAPs Brief at 46).

GNAPs further argues that the ISP Remand Order "mirroring rule" prohibits Verizon from imposing an additional origination or transport charge on reciprocal compensation traffic (GNAPs Brief at 12). GNAPs asserts that Verizon has adopted the FCC's rate caps for ISP-bound traffic, and therefore the mirroring rule requires that the FCC's rate caps apply to all intercarrier compensation on reciprocal compensation traffic exchanged with GNAPs (id. at 13). Furthermore, GNAPs argues that because Verizon has consistently argued that competition rather than regulation should control its offerings and prices, Verizon should not now be permitted to retreat behind its calls for a generic proceeding (Exh. GNAPs-1, at 58).

b. Verizon

Verizon states that it accepts GNAPs' right to define its own local calling areas for its retail customers (Verizon Response ¶ 47; Verizon Brief at 29). But, Verizon contends, the real dispute in Issue 3 is the manner in which local calling areas are defined for the purpose of intercarrier compensation, which the Department has already addressed (Verizon Response ¶ 47; Verizon Brief at 29). Specifically, Verizon states that Federal law gives state commissions the authority to determine local calling areas for the purpose of intercarrier compensation (Verizon Response ¶ 51; Verizon Reply Brief at 8). Verizon states that the Department, however, has not done so, but instead determined, in the Phase 4-B Order,[25] that arbitration proceedings are not the proper forum for considering changes to Verizon's existing tariffed local calling areas because local calling areas present issues of great complexity suitable only for generic proceedings (Verizon Response ¶ 47, citing Phase 4-B Order at 9). Verizon

[25] Consolidated Petitions of New England telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., *pursuant to Section* 252(b) of the Telecommunications Act of 1996, for Arbitration of Interconnection Agreements between NYNEX and the Aforementioned Companies, Order on Motion by TCG for Reconsideration, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 2B) (Phase 4B), (May 2, 1997) ("Phase 4-B Order").

argues that relying on the results of a two-party arbitration to order a change in Verizon's local calling areas for the purpose of intercarrier compensation would be inconsistent with this Department precedent (Exh. VZ-2, at 4; Verizon Reply Brief at 8). Verizon claims that GNAPs' Petition and proposed contract changes add nothing to the Department's previous analysis and thus should be rejected (Verizon Response ¶ 47).

Verizon argues that for practical implementation and compliance with Federal law, calling areas must be symmetrical for the purpose of intercarrier compensation (Verizon Brief at 32). Verizon contends that asymmetrical calling areas would give rise to regulatory arbitrage, where a carrier could pay low reciprocal compensation rates for its customers' outbound calls, but collect a higher access rate for its customers' inbound calls (Exh. VZ-2, at 17; Verizon Brief at 32). Verizon asserts that implementation of GNAPs' proposal would significantly impact its compensation structure and therefore its ability to act as the carrier of last resort, a fact recognized by the Rhode Island Public Utilities Commission (Verizon Brief at 32). Verizon avers that GNAPs' proposal could amount to a Verizon subsidy of GNAPs' operations, a likelihood acknowledged by the New York Public Service Commission (id. at 35).

Finally, Verizon argues that the "mirroring rule" in the ISP Remand Order does not apply to this case because the mirroring rule requires Verizon to offer to exchange reciprocal compensation traffic at the FCC's interim ISP traffic rates, and also requires GNAPs to accept Verizon's offer, which GNAPs has not done (Verizon Reply Brief at 9). In fact, Verizon maintains that the Parties have agreed not to exchange § 251(b)(5) traffic at the same rates as

ISP-bound traffic, and GNAPs should not be heard to argue otherwise (id. at 11).

3. Analysis and Findings

The issue in this case is not whether GNAPs must mirror Verizon's calling areas on a retail basis. Verizon has stated that GNAPs is free to determine its own retail calling areas, and GNAPs has not identified, nor could the Department find, any language in the contract that would prevent GNAPs from offering its retail customers whatever retail calling plans it chooses.

The issue is, simply, how to define a local calling area for the purpose of intercarrier compensation. On this question, Department precedent is clear. The Department has already considered and rejected a request to alter Verizon's local calling areas in a two-party arbitration. In Phase 4-B of the Consolidated Arbitrations, Teleport Communications Group, Inc. ("TCG") advanced the same argument as that advanced by GNAPs in this arbitration, that forcing CLECs to abide by Verizon's (then NYNEX) local calling areas for the purpose of intercarrier compensation would have anti-competitive effects, and that TCG should be free to define its own local calling area for both its retail customers and for its intercarrier compensation regime with Verizon. See Phase 4-B Order at 4-5.

The Department rejected TCG's argument on the grounds that a change to Verizon's local calling areas had far-reaching consequences and was an issue of such complexity that resolution through a two party arbitration would be inappropriate. Phase 4-B Order at 8. In contrast, the existing local calling structure established in D.P.U. 89-300 was the result of a proceeding in which all interested Parties had the opportunity to comment; any change to this structure must be deliberated in a similarly open forum. As discussed below, there has been no change in law at the Federal level that would require a reconsideration of the Department's findings in its Phase 4-B Order. Nor has GNAPs advanced any other arguments that the Department has not considered and rejected before. GNAPs has, therefore, presented no basis upon which the Department should depart from its precedent.

In D.P.U. 89-300, the Department balanced customers' interests in having the largest local calling areas possible against the advantages of a comprehensive state structure for local calling areas that was cost-based and fair, that ensured rate continuity for customers and earnings stability for Verizon (then New England Telephone), and that protected universal service. The Department determined that a reasonable local calling area would consist of a customer's home and contiguous exchanges. D.P.U. 89-300, at 69-70.

Although GNAPs argued in its Brief that the ISP Remand Order "changed everything" regarding intercarrier compensation and the distinctions between local and toll, GNAPs did not advance, nor could the Department find, any basis on which the Department's prior conclusions regarding local calling areas was changed by the ISP Remand Order or any other FCC decision. The ISP Remand Order explicitly recognized that intrastate access regimes in place prior to the Act remain unchanged until further state commission action. ISP Remand Order at ¶ 39. Furthermore, the ISP Remand Order continues to recognize that calls that travel to points beyond the local exchange are access calls. Id. at ¶ 37. In addition, the FCC, when striking the term "local traffic" from its rules, recognized that there is a difference between a call being geographically local and merely rated as local. The FCC explicitly recognized that the term "local" is not statutorily defined and that its use created considerable ambiguity as to whether what is being referred to is a locally rated call or a jurisdictionally local call. Id. at ¶¶ 45, 46. As such, the ISP Remand Order has no impact on the calling area structure implemented by the Department in D.P.U. 89-300.

While low-priced LATA-wide calling may be an attractive option to many consumers, it appears that GNAPs' ability to offer this service on an economical basis is contingent upon the alteration of the access regime, which is not an appropriate subject for investigation in a two-party arbitration.

For the reasons discussed above, while GNAPs is free to offer its customers whatever retail calling areas it chooses, GNAPs is required to follow Verizon's Department-established local calling areas for the purpose of intercarrier compensation. Although a call from Plymouth to Pepperell might not "feel" like a toll call to a GNAPs customer if GNAPs does not assess a separate charge for that call, the call is still a toll call for the purpose of intercarrier compensation, and GNAPs is required to pay access charges. The Department's conclusion is consistent with the FCC's holding that intrastate access regimes in place prior to the Act will continue to be enforced until altered by state commissions. See ISP Remand Order at ¶ 39. On this record, we decline GNAPs' invitation to alter the existing access regime.

Turning to the specific contract language related to this issue, we find as follows. For Glossary §§ 2.34 (Extended Local Calling Scope Arrangement), 2.48 (IXC), 2.57 (Measured Internet Traffic, 2.76 (Reciprocal Compensation Traffic), 2.92 (Toll Traffic); Interconnection Attachment §§ 2.2.1.1, 2.2.1.2 (Trunk Types), 7.3.3, 7.3.4 (Traffic Not Subject to Reciprocal

Compensation), and 13.3 (Number Resources, Rate Center Areas and Routing Points), we find that GNAPs' proposals improperly equate local calling with flat-rated toll and would permit GNAPs to alter Verizon's local calling areas for the purpose of intercarrier compensation. Because GNAPs' proposals are in violation of Department precedent and policy with regard to the definition of local calling, Verizon's proposed language is adopted.

With regard to Glossary § 2.84 (Switched Exchange Access Service), Verizon's proposed language offers a detailed description of the service. Because GNAPs did not explain why Verizon's proposed language is unreasonable, or offer descriptive language of its own, we adopt Verizon's proposal.

We find that the provisions in Glossary §§ 2.47 (Integrated Services Digital Network), 2.56 (Main Distribution Frame), 2.77 (Retail Prices), 2.83 (Switched Access Summary Usage Data), and 2.91 (Third Party Claim); and Interconnection Attachment § 7.1 (Reciprocal Compensation Traffic Interconnection Points) do not appear to be relevant to Issue 3. The Department makes no finding concerning language for these provisions. Similarly, the Department makes no finding concerning language in Interconnection Attachment § 6.2 (Traffic Measurement and Billing over Interconnection Trunks) because, despite having been referenced in GNAPs' Petition, this provision does not appear to be in dispute.

C. <u>Can GNAPs Assign to its Customers NXX Codes that are "Homed" in a Central Office Switch Outside of the Local Calling Area in Which the Customer Resides?</u> (Arbitration Issue No. 4)

1. Introduction

A virtual NXX ("VNXX") is an NXX that is assigned to a central office switch outside of the customer's local calling area. VNXX service is designed to allow customers in the "virtual exchange" to place calls to the VNXX customer as if that customer had a physical presence in the virtual exchange, and the calls therefore appear local to the calling party. The Parties disagree whether Verizon's proposed language would bar GNAPs from assigning VNXX numbers to its customers, whether VNXX calls are local or toll, and whether they are subject to reciprocal compensation rules or to the access charge regime.

2. Positions of the Parties

a. GNAPs

GNAPs argues that the primary function of NXX codes is routing, not rating, and that NXX codes no longer need to be associated with any particular geographic location (GNAPs Reply Brief at 13). Consequently, GNAPs states, the use of VNXXs will allow it to offer its retail customers wide local calling areas, similar to the calling areas currently enjoyed by wireless customers (GNAPs Petition ¶ 49).

