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April 12, 2004

Ms. Blanca Bayó, Director
The Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 040156-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of ACN Communication Services, Inc., Adelphia Business Solutions Operations, Inc. d/b/a TelCove, Allegiance Telecom, Inc., DSLnet Communications, LLC, Florida Digital Network, Inc., PAETEC Communications, Inc., and ICG Telecom Group, Inc. (collectively the "Competitive Carrier Coalition") are an original and 7 copies of the Competitive Carrier Coalition's Motion to Dismiss and Response to Petition for Arbitration of Verizon Florida, Inc.

Also enclosed are an original and 7 copies of the Competitive Carrier Coalition's Motion to designate the undersigned as their Qualified Representative for purposes of this proceeding.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Very truly yours,

Michael C. Sloan

Michael C. Sloan

AUS
CAF
CMP
COM 5
CTR
ECR
GCL
OPC
MMS
SEC 1
OTH

cc: service list

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2004, I caused copies of the foregoing Competitive Carrier Coaltion's Motion to Dismiss, Response to Petition for Arbitration of Verizon Florida, Inc. and Competitive Carrier Coalition's Request for Representation by a Qualified Representative, to be served upon the following parties by first class mail:

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BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE STATE OF FLORIDA

Petition of Verizon Florida Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	**Docket No. 040156-TP**

COMPETITIVE CARRIER COALITION'S MOTION TO DISMISS AND RESPONSE TO PETITION FOR ARBITRATION OF VERIZON FLORIDA INC.

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April 13, 2004

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PUBLIC SERVICE COMMISSION OF
THE STATE OF FLORIDA

Petition of Verizon Florida Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	**Docket No. 040156-TP**

COMPETITIVE CARRIER COALITION'S MOTION TO DISMISS AND RESPONSE TO PETITION FOR ARBITRATION OF VERIZON FLORIDA INC.

ACN Communication Services, Inc.; Adelphia Business Solutions Operations, Inc. d/b/a TelCove; Allegiance Telecom, Inc.; DSLnet Communications, LLC; Florida Digital Network, Inc.; PAETEC Communications, Inc.; and ICG Telecom Group, Inc. (collectively the "Competitive Carrier Coalition" or "Coalition") hereby submits their response to the Petition for Arbitration ("Petition"), as updated on March 19, 2004, of Verizon Florida Inc. ("Verizon") that seeks to amend the interconnection agreements of CLECs to reflect a change in law in accordance with the FCC's *Triennial Review Order* ("*TRO*").[1]

As a preliminary matter and as explained below, Verizon's Petition should be dismissed on numerous grounds. First, the Petition is premature because Verizon is required, pursuant to the Bell Atlantic/GTE Merger Conditions, to offer UNEs under its existing agreements until the *TRO* is final and non-appealable. At this time, the *TRO* is nowhere near being close to that. Second, Verizon's Petition fails to comply with significant procedural requirements that are mandated by law. Third, consideration of Verizon's petition would be a waste of Commission resources when the law on which the Petition

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1 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*"), corrected by Errata, 18 FCC Rcd 19020 (2003) ("Triennial Review Order Errata"). In its Petition, Verizon contends that its Petition is being filed pursuant to the transition process the FCC established in that Order.

purports to be based is still undetermined. Finally, with respect to the rates and terms Verizon seeks to impose for routine network upgrades, Verizon's obligation in this regard is not a product of a change of law and Verizon is already recovering the costs for such upgrades in its recurring UNE rates.

If the Commission does not dismiss or stay Verizon's Petition for these reasons, it should reject and/or modify substantial portions of Verizon's proposed amendment because it fails to comply fully with the requirements of section 251 of the Act.[2] Verizon's proposal contains numerous terms that are inconsistent with the requirements of the *TRO* or with other statutory and regulatory provisions.

DISCUSSION

I. The Commission Should Dismiss Verizon's Petition.

A. Verizon's Petition is Premature Because There has Not Been an Effective Change of Law.

The Commission should not entertain Verizon's arbitration request at this time because, contrary to the assertions in the Petition, Verizon's legal duty to offer UNEs has not yet been modified by the *TRO.* Verizon has an independent legal obligation pursuant to the Bell Atlantic/GTE Merger Conditions to offer UNEs, as its interconnection agreements currently require, until there is a *final and non-appealable* decision that requires Verizon to do otherwise.[3] The *TRO* plainly is not a "non-appealable" order, inasmuch as appeals of it are actually pending.

Verizon accepted this legal obligation as a condition of receiving FCC approval of the merger of its predecessor companies, Bell Atlantic Corporation ("BA") and GTE Corporation ("GTE"). On June 16, 2000, the FCC approved, subject to explicit conditions, the merger of the two companies. Verizon proposed, and the Commission adopted, a series of conditions intended to mitigate potential public

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[2] In submitting this response, the Competitive Carrier Coalition does not concede that any particular interconnection agreement between Verizon and individual members of the Coalition needs to be amended to reflect a change of law. In addition, the Competitive Carrier Coalition reserves its rights, and any other grounds it may have, to appeal, contest, dispute, or challenge any aspect of Verizon's Petition or the TRO.

[3] This Bell Atlantic/GTE Merger Condition was designed to protect CLECs from the negative impacts associated with this merger and only applies to the narrowing of Verizon's obligations to offer UNEs. To the extent the *TRO* has increased or expanded the availability of UNEs and/or UNE combinations, *e.g.*, commingling, the Merger Condition is inapplicable.

interest harms from the merger and to enhance competition in the local exchange and exchange access markets in previous Bell Atlantic and GTE serving areas.[4] One of those conditions was that Verizon continue to make UNEs available under the UNE Remand and Line Sharing Orders until the date on which the Commission orders in those proceedings, *and any subsequent proceedings*, become final and non-appealable.[5]

Paragraph 39 of the Bell Atlantic/GTE Merger Conditions specifically states as follows:

> Bell Atlantic/GTE shall continue to make available to telecommunications carriers, in the Bell Atlantic/GTE Service Area within each of the Bell Atlantic/GTE States, the UNEs and UNE combinations required in [the UNE Remand and Line Sharing Orders] ... in accordance with those Orders until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area. The provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively.[6]

When it approved the Bell Atlantic and GTE merger with this condition, the FCC discussed the effect of the UNE condition in the following terms:

> In order to reduce uncertainty to competing carriers from litigation that may arise in response to our orders in the UNE Remand and Line Sharing proceedings, *from now until the date on which the Commission's orders in those proceedings, and any subsequent proceedings, become final and non-appealable,* Bell Atlantic and GTE will continue to make

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4 *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, FCC 00-221 (2000) ("*Bell Atlantic/GTE Merger Order*"). The actual Merger Conditions appear as Appendix D to the Order.

5 *See Bell Atlantic/GTE Merger Order*, Appendix D ¶ 39 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order") and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. Dec. 9, 1999) ("Line Sharing Order")).

6 *Bell Atlantic/GTE Merger Order*, Appendix D ¶ 39. By its own terms, this condition continues to apply until the date of a final and non-appealable decision, even though other provisions of the Merger Conditions may have expired.

> available to telecommunications carriers, in accordance with those orders, each UNE and combination of UNEs that is required under those orders, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNE or combination of UNEs in all or a portion of its operating territory. This condition only would have practical effect in the event that our rules adopted in the UNE Remand and Line Sharing proceedings [which includes subsequent proceedings] are stayed or vacated.[7]

This condition is still in effect, because the FCC's *UNE Remand* and *Line Sharing* Orders never became final and non-appealable, and the *TRO* is an outgrowth of those same proceedings. Both the *UNE Remand* and *Line Sharing* Orders were appealed to the D.C. Circuit, and that court remanded both decisions (and vacated the *Line Sharing* rules) to the FCC in its first *USTA* decision.[8] The FCC then consolidated the remands of these two orders with its ongoing Triennial Review rulemaking.[9] The *TRO* is expressly captioned as an "Order on Remand" in both the *UNE Remand* docket (CC Docket No. 96-98) and the *Line Sharing* docket (CC Docket No. 98-147). Indeed, the appeals from the *TRO* were transferred to the D.C. Circuit because the order was an outgrowth of that court's earlier decision,[10] and the case was assigned to the *USTA* panel for the same reason.[11] Thus, as long as the Triennial Review proceeding remains pending before the FCC, neither the *UNE Remand* nor the *Line Sharing* proceeding has been terminated by a final, non-appealable order.

Of course, the *TRO* itself is far from being final and non-appealable. The D.C. Circuit recently vacated and/or remanded many significant provisions of the *TRO*, and this decision, in turn, is expected to be appealed to the Supreme Court; if and when the appeals are completed, and if the case is then

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7 *Bell Atlantic/GTE Merger Order*, ¶ 316 (emphasis added).

8 *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*").

9 *See* FCC Public Notice DA 02-1291, Wireline Competition Bureau Extends Reply Comment Deadline for the Triennial Review Proceedings (rel. May 30, 2002) (extending the deadline for reply comments in the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (Triennial Review) proceeding until July 17, 2002 so that parties can incorporate their analysis of *USTA I* into their reply comments); *see TRO* (citing *USTA I* numerous times as the legal backdrop and basis upon which the FCC rendered its decision).

10 *Eschelon Telecom, Inc. v. FCC*, 345 F.3d 682 (8th Cir. 2003).

11 *United States Telecom Association v. FCC*, No. 00-1012 (D.C. Cir. Mar. 2, 2004) ("*USTA II*"), slip op. at 10-11.

remanded, the FCC presumably will have to prescribe new rules that address defects the D.C. Circuit identified.[12] The Bell Atlantic/GTE merger conditions described above were expressly designed to protect CLECs from the uncertainty associated with this litigation prior to its ultimate conclusion.

Accordingly, Verizon's request that the Commission arbitrate and amend interconnection agreements to reflect determinations made in the *TRO* is premature until new FCC rules are final and non-appealable. Because Verizon has an independent and continuing legal obligation in the meantime under the Bell Atlantic/GTE Merger Conditions to offer UNEs pursuant to the UNE Remand and Line Sharing Orders, Verizon's arbitration petition should be dismissed.

B. Verizon Did Not Comply with Filing Requirements that Are Mandated by Law.

Even if Verizon's Petition were not premature for the reasons stated above, it would still be procedurally defective. Because of the inflexible time limits for arbitration imposed by the Telecom Act,[13] Section 252(b)(2) imposes several explicit duties *on the petitioning party*,[14] which seeks to invoke the Commission's time and attention (as well as the time and resources of the responding parties) In particular, 47 U.S.C. § 252(b)(2)(A) requires that:

> A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning –
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> (i) the unresolved issues;
>
> (ii) the position of each of the parties with respect to those issues; and

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[12] *USTA II* at 61-62; FCC News, Statement of FCC Commissioner Michael J. Copps, Kevin J. Martin, and Jonathan S. Adelstein on the D.C. Circuit's Decision to Eliminate the FCC's Rules (rel. Mar. 3, 2004); FCC News Release, Statement of FCC Chairmen Michael K. Powell Regarding the D.C. Circuit Decision on Triennial Review (rel. March 2, 2003); FCC News, Commissioner Abernathy Reacts to Triennial Review Decision by D.C. Circuit Court of Appeals (rel. Mar. 2, 2004), *available at* http://www.fcc.gov.

[13] Telecommunications Act of 1996, *codified at* 47 USC § 251 *et seq.*

[14] Section 252(b) of the Act requires that state commissions resolve unresolved issues raised in an arbitration within approximately nine months from the date a request to negotiate was made. Because arbitration petitions can only be filed between the 135 and 160th day (or approximately 4.5 months) after such a request was made, state commissions have approximately 4.5 months to resolve the outstanding issues. This is an exceedingly tight schedule for the resolution of arbitration petitions, especially now with all the litigation going on to implement the TRO.

(iii) any other issue discussed and resolved by the parties.[15]

As discussed below, however, Verizon's Petition does not even attempt to meet this up-front burden and, therefore, should be dismissed.

First, Verizon has not specifically identified the "unresolved issues" or disputed contract language for any CLEC. Verizon only offers blanket and generic statements that parties have issues with contract rates, terms and conditions. However, that is not enough. Section 252 mandates that the party requesting arbitration identify and present the issues to the Commission clearly and distinctly, which Verizon failed to do.[16] This filing requirement is critical because the Section 252 arbitration process will not work within its time limits if the issues are not laid out in a clear manner on the date the petitioner files its arbitration petition.

Because Verizon's Petition is deficient in this regard, the Commission should dismiss it. Otherwise, the Commission will need to consume valuable time narrowing down the issues, a process that will effectively begin after the responses to the arbitration petition are due, and will reduce even further the time available for actual resolution of issues in dispute. Verizon has had four months since it sent its October 2 letter to anticipate and prepare for the filing of its generic Petition. It is improper for Verizon to now file a boilerplate Petition, devoid of necessary facts, that seeks to shift the burden onto the CLECs and/or the Commission to both identify and resolve disputed issues on an expedited basis.

Second, in disregard of Section 252(b)(2)(A)(ii), Verizon did not submit "the position of each of the parties" with respect to each the issues in its Petition. Without this information, the Commission has

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[15] 47 U.S.C. § 252(b)(2)(A).

[16] In its Petition, Verizon avers that CLECs were untimely in responding to Verizon's proposed amendment and therefore it did not have sufficient time to ascertain what issues CLEC have with Verizon's proposed amendment and their related positions prior to filing its Petition. Verizon Petition at 5. Contrary to these assertions, several CLECs, including members of the Coalition in this state and/or other states, were timely in providing redlines of Verizon's amendment back to Verizon. However, rather than seek comment from these CLECs regarding the issues they have with Verizon's proposal, their positions, and determine an outline of common issues and positions among CLECs, Verizon filed its Petition against all CLECs, which it has an interconnection agreement with in a given state, that did not contain this information as the law requires. Verizon had plenty of time to pull that information together prior to the date the arbitration window closed; *i.e.*, March 10, 2004, but didn't. Its failure in this regard should be deemed fatal to its Petition.

no sense of the scope of the issues or how close or how far apart the parties are in resolving the issues. Moreover, although Verizon requests that the arbitration be dealt with on a consolidated basis, particular issues that each CLEC may have with Verizon's proposed amendment vary according to each CLEC's individual needs, the nature of its interconnection agreement with Verizon, and any negotiation history with Verizon that has already taken place. In this regard, Verizon has not made any attempt to outline the common issues CLECs have expressed with respect to Verizon's proposed amendment that would somehow justify mass consolidation and arbitration of the issues.[17]

Third, Verizon failed to mention "any other issue discussed and resolved by the parties." Nothing in Verizon's Petition explains what occurred during the negotiations process, what attempts were made by Verizon to conduct negotiations, or where and why negotiations broke down and or how issues were resolved by the parties. Nor could it because Verizon's only desire was to arbitrate rather than negotiate.

Verizon's failure to submit the required information is no mere oversight, but instead results from the fact that Verizon has not to date participated in genuine good faith negotiations with most CLECs regarding a TRO amendment. Although Verizon circulated a proposal to most CLECs soon after the TRO became effective, there have been few, if any, attempts by Verizon or CLECs to negotiate their differences. CLECs reasonably interpreted Verizon's inaction as a preference to begin serious negotiations later, after the fate of the TRO on appeal became clear, and that arbitrations, if any, would occur only after a later period of negotiations. For example, soon after receiving Verizon's template amendment proposal, Coalition member Florida Digital Network Inc. ("FDN") asked Verizon whether negotiations were required. By email dated October 16, 2003, Verizon informed FDN that if FDN did not want to negotiate the amendment, Verizon was not asking FDN to negotiate.[18] FDN reasonably understood this response to mean that the parties were not yet operating under the negotiations timeframe of Section 252. Verizon cannot reasonably petition for arbitration now, as if the parties have actually

[17] *See supra* note 16.

[18] FDN reserves the right to argue that Verizon's October 16 statement constitutes an admission that the TRO was not a change of law. FDN has given Verizon an opportunity to state a position regarding its October 16 email, but Verizon has not yet responded to that request.

been negotiating for 135 days. The Commission should instead dismiss the petition, and require the parties to negotiate under a new arbitration clock. If the parties are unable to come to an agreement after a real negotiations period, at least they will be able to present the positions of the parties and narrow the issues remaining in dispute, as contemplated by Section 252.

For these reasons, among others, the North Carolina Utilities Commission ordered that Verizon's consolidated arbitration petition that was filed on February 20, 2004, which is virtually identical to the one filed in Florida, be continued *indefinitely* because, *inter alia*, Verizon did not comply with the Commission's arbitration procedural rules.[19] Moreover, staff of the Virginia State Corporation Commission have filed a motion to dismiss a similar arbitration petition that Verizon filed in Virginia due to Verizon's failure to comply with procedural requirements and abuse of Section 252(g) of the Act.[20]

For the foregoing reasons, the Commission should immediately dismiss Verizon's Petition before further time and effort is wasted in attempting to prosecute this proceeding. Verizon's failure to provide the information discussed above in its Petition violates federal law and is sufficient grounds to dismiss Verizon's Petition without further ado. Verizon's failure to comply with the law should not be tolerated.[21]

C. Consideration of Verizon's Petition Would Be Wasteful of Administrative Resources.

Even if the above-stated grounds for dismissal did not exist, it would be a waste of this Commission's resources to consider Verizon's Petition at this time, when the law on which the Petition

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[19] *In the Matter of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Docket No. P-19, Sub 477, Order Continuing Proceeding Indefinitely, at 2 (N.C.U.C. Mar. 3, 2004) ("*N.C. Order Continuing Proceeding Indefinitely*") (noting that Verizon's arbitration petition was deficient because it did not include prefiled testimony or a matrix summary, and did not appear to be signed by North Carolina counsel). Significantly, in its order, the North Carolina Commission specifically advised "Verizon that it may avail itself of the provisions of Section 252(e)(5), wherein the arbitration may be referred to the FCC." *Id.* This Commission could take a similar approach and make a similar suggestion to Verizon.

