BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.	DOCKET NO. 040156-TP ORDER NO. PSC-06-0078-FOF-TP ISSUED: February 3, 2006

The following Commissioner participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman

ORDER DENYING MOTIONS FOR RECONSIDERATION AND GRANTING CLARIFICATION OF CERTAIN PORTIONS OF ORDER NO. PSC-05-1200-FOF-TP

BY THE COMMISSION:

BACKGROUND

On August 21, 2003, the FCC released its TRO, promulgating various rules governing the scope of incumbent telecommunications service providers' obligations to provide competitors access to UNEs; the Order became effective on October 2, 2003. On February 20, 2004, Verizon-Florida, Inc. (Verizon) filed its Petition for Arbitration of Amendment to Interconnection Agreements with Certain Competitive Local Exchange Companies (CLECs) and Commercial Mobile Radio Service Providers (CMRS) in Florida to implement changes resulting from the TRO.

The TRO was subsequently appealed to the D.C. Circuit Court of Appeals. On March 2, 2004, the D.C. Circuit Court of Appeals, in USTA II, vacated and remanded certain provisions of the TRO, specifically regarding the impairment findings relating to mass market switching, high-capacity loops, and dedicated transport. Verizon filed an Update to Petition for Arbitration to reflect the USTA II decision on March 19, 2004. Subsequently, on June 16, 2004, the D.C. Circuit Court of Appeals issued its mandate.

On December 5, 2005, Final Order No. PSC-05-1200-FOF-TP (Order) was issued, setting forth our specific findings on the issues established for this Docket. On December 20, 2005, the following motions were filed:

Verizon – Motion for Reconsideration of Issue 21(a) and for clarification of portions of Issues 9 and 21(b)(2).

Florida Digital Network, Inc. (FDN) – Motion for Reconsideration of Issue 5, and Motion for Temporary Relief from Enforcement.

CLEC Parties (CLECs) - Motion for Reconsideration of Issue 5

XO Communications Services, Inc. (XO) – Motion for Reconsideration and Clarification of Issues 3, 4, 5, 21, and 25.

On December 27, 2005, Verizon filed its Response to the Motions for Reconsideration and/or Clarification. Also on December 27, 2005, FDN filed its Response to Verizon's Motion for Reconsideration and Clarification.

This Order addresses the Motions for Reconsideration and/or Clarification.

STANDARD OF REVIEW

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a material and relevant point of fact or law that the Commission overlooked or failed to consider when it rendered the Order. Diamond Cab v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161, (Fla. 1st DCA 1981). The mere fact that a party disagrees with the order is not a basis for rearguing the case. Diamond Cab. Additionally, reweighing the evidence is not a sufficient rationale for granting reconsideration. State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

ARGUMENTS OF THE PARTIES

Verizon Motion

The Verizon Motion requests reconsideration of Issue 21(a) and for clarification of portions of Issues 9 and 21(b)(2).

Issue 9

Verizon notes that we added a number of definitions to those requested by Verizon. "Business Line" is one of those added definitions. Verizon requests that we clarify and confirm that our definition of "Business Line" is intended to be the FCC's entire definition and only the FCC's definition, as set forth in the TRRO Appendix B, at 145, §51.5.

Analysis and Findings

The requested clarification of Issue 9 in this instance is warranted and should be granted. For the purposes herein, it was the intent of this Commission that the entire definition of "business line," as set forth in the TRRO Appendix B, at 145, be clarified by this Order.

Issue 21(a)

Verizon requests that we reconsider our finding in Issue 21(a), wherein we found that CLECs "shall be required to submit a letter, either manually or electronically," to certify their compliance with these criteria when they order or re-certify Enhanced Extended Links (EELs), or when they convert access services to EELs. Verizon asks that we reconsider this decision to the extent it gives CLECs the option of choosing not to certify their EELs through the same electronic process they use to order those EELs.