Furthermore, GNAPs argues that because of advances in telecommunications technology, particularly fiber optics transmission systems, distance is no longer a cost driver in telephone calls, and the distinction between "local" and "toll" is obsolete (Exh. GNAPs-1, at 73; Tr. at 112). GNAPs contends that the classification of Foreign Exchange[26] ("FX") traffic

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26 Foreign Exchange service provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area. In its simplest form, a user picks (continued...)

as "local" or "toll" is determined according to the called and calling party's NXXs, not the physical location of the customers (Tr. at 73; GNAPs Brief at 33). GNAPs asserts that Verizon's FX service is essentially the same as the VNXX service that GNAPs proposes to offer its customers (Exh. GNAPs-1, at 69; GNAPs Petition ¶ 53). Accordingly, GNAPs contends, because VNXX serves the same function as FX, VNXX calls must be classified as local or toll in the same manner (GNAPs Brief at 34). Additionally, GNAPs argues that ILECs sometimes offer FX service without the use of dedicated facilities, which is what GNAPs is doing: offering FX service without the use of dedicated facilities (Exh. GNAPs-1, at 78; Tr. at 76-77).

GNAPs further argues that if Verizon billed its own traffic based on the physical locations of the calling and called parties rather than by NXXs, Verizon would have to segregate its FX traffic in order to avoid billing toll charges, but it now does not do so (GNAPs Brief at 35). GNAPs argues that there is no readily available information that tells a carrier the physical location of a called or calling party, nor does there need to be, because there are no additional costs imposed when VNXX is used (id.). GNAPs asserts that this lack of information was the basis upon which the Wireline Competition Bureau of the FCC rejected Verizon's proposal to classify calls based on the geographic end points of the call in the Virginia Order (id. at 35-36). GNAPs contends that because VNXX traffic is not subject to

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26 (...continued)
up the phone in one city and gets dial tone in another city. He will also receive calls dialed to the phone in the foreign city. This means that users in the foreign city can place a local call to get the user. Newton's Telecom Dictionary (17^{th} Edition).

the imposition of a toll charge, it is therefore local traffic subject to reciprocal compensation, and not subject to the imposition of access charges by Verizon (id. at 32).

GNAPs also asserts that Verizon should not be allowed to impose access charges on VNXX traffic, as VNXX service does not impose any additional transport costs on Verizon or cause Verizon to lose toll revenue (GNAPs Brief at 36, 37). GNAPs asserts that GNAPs' VNXX service imposes no additional charges on Verizon, because Verizon's work is done when it hands the call off to GNAPs at the *SPOI* (id. at 47). GNAPs argues that because Verizon itself offers VNXX service to its customers, it would be discriminatory to allow Verizon to impose access charges on VNXX traffic (id. at 38). GNAPs avers that Verizon's proposal turns the current "calling party's network pays" ("CPNP") regime "on its head" by seeking to impose access charges on VNXX calls when Verizon is already being compensated by its customers through its retail rates (id. at 40).

Moreover, GNAPs asserts that Verizon's 500-number Internet Protocol Routing Service/Single Number Service ("IPRS/SNS")[27] is unlike Verizon's traditional FX service, in that the IPRS customer only pays Verizon transport for the distance between the IPRS "hub" and the IPRS customer (GNAPs Brief at 41). GNAPs contends that its use of VNXX service allows it to compete with Verizon's IPRS service (Exh. GNAPs-1, at 83, 105; GNAPs Brief at 42).

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27 With IPRS service, a Verizon end-user dials a number to connect to the ISP who subscribes to the IPRS service. The call is routed through the end-user's local Verizon central office and then connected to a Verizon IPRS hub. At the IPRS hub the call is handed off to the ISP via a dedicated link separately purchased by the ISP. See Exh. GN-VZ 1-13.

GNAPs further argues that it plays a major role in providing local dial-up access for Massachusetts ISPs, and if GNAPs was not permitted to offer its customers locally-rated inbound calls, through the use of VNXX, hundreds of thousands of residences and small businesses would lose access to dial-up internet access until their ISPs migrate to another carrier (Exh. GNAPs-1, at 68). GNAPs also argues that many of its ISP customers collocate their internet gateway equipment in GNAPs' central office buildings, and if GNAPs ceases offering VNXX service, these ISPs will have to seek another location for their equipment (id.).

Finally, GNAPs asserts that Verizon has not provided sufficient evidence of a workable solution to show that it has surmounted the VNXX billing problems identified by the FCC in the Virginia Order (GNAPs Brief at 44).

b. Verizon

Verizon asserts that it does not object to GNAPs assigning VNXX numbers to its customers (Tr. at 131-132). Rather, Verizon states that it objects to the goals of GNAPs' proposed VNXX service, which are to: 1) require Verizon to pay GNAPs reciprocal compensation for interexchange calls; and 2) deprive Verizon of the access charges it is entitled to for such toll calls (Verizon Response ¶ 67).

Contrary to GNAPs' contentions, Verizon argues that NXXs continue to serve both a routing and a rating purpose within the industry, as each NXX is assigned to a switch for routing and a rate center for rating purposes (id. ¶¶ 68-70). Verizon avers that GNAPs' proposed VNXX service is a substitute toll-free calling service which enables a Verizon customer to call a GNAPs VNXX customer without paying a toll charge, as if GNAPs had assigned its customer an 800 number (Verizon Brief at 41). Verizon argues that this expands a Verizon customer's local calling area without compensating Verizon for transport outside of its local calling area (id.). Verizon asserts that local calling areas are defined by localities and exchanges, not by NXXs, and that the FCC confirmed that number assignment does not control intercarrier compensation (id. at 42 n.123, 43).

Verizon also disputes GNAPs' claim that VNXX is the same as Verizon's FX service (Verizon Response ¶ 92). Verizon asserts that when it offers FX, the FX customer pays Verizon for transporting the FX customer's calls from the foreign exchange where the NXX is "homed" to the FX customer's location (Exh. VZ-2, at 42; Verizon Response ¶ 92). Verizon further asserts that, with FX service, the FX customer has a dedicated line from the foreign exchange to their physical location, and if the FX customer wants to have FX service from more than one rate center within a LATA, the FX customer is required to pay Verizon higher monthly charges in order to compensate Verizon for transport from additional rate centers (Exh. VZ-2, at 43; Verizon Response ¶ 93). Verizon argues that its FX offering merely shifts payment responsibility from one user to another as a convenience to the called party (Exh. VZ-2, at 26; Verizon Brief at 45).

However, Verizon argues, under GNAPs' proposed VNXX offering, GNAPs expects Verizon to provide transport for free, and to pay reciprocal compensation to GNAPs (Verizon Response ¶ 92). Verizon argues that unlike FX, where Verizon is compensated by the called party for the service, GNAPs' VNXX service would provide GNAPs with all of the compensation while requiring Verizon to provide transport for free (Verizon Brief at 45).

Verizon also argues that GNAPs' VNXX service is not analogous to Verizon's IPRS service, because its IPRS service includes a charge for transport (Tr. at 135). In addition, Verizon states that it deploys hubs as close as geographically possible to concentrations of calling parties, and that more than 80 percent of the IPRS traffic is terminated at the hubs on a local basis (id.). Verizon asserts that GNAPs is attempting to use Verizon's network to provide toll-free interexchange calling to Verizon customers and then charge Verizon for that privilege (Verizon Brief at 44).

Moreover, Verizon argues that, contrary to GNAPs' assertion, VNXX does not represent state of the art technology, because carriers have been offering toll-free service for decades, and there is nothing in GNAPs' VNXX proposal that can be considered new from a technological perspective (Exh. VZ-2, at 33). Verizon asserts that the vast majority of states that have considered GNAPs' VNXX proposal have rejected it, including Ohio, Illinois, California, Florida, Pennsylvania, Texas, South Carolina, Tennessee, Connecticut, Georgia, Maine, Missouri, and Nevada (Verizon Brief at 46).

Finally, Verizon claims it has developed a plan for the proper rating of VNXX calls. Specifically, Verizon states that the plan would require a CLEC to either submit a list of VNXX numbers to Verizon, or conduct a billing study which would allow Verizon to estimate the amount of traffic being delivered to CLEC VNXX numbers (Exh. VZ-2, at 41; Tr. at 166-167). Therefore, Verizon urges the Department to adopt Verizon's proposed contract language.

3. Analysis and Findings

This issue, like issue 3, turns on the distinction between "local" and "toll." Because Verizon does not dispute GNAPs' ability to assign NXXs as it chooses, the question of whether GNAPs may assign to its customers VNXXs "homed" in rate centers outside of the local calling area where the customer resides is not before us. GNAPs did not identify, nor could the Department find, any proposed language which would explicitly bar GNAPs from offering VNXX. Rather, the issue before the Department is similar to Issue 3, namely, whether GNAPs' VNXX service is properly considered local or toll, and whether it is subject to reciprocal compensation rules, or to the existing access regime. For the reasons discussed below, we find that VNXX calls will be rated as local or toll based on the geographic end points of the call.

First, although GNAPs testified at the hearing that Verizon's Tariff No. 10[28] contains a list of NXXs which define local calling areas, GNAPs did not provide this list as part of its Exhibit 3, nor does the Department find such a list in Tariff No. 10. Tariff No. 10 does contain, however, a list of the exchanges and municipalities that make up the local calling area for each Massachusetts exchange.[29] Verizon's Tariff No. 10 defines local calling areas in terms of municipalities and geographic areas, not in terms of NXXs. GNAPs' proposal, however, by assigning non-geographic NXXs, would make intraLATA toll calls originated by Verizon customers appear as local calls to both the calling party and the Verizon switch, depriving

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28 Tariff No. 10 contains the terms, conditions and rates at which Verizon offers exchange and network services.

29 Tariff No. 10, Part A, Section 6.1.

Verizon of toll charges for which it has an approved tariff, and enabling GNAPs to claim entitlement to reciprocal compensation for having terminated what is actually a toll call.

Second, GNAPs' argument that its proposed VNXX service is indistinguishable from Verizon's FX service, and therefore entitled to the same treatment, is unpersuasive. Verizon's FX service uses dedicated facilities to transport FX traffic to the FX customer's location, and the FX customer pays Verizon for the cost of transporting that traffic (Exh. VZ-2, at 42). Thus, the cost of FX service to the FX customer grows more expensive as the customer elects to receive calls from additional foreign exchanges. FX service does not alter the traditional definitions of local and toll, it merely shifts responsibility for paying the toll charge to the called party (id. at 26). Although GNAPs argued that ILECs in other states offer FX service without the use of dedicated facilities, GNAPs provided no evidence that Verizon offers FX service without the use of dedicated facilities in Massachusetts. Record evidence points exclusively the other way (id. at 42). Nor did GNAPs provide evidence that ILECs offering FX service without the use of dedicated facilities were not compensated for transporting the traffic to the FX customer. Accordingly, we give little weight to GNAPs' assertions on this point.

