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April 13, 2004

BY HAND DELIVERY

Ms. Blanca Bayó, Director
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

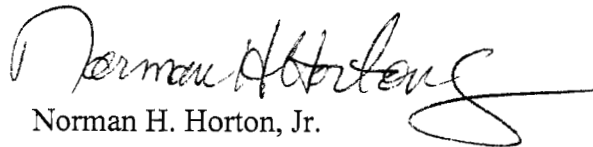
Dear Ms. Bayó:

Enclosed for filing on behalf of Bullseye Telecom Inc., Business Telecom, Inc., DIECA Communications Inc. d/b/a Covad Communications Company, ITC^DeltaCom Communications Inc., Global Crossing Local Services Incorporated, IDT America Corp., KMC Data LLC, KMC Telecom III LLC, KMC Telecom V Inc., NewSouth Communications Corporation, NOW Communications Inc., The Ultimate Connection L.C., Winstar Communications LLC, XO Florida Inc., Xspedius Management Co. Switched Services LLC and Xspedius Management Co. of Jacksonville LLC ("Competitive Carrier Group or CCG") are an original and fifteen copies of Competitive Carriers Group's Answer in the above referenced docket.

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

Thank you for your assistance with this filing.

Sincerely yours,


Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER DATE
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

FILED: April 13, 2004

**ANSWER OF
BULLSEYE TELECOM INC., BUSINESS TELECOM, INC.,
DIECA COMMUNICATIONS INC. D/B/A COVAD COMMUNICATIONS COMPANY,
ITC^DELTA COM COMMUNICATIONS INC., GLOBAL CROSSING LOCAL
SERVICES INCORPORATED, IDT AMERICA CORP., KMC DATA LLC, KMC
TELECOM III LLC, KMC TELECOM V INC., NEWSOUTH COMMUNICATIONS
CORPORATION, NOW COMMUNICATIONS INC., THE ULTIMATE CONNECTION
L.C., WINSTAR COMMUNICATIONS LLC, XO FLORIDA INC., XSPEDIUS
MANAGEMENT CO. SWITCHED SERVICES LLC AND XSPEDIUS MANAGEMENT
CO. OF JACKSONVILLE LLC
("COMPETITIVE CARRIER GROUP")**

Bullseye Telecom Inc., Business Telecom, Inc., DIECA Communications Inc.
d/b/a Covad Communications Company, ITC^DeltaCom Communications Inc., Global Crossing
Local Services Incorporated, IDT America Corp., KMC Data LLC, KMC Telecom III LLC,
KMC Telecom V Inc., NewSouth Communications Corporation, NOW Communications Inc.,
The Ultimate Connection L.C., Winstar Communications LLC, XO Florida Inc., Xspedius
Management Co. Switched Services LLC and Xspedius Management Co. of Jacksonville LLC,
("Competitive Carrier Group" or "CCG"), by their undersigned attorneys and pursuant to section

252 of the Communications Act of 1934, as amended (“Act”),¹ hereby provide their response to Verizon’s Petition for Arbitration, and Update, in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

On February 20, 2004 Verizon hastily petitioned this Commission to “initiate a consolidated arbitration proceeding to amend the interconnection agreement between Verizon” and competitors “to the extent that their current interconnection agreements provide for access to unbundled network elements (“UNEs”).”² Verizon filed its petition without describing the status of interconnection agreements with individual CLECs, negotiations (or lack thereof) conducted to date with any individual CLEC, without regard to the change of law provision(s) of any individual interconnection agreement, and without adequately describing (yet alone defining) the list of issues that this Commission should consider.³

Although Verizon laments the timing of certain CLEC responses to its proposed interconnection agreement amendment,⁴ it has never responded to the amendment proposed by members of the CCG (*see* Tabs A and B),⁵ nor has Verizon made any effort to establish a

¹ 47 U.S.C. § 252. As described in more detail below, the CCG notes that it is unclear whether any of the amendments to the existing interconnection agreements between Verizon and members of the CCG incorporate a 270-day interval for dispute resolution related to interconnection agreement amendments, as Verizon assumes. In any event, this response does not represent waiver of any right of any of the individual CLEC either pursuant to the Act or an individual interconnection agreement. Accordingly, each company that comprises the CCG expressly reserves all of its rights, including the right to seek an individual amendment to its individual interconnection agreement.