Verizon notes that we found that requiring electronic certification would be "discriminatory" because some CLECs may not have access to an electronic process. However, Verizon urges, we overlooked or failed to consider that all CLECs have access to electronic EEL ordering, so the assumption grounding our decision is incorrect. Verizon continues that CLECs have long been required to use Verizon's electronic ordering system, and the electronic Access Services Request (ASR) form in particular, to place orders for DS1 and DS3 loops, dedicated transport and high capacity EELs. Verizon argues that use of a separate certification letter would require Verizon to manually match each letter up to the proper ASR to ensure that each requested EEL has been duly certified.

Analysis and Findings

We note that Verizon's claim that all CLECs have access to the electronic EEL order processing was not included in the record. Moreover, none of the parties in this docket proffered testimony concerning this dispute. Verizon did indicate that it preferred the electronic medium, but did not claim that *all* CLECs currently use the electronic method. However, the Competitive Carrier Group (CCG) in its brief requested that we allow the manual method as well. Being bound to the existing record in formulating our decisions, we recognized Verizon's objection, but dismissed it as discriminatory. Nevertheless, we find the Order warrants clarification regarding a CLEC's use of the electronic method for ordering, but using the manual method for certification purposes. Accordingly, we clarify by finding that a CLEC shall use the same method to submit EEL certifications as it does for ordering EELs. Moreover, for new orders or orders for conversions, the certification should accompany the order. This clarification should ensure this Commission's intent was preserved without harming either Verizon or the CLECs.

Issue 21(b)(2)

Verizon asks that we clarify that we did not intend to eliminate any conversion-related rates we already established in the Verizon UNE case or elsewhere, or that may be in Verizon's existing interconnection agreements. Further, we should clarify that we meant only to find that there was no need to rule on Verizon's proposed new rates for conversion-related items because Verizon withdrew those rates.

FDN's Response to Verizon's Request for Clarification of Issue 21(b)(2)

FDN responded only to this third point of Verizon's Motion, which FDN believes is not sufficiently clear in the relief sought. FDN believes that the Order (1) presently bars Verizon

from assessing conversion charges and (2) does not preclude Verizon from charging pre-existing, approved charges for services other than conversions. If that belief is correct, then FDN states it would appear it has no disagreement with Verizon. However, it is unclear to FDN from Verizon's Motion whether Verizon asserts there are pre-existing, approved charges that do apply to conversions, let alone which conversions and which charges. Absent clarification from Verizon on the relief it seeks, FDN maintains that our Final Order speaks for itself, there is no need for clarification by us, and there are no charges for performing conversions.

Analysis and Findings

It was not our intent to override any terms of the parties' stipulation, nor to prohibit Verizon from charging any existing rates, but only to ensure that no new conversion-related rates were implemented without our approval. The stipulation states that it "does not affect Verizon's right to continue to apply any rates the Commission has already established . . . [or] the rates set forth in particular interconnection agreements." Therefore, we never intended to override existing rates either approved previously by us or included in an interconnection agreement between the parties. Accordingly, Verizon's Request for Clarification is granted to that extent.

FDN Motion

The FDN Motion requests that we reconsider our findings regarding Issue 5. Also, FDN requests Temporary Relief from Enforcement of the Order in this matter. The request for Temporary Relief from Enforcement has been dealt with by the entry of procedural Order No. PSC-06-0018-PCO-TP and, therefore, will not be discussed in this Order.

Issue 5

The specific issue for which FDN seeks reconsideration is the Order's imposition of a cap of ten DS1 dedicated transport circuits on all routes between all Verizon wire centers, regardless of tier, rather than just those routes where DS3 dedicated transport is unimpaired. In deciding on a DS1 dedicated transport cap that applied universally, FDN alleges we overlooked several points of law and failed to consider and to apply the rules of statutory construction and the FCC's intent in establishing the DS1 dedicated transport cap.