Similarly, GNAPs' VNXX service is readily distinguishable from Verizon's IPRS service. With IPRS, calls are routed to a hub, and the IPRS customer pays Verizon for transport from the hub to its location. Because Verizon only receives compensation for transporting traffic from the hub, it has an economic incentive to build as many hubs as possible, as close to the IPRS customer's calling parties as possible, which Verizon has indeed done. More precisely, 80 percent of IPRS traffic is local when it terminates at the hub (Tr. at

135).

Third, Verizon has proposed a solution to the billing of VNXX calls, which had not been considered by the Wireline Competition Bureau of the FCC (id. at 168-169). Verizon's proposed solution provides alternative methods by which carriers might work collaboratively to determine the geographic end points of a call, thus properly rating VNXX calls as local or toll. The Department finds that Verizon's proposed plan for rating VNXX calls as local or toll is responsive to the billing concerns raised by the Wireline Competition Bureau in the Virginia Order.[30] While the Department anticipates that it may eventually be called upon to help the Parties work out some of the details in Verizon's proposed plan for properly rating VNXX calls, an initial difficulty in implementation is not sufficient reason to forfeit any hope of the eventual proper rating of these calls. Indeed, when a carrier seeks to offer a service that complicates enforcement of the existing access regime, it is appropriate to require that carrier to work cooperatively with other carriers involved to ensure that the other carriers are duly compensated for their roles in carrying the traffic generated as a result of that service. To do otherwise would be to permit a de facto alteration of Verizon's local calling areas, which the Department has already determined to be an inappropriate topic for a two-party arbitration. We find Verizon's proposal to be an acceptable starting point to develop the cooperative billing process necessary to properly rate VNXX calls. Accordingly, we direct the Parties to submit, as part of the compliance filing, contract language that incorporates one or both of Verizon's

30 As noted, supra, because the FCC's Wireline Competition Bureau was standing in the place of the Virginia Commission in issuing the Virginia Order, the Virginia Order is persuasive authority, but is not binding on the Department.

proposed solutions.

In the Department's discussion of Verizon's local calling areas, supra, the Department rejected GNAPs' attempt to change Verizon's wholesale local calling areas as inappropriate for resolution in a two-party arbitration. GNAPs' VNXX proposal is even more ambitious, in that it would change both Verizon's wholesale and retail calling areas. The Department will not make such significant changes in a two-party arbitration. If GNAPs cannot ensure that all LECs, including Verizon,[31] have access to the geographic end point data necessary to properly rate a call as local or toll, and are properly compensated, then GNAPs cannot provide virtual NXX service to its customers.

GNAPs indicated that it serves a large number of Massachusetts ISPs through VNXX, and indicated further that GNAPs will have to stop serving these ISPs if GNAPs is prevented from offering locally-rated inbound calling via VNXX. If so, it appears that GNAPs' ability to serve ISPs is the result of merely shifting transport costs to other LECs and of billing reciprocal compensation for completing calls that are properly rated as toll. Unlike Verizon's IPRS service, where Verizon has an economic incentive to deploy as many new facilities as possible, GNAPs' VNXX would artificially shield GNAPs from the true cost of offering the service and will give GNAPs an economic incentive to deploy as few new facilities as possible. By artificially reducing the cost of offering the service, GNAPs will be able to offer an artificially low price to ISPs and other customers who experience heavy inbound calling. The VNXX

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31 Verizon no longer has a monopoly on the residential market, thus Verizon is unlikely to be the only carrier whose customers call GNAPs' VNXX numbers.

customers will be able to offer an artificially low price to their calling party subscribers, thus sending inaccurate cost signals to the calling parties concerning the true cost of the service. The result would be a considerable market distortion based on an implicit Verizon subsidy of GNAPs' operations. While this decision may frustrate GNAPs' ability to offer VNXX under the same financial terms which it may to this point have enjoyed, this decision does not explicitly bar GNAPs from offering VNXX service.

Although the Wireline Competition Bureau approved a VNXX proposal similar to GNAPs' proposal, this approval was based upon the narrow ground that there was no technically feasible manner of determining the geographic end points of a call, and therefore no alternative but to rate calls according to the originating and terminating NXXs. Virginia Order at ¶¶ 301-302. As discussed above, Verizon has proposed alternative methods for determining the geographic end points of calls, and the Department finds that Verizon's proposal is responsive to the concerns raised in and consistent with the Virginia Order.

Turning to the contract language in dispute, we find that Glossary §§ 2.71 (Purchasing Party) and 2.77 (Retail Prices), referenced in GNAPs' Petition, are not relevant to Issue 4.[32] Accordingly, the Department makes no finding concerning language for these provisions. As to Glossary §§ 2.72 (Rate Center Area), 2.73 (Rate Center Point), and 2.76 (Reciprocal Compensation Traffic); and Interconnection Attachment § 13 (Number Resources, Rate Center Areas and Routing Points), we find that Verizon's contract language is in keeping with the Federal and Department policy concerning the distinctions between local and toll and the

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32 We believe GNAPs incorrectly identified these contract sections.

operation of the access regime. Accordingly, consistent with the discussion above, Verizon's proposed language is adopted.

D. Should the Agreement Include Language that Expressly Requires the Parties to Renegotiate Reciprocal Compensation Obligations if Current Law is Overturned or Otherwise Revised? (Arbitration Issue No. 5)

1. Introduction

GNAPs seeks an express and specific change of law provision concerning reciprocal compensation, in the event of a future reversal or modification to the FCC's ISP Remand Order. Verizon contends that its standard change-in-law language provides for such a contingency.

2. Positions of the Parties

a. GNAPs

GNAPs argues that Verizon's proposed contract language, which acknowledges GNAPs' right to renegotiate reciprocal compensation obligations if the current law is overturned or otherwise revised, is inadequate because it "does not directly pertain to the ISP Remand Order as the Interconnection Agreement does not deal with compensation for ISP bound traffic" (GNAPs Brief at 54). According to GNAPs, the ISP Remand Order deserves "special attention" because it is currently being revisited by the FCC and its outcome is uncertain (id.). GNAPs does not provide explicit contract language on this issue, but instead requests a policy determination from the Department (id. at 53).

b. Verizon

Verizon argues that the agreed upon change-in-law provisions contained in General

Terms and Conditions §§ 4.5 and 4.6 "squarely address any future reversal or modification to the ISP Remand Order and, thus, there is no need for a specific niche provision that would address the ISP Remand Order" (Verizon Brief at 57). Moreover, Verizon states that GNAPs' counsel conceded this point during the arbitration hearing (id., citing Tr. at 179).

3. Analysis and Findings

GNAPs and Verizon appear to agree that a judicial reversal or modification of the ISP Remand Order may require renegotiation of the affected provisions of their interconnection agreement. At issue is whether the ISP Remand Order deserves "special attention" above-and-beyond Verizon's standard change-in-law language. As noted by Verizon, in response to a question from the Department, GNAPs' counsel conceded that specific focus on the ISP Remand Order was not necessary when he stated that "[i]n other states where we have not prevailed on this issue for one reason or another, we are of the opinion that Verizon's language will still enable us to enforce Federal law in terms of the arbitrated contract" (Tr. at 179). Accordingly, the Department finds GNAPs' proposal to include an express and specific change-in-law provision concerning reciprocal compensation, in the event of a future reversal or modification to the FCC's ISP Remand Order, unnecessary.[33] We find that the non-disputed change-in-law language contained in General Terms and Conditions §§ 4.5 and 4.6 is sufficient to address any future reversal or modification of the ISP Remand Order.

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[33] We note that this finding is consistent with the Virginia Order. See Virginia Order at ¶¶ 251, 254.

Turning to the contract language in dispute, we find as follows.[34] First, GNAPs cites to Glossary §§ 2.42 (Inside Wire or Inside Wiring) and 2.56 (Main Distribution Frame), and Interconnection Attachment § 6.1.1, as related to Issue 5, but these sections do not relate to Issue 5. Nor do they contain any disputed contract language. Accordingly, there is no need to render a decision on these sections.

Second, GNAPs fails to adequately support its proposed language in Glossary §§ 2.43, 2.74, and 2.75, Additional Services Attachment § 5.1, and Interconnection Attachment §§ 7.3.3 and 7.3.4. Consequently, we adopt Verizon's language. We note that, with respect to Glossary § 2.75 (Reciprocal Compensation), we find Verizon's proposed definition more complete.

Third, we adopt Verizon's proposed language in Interconnection Attachment § 7.4. We find that it is consistent with 47 C.F.R. § 51.711, which provides for symmetrical reciprocal compensation.

E. Whether Two-Way Trunking Should Be Available to GNAPs at GNAPs' Request? (Arbitration Issue No. 6)

1. Introduction

GNAPs seeks authority to request Verizon to provide two-way trunking at GNAPs' sole discretion. Verizon claims that operational issues for Verizon's network mandate mutual accord between the Parties as to the operational and engineering aspects of the two-way trunks

[34] GNAPs also references Glossary §§ 2.57 (Measured Internet Traffic), 2.76 (Reciprocal Compensation Traffic), and 2.92 (Toll Traffic) as related to Arbitration Issue No. 5. We addressed the disputed language in these sections in our discussion of Arbitration Issue No. 3, supra, where we adopted Verizon's proposals.

between them.

2. Positions of the Parties

a. GNAPs

GNAPs contends that there are now, and will likely be in the future, disagreements between Verizon and GNAPs over the operational responsibilities and design parameters associated with two-way trunks (GNAPs Brief at 58). GNAPs claims that these disagreements result from the "onerous restrictions imposed by Verizon's proposed contract language upon Global's ability to order trunking facilities" (id.). For example, GNAPs argues that Verizon's proposal for GNAPs to forecast its traffic terminating on Verizon's network and Verizon's traffic terminating on GNAPs' network is "discriminatory and burdensome" (id.).