[20] *Petition of Verizon Virginia Inc. and Verizon South Inc. Petition for Arbitration*, Case No. PUC-2004-00030, Staff Motion to Dismiss, at 4 (filed Mar. 24, 2004).

[21] Verizon would not be precluded from seeking to use the arbitration process at some appropriate future date, as long as Verizon complies with all applicable procedural requirements.

purports to be based is still undetermined. The *TRO* cannot be relied on as the law of the land, because *USTA II* vacated and/or remanded various aspects of this decision. However, *USTA II* cannot be relied on because it is widely know that this decision, which has not gone into effect (and may not if it is stayed), will be appealed to the Supreme Court. And, even if *USTA II* does take effect, that decision remands various issues to the FCC for further consideration, which may result in still further changes in the law.[22] Given this, it makes no sense whatsoever to arbitrate Verizon's proposed amendment if the law that needs to be applied is in a state of flux and the amendment will need to be modified in short order reflect the upcoming rounds of court or FCC decisions. Instead, dismissal of Verizon's Petition is appropriate at this time if Verizon does not withdraw it voluntarily. Otherwise, the Commission will be stuck in an endless cycle of amending and re-amending interconnection agreements to conform to every intermediate court ruling and every set of FCC rules that remains subject to appeal. Rather than waste resources by following this course of action, the Commission should not entertain this arbitration until the law settles.

Verizon's own proposed amendment demonstrates that the "changed" law supposedly being implemented in this arbitration is still in a state of flux. Paragraph 6 of the amendment recognizes that the *Triennial Review Order* remains subject to appeal. However, rather than apply the existing change of law procedures in the parties approved interconnection agreement, Verizon instead proposes the extraordinary and chaotic plan in which any stay by an appeals court would suspend portions of the amendment and any reversal by an appeals court would allow either party unilaterally to "void" portions of the amendment, without the consent of the other party or the approval of the Commission. Moreover, Verizon's proposed TRO Attachment is laced with provisions that would enable Verizon to withdraw UNEs based on Verizon's unilateral interpretation of *future* events, such as the determinations of the so-called "9 month cases" that, in light of *USTA II*, may never occur. If the history of local competition has demonstrated anything, it is that unilateral authority in the hands of the ILECs to change the rules of the game is a recipe for mischief, not for effective implementation of the Act. Verizon's own arbitration proposal

[22] As a practical matter, if the *USTA II* decision goes into effect, the negotiation and arbitration windows established in the TRO will be effectively reset.

therefore demonstrates that many of the issues for consideration by the Commission are not yet ripe, and may never be.

Two other commissions have recognized this and refused to move forward with respect to similar Petitions for Arbitration that Verizon filed in Maryland and North Carolina. In particular, on March 15, 2004, the Maryland Public Service Commission ("Maryland PSC") dismissed Verizon's consolidated arbitration petition, which is virtually identical to the petition that initiated this proceeding. The Maryland PSC ruled that "the Commission believes that Verizon's Petition for Arbitration is premature, as the status of the law it seeks to use as a trigger for its change of law provision is unclear."[23] In addition, the North Carolina Utilities Commission, in staying the Verizon TRO amendment arbitration proceeding *indefinitely,* stated that "the FCC rules are under challenge on many fronts. It makes no sense to begin an arbitration where the underlying rules may be changed in midstream."[24] This Commission should come to the same conclusion.

The FCC's well-publicized recent request to the industry that carriers focus their attention on negotiating rather than litigating is further reason why the Commission should dismiss this arbitration. On March 31, 2004, the FCC requested that telecommunications carriers and trade associations begin a period of commercial negotiations to arrive at commercially acceptable arrangements for the availability of unbundled network elements.[25] On April 5, Verizon CEO Ivan Seidenberg advised the FCC that Verizon "support[ed] the Commission's approach" and expressed Verizon's position that "[c]ommercial negotiations are the best way to arrive at appropriate wholesale arrangements, rather than through the

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[23] *Verizon Maryland Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Maryland Pursuant to Section 252 of the Communications Act, as Amended, and the Triennial Review Order*, Letter from Felecia L. Greer, Executive Secretary, to David A. Hill, Verizon, at 1 (March 15, 2004) (dismissing Verizon's Petition without prejudice).

[24] *N.C. Order Continuing Proceeding Indefinitely*, at 2.

[25] FCC News, Press Statement of Chairman Michael K. Powell and Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin and Jonathan S. Adelstein On Triennial Review Next Steps (rel. Mar. 31. 2004).

regulatory and litigation process."[26] Numerous CLECs and all the major CLEC trade associations have agreed to participate in these negotiations. It would be inefficient and wasteful for the Commission to proceed with this arbitration concomitantly since carriers will be giving a higher priority to negotiating and settling issues at this time. It will be extremely burdensome on the parties, especially smaller CLECs, to arbitrate while industry-wide negotiations are taking place. Indeed, if CLECs are forced to negotiate and arbitrate at the same time, there would unfortunately be a greatly reduced chance that a CLEC would be able to reach any commercial agreement with Verizon. Not only that, but if this arbitration is looming during such negotiations, Verizon will have far less incentive to engage in bona fide good faith negotiations during the negotiations process. At bottom, dismissal of the Petition is consistent with the FCC's request, as well as Verizon's response to the request, because doing so will ensure that carriers focus on negotiations rather than litigation at this time.

Significantly, in the wake of the D.C. Circuit's recent decision in *USTA II*, Verizon has requested that the nine month state Triennial Review implementation proceedings be stayed and has argued that it would be "futile" or even "feckless" for state commissions to continue with such proceedings.[27] While some members of the Coalition do not endorse Verizon's view on a stay of the 9-month case, it certainly would be "feckless" and "futile" to proceed with this arbitration if the impairment proceedings were stayed, because the parties here would be attempting to establish agreement terms to apply in the absence of any guiding law. There is certainly no clarity with respect to what unbundling rules should apply in an arbitration proceeding. Furthermore, because the state of flux of this legal standard, it would be inefficient for the Commission to move forward with these arbitrations knowing that it will have to repeat this process in short order and possibly numerous times until there are final rules in place.

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26 Letter from Ivan Seidenberg, Chairman and Chief Executive Officer of Verizon to Chairman Powell and FCC Commissioners (April 5, 2004).

27 Verizon made these assertions in its March 3, 2004 motions to stay the Massachusetts and New Jersey Triennial Review implementation proceedings, D.T.E. 03-60 and Docket No. TO03090705, respectively.

Amazingly, Verizon states in its Petition that its "amendment will bring the agreements into conformity with present law in a manner that does not waste the parties' (or the Commission's) resources on needless technical drafting efforts." However, by forcing the start of an arbitration of a proposed Amendment that Verizon has recently updated to reflect the legal turmoil caused by *USTA II* and because it is expected that this decision will be appealed, Verizon is doing just that – it is forcing parties and the Commission to waste resources on needless technical drafting efforts. Incredibly, Verizon wants this Commission to arbitrate an amendment based on the *TRO* and *USTA II* at the same time it is asking state commissions nationwide *not* to complete their nine-month *TRO* impairment proceedings due to *USTA II.* Verizon's tacking back and forth between what is efficient and what is not is inconsistent and self-serving. The well rooted doctrine of judicial estoppel precludes Verizon from taking such contrary positions.[28] Therefore, dismissal of Verizon's Petition is appropriate at this time.

D. Verizon's Request to Amend Interconnection Agreements with Rates and Terms Associated with Routine Network Modifications Should be Dismissed.

Apart from dismissing Verizon's Petition for the reasons expressed above, the Commission has separate grounds for dismissing the portions of Verizon's Petition that seek to amend the agreement to reflect rates, terms, and conditions for routine network modifications needed to provision UNEs. In the *TRO*, the FCC did not establish new law regarding Verizon's obligation in this regard but rather clarified that Verizon's refusal to perform such modifications violated existing law.[29] Therefore, no amendment is required because no change of law occurred. Verizon's obligations in this regard are self-effectuating.

With respect to the charges Verizon seeks to assess for routine network modifications, Verizon is already recovering these costs in its UNE rates. Indeed, as discussed herein, the FCC recognizes in the *TRO* that the costs Verizon seeks to recover in its Petition are often already recovered in Verizon's

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[28] *See, e.g., Scarano v. Central R.R. Co. of N.J.*, 203 F.2d 510, 513 (3d Cir. 1953) (doctrine prevents party from assuming inconsistent position); *Lowery v. Stovall*, 92 F.3d 219, 223 (4th Cir. 1996) judicial estoppel precludes inconsistent allegations); *Ergo Science, Inc. v. Martin*, 73 F.3d 595, 598 (5th Cir. 1996) (doctrine precludes party from adopting contrary positions); *American Nat'l Bank of Jacksonville v. FDIC*, 710 F.2d 1528, 1536 (11th Cir. 1983) (doctrine prevents parties' mockery of the justice system by inconsistent pleadings).

[29] *TRO* at n.1940 (finding Verizon's no-facilities "policy to be discriminatory on its face").

recurring UNE rates. The FCC stated that "costs associated with modifications may be reflected in the carrier's investment in the network element, and labor costs associated with modification may be recovered as part of the expense associated with that investment (*e.g.*, through application of annual charge factors (ACFs))." The FCC further emphasized that, "[t]he Commission's rules make clear that there may not be any double recovery of these costs …." *TRO* at ¶ 640. Moreover, the Virginia State Corporation Commission has already rejected Verizon's attempt in the *TRO* Amendment to impose additional charges for network modifications, finding that Verizon's costs for these routine modifications are already built into its existing UNE rates and therefore must be provided at no additional charge. *See Petition of Cavalier Telephone*, Case No. PUC-2002-00088 (Virginia S.C.C. January 28, 2004) at 8. The same holds true here. Therefore, Verizon's Petition to arbitrate rates and terms associated with routine network modifications is unjustified and should be dismissed.

II. Response to the TRO Amendment Proposed by Verizon

If the Commission does not dismiss Verizon's Petition for the reasons set forth in the preceding section, it must determine whether the amendment terms proposed by Verizon "meet the requirements of section 251 [of the Telecom Act], including the regulations prescribed by the [FCC] pursuant to section 251[.]" 47 USC § 252(c)(1). As explained below, substantial portions of Verizon's proposal do not meet these requirements, and therefore should be modified by the Commission. Accordingly, the Coalition has proposed an alternative amendment that satisfies the requirements of Section 251, the *TRO* and other applicable law, including but limited to *USTA II*.[30]

The format of the Coalition response follows the format used by Verizon in its Petition for Arbitration. As discussed above, Verizon failed to identify adequately each of the issues to be arbitrated

[30] See Attachment 1, Competitive Carrier Coalition's Proposed Alternative to Verizon's Proposed TRO Amendment ("TRO Attachment"). Verizon has proposed nearly-identical amendments in each of its states. The multi-state Coalition has prepared only one alternative for all of the states for this initial response. To the extent that variation exists between the Verizon template and its proposal to this Commission, the Coalition reserves the right to supplement its alternative accordingly.

in this proceeding. Instead, Verizon offered only short descriptions of the provisions it has proposed to implement the *TRO*.[31]

A. Amendment Terms and Conditions

Verizon's Position: In the event that the D.C. Circuit or the Supreme Court stays any provisions of the *TRO*, any terms and conditions in the TRO Attachment or the Pricing Attachment that relate to the stayed provisions shall be suspended and shall have no force or effect, until the stay is lifted.

Proposed Revisions: The Commission should require that the reservation of rights in Section 6 be reciprocal so that its provisions would apply to both Verizon and the CLEC. It would be unjust and unreasonable to allow provisions of the Agreement, including Verizon's unbundling obligations, to be suspended without providing for reasonable interim replacement terms. Instead, the Coalition proposes that provisions of the agreement affected by judicial review should revert to the terms and conditions in the Agreement prior to the Amendment until revisions can be renegotiated by the parties. This language is necessary to provide some certainty to the parties in the event the *TRO* were reversed or vacated. The Coalition proposal is more just and reasonable under the circumstances. Section 251(c)(3) makes clear that Verizon has *some* obligation to provide non-discriminatory access to unbundled network elements. While the particulars of that requirement are being reassessed by the FCC and the state commissions, the best evidence of Verizon's obligation to provide UNEs is the terms and conditions under which Verizon has already agreed to provide them.

B. General Conditions (TRO Attachment § 1)

Verizon Position: Section 1 states that Verizon shall be required to offer UNEs under the terms of the amended agreement only to the extent required by both § 251(c)(3) and Part 51 of the FCC

[31] As indicated above, Verizon filed essentially identical arbitration Petitions in numerous States, and made little or no attempt to conform to state-specific procedural requirements. The Coalition has been forced by Verizon's action to prepare simultaneously responses to these Petitions in numerous States within a very short time, and due to resource constraints has been unable to adapt this response to any specific State procedural requirements. The Coalition respectfully submits that, if this Response violates any State-specific requirements, it is only because Verizon's Petition did so as well, and the proper remedy is to dismiss Verizon's Petition.

rules. The language further specifies that Verizon may decline to offer UNEs if it is not required by both § 251(c)(3) and Part 51 to do so.

Proposed Revisions: The Commission should revise Sections 1.1 and 1.2 of the General Terms and Conditions to preclude Verizon from refusing to provide UNEs that are required by other provisions of applicable law, such as § 271 of the Telecom Act or terms and conditions related to UNEs established by state commissions, and not to limit UNE terms and conditions to only those established by the FCC in the implementation of Section 251(c)(3). Section 252(e)(3) specifically preserves state commission authority to establish or enforce other requirements of state law, and section 252(e)(4)(C) authorizes a state commission to "impos[e] appropriate conditions" to implement the requirements of section 251. Accordingly, Verizon's proposal would not "meet the requirements of Section 251 [of the Telecom Act]," as required by section 252(c), unless it provides for the possibility of additional requirements ordered by this Commission.[32]

The Commission should also revise Section 1.2 to reflect the FCC rules that CLECs may provide additional services using UNEs, and that ILECs may not impose limitations, restrictions, or requirements on requests for, or on the use of UNEs for the service a requesting telecommunications carrier seeks to offer. 47 C.F.R. § 51.309(a). The revisions should also incorporate terms and conditions regarding UNEs established by the FCC in connection with its implementation of Section 271. 47 U.S.C. § 271(c)(2)(B).

The Commission should delete change-of-law language proposed by Verizon in Section 1.3 because the Agreements already have change-of-law provisions. This additional language either conflicts with that existing language, or is superfluous. The Coalition proposal is more "just and reasonable" than Verizon's proposal because Verizon has offered no reason for differing requirements when the law

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[32] Throughout Attachment 1 and for these reasons the Coalition proposes similar revised language wherever Verizon proposed similar limiting language in this regard in the TRO Attachment. *See, e.g.,* Attachment 1, §§ 2.3, 2.4, 2.7, 2.8, 2.18, 2.19, 3.1.1.1, 3.1.1.2, 3.1.2.2, 3.1.3.2, 3.1.3.3, 3.1.4, 3.2.1.1, 3.3.1.2, 3.3.1.2.2, 3.3.2, 3.4.1, 3.4.3, 3.5.1, 3.5.2, 3.5.3, 3.6.1, 3.6.2.1.5, 3.7.1, 3.9.1.

changes with respect to UNEs than with respect to any other aspect of Verizon's obligations under the Telecom Act.

The Coalition proposes a new Section 1.4 to make the reservation of rights by Verizon in Section 1.3 reciprocal to CLECs. There is no reason Verizon should be permitted a reservation of rights without permitting the same to CLECs. Again, Verizon's proposal is not only not "just and reasonable," but it would discriminate against CLECs by not providing them with rights equal to those requested by Verizon.

C. Glossary (TRO Attachment § 2)

Verizon Position: Verizon's amendment contains a Glossary defining the terms used therein. Verizon asserts that the definitions are derived from the definitions established by the FCC in the *TRO* and are consistent with D.C. Circuit's decision in *USTA II.*

Proposed Revisions: The Coalition proposes definitions of certain additional terms that relate to requirements of the *TRO* that Verizon had omitted from its proposed Amendment. These definitions are: "Dark Fiber Loop", "Enterprise Customer", and "Mass Market Customer". The definitions were derived from language in the *TRO* and its implementing regulations. *See* 47 C.F.R. §§ 51.319(a)(6) (dark fiber loops); *TRO* ¶ 497 (mass market customers and enterprise customers).

The Commission should also revise certain other definitions to be consistent with the *TRO.* Section 2.4, "Dedicated Transport", should include interoffice facilities between a Verizon wire center and a CLEC wire center if Verizon has deployed interconnection facilities in the CLEC wire center. This concept of "reverse collocation" is found in the FCC rules. Verizon's definition seems to be based on paragraph 369 of the *TRO,* which states that "we limit the dedicated transport network element to those incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between switches or wire centers owned by incumbent LECs." *TRO* ¶ 369. However, Verizon ignores footnote 1126 to this text, which states that ILEC transport may be unbundled as UNEs to reverse collocations where "an incumbent LEC has local switching equipment, as defined by the Commission's rules." Taken together, these provisions of the *TRO* indicate that a CLEC wire center in which the ILEC has collocated switching equipment must be treated the same as an ILEC wire center in the definition of dedicated transport. The specific language proposed by the Coalition is derived from footnote 1183 defining "reverse collocation."

The Commission should revise Verizon's references to its internal publications in Sections 2.7 and 2.8 (Verizon's Sections 2.6 and 2.7), the definitions of "DS1 Loops" and "DS3 Loops," to make clear that such publications may not be applied in any manner that is inconsistent with provisions of the Agreement or applicable law. This proposed revision is more "just and reasonable" than Verizon's proposal, which appears to allow Verizon to revise its technical publications at any time in any manner it sees fit. The Coalition proposal provides more fairness and certainty for CLECs, and reduces the likelihood of anticompetitive conduct by Verizon.