FDN urges that the Order effectively deletes critical language from the text of the TRRO and impermissibly rewrites the TRRO by applying the DS1 dedicated transport cap to all wire centers regardless of tier. Under the Order, FDN argues, the cap is improperly applied in all settings, even where it makes no net difference whatsoever to the impairment analysis. Further, the DS1 dedicated transport cap should apply consistently from ILEC to ILEC throughout the state, and in BellSouth territory, at least, the cap will only apply on routes where DS3 transport is unimpaired.[1]

[1] In the Prehearing Order in Docket No. 041269-TP, BellSouth's generic change of law proceeding, the parties did not dispute that the cap of 10 DS-1 dedicated transport circuits applied only on routes where DS-3 transport is unimpaired. Order No. PSC-05-1054-PHO-TP, issued October 31, 2005, p. 48. In addition, in Docket No. 041464-TP, an interconnection agreement arbitration case between FDN and Sprint, the staff recommendation provides that

FDN cites ¶ 128 of the TRRO which states in pertinent part:

> On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits. . . . . When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions apply.

However, in Appendix B to the TRRO, the rule § 51.319(e)(2)(B) states in pertinent part:

> A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

Based on these two quoted provisions, the Order in the instant docket observes:

> The language in the TRRO and the language in the rule can lead to different conclusions regarding the DS1 cap. However, we must look to the rule for guidance on this matter. If the parties believe the FCC's TRRO is not clear on this matter, they could seek clarification from the FCC.[2]

FDN argues that we failed to consider that applying the cap as the Order suggests (without a proviso for DS3 unimpaired routes) cannot be achieved unless one effectively deletes significant portions of ¶ 128. Paragraph 128 begins, "On routes for which we determine that there is no unbundling obligation for DS3 transport." According to FDN, this stated proviso, if the Order is not reconsidered, would be rendered superfluous and pointless, since the DS1 cap would apply whether DS3 impairment exists or not. Taking the argument a step further, states FDN, if the DS1 cap applied universally, there would be no reason for the FCC to also state at the end of ¶ 128, "we find that our DS3 impairment conclusions apply," because those impairment conclusions would be without effect should the DS1 cap apply to every route. In short, urges FDN, one cannot reconcile the Order's interpretation of the DS1 cap with the terms of ¶ 128 unless the above language from ¶ 128 was deleted in its entirety.

In the TRRO, urges FDN, the FCC created three tiers of wire centers and linked the dedicated transport impairment analyses to those tiers. DS3 dedicated transport is unimpaired where the end points of the route are either Tier I or II, and both DS1 and DS3 dedicated

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the cap of 10 DS-1 dedicated transport circuits should only apply on routes where DS-3 transport is unimpaired. The Commission approved that staff recommendation at the December 20, 2005 Agenda Conference.

[2] Order at p. 36.

transport are unimpaired where the end points of a route are both Tier I.[3] FDN argues the crux of this dispute on reconsideration is with transport involving Tier III wire centers, because dedicated transport between a Tier I, II or III wire center and a Tier III wire center is, with very limited exception, always impaired.[4] Notably, states FDN, the FCC did not make an explicit finding of nonimpairment as to DS1 dedicated transport where a Tier III wire center was involved, and the impairment analysis remanded to the FCC by the D.C. Court of Appeals is the focus of the TRRO.

FDN notes the FCC itself has held that its orders and the rules adopted thereby should be read in conjunction with one another and the FCC's other rules.[5] In other words, one should not read an FCC rule by turning a blind eye to the orders which spawned and explicate the rule. This, urges FDN, the Order failed to consider. Indeed, according to FDN, this Commission recognized "different results" could be found by comparing ¶ 128 with § 51.319(e)(2)(B) and therefore we should have invoked the rules of statutory construction to aide its interpretation. Two pillars of statutory construction of particular applicability here are (a) that one must read all provisions of a statute or rule together to give all of the words in the statute or rule meaning and (b) that all related statutes or rules must be read in *pari materia* to give effect to each part. See, e.g. Palm Beach County Canvassing Bd. v. Harris, 772 So.2d 1273 (Fla. 2000), and Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 455 (Fla. 1992).

Verizon's Response to FDN's Motion for Reconsideration of Issue 5

While FDN argued that we erred in strictly applying the rule by imposing universal caps of ten DS1 dedicated transport circuits on all routes, regardless of tier, Verizon's response supported our findings and its basis for those findings. Verizon urges that we, correctly, applied the plain meaning rule and, accordingly, reached a correct decision on this issue. According to Verizon's Response, when the rule is unambiguous on its face, as is the case with the rule which is the subject of this discussion, it would be impermissible under Florida law to inject the theory of statutory interpretation. Verizon further noted that the majority of states which have interpreted the FCC rule reached the same conclusion as that of this Commission.