GNAPs instead proposes that each party forecast the traffic that it expects will terminate on the other carrier's network (GNAPs Brief at 58, citing Petition, Exh. B, Glossary §§ 2.93-95; Interconnection Attachment §§ 2.2-2.4, 5, 6, 9). GNAPs further proposes modifications which: (1) exclude measured Internet traffic; (2) replace "intrastate traffic" with "other traffic"; (3) remove restrictions on the manner of connection; (4) impose industry standards for equipment used in provisioning; (5) assure equality in service quality and provisioning through the ASR process; (6) equalize trunk underutilization restrictions; (7) eliminate asymmetrical upfront payment requirements over and above what would actually be due; (8) eliminate restrictive subtending arrangement requirements; and, (9) clarify the definition of "traffic rate" (id. at 58-59). According to GNAPs, "[t]hese proposed modifications are necessary and in totality provide for a more equitable offering of two-way trunking than those proposed by

Verizon" (id. at 59) (footnote omitted).

b. Verizon

Verizon agrees that GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection, pursuant to 47 C.F.R. § 51.305(f) (Verizon Brief at 72). However, Verizon states that because two-way trunks present operational issues for Verizon's own network, "the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them" (id.). In the hearing in response to a question from the Department, Verizon summarized its position on this issue:

> Again, Verizon's position is, you know, we don't have a problem with two-way trunks. It's just you need to lay some ground rules. And it could impact the integrity of [Verizon's] network because of sizing, blocking, utilization, stuff like that. We haven't had a problem with other CLECs agreeing to these terms, and actually it's worked out where traffic is flowing in both directions.

(Tr. at 186-187). According to Verizon, GNAPs' proposed contract language on this issue presents operational and technical problems for Verizon (Verizon Brief at 72).

3. Analysis and Findings

Pursuant to FCC rules, GNAPs' has the option to elect two way-trunking if two-way trunking is technically feasible. See Local Competition Order at ¶ 219; 47 C.F.R. § 51.305(f). But, the issue for the Department's resolution in this proceeding is whether GNAPs may dictate all operational and engineering aspects of the two-way trunks. The Department agrees with Verizon that two-way trunking presents operational and technical problems for Verizon's own network, and consequently, the Department must take into consideration Verizon's right, as "owner and manager of its network," to maintain its network integrity. See Tariff No. 17

Order at 148. The Department therefore rejects GNAPs' proposal for sole discretion over the operational responsibilities and design parameters of two-way trunks between the Parties. Accordingly, the Department adopts Verizon's proposed language for Interconnection Attachment § 2.4.2. Because two-way trunks affect operational issues of Verizon's network, the Department finds it reasonable for the Parties to mutually agree on the initial number of two-way trunks that the Parties will use.[35] Additionally, we adopt Verizon's proposal in Interconnection Attachment § 2.4.12 where Verizon would be able to disconnect trunks that are operating under 60 percent utilization. The Department finds this language appropriate for Verizon to maintain its network integrity and manage its network efficiently.

With respect to other disputed contract language, we find as follows. First, GNAPs fails to support its proposed language for Glossary §§ 2.94-2.95,[36] and Interconnection Attachment § 2.4.14. Sections 2.94-2.95 establish rating and billing parameters for interconnection trunks, which the Department finds appropriate for this interconnection agreement. For Interconnection Attachment § 2.4.14, GNAPs fails to support why it should be

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35 We also adopt Verizon's proposed language concerning one-way interconnections trunks in Interconnection Attachment §§ 2.2.3, 2.3.1 and 2.3.1.1. Furthermore, we find that Verizon's proposed language in § 2.3.1 specifies the terms and conditions for traffic from GNAPs to Verizon. GNAPs proposes language that references traffic exchanged in both directions (i.e., from GNAPs to Verizon and from Verizon to GNAPs), which not only confuses the issue because one-way interconnection trunks are by definition for traffic in one direction, but also is unnecessary considering that § 2.3.2, which is undisputed, outlines the terms and conditions for traffic from Verizon to GNAPs.

36 GNAPs cites to Glossary §§ 2.93-2.95 as related sections to the issue of two-way trunking. Section 2.93 is entitled "Toxic or Hazardous Substance" and both Parties agree on the contract language for this section. The Department therefore assumes that GNAPs intended to reference §§ 2.94-2.96.

entitled to an expedited period for replacing two-way interconnection trunk groups with one-way interconnection trunk groups, or even if such an expedited process is technically feasible or commercially viable. The Department finds that Verizon's proposed language for Glossary §§ 2.94 and 2.95, and Interconnection Attachment § 2.4.14 is reasonable and adopts it accordingly.

Second, Verizon claims that it does not understand what GNAPs is intending to accomplish with its edits to the definition of "*Trunk Side*" in Glossary § 2.96 (see Verizon Brief at 81). GNAPs has not explained its proposed changes. Accordingly, the Department finds that GNAPs has not properly presented and supported its proposal and hereby adopts Verizon's proposed language in § 2.96. We find Verizon's definition is clearer and more detailed than GNAPs' proposed definition.

Third, GNAPs also fails to explain why its proposed language in Interconnection Attachment §§ 2.2.4 and 2.4.11 is necessary or appropriate. The Department finds GNAPs' language in Interconnection Attachment §§ 2.2.4 and 2.4.11, especially in regards to "originating Party" and/or "terminating Party," confusing and unclear. We also agree with Verizon that the addition of the term "originating party" is "nonsensical" considering that both Parties originate traffic over two-way trunks (see Verizon Brief at 79). In contrast, Verizon's proposed language is consistent with Department precedent on an ILEC's right to manage its network, as discussed above. Additionally, the Department further finds it reasonable for GNAPs to bear the responsibility to submit an Access Service Request ("ASR") to augment a trunk as proposed by Verizon in Interconnection Attachment § 2.2.4. Accordingly, we find

Verizon's proposal reasonable and therefore adopt Verizon's proposed language.

Fourth, Verizon offers no compelling reason why language requiring Verizon to "reasonably accept ASRs submitted by GNAPs" is unnecessary or undesirable. GNAPs' proposal simply provides GNAPs with assurances that its ASRs will not be unreasonably denied. Accordingly, we find GNAPs' proposal reasonable and adopt GNAPs' proposed language in Interconnection Attachment § 2.4.10.

Fifth, we also adopt GNAPs' proposed language in Interconnection Attachment §§ 2.4.3 and 2.4.6. The Department finds it reasonable to specify in § 2.4.6 that the equipment be required only "where technically feasible." Regarding Interconnection Attachment § 2.4.3, as discussed above in relation to Arbitration Issue Nos. 1 and 2, and in accordance with Department precedent, GNAPs has the right to designate its POI at its own discretion.

Sixth, because GNAPs customers are primarily ISPs, the majority of traffic between GNAPs and Verizon originates on Verizon's network and terminates on GNAPs' network. Thus, the Department finds that GNAPs is in a better position to forecast trunk requirements for traffic originating and terminating on GNAPs' network. Accordingly, the Department adopts Verizon's language for Interconnection Attachment § 2.4.4.

Seventh, we see no reason to exempt Verizon from performance standards in connection with two-way interconnection trunks as Verizon has proposed in Interconnection Attachment § 2.4.13. Nor has Verizon provided any reason for us to do so. We understand that implementation of two-way trunking is not entirely within Verizon's control, however, we find that Verizon's proposal to exempt itself from meeting performance standards in connection with two-way trunks goes too far, and that more reasonable alternatives exist to address any lack of control. For instance, a "stopped clock" approach may be utilized for CLEC-caused delays in provisioning. Accordingly, § 2.4.13 should be stricken in its entirety, as GNAPs has proposed.

Eighth, we adopt Verizon's proposed Interconnection Attachment § 2.4.16. The term "Proportional Percentage of Use" ("PPU") is a billing factor that addresses the traffic flow, and its use as a billing factor is the most equitable way to apportion expenses when actual traffic data is available. But, the PPU cannot be determined in the absence of actual usage data, e.g. for the first billing cycle after a two-way trunk is established. Verizon's proposal to apportion expenses equally when actual usage data is absent is fair, and we adopt it. Moreover, Verizon's proposal is standard language for interconnection agreements in Massachusetts and other states (see Tr. at 184). Accordingly, the Department finds Verizon's proposed language for recurring charges in Interconnection Attachment § 2.4.16 is reasonable. The Department, however, rejects Verizon's proposed language for nonrecurring charges in Interconnection Attachment § 2.4.16. Verizon is a co-user of, and benefits from, the entire facility on which the two-way trunk rides. Accordingly, we find GNAPs' proposal to apportion nonrecurring charges equally for the entire facility on which the two-way trunk rides is appropriate. We adopt GNAPs' proposed language regarding nonrecurring charges in Interconnection Attachment § 2.4.16.

Finally, we adopt Verizon's proposed Interconnection Attachment § 9.2 (Access Toll Connecting Trunk Group Architecture). GNAPs has failed to support or explain its proposed changes. We agree with Verizon that GNAPs' proposal appears to violate routing and tandem subtending arrangements in the Local Exchange Routing Guide.

F. Is it Appropriate to Incorporate by Reference Other Documents, Including Tariffs, into the Agreement Instead of Fully Setting out Those Provisions in the Agreement? (Arbitration Issue No. 7)

1. Introduction

GNAPs opposes Verizon's incorporation by reference of other documents such as tariff rates, terms and conditions, and the CLEC Handbook, into the interconnection agreement. GNAPs argues that it is inappropriate to incorporate by reference other documents instead of fully setting out those provisions in the agreement.

2. Positions of the Parties

a. GNAPs

GNAPs maintains that the interconnection agreement should be the sole determinant of the rights and obligations of the Parties, yet GNAPs states that Verizon's proposal contains numerous citations and references to tariffs and other documents, such as the CLEC Handbook, which would, in effect, permit Verizon to change the terms and conditions of the interconnection agreement without GNAPs' assent (GNAPs Brief at 59). As a result, GNAPs claims, it would have no certainty over the very terms it has negotiated or arbitrated (GNAPs Petition ¶ 62).

In response to Verizon's argument that tariff filings are public documents which GNAPs has the right to contest, GNAPs contends that Verizon "misses the point" for several reasons (GNAPs Brief at 60). First, GNAPs asserts that a contract evidences a meeting of the minds and should not change because Verizon "decides it should" (id.). Second, GNAPs states that to become aware of a tariff filing would require it to investigate daily each and every tariff filing to determine the potential impact on its interconnection agreement (id.). Third, GNAPs argues that it would incur additional expenses over and above those related to the negotiation and arbitration of the contract (id.). Fourth, GNAPs notes that the CLEC Handbook is subject neither to Department review or approval (GNAPs Reply at 24).

