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

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

MEMORANDUM OPINION AND ORDER

Adopted: March 5, 2004 **Released:** March 5, 2004

By the Associate Bureau Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On December 12, 2003, the Wireline Competition Bureau (Bureau), acting through authority expressly delegated from the Commission and standing in the stead of the Virginia State Corporation Commission, issued a decision resolving all questions arising under the petition for arbitration of an interconnection agreement between Verizon Virginia, Inc. (Verizon) and Cavalier Telephone, LLC (Cavalier or Petitioner) (collectively, the Parties).[1] In the Arbitration Order, the Bureau instructed the Parties to incorporate its determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, pursuant to section 252(e)(1) of the Communications Act of 1934.[2] Section 252(e)(1) also instructs the State commission (or, in this case, the Bureau) to approve or reject the agreement, with written findings as to any deficiencies. Consistent with the required timetable,[3] the Parties filed a proposed conforming contract jointly on February 5, 2004.[4]

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[1] *See Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, WC Docket No. 02-359, Memorandum Opinion and Order, DA 03-3947 (rel. Dec. 12, 2003) (*Arbitration Order*).

[2] *Arbitration Order*, para. 208; 47 U.S.C. § 252(e)(1).

[3] *See Arbitration Order*, para. 208 (requiring a final interconnection agreement to be filed within 45 days of that Order); *Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption* (continued....)

2. In this Order, again under authority delegated from the Commission,[5] we approve the agreement submitted by the Parties. Except as expressly provided below, we find no deficiencies in this agreement, nor do we find any other reason to withhold approval. We note that this agreement was jointly prepared and submitted and reflect agreement between the parties on how to implement the determinations contained in the Arbitration Order.[6] Accordingly, to the extent this agreement reflects the determinations made in the Arbitration Order, we find it to meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, and except as discussed below, not subject to rejection. We note that both Parties filed petitions with the Commission seeking Bureau review of certain aspects of the Arbitration Order.[7] Under the Commission's rules, the pendency of these petitions does not affect the finality of the Arbitration Order, and does not prevent this Order from being effective and binding upon release.[8]

II. OUTSTANDING ISSUES

3. Section 252(e)(5) provides for the Commission to "assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission," including "acting for the state commission under section 252(e)(1), which calls for state commission approval of 'any interconnection agreement adopted by negotiation or arbitration.'"[9] Portions of an arbitrated agreement may be rejected if they do not meet the requirements of section 251, including the Commission's rules implementing section 251, or if they do not meet the pricing requirements of section 252(d).[10]

(Continued from previous page)
of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration, WC Docket No. 02-359, Order, DA 04-291 (rel. Feb. 5, 2004) (granting a 10 day extension of the time to file the final interconnection agreement).

4 *See* Letter from Kimberly A. Newman, Counsel for Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-359 (filed Feb. 5, 2004) (*Verizon Feb. 5 Letter*).

5 *See* 47 U.S.C. § 155(c)(1); *see also Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended,* 16 FCC Rcd 6231, 6233, paras. 8-10 (2001) (*Arbitration Procedures Order*).

6 *See Verizon Feb. 5 Letter.*

7 *See* Verizon Petition for Clarification and Reconsideration, WC Docket No. 02-359 (filed Jan. 12, 2004); Cavalier Petition for Reconsideration, WC Docket No. 02-359 (filed Jan. 12, 2004).

8 *See Arbitration Procedures Order*, para. 9; *see also* 47 U.S.C. §§ 155(c)(3), 405(a), 408; 47 C.F.R. §1.102(b).

9 47 U.S.C. § 252(e) cited in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16129-30, para. 1290 (1996) (*Local Competition First Report and Order*) (subsequent history omitted).

10 *See* 47 U.S.C. § 252(e)(2)(B).

4. In addition, in the *Arbitration Order*, we required the parties to submit a revised section 11.2.12.[11] Upon reviewing section 11.2.12 submitted by the Parties, we identified certain language that must be modified to ensure it accords with that *Order* and the statutory standard. We therefore approve the contract submitted by Cavalier and Verizon, modified as described below.