Additionally, Verizon urges the admonition in our Order that: "If the parties believe the FCC's TRRO is not clear on this matter, they could seek clarification from the FCC." Indeed, notes Verizon, a number of CLECs have already asked the FCC to eliminate or modify the ten

[3] Per Exhibit No. 10 (AFC-1), page 4, there are thirteen Tier I or Tier II wire centers in Verizon Florida territory, leaving all other Verizon wire centers in Florida as Tier III wire centers, by definition. 47 CFR § 319(e)(3)(iii).

[4] The only exception, per Rule 47 CFR § 51.319(e)(2)(iii)(B), is the limit of 12 unbundled DS3 dedicated transport circuits on routes where DS3 transport is impaired. In effect, impairment for a particular carrier on a particular route stops at a particular volume of DS3 circuits, i.e. 12 DS3s.

[5] In the Matters of TSR Wireless, LLC, et al. v. U.S. West Communications, Inc., 2000 WL 796763 (FCC), 15 F.C.C.R. 11166.

DS1 transport cap. Accordingly, argues Verizon, even if we could lawfully take on the task of modifying the FCC's DS1 cap rule (and we cannot), there would be no reason to do so.

Analysis and Findings

For the reasons set forth below, FDN's Motion for Reconsideration fails to meet the standard of review for a motion for reconsideration. The FDN Motion did not allege or identify any point of fact or law that we overlooked or failed to consider in rendering our Order. See Stewart Bonded Warehouse Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. w. King, 146 So. 2d 889 (Fla. 1962). FDN merely reargues matters that have already been considered, in an attempt to obtain a result more in its favor.

The law is clear that when a statute or rule is clear and unambiguous on its face, it should be given that clear meaning rather than resorting to statutory construction in an effort to conclude a different meaning. "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. " Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984). See also Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 303 (Fla. 2002) ("When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent."); Verizon Fla. Inc. v. Jacobs, et al., 810 So. 2d 906, 908 (Fla. 2002). ("There is no need to resort to other rules of statutory construction when the language of the statute is unambiguous and conveys a clear and ordinary meaning.") In "ascertain[ing] the legislative intent implicit in a statute, the courts are bound by the plain and definite language of the statute and are not authorized to engage in semantic niceties or speculations." Tropical Coach Line, Inc. v. Carter, 121 So. 2d 779, 782 (Fla. 1960). "It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language." State v. Jett, 18 Fla. L. Weekly S591, S592 (Fla. Nov. 10, 1993). "Rules of statutory construction should never be used to create doubt, only remove it." Englewood Water Dist. v. Tate, 334 So. 2d 626, 628 (Fla. 2d DCA 1976). See also Star Tyme, Inc. v. Cohen, 659 So. 2d 1064 (Fla. 1995). We correctly applied these principles, concluding that "the DS1 cap must be applied as stated in the rule," without limiting it to routes where unbundled DS3 transport is unavailable. Order at 36. The CLEC Parties call our plain reading of the rule "exceptional," but it is, in fact, the same interpretation made by nearly all Commissions to have considered the issue.

Rule 51.319(e)(2)(ii)(B), adopted in the TRRO, states:

> Cap on unbundled DS1 transport circuits. A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

Based on that unambiguous rule, in our Order in this Docket, we applied the plain meaning of the rule and found:

> The language in the TRRO and the language in the rule can lead to different conclusions regarding the DS1 cap. However, we must look to the rule for guidance on this matter. If the parties believe the FCC's TRRO is not clear on this matter, they could seek clarification from the FCC. Therefore, for purposes of the amendment, the DS1 cap must be applied as stated in the rule, not the text of the TRRO.

Order at 36.

Thus, we clearly indicate that we did, indeed, consider the text of the TRRO before making our ruling on this matter. The fact that the CLECs disagree with our conclusion is not a proper basis for reconsideration. The fact remains that the CLECs have raised no point of fact or law that we overlooked.