Moreover, GNAPs contends that Verizon paints GNAPs proposal as an attempt to engage in regulatory arbitrage, but its proposal actually attempts to constrain Verizon from engaging in regulatory arbitrage by defeating contract language (id.). GNAPs explains that, although Verizon contends that GNAPs seeks to enjoy the lower of its interconnection prices or more recently determined prices set by the Department, if and when prices actually change due to a Department determination, this change constitutes a "change of law" which could be implemented pursuant to operation of that provision in the contract (id., citing §§ 4.5 and 4.6 of the General Terms and Conditions).

Lastly, GNAPs contends that because Verizon's references to its tariff and other documents are pervasive in the interconnection agreement, it has not proposed specific contract language related to this issue, but rather asks the Department to render a policy ruling that the interconnection agreement should be self-contained (GNAPs Reply at 23). Specifically, GNAPs urges the Department not to permit tariffs to supersede interconnection agreement rates, terms or conditions (GNAPs Brief at 60). Additionally, GNAPs requests that the Department permit Verizon to cross reference its tariffs solely for the purpose of utilizing its tariffed rates for UNEs and collocation (GNAPs Petition ¶ 63). GNAPs further requests that definitions contained in Verizon tariffs should not prevail over definitions within the Parties' interconnection agreement, and that "Tariff" should be defined so as to exclude incorporation of future tariffs (GNAPs Brief at 60-61).

GNAPs indicates that references to other documents occur throughout the agreement including in the following sections: General Terms and Conditions § 1; Interconnection Attachment §§ 1, 8, 9, and 10.6; Network Elements Attachment §§ 1.1, 1.3, 4.3, 4.4.6, 6.2 and throughout contract; and the Pricing Attachment (GNAPs Petition ¶ 64).

b. Verizon

Verizon maintains that tariff terms and conditions only supplement the terms and conditions of the interconnection agreement (Verizon Brief at 83). More specifically, Verizon explains that, under proposed General Terms and Condition § 1.2, the Parties would rely on the appropriate Verizon tariff for applicable rates; but, when there is a conflict between the tariff and the interconnection agreement, the interconnection agreement's terms and conditions supersede terms and conditions contained in the tariff (id.). Accordingly, Verizon asserts its proposed language is consistent with the Department's policy that interconnection agreement provisions control unless the Parties agree otherwise (id. 83-84, citing Tariff No. 17 Order).

With regard to prices, Verizon notes that the Parties agreed that applicable tariffs are the first source of prices for services under the agreement (Verizon Brief at 84). Despite this agreement, Verizon asserts that GNAPs' contract modifications freeze current tariff prices and create an arbitrage opportunity that could render the tariff process moot (id.). Verizon insists, on the other hand, that its proposal ensures that prices are set and updated in a manner that complies with Department guidelines, and is also efficient, consistent, fair and nondiscriminatory (id.). In fact, Verizon states, Verizon's proposal would conserve Department resources by relying on Department-approved prices and rates (id.).

Moreover, Verizon notes that the tariff process is not unilateral, and that, because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs would not be compelled to review the details of each tariff filing (id. at 85-86). Additionally, Verizon points out that the Illinois, New York, and Ohio Commissions, and the Rhode Island arbitrator, agreed with Verizon's position (Verizon Brief at 86).

Finally, Verizon argues that GNAPs' broad challenge to the appropriateness of referencing tariffs in the interconnection agreement does not apply to many of the contract sections in which GNAPs has deleted tariff references, some of which GNAPs neglects to list. Furthermore, Verizon contends that GNAPs' failure to address each section leaves many proposed contract changes unsupported (Verizon Brief at 88). Accordingly, Verizon urges the Department to reject GNAPs' proposed changes (id.).

3. Analysis and Findings

As a matter of policy, the Department does not oppose the incorporation of documents, including tariffs, by sufficiently specific reference. In particular, we find cross-referencing Verizon tariffs for prices to be reasonable, a practice which GNAPs did not oppose in its Petition (see GNAPs Petition ¶ 63). Moreover, we do not find that GNAPs' concerns about the tariff process persuade us otherwise. As Verizon notes, the tariff process is not unilateral and GNAPs may always participate in the tariff process to protect its interests. In fact, Verizon is obligated to provide electronic notification of proposed tariff changes to all CLECs with whom it has resale and interconnection agreements. Tariff No. 17 Order at 22-23.[37] This notice is provided on or about the same day that the proposed tariff changes are filed with the Department. Id. Thus, daily investigation by a CLEC is not necessary.[38] Additionally, we find that costs incurred in order to monitor new tariff filings to be part of a CLEC's normal cost of doing business. Accordingly, we reject GNAPs' request to define "tariff" to preclude future tariffs, which could, in effect, "freeze" prices in the interconnection agreement by limiting the reference to tariffs in effect on the day of a contract's execution. Accordingly, we approve Verizon's proposed language in its Pricing Attachment, as well as Network Element Attachment §§ 1.8 and 4.3.

As for references to documents other than tariffs, we find as a general matter that references to other such documents to be reasonable, even though modifications to these documents may not be reviewed or approved by the Department. To begin, we note that GNAPs has not actually identified any objectionable document reference in the Agreement, other than to tariff references, for our review. In addition, we find that the purpose of documents such as the CLEC Handbook are to facilitate the business relationship between

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37 Tariff No. 17 contains the Department-approved rates, terms and conditions that Verizon offers for interconnection and access to network elements.

38 Furthermore, we note that of the 38 tariffs filed in Massachusetts from July 1 to October 15, 2002, none of the tariffs contained substantive changes to services or rates that would impact any interconnection agreement between Verizon and GNAPs (see RR-DTE-6).

Verizon and a CLEC, and thus, the potential is small for the CLEC Handbook to materially affect the terms and conditions of the interconnection agreement in a way adverse to CLECs.

As to tariff terms and conditions superceding terms and conditions in the interconnection agreement, we previously determined that tariffs generally do not supersede negotiated or arbitrated terms. Tariff No. 17 Order at 19. Thus, our Tariff No. 17 Order already provides for that which GNAPs requests. Moreover, we find Verizon's proposed General Terms and Conditions §§ 1.1 and 1.2 to be more consistent with our policy, and approve these sections accordingly.

On the other hand, we are not necessarily opposed to GNAPs' suggestion to incorporate specific provisions of tariffs, or other documents, into the interconnection agreement directly.[39] But, GNAPs' failure to identify specifically which provisions it seeks to have incorporated in full from the tariff or other document, and the basis for incorporating that provision, prevents us from properly considering this approach. GNAPs may negotiate for insertion of specific provisions contained in documents, including tariffs or the CLEC Handbook, into the interconnection agreement, but we will dismiss any request for the insertion of specific language from other documents into the interconnection agreement which conflicts with any of the findings made in this order, unless agreed to, in whole, by both Parties.

Finally, in response to RR-DTE-7, Verizon states that if the Parties explicitly agree that

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39 Usually, rehearsal, in the body of a contract, of wording found in other, separate documents is unnecessary, for a contract "writing may incorporate other documents by reference and may indicate a method by which to determine the unstated terms that were actually agreed upon." Corbin on Contracts, § 95, n.12. But, the parties are free to incorporate specific provisions if they so choose.

an applicable tariff controls the terms of the offering, then "where an applicable tariff is incorporated by reference into an interconnection agreement, and the specific provision in the tariff was not provided in the interconnection agreement, the tariff provision would control since it was clearly the intention of the Parties to incorporate the tariff." We address this below.

In our Tariff No. 17 Order, at 18, we stated that the "Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC." We therefore held that "[t]ariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering." Id. at 19. Additionally, we stated that "the terms and conditions of Tariff No. 17 represent a supplement to interconnection agreements from which carriers may choose to purchase services not addressed in their interconnection agreements." Id. at 21.

Consequently, we find that incorporation of additional terms and conditions from other documents by mere reference to the document is inconsistent with the policy we set forth in our Tariff No. 17 Order unless the Parties explicitly intend to incorporate each and every additional term by the reference. By "additional," we mean terms and conditions in the tariff, or other document, which are not inconsistent with the terms and conditions in the interconnection agreement, and for which there may, or may not, be a corresponding provision contained in the interconnection agreement. Permitting Verizon to impose all such terms and conditions from documents incorporated by reference without the explicit assent of the CLEC would allow Verizon to achieve a level of conformity in its agreement with different CLECs that would be inconsistent with our, and the Act's, preference for contracts that reflect the individual business strategies and priorities of each CLEC. Accordingly, we conclude that, where the Parties explicitly provide that an applicable tariff, or document, controls the terms and conditions of an offering, the agreement shall make clear that the Parties explicitly agree that all provisions in the tariff, or other document, which are not inconsistent with provisions in the interconnection agreement, or that are not addressed at all in the interconnection agreement, are also controlling.

In conclusion, we note that we do not directly address each and every provision in the interconnection agreement which contains a document or tariff reference; however, we expect that our findings above will allow the Parties to submit conforming contract language for all such provisions in the agreement.

G. Should the Interconnection Agreement Require GNAPs To Obtain Excess Liability Insurance Coverage of $10 Million and Require GNAPs to Adopt Specified Policy Forms? (Arbitration Issue No. 8)

1. Introduction

Verizon's proposed insurance requirements include the following: Commercial General Liability of $2 million; Excess Umbrella Liability of $10 million; Worker's Compensation of $2 million; and Commercial Motor Vehicle Insurance of $2 million. GNAPs proposes to reduce the limits to $1 million for the first three items, and to delete the requirement for Commercial Motor Vehicle Insurance. GNAPs also believes the precise form of insurance should be left to

GNAPs' discretion, and that it should be permitted to substitute an umbrella excess liability policy for the minimum limits (GNAPs Petition ¶ 67).

Additionally, Verizon's proposal requires GNAPs to reimburse Verizon for the cost of insurance if GNAPs' contractors' do not maintain insurance, but GNAPs proposes to make this obligation reciprocal (GNAPs Brief at 61). Finally, GNAPs proposes to delete Verizon's requirement that all real and personal property located on Verizon's premises be insured on a full replacement cost basis (id.).