² Verizon Petition at 1 (*citation omitted*).

³ As the Commission is aware, the two-issue Decision Point List filed by Verizon is woefully inadequate and substantively incorrect. As noted below, for example, Verizon was well aware of the language proposed and the positions taken by many of the carriers in this proceeding, despite its representation to the contrary in the DPL.

⁴ *See, e.g.*, Verizon Petition at 4.

⁵ The amendment contained in Tab A initially was prepared by some of the carriers that are joining this Answer (that group included Advanced TelCom Group, Inc., BridgeCom International, Inc.,

negotiation schedule with CCG members that have provided substantive responses to Verizon despite ample time to do so before the arbitration petition deadline. On March 19th, Verizon filed an update to its petition, in which it attempted to appropriate the *USTA II* ruling for its sole benefit.⁶ Verizon's one-sided incorporation of the *USTA II* holding into its proposed amendment is yet another attempt to strip away more of Verizon's Section 251 obligations and must be rejected by this Commission.⁷

Accordingly, in spite of Verizon's incorrect assertion that its draft amendment "tracks the FCC's binding determinations and should be approved," the Commission should reject Verizon's proposal to implement the TRO and *USTA II* decision,⁸ as neither Verizon's Petition nor its Update is consistent with its obligations under applicable federal and state law.⁹

Broadview Networks, Inc., Bullseye Telecom, Inc., Comcast Phone, LLC and its Subsidiaries, Conversent Communications, LLC, Cordia Corporation, Covad Communications Corporation and DIECA Communications, Inc., DSCI Corporation, Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc., InfoHighway Communications Corporation, KMC Telecom III LLC, KMC Telecom V, Inc., KMC Data LLC, Metropolitan Telecommunications, Inc., VeraNet Solutions, and XO Communications, Inc.). Similarly, Tab B contains a proposal provided to Verizon by NewSouth. Just as Verizon's initial proposal preceded and therefore did not take account of *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (decided March 2, 2004) ("*USTA II*"), the same is true for the proposals of CCG member companies attached.

⁶ See Docket 040156-TP, Update to Petition for Arbitration of Verizon Florida, dated March 19, 2004 ("Verizon Update").

⁷ See Verizon Update at 2-3.

⁸ See *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, 17125-26, ¶ 242 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003) (collectively "TRO"), reversed and remanded, *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases) (decided March 2, 2004).

⁹ Because Verizon requested the change of law amendments, and given the complexity of conforming the Amendment to the TRO and *USTA II*, any such amendment submitted by Verizon should be annotated to reference provisions of the TRO or other authority upon which Verizon relies to support its proposals.

Despite the numerous procedural and substantive deficiencies noted, the Competitive Carrier Group believes that this proceeding would provide an efficient vehicle for the resolution of – in one docket – the many outstanding issues that affect so many carriers. Thus, we believe that the Commission should establish procedures for this arbitration that address the TRO (to the extent not modified or affected by *USTA II*), state law, and other federal law requirements in order to minimize duplication of effort and promote the most efficient use of the Commission’s resources.

In light of these factors and circumstances, we respectfully request that the Commission take the following steps. First, the Commission should maintain this current docket to assert its section 252 jurisdiction¹⁰ over all of the issues naturally related to the parties’ interconnection agreements.¹¹ Second, the Commission should issue a standstill order that maintains the *status quo* (regarding access to the UNEs themselves) under existing interconnection agreements until such time as the Commission ultimately approves an interconnection agreement amendment that reflects all applicable law. Third, in order to evaluate the impact of *USTA II* and determine whether the Court’s holdings will be subject to

¹⁰ Although the Commission should assert jurisdiction over the issues logically included in the arbitration at this time, the Carrier Group does not believe that the 270-day timeframe for concluding the arbitration applies in these circumstances since the “negotiations” were not triggered by the competitive carriers as envisioned in the Act. (47 U.S.C. §252) Rather, the FCC simply encouraged use of the section 252 process as a default timetable for the parties to seek dispute resolution should they not reach terms. *See, e.g.*, TRO at ¶ 703.