Also, in our Order, we advised that: "If the parties believe the FCC's TRRO is not clear on this matter, they could seek clarification from the FCC." (Order No. PSC-05-1234-FOF-TP, at 36) It appears that a number of CLECs have already asked the FCC to eliminate or modify the ten (10) DS1 transport cap. Therefore, even if we could lawfully modify the FCC's DS1 cap rule, there would be no reason to do so. Although there are pending requests at the FCC to address the DS1 cap issue, FDN notes that the FCC "has been very slow in recent years to address reconsideration/clarification requests." However, the FCC's pace is not a legitimate reason for us to usurp the FCC's exclusive authority to change or clarify its rule.

CLEC Parties' Motion

The CLEC Parties' Motion essentially makes the same substantive arguments as those detailed above in the FDN Motion. Accordingly, those arguments will not be repeated here.

In addition, the CLEC parties argue that the contract language proposed by the CLEC Parties to address the UNE DS1 Dedicated Transport cap is consistent with the general framework of the FCC's impairment analysis for high capacity transport facilities set forth in the TRRO. Specifically, the FCC's impairment analysis for high capacity dedicated transport facilities focused on when it would make economic sense for a CLEC to construct a DS3 dedicated transport facility, or otherwise to acquire such DS3 dedicated transport from a carrier other than the incumbent LEC. The CLEC Parties point out that because DS3 facilities simply are greater digital capacity than DS1 facilities, there is some cross-over point at which the level of demand is sufficient that a CLEC theoretically could be served equally by a DS3 transport facility, or by multiple DS1 transport facilities, depending in part on the relative pricing of UNE DS3 Dedicated Transport versus UNE DS1 Dedicated Transport. In the TRRO, the FCC found that a reasonable estimate of that cross-over point is ten (10) DS1 dedicated transport circuits. While a DS3 transport circuit can carry 28 DS1 transport circuits, the FCC estimated that it is

economically efficient for a CLEC to move to a DS3 dedicated transport circuit at the ten (10) DS1 transport circuit level.

The CLEC Parties explain the capacity basis of the FCC's impairment standard for UNE Dedicated Transport, and the potential substitutability of multiple UNE DS1 Dedicated Transport circuits for a UNE DS3 Dedicated Transport facility led to a determination by the FCC that a 10-circuit cap on UNE DS1 Dedicated Transport is necessary to protect the efficacy of its "nonimpairment" findings for UNE DS3 Dedicated Transport. For example, urges the CLEC Parties, consider a transport route where the wire center on one end is Tier 1, and the wire center on the other end is Tier 2. Under the FCC's modified unbundling rules, no impairment exists for UNE DS3 Dedicated Transport - i.e., the incumbent LEC is no longer obligated to provide UNE DS3 Dedicated Transport on this route. If a CLEC has enough traffic to justify more than ten (10) UNE DS1 transport circuits on that route, the FCC's view is that the CLEC has enough traffic that it could substitute a DS3 capacity transport facility for multiple UNE DS1 Dedicated Transport circuits. However, on routes where the FCC found no impairment without UNE DS3 Dedicated Transport, that substitution would create a potential "hole" in the FCC's "non-impairment" finding – i.e., the CLEC could continue to meet its transport needs by obtaining multiple UNE DS1 Dedicated Transport circuits notwithstanding its demand for DS3 capacity facilities. This "hole" exists only on routes where the UNE DS3 Dedicated Transport no longer is available.

The CLEC Parties argue that the link between the UNE DS1 Dedicated Transport cap and the FCC's goal of protecting its impairment determinations under the Triennial Review Remand Order is made clear in the final sentence of paragraph 128 which states, "[w]hen a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply." The first sentence of paragraph 128 is unequivocal, urges the CLEC Parties, regarding the FCC's intent to limit the UNE DS1 Dedicated Transport cap to routes where incumbent LECs' obligation to provide UNE DS3 Dedicated Transport has been removed. Conversely, on routes where UNE DS3 Dedicated Transport remains available, there is no concern that a CLEC might circumvent the FCC's non-impairment findings for UNE DS3 Dedicated Transport by requesting multiple DS1 UNE Dedicated Transport circuits.