2. Positions of the Parties

a. GNAPs

GNAPs argues that Verizon's proposal is burdensome. First, GNAPs notes that PacBell, a similarly situated ILEC, considered GNAPs' current commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage sufficient; therefore, GNAPs questions why Verizon does not find its proposal acceptable (GNAPs Brief at 62-63). Additionally, given that SBC has agreed to lower insurance levels, GNAPs contends that Verizon is obligated to provide just cause why its insurance requirements are reasonable, a burden that Global alleges Verizon fails (GNAPs Reply at 24). Second, GNAPs states Verizon has not indicated any circumstance which has resulted in damages or injuries in excess of this amount committed by any CLEC, and insists that its current insurance coverage is adequate to cover any damages that may occur from GNAPs' operation (Exh.GNAPs-2, at 6; GNAPs Brief at 63). Indeed, says GNAPs, because GNAPs and Verizon interconnect at end point fiber meets, there is little risk of destruction to Verizon property and facilities (GNAPs Reply at

25). Third, GNAPs claims that Verizon's proposed automobile insurance requirement duplicates existing state requirements and is excessive, and, therefore, should be deleted (Exh. GNAPs-2, at 6; GNAPs Petition ¶ 66). Fourth, GNAPs argues that limits imposed on other CLECs in other proceedings before the Department should serve as a cap (Exh. GNAPs-2, at 7). Finally, GNAPs believes the precise form of insurance should be left to GNAPs discretion, and that it should be permitted to substitute an umbrella excess liability policy for the minimum limits (GNAPs Petition ¶ 67).

GNAPs also asserts that Verizon's requirements are discriminatory because Verizon self-insures and is, therefore, imposing costs where it has none in order to make GNAPs non-competitive (Exh. GNAPs-2, at 8-9; GNAPs Brief at 63; GNAPs Reply at 25). GNAPs admits that Verizon has not excluded the possibility that GNAPs can self-insure, but GNAPs maintains that Verizon has not provided the criteria to do so, which, GNAPs alleges, is indicative of the one-sided negotiations in which a monopoly with leverage engages (GNAPs Brief at 63).

GNAPs contends that § 21 of the General Terms and Conditions are related to Arbitration Issue No. 8 (GNAPs Petition ¶ 67).[40]

b. Verizon

Verizon argues that its proposed insurance requirements are reasonable and necessary

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40 The Department notes that in Exh. GNAPs-2, the Direct Testimony of William J. Rooney, General Counsel for GNAPs, Mr. Rooney misstates Verizon's insurance requirements at issue in this proceeding and also incorrectly identifies the proper contract section (see Exh. GNAPs-2, at 5). GNAPs does properly identify on brief the specific contract language in dispute.

for the protection of its network, personnel, and other assets in the event GNAPs has insufficient resources (Verizon Brief at 96). In support, Verizon notes that its proposal is consistent with what Verizon requires of other carriers (id. at 96-97). Additionally, Verizon states that the interconnection agreement resulting from this proceeding will permit GNAPs to collocate at Verizon's facilities, and that collocation increases Verizon's risk and exposure to loss in many ways, including: (1) the risk of injury to employees; (2) possible damage to or loss of facilities; (3) the risk of fire or theft; (4) the risk of security breaches; and (5) possible interference with or failure of the network (id. at 99). Furthermore, Verizon asserts that because its risk is much greater than GNAPs' risk, it is appropriate for the agreement to reflect this asymmetrical risk (Exh. VZ-4, at 10; Verizon Brief at 103)

Moreover, Verizon asserts that the Parties operate in a volatile industry and in a society in which either party could be held liable for the acts of the other; accordingly, says Verizon, it maintains an extensive insurance program that protects both Parties (Verizon Brief at 99). On the other hand, Verizon states that GNAPs' proposed limits of $1 million are inadequate, noting that damage or injury to Verizon's network, assets or employees could easily exceed the limits of GNAPs' proposed coverage (Exh. VZ-4, at 8; Verizon Brief at 99).

Verizon further contends that automobile liability insurance and excess liability coverage should be provided to assure that GNAPs vehicles, or GNAPs' employees' vehicles, used in proximity to Verizon's network are adequately insured (Verizon Brief at 100). Verizon also maintains that GNAPs' proposal to make the insurance requirements provision a mutual obligation makes no sense because: (1) Verizon maintains a financially sound insurance program; (2) the risks are increased primarily for Verizon; and (3) for certain provisions, such as the additional insured provisions, it would counteract the benefits to have both Parties name the other as additional insureds (Exh. VZ-4, at 9-10; Verizon Brief at 100). As to GNAPs' contention that Verizon gains a competitive advantage because it self-insures, Verizon dismisses this claim as unfounded, noting Verizon's extensive insurance program (Verizon Brief at 103). Finally, Verizon cites to FCC decisions, as well as other state arbitration orders, in support of its proposed insurance requirements (Verizon Brief at 97, 102-103). Verizon notes that the aggregate amount of insurance it seeks from GNAPs falls below the FCC's measure of reasonableness (Verizon Brief at 97, citing Special Access Expanded Interconnection Order[41]). Accordingly, Verizon contends its proposed insurance requirements are reasonable and urges the Department to adopt its proposal.

3. Analysis and Findings

Two of Verizon's proposed insurance requirements are consistent with that which the Department has approved in Tariff No. 17, namely, the limits for Commercial General Liability and Worker's Compensation Insurance. Because the insurance requirements in Tariff No. 17 were approved by the Department, we find that Tariff No. 17 serves as an appropriate benchmark for insurance limits. Because Verizon's proposed limits for Commercial General Liability and Worker's Compensation Insurance are identical to the limits in Tariff No. 17 for

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41 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 and Order, FCC No. 97-208, (rel. June 13, 1997) ("Special Access Expanded Interconnection Order").

these two types of insurance, we find Verizon's proposal reasonable and hereby approve §§ 21.1.1 and 21.1.4 of the General Terms and Conditions.

As to the requirements that are different from Tariff No. 17, we find as follows. First, the umbrella/excess liability coverage of $5 million in Tariff No. 17 has been increased to $10 million. We do not dispute that the exposure and risk present with interconnection and access to network elements as a result of today's environment may have increased (Exh. VZ-4, at 6; Exh. DTE-VZ 1-1). Nor do we dispute Verizon's claim that the cost to secure the $10 million coverage is minimal (see Exh. VZ-4, at 13).[42] But, Verizon has not persuaded us to conclude that the limit should be twice that which the Department approved in Tariff No. 17. Verizon's interconnection tariff only requires CLECs obtain $5 million in umbrella/excess liability coverage, and Verizon has not proposed any modifications to increase the umbrella/excess liability coverage limit in Tariff No. 17. Thus, we conclude that $5 million in excess/umbrella liability coverage is adequate, even in today's environment, and we reject Verizon's proposed limit of $10 million. Likewise, GNAPs has not provided any persuasive argument that the limit should be reduced to one fifth of the Department-approved limit of $5 million. Accordingly, we direct the Parties to include a $5 million limit for excess umbrella liability coverage in § 21.1.3 of the General Terms and Conditions.

The second substantive difference between Verizon's proposal and Tariff No. 17 is that

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42 GNAPs failed to respond to the Department's record request, RR-DTE- 8, for information as to the cost to secure the $10 million insurance limit (see Tr. at 191). The Department therefore imputes a negative inference and concludes that the incremental cost to purchase this insurance is minimal, as Verizon contended.

Verizon seeks to require GNAPs to maintain Commercial Motor Vehicle Liability insurance of $2 million, whereas Tariff No. 17 does not contain any specific provision for this. We note that the FCC has found that "it is not unreasonable for LECs to require interconnectors to carry a reasonable amount of automobile insurance, provided that interconnector-employees are permitted to park their vehicles on LEC property." Special Access Expanded Interconnection Order at ¶ 345. We conclude similarly and find Verizon's proposal for a separate requirement is consistent with requirements in Tariff No. 17. We further conclude that a separate requirement for vehicle liability insurance is reasonable, given the variety of types of vehicles and equipment used on Verizon's property (Exh. DTE-VZ 1-1). Furthermore, because Verizon's proposed $2 million limit for automobile insurance is consistent with the limits for the other required forms of insurance, we find the limit amount reasonable. Accordingly, we approve Verizon's proposed § 21.2 of the General Terms and Conditions. Even though the interconnection agreement at hand requires insurance at levels above and in addition to that which is required pursuant to Tariff No. 17, the aggregate level of insurance of $18 million required by Verizon under the agreement, is still below the FCC's measure of reasonableness, which, the FCC stated, was one standard deviation above the industry average, or $21.15 million. See Special Access Expanded Interconnection Order at ¶¶ 346, 348.

As to the form of insurance proposed by Verizon, we find Verizon's proposal to be reasonable. GNAPs has provided no record evidence to support its position that it should be permitted to substitute an excess umbrella policy for the minimum limits for the different types of insurance coverage. Moreover, we agree with Verizon that "[i]t is unfair to put Verizon in a position to potentially be responsible for claims due to loss of GNAPs' real and personal property and that of its employees" (Exh. VZ-4, at 7). Therefore, we approve the language in Verizon's proposed § 21.1.5 of the General Terms and Conditions.

Additionally, given that the risk of collocation falls more heavily on Verizon and, further, given that Verizon maintains an extensive insurance program, we find little merit to GNAPs claim of competitive disadvantage. Likewise, we reject GNAPs' proposal for symmetry in the "additional insured" provision because such symmetry would be inconsistent with the function of this provision, i.e., to designate one insurance company to provide the lead defense (Exh. VZ-4, at 9; Verizon Response ¶ 205). As Verizon points out, the "additional insured" provision avoids insurance company "finger pointing" (Exh. VZ-4, at 9). Accordingly, we approve Verizon's proposed § 21.6 of the General Terms and Conditions. Regarding GNAPs' claim that Verizon has not provided the criteria for self-insurance, we note that GNAPs did not raise this claim in its Petition, or during the arbitration hearing. Accordingly, we have no record evidence upon which to reach the merits of this allegation.

In sum, we find GNAPs has failed to persuade us that its proposal is the more appropriate. Accordingly, the Department adopts Verizon's proposed § 21 of the General Terms and Conditions of the agreement, with the modifications noted above.

H. Should the Interconnection Agreement Include Language That Allows Verizon to Audit GNAPs' "books, records, documents, facilities and systems"? (Arbitration Issue No. 9)

1. Introduction

Verizon seeks to include a bilateral right to audit the other parties' books to ensure billing accuracy. GNAPs argues that the proposed audit rights provide Verizon with unreasonably broad access to competitively sensitive records.