The Commission should also revise Section 2.10, "Enterprise Switching," to be more precise. Verizon's proposal defined Enterprise Switching as switching "for the purpose of serving" customers using DS1 or above capacity loops. The Coalition proposal eliminates the ambiguous "purpose" requirement and replaces it with a more objective standard of "to serve" Enterprise Customers. The latter proposal is more "just and reasonable" because it provides for more certainty. Rather than examining the "purpose" of a CLEC's particular use of UNE switching, the Coalition proposal draws a bright line at switching actually used to serve Enterprise Customers. The definition of Enterprise Switching also incorporates the definition of Enterprise Customers described below.

The Commission should also revise the definition of "Enterprise Switching" to reflect that this term does not include stand-alone Tandem Switching. Verizon has a general obligation under the *TRO* to provide unbundled switching, including Tandem Switching. 47 C.F.R. § 51.319(d). Verizon's proposal is not just and reasonable because it would exclude all Tandem Switching, which would be contrary to the FCC regulations.

The Commission should revise the definitions of "FTTH Loop" and "Hybrid Loop" to encompass only loops to a Mass Market Customer. The FCC's discussion of FTTH Loops, *TRO* ¶¶ 273-284, and Hybrid Loops, *TRO* ¶¶ 285-297, was limited to their provision to Mass Market Customers. Verizon's proposal would expand the restrictions on FTTH Loops to all customers, when that was clearly not contemplated or required by the *TRO*. For example, the *TRO*'s extensive discussion of dark fiber loops would be rendered meaningless if the FCC intended to eliminate the unbundling requirements for fiber loops to both mass market and enterprise customers. Thus, Verizon's proposal would be inconsistent with the FCC regulations implementing Section 251, as required by Section 252(c).

The Coalition also proposes that definitions of "House and Riser Cable" and "Sub-Loop for Multiunit Premises Access" should be revised to be consistent with language in the *TRO* regarding FTTH loops. Under Verizon's proposal, any subloop in a FTTH loop would not be subject to unbundling, whereas the *TRO* limited this exception only to the fiber optic facility in a FTTH loop. Rule 51.319(a)(3) explains that a FTTH loop "consists entirely of fiber optic cable," in which case there should be no subloops. To the extent subloops are attached to FTTH facilities, they are not FTTH loops and they would be subject to subloop unbundling requirements. Verizon's proposal would not be consistent with the FCC regulations implementing Section 251.

Consistent with the definition of Enterprise Switching above, the Commission should adopt a definition of "Mass Market Customer". Based upon the *TRO* discussion of the "mass market" and "enterprise" concepts, and the existing the four-line carve out rule, the Coalition proposes to define Mass Market Customer as any residential customer, and any business customer with an aggregate telecommunications capacity of less than 4 DS0s (regardless of the technology used). All other retail and wholesale business customers would be defined as Enterprise Customers.

Likewise, the Commission should require that the definition of "Nonconforming Facility" be revised to be consistent with language in the *TRO* regarding availability of the Feeder portion of the Loop UNE for TDM and narrowband applications. Verizon's proposal would conflict with language elsewhere in the Amendment that acknowledges that Verizon must provide the Feeder portion of the Loop as a UNE in certain circumstances. In addition, the inclusion of Feeder as a Nonconforming Facility was revised to limit such inclusion to fiber Feeder provisioned to serve a Mass Market Customer, in accordance with the terms of the *TRO*. The FCC's discussion of fiber Feeder subloops, ¶ 253, was limited to their provision to

Mass Market Customers. Finally, the Commission should reject Verizon's inference that unbundling obligations could be eliminated in a legally binding manner by some means other than a final and non-appealable finding of non-impairment by the Commission or the FCC. Verizon has identified no such third means of eliminating its legal obligation, and in any case, this hypothetical possibility can be addressed if and when it becomes necessary through the Agreement's change of law provisions.

The Commission should also revise this definition to remove certain restrictions on EELs provided by Verizon prior to the effective date of the *TRO*, October 2, 2003. Under Verizon's proposal, any EEL provided prior to October 2, 2003 must satisfy the eligibility criteria established as of October 2, 2003. This eligibility requirement is not required by the *TRO*. Paragraph 589 of the *TRO* provides with respect to EELs:

> As a final matter, we decline to require retroactive billing to any time before the effective date of this Order. The eligibility criteria we adopt in this Order supersede the safe harbors that applied to EEL conversions in the past. To the extent pending requests have not been converted, however, competitive LECs are entitled to the appropriate pricing up to the effective date of this Order.

This language establishes that (1) if a circuit qualifies under the new standards but did not qualify under the old standards, a CLEC cannot recover the excessive charges prior to the effective date; (2) if a circuit does not qualify under the new standards but did qualify under the old standards, the ILEC may not recover past losses; and (3) EELs may continue to be provided under the old standards up to the effective date.

The third sentence in the paragraph indicates that the FCC envisions a dual-track EEL qualification system. To illustrate, a request pending at the time of the *TRO* would have been submitted under the old "safe harbors" eligibility criteria. Those circuits would be entitled to be priced at "the appropriate pricing" applicable to those circuits at the time; *i.e.*, the pricing applicable to circuits that satisfied the former eligibility criteria. The language suggests that a CLEC may "lock in" the appropriate pricing for the circuit. By locking in the appropriate price, some circuits would continue to qualify as

EELs under the old standards, while other circuits would have to satisfy the new standards before being priced at UNE rates.

The Coalition also proposes that Section 2.17 in Verizon's proposal, "Packet Switching", should be relocated to Section 3.1.3.1. This definition is discussed as part of that section below.

The definition of "Route" should also be revised to reflect "reverse collocation" arrangements that would qualify an interoffice transport facility as a UNE as discussed above with respect to Dedicated Transport. Furthermore, Verizon's parenthetical in the definition "(or as applicable, a class or grouping of such transmission paths in a particular market)" should be deleted. Verizon submits that this modification reflects the D.C. Circuit's reversal of the FCC's route-specific market definition for analyzing impairment with respect to high-capacity facilities. Contrary to Verizon's contentions, *USTA II* did not redefine the FCC's definition rather it held that the FCC did not explore certain alternatives when the FCC established its route-specific impairment analysis of dedicated transport.[33]

D. Loops (TRO Attachment § 3.1)

Proposed Revisions: Verizon's proposal does not address DS0 loops. Language should be added, derived from Rule 51.319(a)(1), to state Verizon's general obligation to provide unbundled access to all loops, and to make clear that Verizon must continue to provide DS0 UNE loops. This revision is necessary in order for the Amendment's discussion of loops to be consistent with the FCC rules implementing section 251, as required by section 252(c).

1. High Capacity Loops (TRO Attachment § 3.1.1)

Verizon's Position: Verizon's draft amendment states that it would allow CLECs to obtain unbundled access to DS1 and DS3 loops only to the extent required by federal law (251(c)(3) and Part 51). Verizon would, however, limit CLECs to only two unbundled DS3 loops (or their equivalent) to any single end-user location. Verizon's obligation to provide unbundled DS1 and DS3 loops to a specific end-user location would terminate if the Commission finds, pursuant to the procedures prescribed by the

[33] *USTA II*, slip op. at 29.

FCC, that there is no impairment on the route to that location. Any DS1 or DS3 loops previously made available to CLEC at the subject end user location shall be considered Nonconforming Facilities immediately on the effective date of the non-impairment finding and thereafter.

Proposed Revisions: The Commission should revise Sections 3.1.1.1 and 3.1.1.2, and add new Section 3.1.1.3, to clarify that Verizon must provide access to UNEs in accordance with all applicable state and federal law, and not only selected federal laws. Section 252(e)(3) specifically preserves state commission authority to establish or enforce other requirements of state law, and section 252(e)(4)(C) authorizes a state commission to "impos[e] appropriate conditions" to implement the requirements of section 251. Accordingly, Verizon's proposal would not "meet the requirements of Section 251 [of the Telecom Act]," as required by section 252(c) unless it provides for the possibility of additional requirements ordered by this Commission.[34]

The Commission should approve the Coalition's new section 3.1.1.3, Dark Fiber Loops, which has been added to make clear that Verizon must provide Dark Fiber Loops as required by paragraphs 311-314 of the *TRO* and Rule 51.319(a)(6). Verizon's proposal would not satisfy section 252(c) because it is not consistent with the FCC regulations implementing section 251.

New subsections 3.1.1.3.1 and 3.1.1.3.2 set forth terms necessary for the effective implementation of Verizon's dark fiber unbundling obligations, including terms for accurate determination of available facilities through a Dark Fiber Inquiry process and field surveys. These terms are based upon the FCC's determinations in the Cavalier-Verizon Virginia arbitration.[35] Because the FCC applied the same standards for arbitration that this Commission must apply pursuant to section 252(c), the Coalition

[34] As noted previously and for these reasons, the Coalition proposes similar revised language wherever Verizon proposed its limiting language in this regard in the TRO Attachment. *See supra* note 32.

[35] *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) ("*FCC Cavalier Arbitration Decision*").

proposal adopting language from the Cavalier-Verizon arbitration proceeding is consistent with federal law and should be approved.

Further, the Commission should revise Section 3.1.1.4, "Nonimpairment," as follows: (1) the reservation of rights should be made reciprocal. As discussed above, non-reciprocal terms are neither just and reasonable nor non-discriminatory. (2) The section should be clarified to refer only to the rights and obligations of the parties under Section 251 of the Act. Because the Act requires an impairment analysis only for UNEs, obligations under other provisions should not be altered as a result of a finding of non-impairment. This revision is necessary for the Amendment to be consistent with section 251 of the Act. (3) The phrase "or class or grouping of locations in a particular" should be deleted from the types of loops that Verizon would not have to provide on an unbundled basis. The *TRO* requires an analysis of impairment for high capacity local loops on a customer-location basis. 47 C.F.R. § 51.319(a)(5). It does not provide for "classes of locations" to be considered as a basis for non-impairment. This revision is necessary to be consistent with the FCC regulations implementing section 251. Moreover, *USTA II* did not address high-capacity loops in its decision, let alone redefine the FCC's route-specific definition for analyzing impairment with respect to them. (4) In conjunction with edits to Section 3.9 (Verizon's Section 3.8), discussed below, the transition process in the event of the withdrawal of any UNEs should be revised to initiate only after a change in law is final and non-appealable. The Coalition proposal is "just and reasonable" because it reduces unnecessary litigation and disruption to CLECs and their customers during periods in which the law is in flux and the UNEs designated for withdrawal could be restored.

2. Fiber to the Home ("FTTH") Loops (TRO Attachment § 3.1.2), Hybrid Loops (TRO Attachment § 3.1.3-.4), and Line Sharing (TRO Attachment § 3.2)

Verizon's Position: The language in Verizon's amendment seeks to implement its interpretation of the new rules regarding these facilities.

Proposed Revisions: The Commission should revise Section 3.1.2.2, Overbuilds, to add additional criteria that must be satisfied in order for Verizon to assert that a FTTH loop does not have to be provided on an unbundled basis. The language proposed is derived from paragraph 277 of the *TRO* and from FCC Rule 51.319(a)(3). The proposed change is necessary in order for the Amendment to comply with FCC regulations implementing section 251.

Sections 3.1.3.2 and 3.1.3.3, regarding Hybrid Loops, should also be revised to be consistent with applicable FCC Rule 51.319(a)(2)(ii) and (iii). Verizon's proposal misstated language from the rule and, among other things, removed the word "nondiscriminatory."

The Commission should revise Section 3.1.4.1, regarding IDLC Hybrid Loops, to remove language regarding a particular non-recurring charge. The section already states that standard recurring and non-recurring Loop charges will apply. Verizon's proposal is not necessary unless the proposed charges are non-standard non-recurring charges, in which case Verizon has no basis to impose them on CLECs. The Coalition proposal is "just and reasonable" because it prevents Verizon from imposing unwarranted and unnecessary expenses on competitive carriers.

Section 3.1.4.2, regarding IDLC Hybrid Loops, should require that Verizon must provide unbundled access to hybrid loops served by IDLC systems by using a "hairpin" option; *i.e.*, configuring a semi-permanent path and disabling certain switching functions. This option is required by footnote 855 of the *TRO*.

The Commission should delete language from Sections 3.1.4.3 and 3.1.4.4, regarding IDLC Hybrid Loops, that has no basis in the *TRO*. Verizon's proposal requires CLECs to pay for charges that were not authorized by the *TRO*. Further, Verizon's language attempts to shield Verizon from provisioning intervals and performance measurement requirements. None of these proposed provisions are "just and reasonable" because they impose unlawful charges on competitive carriers and they protect Verizon from full compliance with its provisioning obligations.

Section 3.2.1 should also be revised to remove the statement that Verizon has no obligation to provide Line Sharing. As indicated by the section itself, Verizon does have a limited obligation to provide Line Sharing. Other language referring to a separate agreement was removed on the grounds that applicable Rule 51.319(a)(1)(i)(B) provides a sufficient basis to determine the rights of the parties regarding Line Sharing. The Coalition proposal would more clearly implement the FCC regulations regarding Verizon's Section 251 obligations.

The Coalition has also proposed moving Verizon's definition of Packet Switching from the Glossary to Section 3.1.3.1. This is the only section in the amendment where the term "Packet Switching" is used. The Coalition has proposed its inclusion here so that it may note that has agreed to this definition only because it was adopted by the FCC in 47 C.F.R. § 51.319(a)(2)(i). The Coalition believes that it is inappropriate to classify DSLAM functionality as "packet switching," and reserves its right to so argue in future proceedings.

E. Subloops (TRO Attachment § 3.3)

Verizon's Position: The language in Verizon's amendment seeks to implement Verizon's interpretation of the new rules regarding these facilities.

Proposed Revisions: The Commission should require Section 3.3, Subloops, to be substantially revised because Verizon proposed language that had no basis in the *TRO*. The Coalition proposes instead that Verizon be required to provide Subloops to the extent required by any applicable Verizon tariff or SGAT, and any applicable federal and state commission rules, regulations, and orders. Some state commissions, and in particular the New York Public Service Commission, have completed thorough proceedings regarding Subloops, especially regarding House and Riser facilities in multi-tenant buildings. Verizon's proposal would have the effect of rendering all of those proceedings irrelevant. Instead, Verizon should be required to return to those state commissions and seek whatever changes to those state commission requirements that may be necessary, if any, to make them consistent with state and federal law. As discussed above, Verizon is obligated to comply with any additional state law requirements or conditions imposed by state commissions in the course of an arbitration. Verizon's proposal would have the effect of avoiding these obligations.

Section 3.1.3.4, Feeder, should be revised to reflect that only fiber Feeder subloops to Mass Market Customers were affected by the *TRO*. The FCC's discussion of fiber Feeder subloops, ¶ 253, was limited to their provision to Mass Market Customers. Accordingly, the Coalition Proposal is consistent with the FCC regulations implementing section 251.

F. Circuit Switching (TRO Attachment § 3.4.1-3.4.2)

Verizon's Position: Under Verizon's proposed amendment, CLECs are entitled to obtain unbundled access to mass-market circuit switching as 251(c)(3) and Part 51 require. CLECs may not, however, obtain switching for providing service to enterprise customers or to any customers subject to the "four-line carve out" rule. The draft amendment follows the FCC's transitional rules for CLECs currently obtaining circuit switching to serve enterprise customers by allowing them 90 days to move their customers to alternative service arrangements. In addition, Verizon's proposed language (in Verizon's Section 3.8.1.2) requires it to provide "at least thirty (30) days advanced written notice of the date on which Verizon will cease provisioning Enterprise Switching" to any given CLEC. Verizon also has offered to "continue provisioning Enterprise Switching to the CLEC under the terms of the Amended Agreement during a transitional period, which transitional period shall end on the date set forth in the notice." Finally, the amendment provides that Verizon's obligation to supply mass market switching will end (subject to an applicable "rolling access" plan) if the board issues a finding of non-impairment.

Proposed Revisions: The Commission should require Section 3.4, Unbundled Local Circuit Switching, to be revised to require Verizon to provide stand-alone Tandem Switching. Nothing in the *TRO* permits Verizon to avoid its obligation to provide stand-alone Tandem Switching on an unbundled basis. In fact, Rule 51.319(d) requires Verizon to provide non-discriminatory access to local switching, including tandem switching, on an unbundled basis. Verizon's proposal omits this requirement.

The section should also be revised to remove the limitation proposed by Verizon that it provide unbundled local circuit switching only to the extent required by Section 251(c)(3) and the FCC local competition rules. Verizon's obligations regarding UNEs are not so limited because they are derived not only from Section 251(c)(3), but also from other sources, including orders from state commissions imposing additional requirements, FCC decisions outside the context of local competition (such as merger approval orders), and other sections of the Telecom Act (such as Section 271). As discussed above, in order for the Amendment to be consistent with section 251 and the FCC regulations implementing section 251, the language regarding Verizon's obligations to provide UNEs must reflect other requirements imposed by state and federal regulators. In any case, this paragraph is superfluous because the extent of Verizon's obligations is already described in section 1.2 of the TRO Attachment.

Further, the word "conditional" in section 3.4.1 should be deleted because it is superfluous. Verizon is obligated to provide switching in accordance with applicable law. There is nothing conditional about this obligation.

Section 3.4.2, "Nonimpairment," should be revised to add specificity to the transitional "rolling" access to unbundled switching. This proposed language is derived from Rule 51.319(d)(2)(iii). As revised, the proposed language would be consistent with the applicable FCC regulations.

G. Signaling/Databases (TRO Attachment § 3.4.3)

Verizon's Position: The language in Verizon's amendment seeks to implement Verizon's interpretation of the new rules regarding these facilities.

Proposed Revisions: Apart from requiring Verizon to offer services pursuant to applicable law (as previously discussed), the Coalition has no other proposed revisions to this section of the Amendment.

H. Interoffice Facilities (TRO Attachment § 3.5)

Verizon's Position (Verizon at 19-21): The language in Verizon's amendment seeks to implement its interpretation of the FCC rules established in the *TRO* regarding these facilities.