The CLEC Parties also argue that we should interpret the UNE DS1 Dedicated Transport Cap consistent with the outcome of the BellSouth Generic UNE Docket. In that Docket, the parties recently agreed that the cap on UNE DS1 Dedicated Transport established by the FCC must be applied consistent with the Triennial Review Remand Order, as well as the FCC's modified unbundling rules. Specifically, note the CLEC Parties, the parties stipulated that the interconnection agreement amendments executed by BellSouth and Florida CLECs will include the following contract language, which properly limits application of the UNE DS1 Dedicated Transport cap to those routes where UNE DS3 Dedicated Transport no longer is available:

> CLEC shall be entitled to obtain up to (10) DS1 UNE Dedicated Transport Circuits on each Route where there is no unbundling obligation for DS3 UNE Dedicated Transport. Where DS3 UNE Dedicated Transport is available as a UNE

under Section 251(c)(3), no cap applies to the number of DSl UNE Dedicated Transport Circuits CLEC can obtain.

CLEC Parties claim that Verizon has provided this Commission no legitimate reason to broadly apply the UNE DS1 Dedicated Transport cap in a manner inconsistent with the TRRO.

Analysis and Findings

For the reasons set forth above under the finding for the FDN Motion, the CLEC Parties' Motion for Reconsideration fails to meet the standard of review for a motion for reconsideration. Our analysis would be the same as that in the FDN section, and need not be repeated here. Based on that analysis, the CLEC Parties' Motion for Reconsideration is denied.

XO Motion

De-Listed Section 251 UNEs Remain Subject to Transition Pricing Where No Physical Change to Existing Circuits is Required to Effectuate Commingling (Issues 3 and 5)

XO argues that we should clarify our ruling to establish that commingling of de-listed section 251 UNEs, including DS1 and DS3 dedicated transport circuits, does not constitute a "change" to existing facilities that effectively would remove such facilities from the requesting CLEC's embedded base, and thus, would deny the requesting CLEC the opportunity to avail itself of the transition rates to which it otherwise is entitled for the affected circuits. According to XO, commingling does not constitute a change for purposes of the "no new adds" rule, as Verizon need not make any physical change to existing DS1 and DS3 dedicated transport circuits to effectuate the commingling obligations imposed by the TRO and the FCC's modified unbundling rules.

In addition, claims XO, the assignment of new identification numbers to commingled arrangements is undertaken at Verizon's election, and solely for the purpose of Verizon's administrative ease. A contrary interpretation of the Order would subject Florida CLECs to higher wholesale rates where a de-listed section 251 UNE is commingled with a service or facility provided by Verizon. According to XO, these increased wholesale rates would be tantamount to a monetary penalty imposed on commingling. Therefore, XO requests that we clarify that commingling of a delisted section 251 UNE does not constitute a "change" where no physical change to the facility takes place, such as where Verizon, at its discretion, undertakes to assign a new circuit identification number.

Verizon's Response

Verizon responds that nothing in our analysis would prohibit transition pricing for de-listed, commingled facilities where there is no physical change to the commingled circuits. Nor would anything in Verizon's draft conforming amendment prohibit such transition pricing. Verizon believes XO prepared its request for clarification before it reviewed Verizon's conforming amendment. Because there is nothing in the Order or Verizon's proposed

amendment that would prohibit transition pricing for de-listed facilities that are commingled without any physical changes, Verizon believes there is no need for the clarification XO seeks. If, however, we do issue a clarification, Verizon asks that we adhere closely to exactly the clarification XO seeks - that "commingling of a de-listed ... UNE does not constitute a 'change' *where no physical change to the facility takes place.*" In particular, urges Verizon, we should avoid any broad statements suggesting that commingling never involves changes to existing facilities, because the CLEC might request changes in some cases. Such cases would not be covered by the clarification XO requests.