2. Positions of the Parties

a. GNAPs

GNAPs argues it is unreasonable for Verizon to be privy to its competitors' books and records because they contain competitively sensitive materials which would be costly to sanitize (Exh. GNAPs-2, at 10; GNAPs Brief at 65). GNAPs further contends that Verizon already keeps computer records of call traffic exchanged between the Parties, and that the Parties already have in place a practice of verifying records on a monthly basis (Exh. GNAPs-2, at 10; GNAPs Brief at 65). Additionally, GNAPs states that Verizon pays GNAPs based on Verizon's count of minutes-of-use ("MOUs"), and that billing disputes involve GNAPs disputing Verizon's MOU count (GNAPs Reply at 26). Thus, GNAPs insists that Verizon does not need to audit GNAPs' information to verify traffic for billing (id.). GNAPs, however, states that it is amendable to providing traffic reports and Call Data Records ("CDRs") necessary to verify billing, stating that with CDRs available, there is no legitimate basis to insist on access to GNAPs' books and records (GNAPs Brief at 65). Finally, GNAPs asserts that Verizon's proof of allegations about an illegal billing scheme by GNAPs is nothing more than unproven allegations in a complaint it filed against GNAPs (GNAPs Reply at 26).

GNAPs states that § 7 of the General Terms and Conditions, § 8.5.4 of the Additional Services Attachment, and §§ 6.3 and 10.13 of the Interconnection Attachment are related to Arbitration Issue No. 9 (GNAPs Petition ¶ 70).

b. Verizon

Verizon contends that GNAPs' deletion of § 7 of the General Terms and Conditions, and § 10.13 of the Interconnection Attachment would delete all of Verizon's proposed audit provisions, and eliminate either party's ability to verify the accuracy of the other's bills (Verizon Brief at 105).[43] But, Verizon notes, audit provisions are common in the industry, including in Massachusetts (Exh. VZ-3, at 7; Verizon Brief at 107). In addition, Verizon asserts, GNAPs opposition is based on a misunderstanding of Verizon's proposal (Verizon Brieft at 105). First, Verizon notes that its proposal applies to both Parties (id. at 106). Second, Verizon points out that any audit would be performed by independent certified public accountants, and the audited party may request a protective agreement or order (id.). Finally, Verizon states its proposal is not unreasonably broad in that the audit is limited to records, documents, employees, books, facilities, and systems necessary to assess the accuracy of the audited party's bills (id.).

Verizon also points to GNAPs' history to support its audit proposal. Specifically, Verizon states that in New York, "Verizon uncovered what it believed to be an apparent illegal billing scheme that GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation" (Exh. VZ-3, at 5, citing Verizon's Complaint filed in New York Telephone Company, et. al. v. Global NAPs, Inc. et. al., No. 00 Civ. 2650 (FB) (RL) (E.D.N.Y.)). Verizon argues that it wants to avoid history repeating itself, and insists that

43 Verizon correctly notes that GNAPs fails to include any disputed language with regard to § 6.3 of the Interconnection Attachment (Exh. VZ-3, at 8; Verizon Response ¶ 210).

having an independent third-party accountant audit GNAPs' records is preferable to initiating litigation to obtain needed information (Verizon Brief at 110).

Moreover, Verizon contends that, although GNAPs does not include any disputed language in this section, the audit provisions of § 8.5.4 of the Additional Services Attachment relating to access to OSS provides Verizon with the right to monitor its OSS so that all carriers can receive uninterrupted and reliable access to this system (Exh. VZ-3, at 9; Verizon Brief at 107). Additionally, Verizon states that its OSS contains customer proprietary network information, which Verizon is obligated to protect and to release to authorized parties only (Exh. VZ-3, at 9: Verizon Brief at 107-108). To fulfil that obligation, Verizon asserts that it must be able to audit GNAPs' use of Verizon's database (Exh. VZ-3, at 9; Verizon Brief at 107-108).

Finally, Verizon argues that its proposal in this proceeding is similar to that which the Department adopted in MediaOne. More precisely, Verizon notes that in MediaOne, the Department rejected MediaOne's audit proposal because it was too broad and adopted Bell Atlantic's proposal, which Verizon states is nearly identical to the audit language Verizon proposes in this case (Exh. VZ-3, at 11, citing MediaOne at 140). In fact, Verizon states that its proposed § 10.13 and § 6.3 of the Interconnection Attachment contain identical language as § 6.3.13 and § 5.7.5, respectively, of the agreement between Verizon and MediaOne's successor corporation, AT&T Broadband (id. at 12). In sum, Verizon asserts that the language and rationale adopted by the Department in MediaOne is identical or substantially similar to the language and rationale applicable in this case (id.).

3. Analysis and Findings

We find that GNAPs' concerns are without merit. For instance, Verizon's audit proposal does not contain the broad audits rights which we previously rejected in MediaOne. Rather, Verizon's proposal is specifically aimed at auditing "books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills" (General Terms and Conditions § 7.1) (emphasis added). Thus, Verizon's proposal is more akin to the specific audit rights we permitted in MediaOne, at 140, as well as in Greater Media, D.T.E. 99-52, at 79 (September 24, 1999). Additionally, Verizon's proposal addresses GNAPs' confidentiality concerns in that any audit is performed by independent third party accountants who are required to execute a confidentiality agreement (see General Terms and Conditions § 7.2). Finally, Verizon's audit provisions are symmetrical, and apply to Verizon as well as GNAPs. Accordingly, we adopt Verizon's proposed audit provisions contained in § 7 General Terms and Conditions and in §§ 6.3 and 10.13 of the Interconnection Attachment.[44]

Similarly, we find Verizon's proposed § 8.5.4 of the Additional Services Attachment reasonable and appropriate. We are convinced of Verizon's need to audit its OSS to ensure reliable access to this database, and to fulfil its obligations under Federal law to protect and to release to authorized parties only proprietary information contained in its database.

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44 Section 6 of the Interconnection Attachment addresses Traffic Measurement and Billing over Interconnection Trunks, and § 6.3 permits either party to audit all traffic to ensure that rates are appropriately applied. Section 10 of the Interconnection Attachment addresses Meet- Point Billing Arrangements, and § 10.13 grants both Parties the right to audit, subject to § 7 of the General Terms and Conditions, various components of access recording. GNAPs did not propose any changes to § 6.3, and proposed to delete § 10.13 in its entirety.

Accordingly, we adopt Verizon's proposed language for § 8.5.4 of the Additional Services Attachment.

Finally, GNAPs claims that there is no need for audit rights to verify billing, because Verizon pays GNAPs based upon Verizon's MOU count, and thus, any billing disputes between the Parties involve GNAPs disputing Verizon's MOU count. But, GNAPs did not provide any record evidence so that the Department could verify this claim. In fact, GNAPs first raised this claim in its reply brief. Accordingly, we do not accept GNAPs' claim.

In sum, we find Verizon's audit proposal is reasonable, and further find that GNAPs has failed to present convincing argument to support its modifications to the agreement.

I. Should GNAPs Be Permitted To Avoid Its Agreement To Permit Collocation In Accordance With Tariffed Terms? (Arbitration Issue No. 10)

1. Introduction

Verizon raised reciprocal collocation rights as a supplemental issue in its response. Verizon seeks the unconditional right to collocate at GNAPs's central offices, but GNAPs' proposed changes to Verizon's Interconnection Attachment §§ 2.1.5 et. seq. incorporate language that subjects Verizon's right to collocate in GNAPs central offices to GNAPs's sole discretion.

2. Positions of the Parties

a. Verizon

Verizon states that the Parties have agreed to language in the Collocation Attachment whereby GNAPs agrees to make collocation available to Verizon according to terms and conditions under GNAPs collocation tariff, if such tariff is in place (Verizon Brief at 114). If

GNAPs does not have a collocation tariff in place, Verizon states that the Parties have agreed to negotiate the terms upon which collocation will be provided if Verizon requests collocation (id.). Verizon notes that GNAPs has expressly requested that the Department approve undisputed provisions in the agreement, which would include the Collocation Attachment (Verizon Reply at 37).

Despite the agreed upon language in the Collocation Attachment, Verizon states that GNAPs seeks to add language into § 2.1.5 of the Interconnection Attachment that would subject Verizon's right to collocate to GNAPs' discretion (Verizon Brief at 114). Verizon asserts that GNAPs should not be permitted to undo that which it has already agreed to in one section by adding language to another section, and thus urges the Department to reject GNAPs' attempt to revise § 2.1.5 of the Interconnection Attachment (Verizon Brief at 114; Verizon Reply at 37). Moreover, Verizon dismisses, as lacking merit, GNAPs' argument that the agreement somehow discriminates between customers (Verizon Reply at 37). Verizon also argues that because GNAPs did not identify its proposed language for § 2.1.5 of the Interconnection Attachment as related to any of the issues in its complaint, the Department should not now address that language (Verizon Brief at 115).

Even if GNAPs had not agreed to permit collocation, Verizon contends that it should be permitted to do so (id.). Verizon argues that whether GNAPs is required by law to provide collocation is not the issue, noting that nothing in the Act prohibits the Department from allowing Verizon to collocate (Verizon Reply at 37; Verizon Brief at 115). Verizon further states that, because GNAPs determines all of the interconnection points under GNAPs' proposal, GNAPs could unreasonably limit the terms and conditions for Verizon's interconnection with GNAPs (id.). Thus, the Department should either permit Verizon to collocate, or prohibit GNAPs from charging distance sensitive transport rates (id).

Furthermore, Verizon argues that without the option to collocate, it cannot evaluate whether it is more cost effective to purchase transport from GNAPs or build its own facilities to GNAPs (Verizon Brief at 115). Verizon notes that several state commissions have ruled in its favor on this issue, and that fairness dictates that it have comparable choices to those of GNAPs (id. at 115-116). Verizon states that its proposal gives Verizon reasonable interconnection choices while GNAPs' proposal does not, and, therefore, the Department should adopt Verizon's proposed language in § 2.1.5 of the Interconnection Attachment (id. at 116).

b. GNAPs

GNAPs asserts that there is no *state requirement* for GNAPs to provide collocation but that it is company policy to do so for the convenience and benefit of its customers (GNAPs Brief at 66). GNAPs notes that it has never rejected a request by Verizon to collocate at GNAPs' facilities, nor has Verizon ever asked to collocate (id.). GNAPs insists that it welcomes customers, including Verizon, but that it cannot allow a customer to dictate terms and conditions that purport to involve GNAPs in discrimination between its customers (id.). GNAPs also indicates that it may not be able to match all terms and conditions requested and required by Verizon, and that GNAPs provides collocation through a corporate entity not a party to this proceeding (id.). In addition, GNAPs contends that there is no Federal requirement for GNAPs to provide collocation and urges the Department not to impose a state requirement that could potentially place GNAPs in the position of discriminating between customers (id. at 67).