Proposed Revisions: The Commission should revise Section 3.5.2.1, Dedicated Transport, and Section 3.5.3, Dark Fiber Transport, to include interoffice facilities between a Verizon wire center and a CLEC wire center if Verizon had deployed interconnection facilities in the CLEC wire center. This concept of "reverse collocation" is discussed above under the definition of "Dedicated Transport" in the Glossary (Section 2), and the change here is appropriate for the same reasons.

A new section to the Amendment, 3.5.4, should be added regarding interconnection facilities between a CLEC wire center and the ILEC wire center in which the CLEC has established a point of interconnection ("POI"). The proposed language makes clear that interconnection facilities and equipment provided pursuant to section 251(c)(2) are not UNEs provided pursuant to section 251(c)(3), and the rights and obligations applicable to § 251(c)(3) UNEs are not applicable to § 251(c)(2) interconnection facilities. This result is made clear by paragraph 365 of the *TRO*. The FCC explained that "transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic" were "[u]nlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection." Thus, the FCC distinguished facilities provided as UNEs under section 251(c)(3) from interconnection facilities provided under section 251(c)(2).

Even though section 251(c)(2) interconnection facilities are not UNEs, they must be provided under the same pricing principles as UNEs. They are also subject to the same section 252 arbitration provisions as UNEs, so it is appropriate to deal with them in this proceeding. Section 251(c)(2)(D) requires interconnection facilities to be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with ... the requirements of this section and Section 252." This is identical to the pricing standard for UNEs found at section 251(c)(3), which must be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with ... the requirements of this section and Section 252." The pricing standards under Section 252(d)(1) apply specifically and equally to section 251(c)(2) interconnection facilities and section 251(c)(3) network element charges. The pricing standard developed by the FCC to implement section 252(d) is TELRIC. Thus, the facilities provided by Verizon to interconnect in order to exchange traffic with a CLEC, such as interconnection trunks between a Verizon wire center and the CLEC wire center, are interconnection facilities under section 251(c)(2) that must be provided at TELRIC.

The Coalition proposes adding new subsections 3.5.3.1.1 and 3.5.3.1.2 to set forth terms necessary for the effective implementation of Verizon's dark fiber transport unbundling obligations, including terms for accurate determination of available facilities through a Dark Fiber Inquiry process and field surveys. These terms are based upon the FCC's determinations in the Cavalier-Verizon Virginia arbitration.[36] These terms were ordered by the FCC in an arbitration proceeding conducted under section 252 and are consistent with section 251 and 252 of the Act.

I. Combinations and Commingling (TRO Attachment § 3.6)

Verizon's Position: Verizon's amendment seeks to implement Verizon's interpretation of the FCC rules established in the *TRO* regarding these facilities.

Proposed Revisions: The Coalition proposes that Section 3.6.1, Commingling, be revised to be consistent with the *TRO*. First, language proposed by Verizon regarding prohibitions on commingling has been deleted as unnecessary. To the extent commingling is prohibited in the future, the Agreement can be modified under the terms of the change-of-law provisions. As a result, the Coalition proposal is just and reasonable. Second, Verizon's proposal to impose a non-recurring charge for commingling of elements has been deleted because such charges are specifically prohibited by paragraph 587 of the *TRO*. Third, Verizon's proposal that provisioning intervals or performance measurements not apply to commingled network elements has been deleted because there is no basis in the *TRO* for the language proposed by Verizon. There is no reason to treat commingled network elements apart from other network elements in terms of provisioning intervals or performance measurements. Verizon's proposal does not satisfy its obligation to offer just and reasonable terms of service.

The Commission should revise Section 3.6.2.1, regarding service eligibility criteria, to reflect that EELs that were provided prior to October 2, 2003 are not required to satisfy the eligibility criteria established by the *TRO*. As discussed above, paragraph 589 of the *TRO* makes clear that the FCC envisioned two tracks of EELs eligibility.

Section 3.6.2.2 must be substantially revised to be consistent with the *TRO*. In this section, Verizon seeks to impose onerous eligibility requirements that a CLEC must satisfy before it may obtain EELs. Nothing in the *TRO* requires a CLEC to provide the sort of information demanded by Verizon. A CLEC is only required to certify that it satisfies the eligibility criteria of Rule 318(b) for each DS1 circuit

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36 *FCC Cavalier Arbitration Decision*, ¶¶ 103-113.

or DS1 equivalent. If Verizon seeks to contest the CLEC certification, it may exercise its audit rights. The changes proposed are necessary to make the Amendment consistent with the *TRO*.

Section 3.6.2.3 should be deleted in its entirety and Section 3.6.2.5 should be revised to remove references to certain non-recurring charges related to EELs. In these sections, Verizon seeks to impose a type of non-recurring charge that was specifically prohibited by paragraph 587 of the *TRO*.

Section 3.6.2.6 should also be deleted in its entirety. In this section, Verizon seeks to exclude all conversions of special access circuits into EELs from provisioning intervals and performance measurement requirements. To the extent such requirements apply to EEL conversions, nothing in the *TRO* permits Verizon to treat them as Verizon proposes. Verizon's proposal is not just and reasonable because it seeks to shield Verizon from its provisioning and performance standards.

The Commission should also require Section 3.6.2.7, regarding Audits for compliance with the service eligibility criteria, to be substantially revised to be consistent with the *TRO*. First, Verizon is entitled only to one audit of a CLEC's books in a 12-month period, not once per calendar year as Verizon has proposed. The *TRO* refers to an "annual audit." *TRO* ¶ 626. In order for an audit to be considered "annual," a full year would have to elapse between audits. Under Verizon's proposal, Verizon could audit a CLEC's books in December, and then audit again in January of the following year. In that case, the two audits would be separated by a month, not by a year as the term "annual audit" requires. Second, Verizon's proposed allocation of responsibilities of payment for the auditor is not consistent with the *TRO*. Verizon's proposal was biased in Verizon's favor, and thus not just or reasonable. Third, Verizon's proposal that a CLEC keep books and records for a period of eighteen (18) months is not supported by anything in the *TRO*. The proposed interval is unreasonably long and unduly burdensome.

J. Routine Network Modifications (TRO Attachment § 3.7)

Verizon's Position: Verizon's proposed Section 3.7 offers a minimalist and incomplete reflection of the FCC's clarification of its rules in the *TRO* that reaffirmed Verizon's obligation to perform routine network modifications on behalf of CLECs on a nondiscriminatory basis pursuant to Section 251.

Proposed Revisions: The Coalition has proposed more detailed terms to better assure the effectuation of the requirements of the Act as reemphasized by the *TRO*.[37] Verizon's well-established record of evasion of its obligations, which the FCC explicitly condemned in the *TRO*, necessitates more detailed rules to enable verification and enforcement of Verizon's obligations. See *TRO* at fn. 1940, finding Verizon's policy "discriminatory on its face."

Accordingly, the Coalition's proposed Section 3.7.1 more clearly reflects Verizon's legal obligations. The Commission should reject Verizon's apparent attempt to continue to discriminate in provisioning of Dark Fiber Loop and Transport UNEs, and adopt the Coalition's terms that apply the nondiscrimination terms to all elements. *See TRO* at ¶ 638 (finding that the network modification rules apply to all transmission facilities, including dark fiber).

In addition, the Commission should reject Verizon's attempt to double-recover its supposed costs for performing routine network modifications. While the *TRO* permits Verizon to recover its costs, it recognizes that these costs are often already recovered by an ILEC's recurring UNE rates. The FCC found that "costs associated with modifications may be reflected in the carrier's investment in the network element, and labor costs associated with modification may be recovered as part of the expense associated with that investment (*e.g.*, through application of annual charge factors (ACFs))." Continuing, the FCC held that its "rules make clear that there may not be any double recovery of these costs ...." *TRO* at ¶ 640. The Virginia State Corporation Commission has already rejected Verizon's attempt in the *TRO* Amendment to impose additional charges for network modifications, finding that Verizon's costs for these routine modifications are already built into its existing UNE rates and therefore must be provided at no additional charge. *See Petition of Cavalier Telephone*, Case No. PUC-2002-00088 (Virginia S.C.C. January 28, 2004) at 8.

[37] As stated in Section I of this Response, Verizon's obligation to perform routine network modifications was required by existing law prior to the release of the *TRO*, and therefore is not an appropriate subject for arbitration under change-of-law clauses. The Commission should delete proposed Section 3.7 from the amendment for this reason. By submitting alternative language for the Commission's consideration in the event that it does not dismiss Verizon's Petition, the Coalition does not waive its argument that this language is not properly subject to arbitration.

The Commission should also reject Verizon's baseless proposal in Section 3.7.2 to exempt UNEs requiring routine modifications from the performance plan adopted by the Commission. It would be nonsensical to abandon the performance plan, one of the Commission's principal mechanisms for curbing discrimination, for a category of UNEs for which Verizon has been singled out by the FCC for its record of intentional discrimination. Verizon's proposal is tantamount to a suggestion that corporations found guilty of securities fraud should receive a special exemption from further SEC investigations. Thus, the Commission should deny Verizon's thinly-veiled attempt to continue its practice of discrimination with respect to network modifications, and should instead adopt the Coalition's modified version of Section 3.7.2.

In view of Verizon's record of discrimination and evasion of its obligations, the Commission should adopt additional measures to reduce the likelihood that a CLEC UNE request will continue to be improperly denied on the basis of no facilities. In view of the FCC's clarification of Verizon's obligation to perform routine network modifications, rejected orders should be at most a rare occurrence. Under the Coalition's proposed Section 3.7.3, if Verizon rejects a UNE request on the basis of no facilities, it would be required to provide detailed information, including the location of all facilities that were reviewed in making the determination; a description and estimated cost of non-routine modifications that would be necessary to fulfill the UNE request, and a proposed timetable and charge to the CLEC for the non-routine modifications that would be sufficient to provision the requested facility. This exercise will reduce the probability of error, assist all parties in the identification of alternative solutions, and facilitate enforcement by greatly increasing the transparency of the process.

The Coalition's proposed Section 3.7.4 would serve as an additional protective measure to ensure that Verizon does not continue to unlawfully discriminate against CLECs. Where a CLEC UNE request is denied on the basis of no facilities available, Verizon would for a 24-month period have a continuing obligation to advise the CLEC within 60 days if and when Verizon later provides any retail or wholesale services to any customer at the same premises that were the subject of CLEC's request using facilities that were, at the time of the CLEC request, deemed unavailable to CLEC. This notification shall include, at a minimum, a description of all work that was performed in the interim period that enabled service to be offered over the facility. In the absence of such a provision, it would be extremely difficult for CLEC and the Commission to identify and prosecute instances in which Verizon has unlawfully discriminated in its provisioning. If Verizon fails to so notify CLEC, or if it can subsequently be determined by Verizon, the CLEC or the Commission that the facility should have been made available to the CLEC at the time of its request, Verizon shall pay to CLEC a performance remedy of $1000 per incident, in addition to and not exclusive of all other available remedies.. Given Verizon's record of noncompliance, meaningful and enforceable penalties are necessary to incent Verizon to comply with its obligations.

K. Section 271 Obligations (TRO Attachment New Section § 3.8)

Verizon's Position: Verizon did not propose terms to govern its obligations under Section 271 of the Act.

Proposed Revisions: The Coalition has proposed terms to secure its rights under Section 271(c)(2)(B) of the Act with respect to facilities that Verizon is no longer required to offer under Section 251. Inclusion of these terms in the interconnection agreement is necessary to enable reasonable transition terms for affected UNEs. Verizon's exclusion of these terms from the proposed Amendment is merely the latest incantation of its position that Section 271 does not impose any independent obligation to provide access to certain network elements. Verizon's position has been repeatedly rejected by the FCC, most recently in the *TRO*. *See TRO* ¶ 653 ("we continue to believe that the requirements of Section 271(c)(2)(B) establish an independent obligation for the BOCs to provide access to loops, switching, transport and signaling regardless of any unbundling analysis under Section 251."); *see also TRO* at ¶¶ 652, 654-655 (rejecting Verizon's arguments).

The Coalition proposes in Section 3.8.2 the continued utilization of the TELRIC-based rates set forth in the parties' Agreement for network elements provided pursuant to Section 271. The Coalition is mindful of the FCC's determination in the *TRO* that state commissions are not required to apply the pricing standards of Section 252 to these facilities. However, Verizon has not proposed alternative rates in its Amendment, nor has it provided any cost support information to establish that different rates would be just and reasonable as required by the *TRO*. Therefore, the rates established by the Commission in its prior UNE cost proceedings, which are already a part of the parties' Agreements, remain the most suitable, presumptively lawful pricing scheme available for the Commission to adopt in this proceeding. Given that existing contract rates are a viable alternative, it would be unnecessary and inefficient for the Commission to conduct a new evidentiary cost proceeding for these network elements, especially when Verizon has not even proposed rates or a cost study. The Coalition's Section 3.8.2 therefore should be adopted.

Finally, in Section 3.8.3, the Coalition proposes that Verizon continue to be required to provide combinations of network elements provided pursuant to Section 271. Even if these elements are not subject to nondiscrimination standards of Section 251, they remain subject to the requirements of state law and of Sections 201 and 202. Any refusal to provide such combinations to CLECs, even as it performs them for its own affiliates and operations, would be unreasonable and discriminatory in violation of these applicable standards. The Coalition's Section 3.8.3 is necessary to ensure that Verizon's provisioning of Section 271 elements is reasonable and nondiscriminatory.

L. Non-Conforming Facilities (TRO Attachment § 3.9 (Verizon Section § 3.8))

Verizon's Position: The language in Verizon's amendment seeks to establish transition rules for facilities that are no longer available as UNEs; *i.e.*, where CLECs are deemed not impaired without access to the facilities.

Proposed Revisions: The CLEC coalition proposes substantial revisions to Section 3.9.2, Other Nonconforming Facilities, to provide a reasonable transition period for UNEs that are no longer to be provided on an unbundled basis. The FCC "expect[ed] states will require an appropriate period for competitive LECs to transition from [UNEs] that the state finds should no longer be unbundled. *TRO* ¶¶ 339, 417. Verizon's proposed transition terms are inadequate and unreasonable.

Section 3.9.2 modifies Verizon's proposed Section 3.8.2 to create a series of prerequisites before Verizon could revoke a CLEC's existing unbundled access to a facility. First, Verizon should be required to wait until the elimination of a particular UNE was final and non-appealable. While the *TRO* urges timely implementation of its terms, actions that strip existing UNEs from CLECs while appeals remain pending would only produce unnecessary litigation, confusion and disruption. As demonstrated most recently by the D.C. Circuit's *USAT II* decision reversing and remanding portions of the *TRO*, rushed implementation while appeals remain pending would likely result in premature deprivation and disruption that would disserve the purposes of the Act or the public interest. Second, the section should require Verizon's notification letter to identify Nonconforming Facilities individually by circuit identification number for circuits, or other comparable identifying descriptions for other facilities. In the absence of such a requirement, it would be more likely that Verizon would make errors in the designation of Nonconforming Facilities, and more likely that CLEC would misinterpret which facilities were in fact scheduled for transition. Provision of this information would assist all parties and would reduce the likelihood that disputes and complaints would need to be brought to the commission. Third, for facilities that can be converted to an alternative Section 271 offering or a special access service, Verizon should be required to continue to provide the UNE for at least 90 days after providing notice to the CLEC; for all other facilities, Verizon must continue to offer the facility for at least 180 days, to allow the CLEC a reasonable opportunity to procure or construct alternative facilities. Fourth, where Nonconforming Facilities are terminated or are converted to alternative arrangements, Verizon should be prohibited from charging the CLEC for conversion or termination fees for this involuntary conversion, or for installation of the "new" converted service. Verizon will have been compensated once for installing the facility, and should not be compensated a second time for making a mere billing conversion. Fifth, Verizon should be prohibited from terminating any UNE if there is a pending dispute as to whether the UNE is Nonconforming. Under Verizon's proposal, a CLEC would have no timely recourse if Verizon were to make an erroneous designation of a facility as Nonconforming. The Coalition proposal would prevent Verizon from terminating the UNE pending resolution of CLEC's good faith challenge to the designation.

Verizon's proposed section 3.8.3 regarding Nonconforming Facilities should be deleted in its entirety as being inconsistent with the requirements of the Act. Verizon proposes that any negotiations to provide a service or facility to replace a nonconforming facility should not be considered a negotiation under Section 251 of the Act, and therefore not subject to arbitration under Section 252. The *TRO* expressly affirmed the negotiation and arbitration process of Section 252 as the appropriate means of implementing any changes to the parties' agreements with respect to unbundled network elements. See *TRO* ¶ 701.

M. Pricing Attachment to TRO Amendment

Verizon's Position: The language in Verizon's Pricing Attachment seeks to implement the FCC rules established in the *TRO* regarding these facilities.

Proposed Revisions: Because Verizon's costs for routine network modifications are already recovered by their existing TELRIC cost studies that were used to calculate UNE rates under the Agreement, as discussed under Section 3.7 above, a Pricing Attachment is unnecessary. In the event that the Commission concludes that existing TELRIC rates do not contemplate a particular type of modification, the Coalition proposes that the Commission establish an interim rate of zero for all modifications (subject to true-up) and open a separate, generic TELRIC proceeding to determine appropriate permanent rates for Verizon's performance thereof.

CONCLUSION

The Commission should dismiss this proceeding and/or portions of Verizon's Petition for the reasons set forth in Section I of this Response. Alternatively, the Commission should adopt the amendment proposed by the Competitive Carrier Coalition.