The Commission Should Adopt a Process to Verify "Non-Impairment" Wire Center Designations by Verizon (Issues 4 and 5)

In our Order, notes XO, we declined to adopt a process whereby we may review and verify that claims by Verizon for section 251(c)(3) loop and dedicated transport unbundling relief comply with the thresholds set forth in the TRRO. XO claims such a process is essential to ensure accuracy of future modifications to Verizon's list of claimed non-impaired wire center and route locations for which such unbundling relief is available. At a minimum, urges XO, we must provide a forum to verify Verizon's application of the criteria for section 251 loop and dedicated transport unbundling relief, as directed by the TRRO and the FCC's unbundling rules. XO argues that to not do so would effectively deprive Florida CLECs any opportunity to access or undertake a meaningful review of the factual data supporting Verizon's claims that unbundling relief is available, and in turn, frustrate CLECs' diligent efforts to self-certify that a specified wire center or route location in fact does not exceed the thresholds for unbundling relief established by the FCC.

XO argues that the self-certification and dispute resolution process approved by the Commission does not, by itself, provide adequate regulatory certainty critical to the stability of CLECs' business plans within Florida. Indeed, claims XO, the possibility of future litigation initiated by Verizon, for the purpose of challenging a requesting carrier's self-certified order for UNEs that Verizon claims no longer are available under section 251(c)(3) of the Act, threatens to consume substantial CLEC resources, as may be necessary to defend each such unbundling order, on a case-by-case basis. Moreover, according to XO, in the event that Verizon prevails in challenging a self-certified CLEC order for "de-listed" UNE loops or UNE dedicated transport facilities, the requesting carrier will be subject to retroactive billing of higher wholesale rates. Therefore, urges XO, in order to avoid the burden and expense of multiple, successor proceedings, we should approve contract language that provides a process to permit the parties to verify Verizon's initial designation of wire center and route locations that it claims exceed the thresholds set forth in the TRRO, as well as any subsequent modifications.

Verizon's Response

Verizon argues that the Order makes clear that we have already considered and rejected XO's arguments not once, but at least twice. We agreed with Verizon that its May 5, 2005, Order denying several CLECs' "emergency motions" to stay the TRRO's transition plan had already addressed the CLECs' disputes with respect to verification of ILEC wire centers. In our

May 5 Order, we confirmed that carriers must comply with TRRO paragraph 234 for ordering and provisioning high-capacity loops and transport. Verizon also urges that XO has improperly tried to introduce "evidence," for the first time on reconsideration.

Verizon also alleges that XO has failed to reveal that Verizon has already challenged XO's self certifications of a number of UNE dedicated transport circuits in Florida. On July 1, 2005, Verizon sent XO a notice to initiate dispute resolution, and the parties are in negotiations to try to resolve the matter through the dispute resolution provisions of their interconnection agreement. Accordingly, the process the FCC established in paragraph 234 of the TRRO is working just as the FCC intended, and just as we expected it would. Verizon claims that if XO were genuinely concerned about needless consumption of CLEC resources and multiple proceedings, it would not be seeking to initiate a second proceeding to address wire center designations that are already the subject of the ongoing dispute resolution process.

The Commission Should Reverse its Ruling That Requires Circuit-by-Circuit Re-Certification of All Pre-Triennial Review Order EELs (Issues 21 and 25)

XO claims that under our Order, we adopted contract language proposed by Verizon that requires Florida CLECs to re-certify that all currently provisioned EEL arrangements comply with the service eligibility criteria established by the FCC, and set forth in the FCC's unbundling rules. XO requests that we reconsider and reverse our decision to impose on Florida CLECs an obligation to submit to Verizon written re-certification of compliance for all embedded base EELs.

XO argues that neither the TRO, nor the FCC's unbundling rules promulgated thereunder, establish a "re-certification" process for EELs obtained by CLECs under the FCC's prior "safe harbor" rules that effectively would eliminate arrangements complying with the predecessor regulatory framework. Therefore, according to XO, the contract language proposed by Verizon, and approved in the Order, is inconsistent with the FCC's approach, and would impose on Florida CLECs additional burdens and expenses to re-certify existing EELs. Accordingly, XO requests that we reverse the conclusion in the Order to incorporate in the Amendment a requirement that Florida CLECs re-certify, on a circuit-by-circuit basis, that all currently provisioned EELS comply with the service eligibility criteria set forth in the FCC's unbundling rules.