5. Sections 11.2.12.2(B), (C), and (F) reference "manual loop qualification." Those sections should, instead, refer to the defined term "Manual Loop Qualification." We direct the Parties to make that modification.

6. In the third sentence of section 11.2.12.2(C), we require the Parties to replace the phrase "If Cavalier requests loop qualification manually or through an Engineering Query" with the phrase "If Cavalier requests Manual Loop Qualification or an Engineering Query." This clarifies that it is the loop qualification process that is manual, and not necessarily Cavalier's request that is manual.

7. The third sentence of section 11.2.12.2(C) likewise refers to "a query" being issued to Cavalier with loop qualification results. However "a query" is not itself the loop qualification results, but is the process used to determine those results. Thus, for clarity, we direct the Parties to modify that language to refer to "a query result" being issued to Cavalier.

8. The first sentence of section 11.2.12.2(D) requires that Verizon's mechanized loop qualification database or its Manual Loop Qualification must indicate that a loop does not qualify as xDSL compatible before Cavalier may request an Engineering Query. However, Cavalier has the right to use non-Verizon loop pre-qualification or qualification tools, and may wish to request an Engineering Query after utilizing those tools. Consequently, we direct the Parties to remove the restriction and modify the first sentence of section 11.2.12.2(D) to read simply "Cavalier may request an Engineering Query to obtain more information regarding the characteristics of the loop itself."

9. Finally, the first sentence of section 11.2.12.3(B) erroneously refers to an "Engineering Query," when it should instead refer to an "Engineering Work Order." We direct the Parties to modify section 11.2.12.3(B) to make that correction.

10. In sum, we direct the Parties to modify sections 11.2.12.2 and 11.2.12.3 to read as follows:

> **11.2.12.2** The following ordering procedures shall apply to the Digital Designed Loops:
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> A. Cavalier shall place orders for xDSL Compatible Loops and Digital Designed Loops by delivering to Verizon a valid electronic transmittal service order or other mutually agreed upon type of service order. Such service order shall be provided in

[11] *Arbitration Order*, para. 70.

accordance with industry format and specifications or such format and specifications as may be agreed to by the Parties.

B. Verizon is in the process of conducting a mechanized survey of existing Loop facilities, on a Central Office by Central Office basis, to identify those Loops that meet the applicable technical characteristics established by Verizon for compatibility with ADSL, HDSL, SDSL, IDSL and ISDN signals. The results of this mechanized survey will be stored in a mechanized database that is made available to Cavalier on a non-discriminatory basis. Cavalier may utilize this mechanized loop qualification database, where available, in advance of submitting a valid electronic transmittal service order for an ADSL, HDSL, SDSL, IDSL or ISDN Loop provided, however, Cavalier may request Manual Loop Qualification or an Engineering Query if the mechanized loop qualification database is not available or if Cavalier chooses not to utilize such database. Charges for Engineering Query, Engineering Work Order and Manual Loop Qualification are set forth in Exhibit A. Cavalier may also access loop make-up information from Verizon's Loop Facility Assignment and Control System ("LFACS") (*e.g.*, cable segment lengths and gauges, bridged tap lengths, gauges and locations, load coil locations, and DLC system types) as that information exists in the LFACS database at the rates set forth in Exhibit A. Cavalier may utilize, at its option, any of the loop pre-qualification methods currently provided by or used by Verizon, including any affiliate of Verizon. Cavalier may also use any alternative loop pre-qualification or qualification method generally available to CLECs, subject to the terms of Section 11.2.12.2(E). When Cavalier elects not to use Verizon's loop pre-qualification procedure, it shall not be assessed any charge for such procedures; however, for the avoidance of any doubt, Verizon shall bill and Cavalier shall pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made at Cavalier's request and as a result of Cavalier's decision to use non-Verizon loop pre-qualification tools.