Respectfully submitted,

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April 13, 2004

ATTACHMENT 1

Competitive Carrier Coalition's Proposed Alternative to Verizon's Proposed TRO Amendment

COMPETITIVE CARRIER COALITION PROPOSED ALTERNATIVE

Insertions shown in this type; ~~deletions shown in this type.~~

AMENDMENT NO. __

to the

INTERCONNECTION AGREEMENT

between

[VERIZON LEGAL ENTITY]

and

[CLEC FULL NAME]

This Amendment No. [NUMBER] (the "Amendment") is made by and between Verizon [LEGAL ENTITY] ("Verizon"), a [STATE OF INCORPORATION] corporation with offices at [VERIZON STATE ADDRESS], and [FULL CLEC NAME], a [CORPORATION/PARTNERSHIP] with offices at [CLEC ADDRESS] ("***CLEC Acronym TXT***"), and shall be deemed effective **[FOR CALIFORNIA]** upon Commission approval pursuant to Section 252 of the Act (the "Amendment Effective Date").**] [FOR ALL OTHER STATES:** on ____________ (the "Amendment Effective Date").**]** Verizon and ***CLEC Acronym TXT*** are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in Verizon's service territory in the [State or Commonwealth] of [STATE/COMMONWEALTH NAME OF AGREEMENT] (the "State"/"Commonwealth").

WITNESSETH:

NOTE: DELETE THE FOLLOWING WHEREAS SECTION ONLY IF CLEC's AGREEMENT HAS USED AN ADOPTION LETTER:

[WHEREAS, Verizon and ***CLEC Acronym TXT*** are Parties to an Interconnection Agreement under Sections 251 and 252 of the Communications Act of 1934, as amended [the "Act"] dated [INSERT DATE] (the " Agreement"); and**]**

NOTE: INSERT THE FOLLOWING WHEREAS SECTION ONLY IF CLEC's AGREEMENT USED AN ADOPTION LETTER:

[WHEREAS, pursuant to an adoption letter dated [INSERT DATE OF ACTUAL ADOPTION LETTER] (the "Adoption Letter"), ***CLEC Acronym TXT*** adopted in the [State or Commonwealth] of [STATE/COMMONWEALTH NAME], the interconnection agreement between [NAME OF UNDERLYING CLEC AGREEMENT] and VERIZON (such Adoption Letter and underlying adopted interconnection agreement referred to herein collectively as the "Agreement"); and**]**

WHEREAS, the Federal Communications Commission (the "FCC") released an order on August 21, 2003 in CC Docket Nos. 01-338, 96-98, and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; ~~**and**~~

WHEREAS, on March 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") issued a decision affirming in part and vacating in part the TRO (the "D.C. Circuit Decision"); and

WHEREAS, pursuant to Section 252(a)(1) of the [**NOTE: IF CLEC'S AGREEMENT IS AN ADOPTION, REPLACE "ACT" WITH: "the Communications Act of 1934, as amended, (the "Act")**] Act, the Parties wish to amend the Agreement in order to give contractual effect to the provisions of the TRO as set forth herein; and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. The Parties agree that the Agreement should be amended by the addition of the rates, terms and conditions set forth in the TRO Attachment ~~**and the Pricing Exhibit to the TRO Attachment**~~ attached hereto. The TRO Attachment ~~**and the Pricing Exhibit to the TRO Attachment**~~ shall apply notwithstanding any other provision of the Agreement or a Verizon tariff or a Verizon Statement of Generally Available Terms and Conditions ("SGAT").

2. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement this Amendment shall govern, *provided, however,* that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.

5. Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Section 1 of this Amendment. As used herein, the Agreement, as revised and supplemented by this Amendment, shall be referred to as the "Amended Agreement." Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.

6. Stay or Reversal. Notwithstanding any contrary provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, nothing contained in the Agreement, this Amendment, or any Verizon tariff or SGAT shall limit ~~**Verizon**~~**either Party**'s right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the [***State Commission TXT***], the FCC, any court or any other governmental authority related to, concerning or that may affect ~~**Verizon**~~**either Party**'s obligations under the Agreement, this Amendment, any Verizon tariff or SGAT, or Applicable Law. **The parties acknowledge that certain provisions of the TRO remain subject to appeal to the United States Supreme Court.** Notwithstanding any other provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, should ~~**the FCC, the D.C. Circuit or the United States Supreme Court**~~**any court or agency of competent jurisdiction** issue a stay of any or all of the TRO's provisions, or should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the D.C. Circuit Decision's provisions, any terms and conditions of this Amendment that implement the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted, **and, while such terms and conditions are suspended, the terms and conditions of the Agreement shall be in effect to the same extent as if the provisions of this Amendment relating to the stayed provisions of the TRO had not been executed. Should any court or agency**

of competent jurisdiction reverse or vacate any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed provisions shall be subject to renegotiation pursuant to the change of law provisions of the Agreement. Pending such renegotiation, the terms and conditions of the Agreement shall be in effect to the same extent as if the terms and conditions of this Amendment that relate to the reversed provisions had not been executed.

7. Joint Work Product. This Amendment is a joint work product, and any ambiguities in this Amendment shall not be construed by operation of law against either Party.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the Amendment Effective Date.

CLEC Full Name TXT	VERIZON***IF Verizon Company Full Name 2 TXT != ""***
By: ______________________	By: ______________________
Printed: ______________________	Printed: ______________________
Title: ______________________	Title: ______________________

[FOR CALIFORNIA, FLORIDA AND PENNSYLVANIA ONLY, ADD:]

Date: ______________________	Date: ______________________

TRO Attachment

1. General Conditions

1.1 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT~~: (a)~~, Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of unbundled Network Elements ("Combinations"), ~~or~~and UNEs commingled with wholesale services ("Commingling"), to ***CLEC Acronym TXT*** under the terms of this Amended Agreement in accordance with ~~only to the extent required by both~~ 47 U.S.C. § 251~~(c)(3) and 47 C.F.R. Part 51, and, (b) Verizon may decline to provide access to UNEs, Combinations, or Commingling to ***CLEC Acronym TXT*** to the extent that provision of access to such UNEs, Combinations, or Commingling is not required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.~~(c)(3), 47 U.S.C. § 271, 47 C.F.R. Part 51, and other applicable law, and as otherwise required by the [***State Commission TXT***] in accordance with applicable law.

1.2 ~~***CLEC Acronym TXT*** may use a UNE, a Combination, or Commingling only for those purposes for which Verizon is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide such UNE, Combination, or Commingling to ***CLEC Acronym TXT***.~~***CLEC Acronym TXT*** may use a UNE, a Combination, or Commingling only if it will use the facility at least in part for a qualifying service in accordance with 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51, or other applicable law. Except as permitted by 47 C.F.R. § 51.318, Verizon shall not impose limitations, restrictions, or requirements on requests for, or on the use of UNEs, a Combination or Commingling for the service ***CLEC Acronym TXT*** seeks to offer.

~~1.3 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent Verizon is required by a change in Applicable Law to provide to ***CLEC Acronym TXT*** pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 a UNE, a Combination, or Commingling that is not offered under the Amended Agreement to ***CLEC Acronym TXT*** as of the Amendment Effective Date, the rates, terms, conditions for such UNE, Combination, or Commingling shall be as provided in an applicable Verizon tariff, or, in the absence of an applicable Verizon tariff, as mutually agreed in writing by the Parties.~~

1.3 ~~1.4~~ Verizon reserves the right to argue in any proceeding before the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction that an item identified in the Agreement or this Amendment as a Network Element (a) is not a Network Element under 47 U.S.C. § 251(c)(3), (b) is not a Network Element Verizon is required by 47 U.S.C. § 251(c)(3) to provide to ***CLEC Acronym TXT***, or (c) is an item that Verizon is not required to offer to ***CLEC Acronym TXT*** at the rates set forth in the Amended Agreement.

1.4 ***CLEC*** reserves the right to argue in any proceeding before the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction that an item not identified in the Agreement or this Amendment as a Network Element (a) is a Network Element Verizon is required under 47 U.S.C. § 251(c)(3) to provide to ***CLEC Acronym TXT***, or (b) is an item that Verizon is otherwise required to offer to ***CLEC Acronym TXT*** at rates to be determined by the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction.

2. TRO Glossary

Notwithstanding any other provision in the Agreement or any Verizon tariff or SGAT, the following terms, as used in the Amended Agreement, shall have the meanings set forth below:

2.1 Call-Related Databases.

Databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases.

2.2 **Dark Fiber Loop.**

An unactivated optical transmission facility within a LATA, without attached multiplexing, aggregation or other electronics, between a wire center and an Enterprise Customer's premises, that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3), ~~**and**~~ **47 C.F.R. Part 51, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law.**

2.3 ~~2.2~~ Dark Fiber Transport.

An unactivated optical transmission facility within a LATA, without attached multiplexing, aggregation or other electronics, between Verizon switches (as identified in the LERG) or wire centers, that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 C.F.R. Part 51**, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law**. ~~**Dark fiber facilities between (i) a Verizon wire center or switch and (ii) a switch or wire center of ***CLEC Acronym TXT*** or a third party are not Dark Fiber Transport.**~~

2.4 ~~2.3~~ Dedicated Transport.

A ~~**DS1 or DS3**~~ transmission facility between Verizon switches (as identified in the LERG) or wire centers, within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 C.F.R. Part 51**, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law**. Transmission facilities or services provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of ***CLEC Acronym TXT*** or a third party are not Dedicated Transport~~.~~**, unless Verizon has installed any equipment at the premises of ***CLEC Acronym TXT*** or any other entity not affiliated with Verizon, regardless of whether Verizon has a cage ("Reverse Collocation").**

2.5 ~~2.4~~ DS1 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 1.544 Mbps.

2.6 ~~2.5~~ DS3 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 44.736 Mbps.

2.7 ~~2.6~~ DS1 Loop.

A digital transmission channel suitable for the transport of 1.544 Mbps digital signals that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 C.F R. Part 51**, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law**. This loop type is more fully described in Verizon TR 72575, as revised from time to time**, except that Verizon publications referenced in this Agreement may not be applied in any manner that is inconsistent with provisions of the Agreement or applicable law**. A DS-1 Loop requires the electronics necessary to provide the DS-1 transmission rate.

2.8 ~~2.7~~ DS3 Loop.

A digital transmission channel suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS-1 channels) that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 C.F.R. Part 51**, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law**. This Loop type is more fully described in Verizon TR 72575, as revised from time to time**, except that Verizon publications referenced in this Agreement may not be applied in any manner that is inconsistent with provisions of the Agreement or applicable law**. A DS-3 Loop requires the electronics necessary to provide the DS-3 transmission rate.

2.9 **Enterprise Customer.**

Any retail or wholesale business customer that is not a Mass Market Customer.

2.10 ~~2.8~~ Enterprise Switching.

Local Switching or Tandem Switching that, if provided to ***CLEC Acronym TXT*** would be used ~~for the purpose of serving~~**to serve** ***CLEC Acronym TXT***'s customers using DS1 or above capacity Loops. **Enterprise Switching does not include stand-alone Tandem Switching.**

2.11 ~~2.9~~ Feeder.

The fiber optic cable (lit or unlit) or metallic portion of a Loop between a serving wire center and a remote terminal or feeder/distribution interface.

2.12 ~~2.10~~ FTTH Loop.

A Loop **serving a Mass Market Customer and** consisting entirely of fiber optic cable, whether dark or lit, between the main distribution frame (or its equivalent) in an end user's serving wire center and the demarcation point at the end user's customer premises.

2.13 ~~2.11~~ House and Riser Cable.

A distribution facility in Verizon's network, other than **a fiber optic facility** in a FTTH Loop, between the minimum point of entry ("MPOE") at a multiunit premises where an end user customer is located and the Demarcation Point for such facility, that is owned and controlled by Verizon. **Also known as the "Inside Wire Subloop."**

2.14 ~~2.12~~ Hybrid Loop.

A local Loop **serving a Mass Market Customer and** composed of both fiber optic cable and copper wire or cable **between the main distribution frame (or its equivalent) in an end user's serving wire center and the demarcation point at the end user's customer premises**.

2.15 ~~2.13~~ Line Sharing.

The process by which ***CLEC Acronym TXT*** provides xDSL service over the same copper Loop that Verizon uses to provide voice service by utilizing the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions (the High Frequency Portion of the Loop, or "HFPL"). The HFPL includes the features, functions, and capabilities of the copper Loop that are used to establish a complete transmission path between Verizon's distribution frame (or its equivalent) in its Wire Center and the demarcation point at the end user's customer premises, and includes the high frequency portion of any inside wire (including any House and Riser Cable) owned and controlled by Verizon.

2.16 ~~2.14~~ Local Switching.

The line-side, and trunk-side facilities associated with the line-side port, on a circuit switch in Verizon's network (as identified in the LERG), plus the features, functions, and capabilities of that switch, unbundled from loops and transmission facilities, including: (a) the line-side Port (including the capability to connect a Loop termination and a switch line card, telephone number assignment, dial tone, one primary directory listing, pre-subscription, and access to 911); (b) line and line group features (including all vertical features and line blocking options the switch and its associated deployed switch software are capable of providing that are provided to Verizon's local exchange service Customers served by that switch); (c) usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks); and (d) trunk features (including the connection between the trunk termination and a trunk card).

2.17 **Mass Market Customer.**

An end user customer who is either (a) a residential customer or (b) a business customer whose premises are served by telecommunications facilities with an aggregate transmission capacity (regardless of the technology used) of less than four DS-0s.

2.18 ~~2.15~~ Mass Market Switching.

Local Switching or Tandem Switching that Verizon offers on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law**, and that is provided to ***CLEC Acronym TXT*** to serve ***CLEC Acronym TXT***'s end user customers over DS0 Loops.

2.19 ~~2.16~~ Nonconforming Facility.

Any facility that Verizon was providing to ***CLEC Acronym TXT*** on an unbundled basis pursuant to the Agreement or a Verizon tariff or SGAT prior to October 2, 2003, but which Verizon is no longer obligated to provide on an unbundled basis under 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51, **or other applicable state or federal law or regulation** ~~whether~~ by ~~operation of the TRO, a subsequent~~**a final, nonappealable** nonimpairment finding issued by the [***State Commission TXT***] or the FCC~~, or otherwise~~. By way of example and not by way of limitation, Nonconforming Facilities may include any of the following: (a) any unbundled dedicated transport or dark fiber facility that is no longer encompassed within the amended terms applicable to DS1 Dedicated Transport, DS3 Dedicated Transport, or Dark Fiber Transport; (b) DS1 Dedicated Transport, DS3 Dedicated Transport, or Dark Fiber Transport on a Route or Routes as to which the [***State Commission TXT***] or the FCC, on or after October 2, 2003, finds telecommunications carriers to be nonimpaired without access to such facilities; (c) Enterprise Switching; (d) Mass Market Switching in any market in which the [***State Commission TXT***] or the FCC, on or after October 2, 2003, finds telecommunications carriers to be nonimpaired without access to such facilities; (e) Local Switching subject to the FCC's four-line carve out rule, as described in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No 96-98, 15 FCC Rcd 3822-31 (1999) (the "Four-Line Carve Out Rule"); (f) OCn Loops and OCn Dedicated Transport; (g) the **fiber** Feeder portion of a Loop **serving a Mass Market Customer, subject to exceptions for TDM and narrowband applications**; (h) Line Sharing; ~~(i) an EEL that does not meet the service eligibility criteria established in the TRO; (j)~~ **(i)** any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with ***CLEC Acronym TXT***'s use of Verizon Mass Market Switching; (~~k~~**j**) Signaling that is not provisioned in connection with ***CLEC Acronym TXT***'s use of Verizon's Mass Market Switching; **(k) FTTH Loops (lit or unlit) in a new build environment;** (l) FTTH Loops (lit or unlit) in ~~a new build environment; (m) FTTH Loops (lit or unlit) in~~ an overbuild environment, subject to the limited exceptions set forth herein; or (~~n~~**m**) any facility or class of facilities as to which the [***State Commission TXT***] or the FCC, on or after October 2, 2003, makes a general finding of nonimpairment.

~~2.17 Packet Switching.~~

~~The routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, or the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper Loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the Loops; and the ability to combine data units from multiple Loops onto one or more trunks connecting to a packet switch or packet switches.~~

2.20 ~~2.18~~ **[INTENTIONALLY LEFT BLANK]**

2.21 ~~2.19~~ Route.

A transmission path between one of Verizon's wire centers or switches and another of Verizon's wire centers or switches ~~(or, as applicable, a class or grouping of such transmission paths in a particular market)~~ within a LATA**, including "Reverse Collocation" sites**. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more Verizon intermediate wire centers or switches (e.g., Verizon wire center or switch "X"). Transmission paths between identical end points (e.g., Verizon wire center or switch "A" and Verizon wire center or switch "Z") are the same "route", irrespective of whether they pass through the same intermediate Verizon wire centers or switches, if any.

2.22 ~~2.20~~ Signaling.

Signaling includes, but is not limited to, signaling links and signaling transfer points.

2.23 ~~2.21~~ Sub-Loop for Multiunit Premises Access.

Any portion of a Loop~~, **other than a FTTH Loop,**~~ that is technically feasible to access at a terminal in Verizon's outside plant at or near a multiunit premises. It is not technically feasible to access a portion of a Loop at a terminal in Verizon's outside plant at or near a multiunit premises if a technician must access the facility by removing a splice case to reach the wiring within the cable.

2.24 ~~2.22~~ Sub-Loop Distribution Facility.

The copper portion of a Loop in Verizon's network that is between the minimum point of entry ("MPOE") at an end user customer premises and Verizon's feeder/distribution interface.

2.25 ~~2.23~~ Tandem Switching.

The trunk-connect facilities on a Verizon circuit switch that functions as a tandem switch, plus the functions that are centralized in that switch, including the basic switching function of connecting trunks to trunks, unbundled from and not contiguous with loops and transmission facilities. Tandem Switching creates a temporary transmission path between interoffice trunks that are interconnected at a Verizon tandem switch for the purpose of routing a call. A tandem switch does not provide basic functions such as dial tone service.