3. Analysis and Findings

First, we do not attempt to determine whether GNAPs agreed during voluntary negotiations to grant Verizon an unconditional right to collocate at GNAPs' facilities. Nor do we need to. Consistent with the Wireline Competition Bureau, we agree that "there is simply no requirement that a petitioner for arbitration under section 252(b) must present the Arbitrator with the same language discussed during previous voluntary negotiations." Virginia Order at ¶ 57. Thus, we find Verizon's claims regarding GNAPs' attempts to "undo" that which GNAPs agreed to in the Collocation Attachment unconvincing. Our focus here is the disputed language in § 2.1.5 of the Interconnection Agreement, which subjects Verizon's right to collocate to GNAPs' discretion.

The Department has previously dealt with reciprocal collocation rights. Specifically, in MediaOne, at 50, we acknowledged that nothing in the Act specifically requires a CLEC to permit an ILEC to collocate at the CLECs' facilities. But, we also concluded that the Department may require, under state law, a CLEC to do so. MediaOne at 50. The Department, however, declined to impose collocation obligations on CLECs because we determined that such a requirement would conflict with a CLEC's right to interconnect at any technically feasible location it chooses. Id. This decision was upheld on reconsideration where we explained that "if BellAtlantic chose to collocate at MediaOne's facilities, MediaOne would be forced to accept that type of interconnection in lieu of, for example, a mid-span meet arrangement. Bell Atlantic's choice would limit MediaOne's options." MediaOne Reconsideration Order at 22. In the case at hand, if the Department were to grant Verizon's request for reciprocal collocation rights, we would be overturning our prior decisions on this issue. But, Verizon has not presented persuasive argument that would convince us to disturb our earlier decisions. The potential limitations imposed on a CLEC's interconnection options, if an ILEC decided to collocate at the CLEC facilities, remain our primary concern.

Likewise, Verizon's insistence that fairness dictates it have comparable interconnection choices as GNAPs rings hollow. The interconnection standards outlined in the Act for ILECs and CLECs are not symmetrical. Rather, the burdens imposed by the Act fall much more heavily on ILECs. Thus, appeals based upon fairness are not convincing. Accordingly, we reject Verizon's proposed language for § 2.1.5 of the Interconnection Agreement, and adopt GNAPs' proposed language. We find that GNAPs' discretionary grant of collocation rights to Verizon is consistent with our prior policy and with the Act. We further find no Federal or Department precedent for Verizon's alternative request that we prohibit GNAPs from charging distance sensitive rates, and we reject it accordingly.

J. Should GNAPs Be Permitted to Avoid the Effectiveness of Any Unstayed Legislative, Judicial, Regulatory or Other Governmental Decision, Order, Determination or Action? (Arbitration Issue No. 11)

1. Introduction

GNAPs seeks a provision in the interconnection agreement at General Terms and Conditions § 4.7 that would require Verizon to delay the effect of a change in law until such law is "final and non-appealable," regardless of whether the change in law is subject to a judicial or regulatory stay. Verizon proposes to give effect to all changes in law.

2. Positions of the Parties

a. GNAPs

GNAPs claims that, "no party should be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination or action" (GNAPs Reply Brief at 28). GNAPs further submits that both Parties should follow the law (GNAPs Brief at 67; GNAPs Reply Brief at 28).

b. Verizon

Verizon states that its proposed General Terms and Conditions § 4.7, a subsection of "Applicable Law," ensures that the contract reflects changes in law (Verizon Brief at 117). Verizon argues that GNAPs' proposal to delay implementation of a change in law until appeals are exhausted, even if the change in law is not subject to a stay, is "patently unreasonable" and "unfounded" (Verizon Brief at 117; Verizon Reply Brief at 38). According to Verizon, GNAPs' true motive is to "base Verizon MA's obligations on what GNAPs wants governing law to be, not what it actually is" (Verizon Reply Brief at 38) (emphasis in original). Verizon states that the Parties' agreement must recognize a change in law if the law is effective (Verizon Brief at 117; Verizon Reply Brief at 38).

Verizon further contends that GNAPs' proposed contract language that addresses discontinuance of service, payment, or benefit, specifying that it must be "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier" (see GNAPs' General Terms and Conditions § 4.7) is "superfluous and, thus, undesirable from a contract drafting standpoint" (Verizon Brief at 117). According to Verizon, it is "critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to [do] so under applicable law" (Verizon Brief at 118, footnote omitted; Verizon Reply Brief at 38). Verizon therefore asks the Department to adopt Verizon's proposed General Terms and Conditions § 4.7.

3. Analysis and Findings

GNAPs proposes two additions to General Terms and Conditions § 4.7 that the Department deems inappropriate. First, GNAPs' proposes to add the phrase "final and non-appealable" in reference to "any legislative, judicial, regulatory or other governmental decision, order, determination or action." The Department finds that this language, if adopted, would have the undesirable effect of staying the effectiveness of any change in law pertinent to the contract regardless of whether a judicial stay is ever requested or granted. Second, GNAPs proposes language that addresses discontinuance of service, payment, or benefit, specifying that it must be "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier." The Department finds that the interconnection agreement already specifies the terms and conditions under which Verizon may discontinue service, including the timing and other procedures relating to discontinuance, and thus, GNAPs' proposed language is unnecessary. Accordingly, Verizon's proposed language for General Terms and Conditions § 4.7 is adopted.

K. Should GNAPs be Permitted to Insert Itself Into Verizon's Network Management to Prospectively Gain Access to Network Elements That Have Not Yet Been Ordered Unbundled? (Arbitration Issue No. 12)

1. Introduction

This issue relates to General Terms and Conditions § 42 (Technology Upgrades), which discusses network upgrades and the responsibilities of interconnecting carriers. The disputed contract language relates to the consequences of such upgrades.

2. Positions of the Parties

a. GNAPs

In response to a Department question, counsel for GNAPs stated during the hearing that "[o]bviously the characterization of the issue pretty much lays out what a potential response would be anyway" (Tr. at 195).[45] In its brief, GNAPs offers no position on the issue because "Verizon framed the issue in such an argumentative and vague manner that Global cannot be expected to reply" (GNAPs Brief at 67). In its reply brief, GNAPs responds to this issue by stating that "Global wants some protections that as a customer it will (a) have access to the same technologies deployed in Verizon's network and (b) Verizon will not deploy new technologies which will affect Global's service quality without notice and adequate joint testing" (GNAPs Reply Brief at 28).

b. Verizon

Verizon argues that its proposed language in General Terms and Conditions § 42 (Technology Upgrades) is "necessary to memorialize Verizon's right to upgrade and maintain its

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45 In its Reply, Verizon framed Arbitration Issue No. 12 as follows: "Should GNAPs be Permitted to Insert Itself Into Verizon's Network Management or to Contractually Eviscerate the 'Necessary and Impair' Analysis to Prospectively Gain Access to Network Elements That Have Not Yet Been Ordered Unbundled?" (Verizon Response at 112).

network, ensure that GNAPs does not force Verizon to unbundle its network absent a requirement to do so, and make GNAPs financially responsible for interconnecting with Verizon's network" (Verizon Brief at 119). According to Verizon, the dispute on this issue relates to the consequences of technology upgrades, not whether Verizon has a right to upgrade its network (id.).

Verizon states that applicable law only requires Verizon to "provide GNAPs unbundled access to network elements that have been declared UNEs and that pass the necessary and impair test" (Verizon Brief at 119) (footnote omitted). Accordingly, Verizon claims that the language GNAPs adds requiring Verizon to offer fiber and "next generation technology" as unbundled network elements is unnecessary (id.). On the issue of financial responsibility, Verizon states that, "if GNAPs wishes to interconnect with or take services or facilities from Verizon, then GNAPs must ensure that its network is compatible with Verizon's network as it may change from time to time" (id. at 120). Verizon claims that this requirement is necessary to ensure that Verizon maintains its service quality standards and acts in a non-discriminatory manner (id.).

Verizon states that these issues were examined in the Department's Tariff No. 17 Order, and that § 42 of the General Terms and Conditions of its Redlined Agreement is consistent with the Department's prior rulings (Verizon Brief at 121). Verizon further states that its proposed § 28 of the General Terms and Conditions (Notice of Network Changes) of its Redlined Agreement "tracks the Department's findings and should be adopted in its entirety" (id.).

3. Analysis and Findings

In the Tariff No. 17 Order, at 147, the Department held that an ILEC's duty under Section 251(c)(5) of the Act "requires Bell Atlantic [now Verizon] to provide notice of its planned network changes and upgrades." Although the Department entrusted "Bell Atlantic [now Verizon] with the authority to make all final decisions with regard to its planned network changes and upgrades," the Department ordered Verizon "to provide a mechanism for CLECs to submit formal comments and suggestions as to proposed network changes and upgrades." Id. at 148. Therefore, Department precedent requires Verizon to provide GNAPs with notice of any network changes. We agree with Verizon that its proposed § 28 of the General Terms and Conditions is consistent with Department precedent and therefore adopt it.

As to the cost to GNAPs to accommodate Verizon's network changes in its own network, the Department found it unnecessary to "require Bell Atlantic to reimburse CLECs for costs associated with network changes and upgrades." Tariff No. 17 Order at 149. The Department affirms its prior determination. The Department finds no basis to shift responsibility for CLECs' costs associated with Verizon's network changes and upgrades; therefore, we reject GNAPs' proposal to do so.

Next, we find GNAPs' attempt to address Verizon's obligation to provide unbundled access to network elements, including next generation technology, goes beyond the requirements imposed by the Act. Verizon is not required to provide unbundled access to any and all network elements, but only to those elements that have been declared UNEs because they have passed the "necessary and impair" test.[46] Until next generation technology, a term which is not even defined by GNAPs, has been declared a UNE, Verizon is not required to provide unbundled access to it. Accordingly, the Department finds Verizon's proposed contract language for General Terms and Conditions § 42 consistent with Department and FCC precedent, and hereby adopt it.

V. ORDER

After due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth in this Order; and it is

FURTHER ORDERED: That the Parties incorporate these determinations into a final

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46 See Iowa Utilities Board v. FCC, 219 F.3d 744 (8^{th} Circuit 2000).

agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act, within 21 days of the date herein.

By Order of the Department,

/s/
Paul B. Vasington, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Deirdre K. Manning, Commissioner