C. If the Loop is not listed in the mechanized database described in section (B) above, Cavalier may request either a Manual Loop Qualification or Engineering Query prior to or in conjunction with submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL or BRI ISDN Loop. The rates for Manual Loop Qualification and Engineering Query are set forth in Exhibit A. If Cavalier requests Manual Loop Qualification or an Engineering Query, three (3) business days (or a shorter period if required under Applicable Law) following receipt of Cavalier's valid and accurate request will be generally required before a FOC or a query result can be issued to Cavalier with the Loop qualification results. Verizon may require additional time to complete the Engineering Query where there are poor record conditions, spikes in demand or other unforeseen events, unless such additional time is not permitted pursuant to an effective Commission order.

D. Cavalier may request an Engineering Query to obtain more information regarding the characteristics of the loop itself. Subject to the terms herein, including but not limited to Section 11.2.12.2(C) above, Verizon will respond to an Engineering Query with information from Verizon cable records such as amount and location of bridged taps,

number and location of load coils, location of digital loop carrier, or cable gauge at specific locations or any other reason that may be revealed through loop qualification.

E. If Cavalier uses a non-Verizon loop pre-qualification or qualification tool, then Verizon will not be responsible for the service performance of any loop, including any performance measurements and remedies under this Agreement, and, except as otherwise required by Applicable Law, under any FCC or Commission approved carrier-to-carrier performance assurance guidelines or plan, regardless of whether that loop was in use providing the same xDSL service at the time of Cavalier's order. If Cavalier submits a service order for an ADSL, HDSL, SDSL, IDSL or BRI ISDN Loop that is, in fact, found not to be compatible with such services in its existing condition, Verizon will respond back to Cavalier with a "Nonqualified" indicator and with information showing whether the non-qualified result is due to the presence of load coils, presence of digital loop carrier, or loop length (including bridged tap).

F. Where Cavalier has followed a loop pre-qualification procedure described above resulting in the determination that a Loop is not compatible with ADSL, HDSL, SDSL, IDSL or BRI ISDN service in its existing condition (e.g., the results of the manual or mechanized prequalification query indicate that a Loop does not qualify due to factors such as the presence of load coils, presence of digital loop carrier, loop length (including bridged tap) or for any other reason that may be revealed through loop qualification), Cavalier, together with its order or prior to submitting an order for service, may request an Engineering Query to determine whether conditioning may make the Loop compatible with the applicable service; or if Cavalier is already aware of the conditioning required (e.g., where Cavalier has previously requested a Manual Loop Qualification or an Engineering Query), Cavalier may submit a service order for a Digital Designed Loop. Verizon will undertake to condition or extend the Loop in accordance with this Section 11.2.12 upon receipt of Cavalier's valid, accurate and pre-qualified service order for a Digital Designed Loop.

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

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

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

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

11. Section 51.807(c)(3) of the Commission's rules allows us to specify a schedule for implementation of the approved interconnection agreement.[12] To provide certainty as to the effective date of this interconnection agreement both for these Parties, as well as other parties that might wish to opt in to this agreement pursuant to section 252(i) of the Act, we require the Parties to submit an executed copy of the modified agreement to the Commission within five days of the date of this order.[13] In compliance with section 252(h) of the Act, we likewise require the Parties to file a copy of the executed interconnection agreement with the Virginia State Corporation Commission.[14]

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to Section 252 of the Communications Act of 1934, as amended, and Sections 0.91, 0.291 and 51.807 of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291 and 51.807, the Interconnection Agreement submitted jointly by Cavalier and Verizon, as modified herein, IS APPROVED.

13. IT IS FURTHER ORDERED that Cavalier Telephone, LLC and Verizon Virginia, Inc. SHALL INCORPORATE the above determinations into an executed interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed within five days from the date of this Order with the Commission, pursuant to Section 252(e)(1) of the Communications Act of 1934, 47 U.S.C. § 252(e)(1) and with the Virginia State Corporation Commission, pursuant to Section 252(h) of the Communications Act of 1934, 47 U.S.C. § 252(h).

By Order of the Associate Bureau Chief,

Richard Lerner
Associate Bureau Chief
Wireline Competition Bureau

[12] 47 C.F.R. § 51.807(c)(3).

[13] 47 U.S.C. § 252(i).

[14] 47 U.S.C. § 252(h).