3. UNE TRO Provisions

3.1 Loops. **Except where the provisions of this Amendment explicitly conflict with the terms of the Agreement, Verizon shall continue to provide access to loops in accordance with the terms of the Agreement. Verizon shall provide nondiscriminatory access to stand-alone local loops comprised entirely of copper wire or cable, where available. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics.**

3.1.1 Hi-Cap Loops. Notwithstanding any other provision of the Agreement or a Verizon tariff or SGAT, as of October 2, 2003:

3.1.1.1 DS1 Loops. Upon ***CLEC Acronym TXT***'s written request, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to a DS1 Loop on an unbundled basis under the Amended Agreement in accordance with~~, **but only to the extent required by,**~~ **all applicable law and regulation, including but not limited to**, 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 C.F.R. Part 51**, and any requirements of the [***State Commission TXT***] pursuant to 47 U.S.C. § 252(e)(3), U.S.C. § 271, or other applicable law or regulation.**

3.1.1.2 DS3 Loops. Upon ***CLEC Acronym TXT***'s written request, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to a DS3 Loop on an unbundled basis under the Amended Agreement in accordance with~~, **but only to the extent required by,**~~ **all applicable** law and regulation, including but not limited to, 47 U.S.C. § 251(c)(3), ~~and~~ 47 C.F.R. Part 51, and any requirements of the [***State Commission TXT***] pursuant to 47 U.S.C. § 252(e)(3), U.S.C. § 271, or other applicable law or regulation.

3.1.1.2.1 Cap on DS3 Loops. ***CLEC Acronym TXT*** may obtain on an unbundled basis a maximum of two (2) DS-3 Loops (or two (2) DS-3 equivalents) at any single end user location. Any Loop previously made available to ***CLEC Acronym TXT*** at said end user location above the two (2) Loop cap shall be considered a Nonconforming Facility.

3.1.1.3 Dark Fiber Loops. Upon ***CLEC Acronym TXT*'s written request, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to a Dark Fiber Loop on an unbundled basis under the Amended Agreement in accordance with all applicable law and regulation, including but not limited to 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51, and any requirements of the [***State Commission TXT***] pursuant to 47 U.S.C. § 252(e)(3), or 47 U.S.C. § 271, or other applicable law or regulation.**

3.1.1.3.1 A Dark Fiber Inquiry Form must be submitted prior to submitting an ASR. Upon receipt of ***CLEC Acronym TXT*'s completed Dark Fiber Inquiry Form, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop(s) may be available between the locations and in the quantities specified. Verizon will respond within fifteen (15) Business Days from receipt of ***CLEC Acronym TXT***'s Dark Fiber Inquiry Form, indicating whether Dark Fiber Loop(s) may be available (if so available, an "Acknowledgement") based on the records search except that for ten (10) or more requests per LATA or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loop(s). In responding to Dark Fiber Inquiries from ***CLEC Acronym TXT***, Verizon will identify whether fiber is: (i) installed and available, (ii) installed but not available, or (iii) not installed. Where fiber is not available, Verizon shall describe in reasonable detail the reason why fiber is not available, including, but not limited to, specifying whether fiber is present but needs to be spliced, whether no fiber at all is present between the two points specified by ***CLEC Acronym TXT***, whether further work other than splicing needs to be performed, and the nature of any such further work other than splicing. Use of information provided by Verizon pursuant to this provision shall be limited to ***CLEC Acronym TXT***'s engineering and operations personnel. ***CLEC Acronym TXT***'s marketing personnel shall not be permitted access to, or use of, this information.**

3.1.1.3.2 A field survey shows the availability of dark fiber pairs between a Verizon central office and a ***CLEC Acronym TXT* Customer, shows whether or not such pairs are defective, shows whether or not such pairs have been used**

by Verizon for emergency restoration activity and tests the transmission characteristics of Verizon dark fiber pairs. If a field survey shows that a Dark Fiber Loop or is available, ***CLEC Acronym TXT* may reserve the Dark Fiber Loop, as applicable, for ten (10) Business Days from receipt of Verizon's field survey results. If ***CLEC Acronym TXT*** submits an order for access to such Dark Fiber Loop after passage of the foregoing ten (10) Business Day reservation period, Verizon does not guarantee or warrant the Dark Fiber Loop will be available when Verizon receives such order, and ***CLEC Acronym TXT*** assumes all the risk that the Dark Fiber Loop will not be available. At ***CLEC Acronym TXT***'s option, its personnel may observe the conducting of the field survey. Verizon shall perform a field survey subject to a negotiated interval. If ***CLEC Acronym TXT*** submits an order for a dark fiber pair without first obtaining the results of a field survey of such pair, ***CLEC Acronym TXT*** assumes all risk that the pair will not be compatible with ***CLEC Acronym TXT***'s equipment, including, but not limited to, order cancellation charges.**

3.1.1.4 ~~**3.1.1.3**~~ Nonimpairment. Without limiting any other rights ~~**Verizon**~~**either party** may have under the Amended Agreement or under Applicable Law, subject to the provisions of Section ~~**3.8**~~**3.9** below, Verizon shall be under no obligation to provide or continue providing ***CLEC Acronym TXT*** with nondiscriminatory access to DS-1 Loops or DS3 Loops **pursuant to § 251 of the Act,** under the Amended Agreement at a specific end user location if the [***State Commission TXT***] or the FCC ~~**finds**~~**issues a final, nonappealable order finding** that ***CLEC Acronym TXT*** or CLECs generally are not impaired without access to such DS1 Loops or DS3 Loops at such end user location ~~**(or class or groupings of locations in a particular market)**~~. Any DS1 Loops or DS3 Loops previously made available to ***CLEC Acronym TXT*** at the subject end user location shall be considered Nonconforming Facilities ~~**immediately on the effective date of the nonimpairment finding and thereafter.**~~ **governed pursuant to Section 3.9 of this Amendment. All nonconforming DS1 and DS3 Loops provided to***CLEC Acronym TXT*** shall be treated in accordance with § 3.8 of this Agreement.**

3.1.2 FTTH Loops.

3.1.2.1 New Builds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ***CLEC Acronym TXT*** shall not be entitled to obtain access to a FTTH Loop (or any segment thereof) on an unbundled basis where Verizon has deployed such a Loop to ~~**an end user's customer**~~**a Mass Market Customer's** premises that previously was not served by any Verizon Loop.

3.1.2.2 Overbuilds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ***CLEC Acronym TXT*** shall not be entitled to obtain access to a FTTH Loop (or any segment thereof) on an unbundled basis where Verizon has deployed the subject Loop parallel to, or in replacement of, an existing copper Loop**, and (A) Verizon maintains the existing copper loop connected to the particular customer premises after deploying the FTTH loop and**

provides nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loop pursuant to section 51.319 (a)(3)(iii), and (B) Verizon shall restore the copper loop to serviceable condition upon request; provided, *however*, that if such a Loop replaces a copper Loop that Verizon has retired, and there are no other available copper Loops or Hybrid Loops, then in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access on an unbundled basis to a transmission path **on the FTTH loop** from Verizon's serving wire center to the demarcation point at the end user's customer premises capable of voice grade service.

3.1.3 Hybrid Loops Generally.

3.1.3.1 Packet Switching. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ***CLEC Acronym TXT*** shall not be entitled to obtain access to the Packet Switching Capability of any Hybrid Loop on an unbundled basis. **For purposes of this section 3.1.3.1 only, the term Packet Switching means as follows:**

The routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, or the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper Loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the Loops; and the ability to combine data units from multiple Loops onto one or more trunks connecting to a packet switch or packet switches.

*****CLEC Acronym TXT*** has agreed to this definition only because it was adopted by the FCC in 47 C.F.R. § 51.319(a)(2)(i). ***CLEC Acronym TXT*** believes that it is inappropriate to classify DSLAM functionality as "packet switching," and reserves its right to so argue in future proceedings.**

3.1.3.2 Broadband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, when ***CLEC Acronym TXT*** seeks access to a Hybrid Loop for the provision of "broadband services," as such term is defined by the FCC, then in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**, Verizon shall provide ***CLEC Acronym TXT*** with **nondiscriminatory** access under the Amended Agreement to the time division multiplexing features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (but only where impairment has been found to exist), on an unbundled basis, to establish a complete transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.3.3 Narrowband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, when ***CLEC Acronym TXT*** seeks access to a Hybrid Loop for the provision to its customer of "narrowband services," as such term is defined by the FCC, then in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3), ~~and~~ 47 C.F.R. Part 51, **and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**, Verizon shall either (a) provide **nondiscriminatory** access under the Amended Agreement to a spare home-run copper Loop serving that customer on an unbundled basis, or in Verizon's sole discretion, (b) provide **nondiscriminatory** access under the Amended Agreement, on an unbundled basis, to **a** ~~voice-grade transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises~~**an entire hybrid loop capable of voice-grade service**, using time division multiplexing technology.

3.1.3.4 Feeder. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, ***CLEC Acronym TXT*** shall not be entitled to obtain access to the **fiber** Feeder portion of a Loop on an unbundled, standalone basis **to serve a Mass Market customer**.

3.1.4 IDLC Hybrid Loops.

Notwithstanding any other provision of the Agreement, Section 3.1.3 above, or any Verizon tariff or SGAT, if [***CLEC Acronym TXT***] requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop), Verizon shall, as and to the extent required by 47 U.S.C. § 251(c)(3), ~~and~~ 47 C.F.R. Part 51, **or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law**, provide [***CLEC Acronym TXT***] unbundled access to a Loop capable of voice-grade service to the end user customer served by the Hybrid Loop.

3.1.4.1 Verizon will endeavor to provide [***CLEC Acronym TXT***] with an existing copper Loop or a Loop served by existing Universal Digital Loop Carrier ("UDLC"). Standard recurring and non-recurring Loop charges will apply. ~~In addition, a non-recurring charge will apply whenever a line and station transfer is performed.~~

3.1.4.2 ~~If neither a copper Loop nor a Loop served by UDLC is available, Verizon shall, upon request of ***CLEC Acronym TXT***, construct the necessary copper Loop or UDLC facilities. In addition to the rates and charges payable in connection with any unbundled Loop so provisioned by Verizon, ***CLEC Acronym TXT*** shall be responsible for the following charges: (a) an engineering query charge for preparation of a price quote; (b) upon ***CLEC Acronym TXT***'s submission of a firm construction order, an engineering work order nonrecurring charge; and (c) construction~~

~~charges, as set forth in the price quote. If the order is cancelled by ***CLEC Acronym TXT*** after construction work has started, ***CLEC Acronym TXT*** shall be responsible for cancellation charges and a pro-rated charge for construction work performed prior to the cancellation.~~ <u>If neither a copper Loop nor a Loop served by UDLC is available, Verizon shall, upon request of ***CLEC Acronym TXT***, provide unbundled access to hybrid loops served by IDLC systems by using a "hairpin" option, *i.e.*, configuring a semi-permanent path and disabling certain switching functions, as described in note 855 of the TRO.</u>

3.1.4.3 ~~Verizon's performance in connection with providing unbundled Loops pursuant to this Section 3.1 shall not be subject to standard provisioning intervals or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.~~<u>If none of the options described above are available, Verizon shall construct the necessary copper Loop or UDLC facilities.</u>

3.2 <u>Line Sharing</u>.

Notwithstanding any other provision in the Agreement or any Verizon tariff or SGAT, as of October 2, 2003:

3.2.1 <u>Line Sharing</u>.

3.2.1.1 ~~New Line Sharing. Verizon shall be under no obligation to provision new Line Sharing arrangements under the Agreement or this Amendment; *provided, however*, that as and to the extent required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and subject to Section 3.8.3 below, Verizon offers new Line Sharing arrangements on a transitional basis pursuant to rates, terms, and conditions offered by Verizon in a separate agreement that is subject to FCC-prescribed pricing rules.~~<u>New Line Sharing. To the extent required by 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law, Verizon shall provide new Line Sharing arrangements in conformance with all applicable law.</u>

3.2.1.2 <u>Grandfathered Line Sharing</u>. Any existing Line Sharing arrangement over a copper Loop or Sub-Loop in place with an end user customer of ***CLEC Acronym TXT*** will be grandfathered at existing rates, provided ***CLEC Acronym TXT*** began providing xDSL service to that end user customer using Line Sharing over that Loop or Sub-Loop prior to October 2, 2003, and only so long as ***CLEC Acronym TXT*** has not ceased providing xDSL service to that end user customer at the same location over that Loop or Sub-Loop.

3.3 <u>Sub-Loop</u>.

3.3.1 ~~Sub-Loop for Access to Multiunit Premises. As of October 2, 2003, all provisions in the Agreement governing ***CLEC Acronym TXT*** access to Inside Wire, House and Riser or House and Riser Cable are hereby deleted and replaced with this Section 3.3.1, which shall supersede any other provision in the Agreement or in any Verizon tariff or SGAT in effect prior to October 2, 2003. Upon request by ***CLEC Acronym TXT***, Verizon~~

~~shall provide to ***CLEC Acronym TXT*** access to the Sub-Loop for Multiunit Premises Access in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.~~Sub-Loop for Access to Multiunit Premises. Upon request by ***CLEC Acronym TXT***, Verizon shall provide to ***CLEC Acronym TXT*** access to the Sub-Loop for Multiunit Premises Access in accordance with 47 U.S.C. § 251(c)(3) and 47 C.F.R. § 51.319(b), any applicable Verizon tariff or SGAT, and any applicable federal and state commission rules, regulations, and orders.

3.3.1.1 ~~Inside Wire Sub-Loop. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, upon request by ***CLEC Acronym TXT***, Verizon shall provide to ***CLEC Acronym TXT*** access to a House and Riser Cable pursuant to this Section 3.3.1.1 at the rates and charges provided in the Agreement. Verizon shall not reserve a House and Riser Cable for ***CLEC Acronym TXT***. ***CLEC Acronym TXT*** may access a House and Riser Cable only between the MPOE for such cable and the demarcation point at a technically feasible access point. It is not technically feasible to access inside wire sub-loop if a technician must access the facility by removing a splice case to reach the wiring within the cable.~~[intentionally left blank]

~~3.3.1.1.1 ***CLEC Acronym TXT*** must satisfy the following conditions before ordering access to a House and Riser Cable from Verizon:~~

~~3.3.1.1.1.1 ***CLEC Acronym TXT*** shall locate its facilities within cross connect distance of the point of interconnection on such cable. Facilities are within cross connect distance of a point of interconnection if they are located in the same room (not including a hallway) or within twelve (12) feet of such point of interconnection.~~

~~3.3.1.1.1.2 If suitable space is available, ***CLEC Acronym TXT*** shall install its facilities no closer than fourteen (14) inches of the point of interconnection for such cable, unless otherwise agreed by the Parties.~~

~~3.3.1.1.1.3 ***CLEC Acronym TXT***'s facilities cannot be attached, otherwise affixed or adjacent to Verizon's facilities or equipment, cannot pass through or otherwise penetrate Verizon's facilities or equipment and cannot be installed so that ***CLEC Acronym TXT***'s facilities or equipment are located in a space where Verizon plans to locate its facilities or equipment.~~

~~3.3.1.1.1.4 ***CLEC Acronym TXT*** shall identify its facilities as those of ***CLEC Acronym TXT***.~~

~~3.3.1.1.2 To provide ***CLEC Acronym TXT*** with access to a House and Riser Cable, Verizon shall not be obligated to (a) move any Verizon equipment, (b) secure any right of way for ***CLEC Acronym TXT***, (c) secure space for ***CLEC Acronym TXT*** in any building, (d) secure access to any portion of a building for ***CLEC Acronym TXT*** or (e) reserve space in any building for ***CLEC Acronym TXT***.~~

~~3.3.1.1.3 Verizon shall perform cutover of a Customer to ***CLEC Acronym TXT*** service by means of a House and Riser Cable subject to a negotiated interval. Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to ***CLEC Acronym TXT***'s facilities, and Verizon shall determine how to perform such installation. ***CLEC Acronym TXT*** shall coordinate with Verizon to ensure that House and Riser Cable facilities are converted to ***CLEC Acronym TXT*** in accordance with ***CLEC Acronym TXT***'s order for such services.~~

~~3.3.1.1.4 If proper ***CLEC Acronym TXT*** facilities are not available at the time of installation, Verizon shall bill ***CLEC Acronym TXT***, and ***CLEC Acronym TXT*** shall pay to Verizon, the Not Ready Charge set forth in the Agreement and the Parties shall establish a new cutover date.~~

~~3.3.1.1.5 Verizon shall perform all installation work on Verizon equipment in connection with ***CLEC Acronym TXT***'s use of Verizon's House and Riser Cable. All ***CLEC Acronym TXT*** equipment connected to a House and Riser Cable shall comply with applicable industry standards.~~

~~3.3.1.1.6 Verizon shall repair and maintain a House and Riser Cable at the request of ***CLEC Acronym TXT***. ***CLEC Acronym TXT*** shall be solely responsible for investigating and determining the source of all troubles and for providing Verizon with appropriate dispatch information based on its test results. Verizon shall repair a trouble only when the cause of the trouble is a Verizon House and Riser Cable. If (a) ***CLEC Acronym TXT*** reports to Verizon a Customer trouble, (b) ***CLEC Acronym TXT*** requests a dispatch, (c) Verizon dispatches a technician, and (d) such trouble was not caused by a Verizon House and Riser Cable in whole or in part, then ***CLEC Acronym TXT***~~

~~**shall pay Verizon the charge set forth in the Agreement for time associated with said dispatch. In addition, this charge also applies when the Customer contact as designated by ***CLEC Acronym TXT*** is not available at the appointed time. If as the result of ***CLEC Acronym TXT*** instructions, Verizon is erroneously requested to dispatch to a site on Verizon company premises ("dispatch in"), a charge set forth in the Agreement will be assessed per occurrence to ***CLEC Acronym TXT*** by Verizon. If as the result of ***CLEC Acronym TXT*** instructions, Verizon is erroneously requested to dispatch to a site outside of Verizon company premises ("dispatch out"), a charge set forth in the Agreement will be assessed per occurrence to ***CLEC Acronym TXT*** by Verizon.**~~

3.3.1.2 Single Point of Interconnection. In accordance with~~**, but only to the extent required by,**~~ 47 U.S.C. § 251(c)(3)**, ~~and~~** 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**, upon request by ***CLEC Acronym TXT*** and provided that the conditions set forth in Subsections 3.3.1.2.1 and 3.3.1.2.2 are satisfied, the Parties shall negotiate in good faith an amendment to the Amended Agreement memorializing the terms, conditions and rates under which Verizon will provide a single point of interconnection at a multiunit premises suitable for use by multiple carriers:

3.3.1.2.1 Verizon has distribution facilities to the multiunit premises, and either owns and controls, or leases, the House and Riser Cable at the multiunit premises; and

3.3.1.2.2 ***CLEC Acronym TXT*** certifies that it will place an order for access to an unbundled Sub-Loop network element under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51**, or other applicable law, or requirements of the [***State Commission TXT***] in accordance with applicable law,** via the newly provided single point of interconnection.