Verizon's Response

Verizon urges that our Order correctly states "that all [EEL] circuits must be recertified, as explained in ¶7589, ¶7614 and footnote 1875 of the TRO." Order at 110. We established a 60-day period, from the effective date of the Order, for a CLEC "to verify and document that its current EELs comply with the TRO eligibility criteria." Whether CLECs must re-certify pre-existing EELs under the TROs new eligibility criteria was not a focus in the proceeding because the parties agreed to withdraw the re-certification dispute that had originally been identified. On April 8, 2005, AT&T submitted a letter explaining that it no longer needed to pursue this issue, and there were no objections to withdrawing the re-certification issue. Verizon argues that XO

cannot now resurrect withdrawn Issue 21(b)(3), and then brief that issue for the first time on reconsideration.

Verizon notes that our recognition of the re-certification obligation is well-grounded in the terms of the TRO. The FCC required that "each DS1 EEL (or combination of DS1 loop with DS3 transport) must satisfy the service eligibility criteria." In the TRO, the FCC made clear that "[tlhe eligibility criteria we adopt in this Order supersede the safe harbors that applied to EEL conversions in the past." Thus, as the Massachusetts D.T.E. explained: "Because the new service eligibility criteria are significantly different from the requirements under the old rules, and because circuits that qualified under the former rules may not qualify under the new rules, it is only logical that the FCC would require re-certification." Mass. Arb. Order at 130. If the FCC had intended to grandfather pre-existing EELs, claims Verizon, it would have done so explicitly. The FCC's EEL eligibility rule (47 C.F.R. § 51.318(b)) does not state any distinction between EELs ordered before the effective date of the TRO and those ordered later, so we cannot draw such a distinction, either - let alone on the basis of XO's improper motion for reconsideration.

Analysis and Findings

In none of the three subject areas argued by XO, did it allege or identify any point of fact or law that this Commission failed to consider in its Order. Therefore, for each of the issues argued in XO's Motion for Reconsideration, for the reasons set forth above under the findings for the FDN Motion, the XO Motion for Reconsideration fails to meet the standard of review for a motion for reconsideration. Also, regarding XO's first challenged area, because there is nothing in the Order or Verizon's proposed amendment that would prohibit transition pricing for de-listed facilities that are commingled without any physical changes, there is no need for the clarification XO seeks. The second challenge in the XO Motion, the verification of "non-impairment" wire center designations by Verizon, has been argued and rejected by the Commission earlier in these proceedings and need not be readdressed here. Finally, XO argues that neither the TRO, nor the FCC's rules, "establish a 're-certification' process for EELs obtained by CLECs under the FCC's prior 'safe harbor' rules that effectively would eliminate arrangements complying with the predecessor regulatory framework." However, this argument was not raised during the course of the proceeding. The Order recognized Verizon's claim that the amendments proposed by AT&T and CCG did not include any language regarding re-certification. Also, we did consider whether re-certification was required and found that the TRO does require such. The fact that XO may not agree with our findings is not a basis for reconsideration of our findings. Thus, we deny XO's Motion for reconsideration.

TIME FOR SUBMISSION OF AGREEMENTS

The TRRO established a 12-month transition period for unbundled local circuit switching and DS1 and DS3 loops and transport, when de-listed. That transition period ends March 10, 2006. The agreements must be submitted for review by our staff and approval by this Commission prior to the expiration of that transition period. Accordingly, there is a very short turn-around time for all the activity which must occur by the end of the transition period.

Therefore, the agreements shall be submitted to this Commission within 15 days of the Commission vote on this matter.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the subject motions for reconsideration of Order No. PSC-05-1200-FOF-TP is hereby denied. It is further

ORDERED that clarifications to Order No. PSC-05-1200-FOF-TP are hereby granted as detailed in the body of this Order. It is further

ORDERED that each of the agreements which are subject to this Docket shall be submitted to this Commission for approval no later than February 8, 2006. It is further

ORDERED that this docket shall remain open pending the submission and approval of the subject agreements.

By ORDER of the Florida Public Service Commission this 3rd day of February, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

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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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.