3.3.2 **Sub-Loop** Distribution ~~**Sub-Loop**~~ Facility. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, in accordance with~~**, but only to the extent required by**~~, 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**, upon site-specific request, ***CLEC Acronym TXT*** may obtain access to the Distribution Sub-Loop Facility at a technically feasible access point located near a Verizon remote terminal equipment enclosure at the rates and charges provided for Unbundled Sub-Loop Arrangements (or the Distribution Sub-Loop) in the Agreement. It is not technically feasible to access the sub-loop distribution facility if a technician must access the facility by removing a splice case to reach the wiring within the cable.

3.4 Unbundled Local Circuit Switching.

3.4.1 General Requirements. Verizon shall provide Mass Market Switching **and stand-alone Tandem Switching** to ***CLEC Acronym TXT*** under the Amended Agreement in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**. Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, as of October 2, 2003, with the exception of the foregoing ~~conditional~~ obligation to provide Mass Market Switching, Verizon shall have no other obligation to provide ~~any other form of Local Switching or Tandem Switching (such as~~ Enterprise Switching~~)~~ to ***CLEC Acronym TXT***, and any ~~Local Switching or Tandem~~**Enterprise** Switching previously made available to ***CLEC Acronym TXT*** shall be considered a Nonconforming Facility that shall be subject to the transition provisions of Section ~~3.8~~**3.9** below. For the avoidance of doubt: (a) Enterprise Switching is a Nonconforming Facility as of October 2, 2003; and (b) Local Switching **is** subject to the FCC's Four-Line Carve Out Rule ~~is~~**and may be** a Nonconforming Facility by operation of law in effect prior to the Amendment Effective Date.

3.4.2 Nonimpairment. Subject to the provisions of Section ~~3.8~~**3.9** below, Verizon shall be under no obligation to continue to provide ***CLEC Acronym TXT*** with nondiscriminatory access to Mass Market Switching on an unbundled basis **pursuant to § 251 of the Act,** under the Amended Agreement upon a finding by the [***State Commission TXT***] or the FCC that requesting telecommunications carriers are not impaired without access to Mass Market Switching in a particular market~~,~~ or where the [***State Commission TXT***] ~~or the FCC~~ has found that all impairment would be cured by implementation of ~~a transition plan for unbundled circuit switching in a particular market.~~**transitional ("rolling") access to local circuit switching on an unbundled basis for a period of 90 days or more. "Rolling" access means the use of unbundled local circuit switching for a limited period of time for each end-user customer to whom ***CLEC Acronym TXT*** seeks to provide service. All nonconforming UNE local switching provided to***CLEC Acronym TXT*** shall be treated in accordance with § 3.8 of this Agreement.**

3.4.3 Signaling and Call-Related Databases. Verizon shall provide access to Signaling and Call-related Databases under the Amended Agreement in accordance with ~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**. Specifically, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, Verizon shall provide Signaling and Call-Related Databases only in conjunction with the provision of Local Switching or Tandem Switching that Verizon is otherwise obligated to make available to ***CLEC Acronym TXT*** under the Amended Agreement; *provided, however*, that Verizon shall continue to provide nondiscriminatory access to the 911 and E911 Call-Related Databases in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**. Where Local Switching or Tandem Switching associated with a particular Signaling facility or Call-Related Database is or becomes a Nonconforming Facility, the associated Signaling facility or Call-Related Database associated with that Local Switching or Tandem Switching facility shall also be subject to the same transitional provisions in Section ~~3.8~~**3.9** (except for the 911 and E911 Call-Related Databases. as noted above).

3.5 Unbundled Interoffice Facilities.

3.5.1 General Requirements. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003: (a) Verizon shall provide Dedicated Transport and Dark Fiber Transport under the Agreement in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**.

3.5.2 Dedicated Transport. On or after October 2, 2003, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, and in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**:

3.5.2.1 Upon ***CLEC Acronym TXT***'s written request, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt: (a) a transmission facility or service between a Verizon switch or wire center and a switch or wire center of ***CLEC Acronym TXT*** or a third party is not Dedicated Transport**unless Verizon has installed any equipment at the premises of ***CLEC Acronym TXT*** or any other entity not affiliated with Verizon, regardless of whether Verizon has a cage ("Reverse Collocation")**; and (b) a transmission facility or service that uses an OCn interface or a SONET interface is not Dedicated Transport. Subject to the provisions of Section ~~3.8~~**3.9** below, Verizon is under no obligation to provide or continue providing the Nonconforming Facilities described in clauses (a) and (b) above under the Agreement or the Amended Agreement.

3.5.2.2 Cap on Dedicated Transport. ***CLEC Acronym TXT*** may obtain on an unbundled basis a maximum of twelve (12) DS3 Dedicated Transport circuits (or twelve (12) DS3-equivalents, *e.g.* 336 DS1s) on any single Route on which unbundled transport is otherwise available. Any circuit capacity on that Route above such twelve (12) circuit cap shall be considered a Nonconforming Facility.

3.5.2.3 Nonimpairment. Subject to the provisions of Section ~~3.8~~**3.9** below, Verizon shall be under no obligation to provide or continue providing ***CLEC Acronym TXT*** with nondiscriminatory access to DS1 Dedicated Transport or DS3 Dedicated Transport on an unbundled basis**, pursuant to § 251 of the Act,** under the Amended Agreement on a particular Route upon a finding by the [***State Commission TXT***] or the FCC that requesting telecommunications carriers are not impaired without access to DS1 Dedicated Transport or DS3 Dedicated Transport, respectively, on the subject Route(s) or on all Routes. Any DS1 Dedicated Transport or DS3 Dedicated Transport previously made available to ***CLEC Acronym TXT*** on the subject Route(s) shall be considered Nonconforming Facilities immediately on the effective date of the nonimpairment finding and thereafter. **All nonconforming DS1** and DS3 Dedicated Transport provided to***CLEC Acronym TXT*** shall be treated in accordance with §§ 3.8 of this Agreement.

3.5.3 Dark Fiber Transport. On or after October 2, 2003, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, and in accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3), ~~and~~ 47 C.F.R. Part 51, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law:

3.5.3.1 ~~Upon ***CLEC Acronym TXT***'s written request, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to Dark Fiber Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt, Dark Fiber Transport does not include a dark fiber facility between (a) a Verizon switch or wire center and (b) a switch or wire center of ***CLEC Acronym TXT*** or any third party, and subject to the provisions of Section 3.8 below, Verizon is under no obligation to provide or continue providing such Nonconforming Facility under the Amended Agreement.~~Upon ***CLEC Acronym TXT***'s written request, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to Dark Fiber Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt, Dark Fiber Transport does not include a dark fiber facility between (a) a Verizon switch or wire center and (b) a switch or wire center of ***CLEC Acronym TXT*** or any third party, unless Verizon has installed any equipment at the premises of ***CLEC Acronym TXT*** or any other entity not affiliated with Verizon, regardless of whether Verizon has a cage ("Reverse Collocation") and subject to the provisions of Section 3.9 below, Verizon is under no obligation to provide or continue providing such Nonconforming Facility under the Amended Agreement.

3.5.3.1.1 A Dark Fiber Inquiry Form must be submitted prior to submitting an ASR. Upon receipt of ***CLEC Acronym TXT***'s completed Dark Fiber Inquiry Form, Verizon will initiate a review of its cable records to determine whether Dark Fiber Transport may be available between the locations and in the quantities specified. Verizon will respond within fifteen (15) Business Days from receipt of ***CLEC Acronym TXT***'s Dark Fiber Inquiry Form, indicating whether Dark Fiber Transport may be available (if so available, an "Acknowledgement") based on the records search except that for ten (10) or more requests per LATA or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Transport. Where a direct Dark Fiber Transport route is not available, Verizon will provide, where available, Dark Fiber Transport via a reasonable indirect route that passes through intermediate Verizon Central Offices at the rates set forth in Exhibit A. Any limitations on the number of intermediate Verizon Central Offices will be discussed with ***CLEC Acronym TXT***. If access to Dark Fiber Transport is not available, Verizon will notify ***CLEC Acronym TXT***, within fifteen (15) Business Days, that no spare Dark Fiber Transport is available over the direct route nor any reasonable alternate indirect route, except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. Where no available route was found during the record review, Verizon will identify the first blocked segment on each alternate indirect route and which segment(s) in the alternate indirect route are available prior to encountering a blockage on that route, at the rates set forth in UNE Appendix Pricing. In responding to Dark Fiber Inquiries from ***CLEC Acronym TXT***, Verizon will identify whether fiber is: (i) installed and available, (ii) installed but not available, or (iii) not installed. Where fiber is not available, Verizon shall describe in reasonable detail the reason why fiber is not available, including, but not limited to, specifying whether fiber is present but needs to be spliced, whether no fiber at all is present between the two points specified by ***CLEC Acronym TXT***, whether further work other than splicing needs to be performed, and the nature of any such further work other than splicing. Use of information provided by Verizon pursuant to this provision shall be limited to ***CLEC Acronym TXT***'s engineering and operations personnel. ***CLEC Acronym TXT***'s marketing personnel shall not be permitted access to, or use of, this information.

3.5.3.1.2 A field survey that shows the availability of dark fiber pairs between two or more Verizon central offices or a Verizon central office and a ***CLEC Acronym TXT*** central office, shows whether or not such pairs are defective, shows whether or not such pairs have been used by Verizon for emergency restoration activity and tests the transmission characteristics of Verizon dark fiber pairs. If a field survey shows that Dark Fiber Transport is available, ***CLEC Acronym TXT*** may reserve the Dark Fiber Transport, as applicable, for ten (10) Business Days from receipt of Verizon's field survey results. If ***CLEC Acronym TXT*** submits an order for access to such Dark Fiber Transport after passage of the foregoing ten (10) Business Day reservation period, Verizon does not guarantee or warrant that the Dark Fiber Transport will be available when Verizon receives such order, and ***CLEC Acronym TXT*** assumes all risk that the Dark Fiber Transport will not be available. At ***CLEC Acronym TXT***'s option, its personnel may observe the conducting of the field survey. Verizon shall perform a field survey subject to a negotiated interval. If ***CLEC Acronym TXT*** submits an order for a dark fiber pair without first obtaining the results of a field survey of such pair, ***CLEC Acronym TXT*** assumes all risk that the pair will not be compatible with ***CLEC Acronym TXT***'s equipment, including, but not limited to, order cancellation charges.

3.5.3.2 Nonimpairment. Subject to the provisions of Section ~~3.8~~3.9 below, Verizon shall be under no obligation to provide or continue providing ***CLEC Acronym TXT*** with nondiscriminatory access to Dark Fiber Transport on an unbundled basis pursuant to § 251 of the Act, under the Agreement or the Amended Agreement on a particular Route upon a finding by the [***State Commission TXT***] or the FCC that requesting telecommunications carriers are not impaired without access to unbundled Dark Fiber Transport on the subject Route(s) or on all Routes. Any Dark Fiber Transport previously made available to ***CLEC Acronym TXT*** on the subject Route(s) shall be considered a Nonconforming Facility as of the effective date of the nonimpairment finding. **All nonconforming Dark Fiber Transport UNEs provided to ***CLEC Acronym TXT*** shall be treated in accordance with §§ 3.8 of this Agreement.**

3.5.4 **Interconnection facilities and equipment provided pursuant to 47 U.S.C. § 251(c)(2) ("Interconnection Facilities") are not Unbundled Network Elements provided pursuant to 47 U.S.C. § 251(c)(3) and nothing in this Amendment is intended to impair or limit in any way ***CLEC Acronym TXT***'s rights to obtain access to 251(c)(2) Interconnection Facilities. Interconnection Facilities include, but are not limited to, transport facilities and equipment between the ***CLEC Acronym TXT*** switch and the Verizon Tandem Switch, or other Point of Interconnection designated by ***CLEC Acronym TXT***, used for the exchange of traffic between ***CLEC Acronym TXT*** and Verizon. Interconnection facilities are to be provided by Verizon to ***CLEC Acronym TXT*** at rates consistent with the TELRIC pricing principles established by the FCC and the [***State Commission TXT***].**

3.6 Commingling and Combinations.

3.6.1 Commingling. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, but subject to the conditions set forth in the following Section 3.6.2, Verizon will not prohibit the commingling of an unbundled Network Element or a combination of unbundled Network Elements obtained under the Agreement or Amended Agreement pursuant to 47 U.S.C. § 251(c)(3) **,** ~~**and**~~ 47 C.F.R. Part 51**, or other applicable law or requirements of the [***State Commission TXT***] in accordance with applicable law**, or under a Verizon UNE tariff ("Qualifying UNEs"), with wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement ("Qualifying Wholesale Services")~~**, but only to the extent and so long as commingling and provision of such Network Element (or combination of Network Elements) is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.**~~**.** Moreover, to the extent and so long as required by 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 U.S.C. Part 51**, or other applicable law, or as required by the [***State Commission TXT***] in accordance with applicable law**, Verizon shall, upon request of ***CLEC Acronym TXT***, perform the functions necessary to commingle or combine Qualifying UNEs with Qualifying Wholesale Services. ~~**Subject to Section 3.8.3 below, the**~~**The** rates, terms and conditions of the applicable access tariff or separate non-251 agreement will apply to the Qualifying Wholesale Services, and the rates, terms and conditions of the Amended Agreement or the Verizon UNE tariff, as applicable, will apply to the Qualifying UNEs~~**; provided, *however*, that a nonrecurring charge will apply for each UNE circuit that is part of a commingled arrangement, as set forth in the Pricing Attachment to this Amendment. This charge is intended to offset Verizon's costs of implementing and managing commingled arrangements**~~. "Ratcheting," as that term is defined by the FCC, shall not be required. Qualifying UNEs that are commingled with Qualifying Wholesale Services are not included in the shared use provisions of the applicable tariff. ~~**Verizon's performance in connection with the provisioning of commingled**~~

~~**facilities and services shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.**~~

3.6.2 Service Eligibility Criteria for Certain Combinations and Commingled Facilities and Services. Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT to the contrary:

3.6.2.1 Verizon shall not be obligated to provide:

3.6.2.1.1 an unbundled DS1 Loop in combination with unbundled DS1 or DS3 Dedicated Transport, or commingled with DS1 or DS3 access services;

3.6.2.1.2 an unbundled DS3 Loop in combination with unbundled DS3 Dedicated Transport, or commingled with DS3 access services;

3.6.2.1.3 unbundled DS1 Dedicated Transport commingled with DS1 channel termination access service;

3.6.2.1.4 unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service; or

3.6.2.1.5 unbundled DS3 Dedicated Transport commingled with DS3 channel termination service,

except to the extent and so long as Verizon is required by 47 U.S.C. § 251(c)(3)**,** ~~**and**~~ 47 C.F.R. Part 51**, or other applicable law or requirements of the [***State Commission TXT***] in accordance with applicable law** to do so, and then not unless ~~**and until**~~ ***CLEC Acronym TXT*** certifies in writing to Verizon for each DS1 circuit or DS1 equivalent circuit **ordered or converted to UNEs after October 2, 2003,** that it is in compliance with each of the service eligibility criteria set forth in 47 C.F.R. § 51.318(b). ***CLEC Acronym TXT*** must remain in compliance with said service eligibility criteria for so long as ***CLEC Acronym TXT*** continues to receive the aforementioned combined or commingled facilities and/or services from Verizon. The service eligibility criteria shall be applied to each DS1 circuit or DS1 equivalent circuit. If the circuit ~~is,~~ becomes, or is subsequently determined to be, noncompliant, the noncompliant circuit will be treated as a Nonconforming Facility subject to the provisions of Section 3.8 below. The foregoing shall apply whether the circuits in question are being provisioned to establish a new circuit or to convert an existing wholesale service, or any part thereof, to unbundled network elements. ~~**For existing circuits, the CLEC must re-certify in writing for each DS1 circuit or DS1 equivalent within 30 days of the Amendment Effective Date. Circuits not re-certified shall be Nonconforming Facilities.**~~

3.6.2.2 ~~**Each written certification to be provided by ***CLEC Acronym TXT*** pursuant to Section 3.6.2.1 above must contain the following information for each DS1 circuit or DS1 equivalent: (a) the local number assigned to each DS1 circuit or DS1 equivalent; (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was**~~

~~established in the 911/E911 database; (d) the collocation termination connecting facility assignment for each circuit, showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6), and not under a federal collocation tariff; (e) the interconnection trunk circuit identification number that serves each DS1 circuit. There must be one such identification number per every 24 DS1 circuits; and (f) the local switch that serves each DS1 circuit. When submitting an ASR for a circuit, this information must be contained in the Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information.~~Each written certification to be provided by ***CLEC Acronym TXT*** pursuant to Section 3.6.2.1 above must contain the information required by 47 C.F.R. § 51.318(b) for each DS1 circuit or DS1 equivalent.

3.6.2.3 ~~The charges for conversions are as specified in the Pricing Attachment to this Amendment and apply for each circuit converted.~~Section intentionally omitted.

3.6.2.4 Until such time as Verizon implements its ASR-driven conversion process in the East, conversion of access circuits to unbundled Network Elements**, and conversion of unbundled Network Elements to access circuits,** will be performed manually pursuant to Verizon's conversion guidelines. The effective bill date for conversions is the first of the month following Verizon's receipt of an accurate and complete ASR or electronic request for conversion pursuant to Verizon's conversion guidelines.

3.6.2.5 All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access. ~~If such change in circuit ID requires that the affected circuit(s) be retagged, then a retag fee per circuit will apply as specified in the pricing attachment.~~

3.6.2.6 ~~All requests for conversions will be handled as a project and will be excluded from all ordering and provisioning metrics.~~Section intentionally omitted.

3.6.2.7 ~~Once per calendar year~~On an annual basis, *i.e.*, once per 12-month period, , Verizon may obtain and pay for an independent auditor to audit ***CLEC Acronym TXT***'s compliance in all material respects with the service eligibility criteria applicable to EELs. Any such audit shall be performed in accordance with the standards established by the American Institute for Certified Public Accountants, and may include, at Verizon's discretion, the examination of a sample selected in accordance with the independent auditor's judgment. To the extent the independent auditor's report concludes that ***CLEC Acronym TXT*** failed to comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, then ***CLEC Acronym TXT*** must convert all noncompliant circuits to the appropriate service, true up any difference in payments, **and** make the correct payments on a going-forward basis~~,~~. In the event that the independent auditor's report concludes that ***CLEC Acronym TXT*** failed to comply in all material respects with the service eligibility criteria, ***CLEC Acronym TXT*** must reimburse Verizon for the ~~entire~~ cost of the ~~audit within thirty (30) days after receiving a statement of such costs from Verizon.~~ **independent auditor.** Should the independent auditor confirm ***CLEC Acronym TXT***'s compliance **in all material respects** with the service eligibility criteria ~~for each DS1 or DS1 equivalent circuit, then ***CLEC Acronym TXT*** shall provide to the independent auditor for its verification a statement of ***CLEC Acronym TXT***'s out-of-pocket costs of complying with any requests of the independent auditor, and Verizon shall then~~**, then Verizon shall** reimburse ***CLEC Acronym TXT*** for its ~~out-of-pocket costs within thirty (30) days of the auditor's verification of the same.~~ **costs associated with the audit.** ***CLEC Acronym TXT*** shall maintain records adequate to support its compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit ~~for at least eighteen (18) months after the service arrangement in question is terminated~~.

3.7 Routine Network Modifications.

3.7.1 General Conditions. In accordance with~~, but only to the extent required by,~~ 47 U.S.C. § 251(c)(3)**,** ~~and~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law, including Verizon's obligation to provide nondiscriminatory access to all network modifications performed for its retail or affiliated operations,** Verizon shall make such routine network modifications~~, at the rates and charges set forth in the Pricing Attachment to this Amendment,~~ as are necessary to permit access by ***CLEC Acronym TXT*** to ~~the Loop, Dedicated Transport, and Dark Fiber Transport~~**any UNE** facilities available under the Amended Agreement~~, including DS1 Loops and DS1 Dedicated Transport, and DS3 Loops and DS3 Dedicated Transport. Where facilities are unavailable, Verizon will not perform trenching, pull cable, construct new Loops or Transport or install new aerial, buried, or underground cable to provision an order of ***CLEC Acronym TXT***.~~ **.** Routine network modifications ~~applicable to Loops or Transport~~ may include, but are not limited to: rearranging or splicing of in-place cable at existing splice points; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; deploying a new multiplexer or reconfiguring an existing multiplexer; accessing manholes; ~~and~~ deploying bucket trucks to reach aerial cable~~. Routine network modifications applicable to Dark Fiber Transport may include, but are not limited to, splicing of in-place dark fiber at existing splice points; accessing manholes; deploying bucket trucks to reach aerial cable; and~~**, and any other** routine activities, if any, needed to enable ***CLEC Acronym TXT*** to ~~light a Dark Fiber Transport~~**obtain and use a UNE** facility that it has obtained **or seeks to obtain** from Verizon under the Amended Agreement. **The costs for these modifications are already included in the existing rates for the UNEs as set forth in the Agreement. Verizon is not required to perform trenching, pull cable, construct entirely new Loops or Transport or install new aerial, buried, or underground cable to provision an order of ***CLEC Acronym TXT***.** Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier or the placement of new cable.

3.7.2 ~~Performance Plans. Verizon's performance in connection with the provisioning of Loops or Transport (including Dark Fiber Transport) for which routine network modifications are necessary shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or~~

~~elsewhere.~~Performance. Verizon's performance in connection with the provisioning of UNEs for which routine network modifications are necessary remains subject to standard provisioning intervals, and to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.

3.7.3 If, notwithstanding its obligations under Sections 201, 202, and 251 of the Act, state law, and 47 C.F.R. Part 51, and other applicable law, and requirements established by the [***State Commission TXT***] in accordance with applicable law, Verizon determines that it does not have available facilities to fulfill a ***CLEC Acronym TXT*** request for an unbundled facility, Verizon may deny the request on the basis of "no facilities" only if it provides the following information at the time of a denial: the location of all facilities that were reviewed in making the determination; a detailed description and estimated cost of non-routine modifications that would be necessary to fulfill the UNE request utilizing currently unused facilities; and a proposed timetable and charge to ***CLEC Acronym TXT*** for the non-routine modifications that would be sufficient to provision the requested facility.

3.7.4 Where a ***CLEC Acronym TXT*** UNE request is denied on the basis of no facilities available, Verizon shall for a 24-month period have a continuing obligation to advise ***CLEC Acronym TXT*** within 60 days if and when Verizon later provides any retail or wholesale services to any customer at the same premises that were the subject of ***CLEC Acronym TXT***'s request using facilities that were, at the time of the request, deemed unavailable to ***CLEC Acronym TXT***. This notification shall include, at a minimum, a description of all work that was performed in the interim period that enabled service to be offered over the facility. If Verizon fails to so notify ***CLEC Acronym TXT***, or if it can subsequently be determined by Verizon, ***CLEC Acronym TXT*** or the [***State Commission TXT***] that the facility should have been made available to ***CLEC Acronym TXT*** at the time of its request, Verizon shall pay ***CLEC Acronym TXT*** a performance rebate of $1000 per incident, which shall be in addition to any other remedies available to ***CLEC Acronym TXT*** under this Agreement or applicable law.

3.8 Section 271 Obligations [only applicable in former Bell Atlantic states]

3.8.1 Notwithstanding any determination of non-impairment that may affect Verizon's obligations under Section 251, the Parties agree that Verizon is obligated under § 271 of the Act to provide ***CLEC Acronym TXT*** with nondiscriminatory access to elements as provided in § 271(c)(2)(b) including but not limited to: local loop transmission from the central office to the customer's premises (§271(c)(2)(b)(iv), local transport from the trunk side of Verizon's switch ((§271(c)(2)(b)(v)), and local switching (§271(c)(2)(b)(vi)).

3.8.2 The Parties further agree that each element provided by Verizon to ***CLEC Acronym TXT*** shall be provided at TELRIC-based rates. ***CLEC Acronym TXT*** and Verizon agree that TELRIC-based rates are just and reasonable rates for these elements and the rates at which Verizon shall provide these elements appears in the UNE Pricing Appendix.

3.8.3 **The Parties agree that in providing ***CLEC Acronym TXT*** nondiscriminatory access to elements under §271, Verizon shall be obligated to, at a minimum, combine UNEs at ***CLEC Acronym TXT*** request, comply with the modification of network facilities provisions of this Agreement, and all other provisions of this Agreement governing the nondiscriminatory provision of network elements to ***CLEC Acronym TXT***.**

3.9 ~~3.8~~ Transitional Provisions for Nonconforming Facilities.

3.9.1 ~~3.8.1~~ **Nonimpairment Findings** – Switching. To the extent required by 47 U.S.C. § 251(c)(3), ~~**and**~~ 47 C.F.R. Part 51**, and other applicable law, and as required by the [***State Commission TXT***] in accordance with applicable law**, Verizon and ***CLEC Acronym TXT*** will abide by the following transitional procedures with respect to Mass Market Switching and Enterprise Switching:

3.9.1.1 ~~3.8.1.1~~ Mass Market Switching. Upon a finding by the [***State Commission TXT***] ~~**or the FCC**~~ that no impairment exists in a particular market with respect to Mass Market Switching, Verizon will continue accepting orders under the Amended Agreement for Mass Market Switching for a transitional period of five (5) months. Thereafter, Verizon shall be under no obligation to accept new orders for Mass Market Switching. Counting from the date of the [***State Commission TXT***]'s ~~**or FCC's**~~ order finding no impairment in a particular market or markets, ***CLEC Acronym TXT*** shall submit orders to Verizon to migrate the embedded base of its end user customers in the subject market off of Verizon's Mass Market Switching product to any other switching service or product made available by Verizon~~**, subject to Section 3.8.3 below,**~~ under separate agreement, or to ***CLEC Acronym TXT***'s own or a third party's facilities, in accordance with the following schedule: (a) during month 13, ***CLEC Acronym TXT*** must submit orders to migrate one-third of its embedded base of end user customers; (b) during month 20, ***CLEC Acronym TXT*** must submit orders to migrate one-half of the remaining embedded base of end user customers; and (c) during month 27, ***CLEC Acronym TXT*** must submit orders to migrate the remainder of its embedded base of end user customers. For purposes of the foregoing schedule, customers already in a "rolling" transition plan established by the [***State Commission TXT***] ~~**or the FCC**~~ shall not be included in the embedded base.

3.9.1.2 ~~3.8.1.2~~ Enterprise Switching. Verizon will provide ***CLEC Acronym TXT*** with at least thirty (30) days advance written notice of the date on which Verizon will cease provisioning Enterprise Switching to ***CLEC Acronym TXT***. Verizon agrees to continue provisioning Enterprise Switching to ***CLEC Acronym TXT*** under the terms of the Amended Agreement during a transitional period, which transitional period shall end on the date set forth in the notice. Beginning January 1, 2004, ***CLEC Acronym TXT*** shall have ninety (90) days in which to submit orders to Verizon to migrate its embedded base of end user customers served by Verizon's Enterprise Switching product to any other switching service or product made available by Verizon~~**, subject to Section 3.8.3 below,**~~ under separate agreement, or to ***CLEC Acronym TXT***'s own or a third party's facilities.

3.9.2 Other Nonconforming Facilities. With respect to any Nonconforming Facility not addressed in Section 3.9.1 above, Verizon may reclassify or disconnect its provision of such facility on an unbundled basis *only* upon all of the following conditions: (1) On or after the date on which a facility is deemed a Nonconforming Facility pursuant to a final, nonappealable nonimpairment finding issued by the [***State Commission TXT***] or the FCC, Verizon provides written notice to ***CLEC Acronym TXT*** of its intent to discontinue access to the facility on an unbundled basis. Verizon's written notice will include circuit identification numbers and location information, or for facilities other than circuits, comparable identifying information, for each facility; (2) Verizon will continue to provide the Nonconforming Facilities addressed in the subject notice(s) to ***CLEC Acronym TXT*** under the terms of the Amended Agreement for a transition period of at least (a) 90 days for facilities which Verizon also offers pursuant to Section 271 or as a special access service or (b) 180 days for all other facilities; (3) At the end of that applicable transitional period set forth above, unless ***CLEC Acronym TXT*** has submitted an LSR or ASR, as appropriate, to Verizon requesting disconnection of the Nonconforming Facility, Verizon shall convert the subject Nonconforming Facilities to (a) an element under §271 of the Act consistent with § 3.8 of this Agreement, if applicable; or (b) if no alternative is offered pursuant to Section 271, Verizon shall convert the Nonconforming Facility to an analogous access service, if available; (c) or if no analogous access service is available, to such other service arrangement as ***CLEC Acronym TXT*** may have separately secured from Verizon (*e.g.*, a separate agreement at market-based rates or resale). Where the Nonconforming Facilities are converted to an analogous access service, Verizon shall provide such access services at the month-to-month rates, and in accordance with the terms and conditions, of Verizon's applicable access tariff, or separate Agreement where applicable, with the effective bill date being the first day following the expiration of the transition period. No nonrecurring charges for service termination, connection, disconnection, reconnection, or other charges associated with the installation of a new service or the termination of an existing service shall apply to the conversion of Nonconforming Facilities to an analogous access service, or an element under § 271 of the Act, or to any Nonconforming Facilities that ***CLEC Acronym TXT*** requests Verizon to disconnect; and (4) in the event that ***CLEC Acronym TXT*** has a good faith dispute that a facility identified in Verizon's notice is not a Nonconforming Facility, ***CLEC Acronym TXT*** may within 90 days file a dispute with Verizon pursuant to the Dispute Resolution procedures set forth in the Agreement. Verizon will continue to provide the facility on an unbundled basis pending resolution of the dispute.

~~3.8.2 Other Nonconforming Facilities-Generally. Except as addressed in the limited circumstances described in Section 3.8.1 above, relating to a finding of no impairment,Verizon will notify ***CLEC Acronym TXT*** in writing as to any particular unbundled facility previously made available to ***CLEC Acronym TXT*** that is or becomes a Nonconforming Facility, as defined herein. The Parties acknowledge that such notice was issued prior to the execution of this Amendment with respect to certain Nonconforming Facilities. During a transitional period of thirty (30) days from the date of such notice, Verizon agrees to continue providing the Nonconforming Facilities addressed in the subject notice(s) to ***CLEC Acronym TXT*** under the terms of the Amended Agreement. At the end of that thirty (30) day period, unless ***CLEC~~

~~Acronym TXT*** has submitted an LSR or ASR, as appropriate, to Verizon requesting disconnection of the Nonconforming Facility, Verizon shall, subject to Section 3.8.3 below, convert the subject Nonconforming Facilities to an analogous access service, if available, or if no analogous access service is available, to such other service arrangement as ***CLEC Acronym TXT*** may have separately secured from Verizon (*e.g.*, a separate agreement at market-based rates or resale); *provided, however*, that where there is no analogous access service, if ***CLEC Acronym TXT*** has not separately secured from Verizon, subject to Section 3.8.3 below, a substitute service within such thirty (30) day period, then Verizon may disconnect the Nonconforming Facilities; and *provided, further*, that with respect to any dark fiber facility that, pursuant to the terms of this Amendment, is (or becomes) a Nonconforming Facility, the transition period shall be ninety (90) days from the date of the aforementioned notice; and *provided further*, that unless ***CLEC Acronym TXT***, subject to Section 3.8.3 below, has separately secured from Verizon a suitable transitional services agreement for such dark fiber facilities within that ninety (90) day period, Verizon may disconnect the Nonconforming Facility in question. Where the Nonconforming Facilities are converted to an analogous access service, Verizon shall, subject to Section 3.8.3 below, provide such access services at the month-to-month rates, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the thirty (30) day notice period. ***CLEC Acronym TXT*** shall pay all applicable termination charges, if any, for any Nonconforming Facilities that ***CLEC Acronym TXT*** requests Verizon to disconnect, or that Verizon disconnects as permitted by terms of this Amendment or otherwise.~~

~~3.8.3 Limitation With Respect to Substitute Services. Notwithstanding any contrary provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent a Nonconforming Facility is replaced, in whole or in part, by a service, facility or arrangement that Verizon is not required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide, including without limitation an analogous access service (a "Substitute Service"), any negotiations regarding the rates, terms or conditions of such Substitute Service shall not be deemed to have been conducted pursuant to this Amended Agreement or 47 U.S.C. § 252(a)(1) (or 47 C.F.R. Part 51), and the rates, terms, and conditions of any such Substitute Service shall not be subject to arbitration pursuant to 47 U.S.C. § 252(b). Verizon does not agree to negotiate pursuant to 47 U.S.C. § 252(a)(1) the rates, terms, or conditions of any Substitute Service. Any reference in this Amended Agreement to Verizon's provision of a service that Verizon is not required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide is solely for the convenience of the Parties and shall not be construed in a manner contrary to this Section 3.8.3.~~

~~Pricing Attachment to the TRO Amendment~~

~~1. General~~

~~1.1 As used in this Attachment:~~

~~1.1.1 "Services" means and includes any Network Element or other service, facility, equipment or arrangement, provided pursuant to this Amendment; and,~~

~~1.1.2 "Charges" means the rates, fees, charges and prices for a Service.~~

~~1.2 Charges for Services provided under the Amended Agreement shall be those set forth in Exhibit A of this Pricing Attachment and in the Amended Agreement (including any cross references therein to applicable tariffs). For rate elements provided in Exhibit A of this Pricing Attachment that do not include a Charge, if any, whether marked as "TBD" or otherwise, Verizon is developing such Charges and has not finished developing such Charges as of the Amendment Effective Date. When Verizon finishes developing such a Charge, Verizon shall notify ***CLEC Acronym TXT*** in writing of such Charge in accordance with, and subject to, the notices provisions of the Amended Agreement and thereafter shall bill ***CLEC Acronym TXT***, and ***CLEC Acronym TXT*** shall pay to Verizon, for Services provided pursuant to this Amendment on the Amendment Effective Date and thereafter in accordance with such Charge. Any Charges set out in a notice provided by Verizon to ***CLEC Acronym TXT*** pursuant to this Section 1.2 shall be deemed to be a part of Exhibit A of this Pricing Attachment immediately after Verizon sends such notice to ***CLEC Acronym TXT*** and thereafter.~~

~~1.3 In the absence of Charges for a Service established pursuant to Section 1.2 of this Attachment, the Charges for the Service shall be the Charges required, approved, or otherwise allowed to go into effect, by the [***State Commission TXT***] or the FCC (including, but not limited to, in a tariff that has been filed with the [***State Commission TXT***] or the FCC), provided such Charges are not subject to a stay issued by any court of competent jurisdiction.~~

~~1.4 In the absence of Charges for a Service established pursuant to Sections 1.2 through 1.3 of this Attachment, the Charges for the Service shall be mutually agreed to by the Parties in writing.~~

~~EXHIBIT A~~✦

[Note: Verizon's Exhibit A to the Pricing Attachment is not reproduced in this alternative; the Coalition proposes to delete the entire Exhibit A.]

✦ ~~The rate schedules shown are subject to unilateral change by Verizon, unless and until finalized in connection with an executed interconnection agreement amendment.~~