¹¹ These issues, as noted below, are much broader than the limited subset Verizon has attempted to frame in its Petition. Since the interconnection agreements contain terms and conditions for access to network elements on bases other than section 251(c)(3) (including, for example, access pursuant to state law and sections 251(c)(2) and 271 of the Act), any attempt to amend the terms must likewise include an assessment of those ongoing obligations. As this Commission is well aware, state law is a basis for requiring access to elements was specifically preserved by Congress when it amended the Act in 1996 (*see, e.g.*, 47 U.S.C. 251(d)(3)). Indeed, since one of the primary purposes of section 251 is to mandate access to network elements, it would be nearly impossible for action by this Commission requiring access to network elements to be declared inconsistent with that section. The very fact that this arbitration was brought by Verizon at the state level under the federal Act is tacit recognition of the federal-state partnership woven into the Act.

Supreme Court review, the Commission should hold those issues that are affected by the *USTA II* decision in abeyance until such issues are resolved. Once the *USTA II* issues are settled, the Commission should direct the parties to attempt a negotiated agreement to address these issues, with oversight by Commission Staff as appropriate, over a subsequent 135-day period. To the extent the parties cannot reach a negotiated agreement, the parties should submit to the Commission a jointly-developed issues list at the end of that 135-day period, which would trigger a new phase of the arbitration proceeding.

While the process described above takes place, the Commission should concurrently – and immediately – take action on two related items that were not affected by *USTA II*. First, the Commission must order Verizon to comply with its preexisting and ongoing obligation to provide access to elements even where routine network modifications are required. While the FCC in the TRO clarified Verizon’s obligations in this respect, that clarification can in no way be considered a change in law that must be incorporated into an amendment before it becomes binding. In fact, the FCC’s justification for issuing that clarification was to prevent incumbents from delaying competitor access to facilities.¹² Thus, permitting Verizon to shirk its legal obligations by claiming that an amendment is necessary, would frustrate the intent of the rule and continue to severely limit competition.

Second, the Commission must require that Verizon comply with the clarified UNE commingling requirements. Similar to the FCC’s clarification regarding network modifications noted above, the FCC also clarified the terms under which carriers may commingle elements and services, in order to avoid further confusion and delay. In fact, the FCC determined that “a restriction on commingling would constitute an ‘unjust and unreasonable

¹² See, e.g., TRO at ¶ 639.

practice’ under section 201 of the Act” and an “undue and unreasonable prejudice or advantage” under section 202, and would be violative of the “the nondiscrimination requirement in section 251(c)(3).¹³ The FCC specifically required ILECs to effectuate commingling immediately, through modifications of their interstate access tariffs – noting even the penalties for noncompliance.¹⁴ The Commission should likewise order that Verizon immediately comply with these requirements.

ARGUMENT

Taking the items highlighted in the preceding section in reverse order, the CCG first demonstrates that the Commission should assert its section 252 jurisdiction and commence an arbitration proceeding that will take into account the provisions of the TRO that are in effect, other aspects of state and federal law implicated by the TRO and the terms of the underlying interconnection agreements. Next, the CCG provides its direct answer to Verizon’s inaccurate and incomplete amendment.¹⁵

I. THE COMMISSION SHOULD INITIATE AN ARBITRATION PROCEEDING

The Competitive Carrier Group submits that the Commission should exercise its authority under section 252 of the Act and §§364.16 and .161, F.S., and concurrent state authority by establishing a schedule to arbitrate a consolidated interconnection agreement amendment that appropriately effectuates the TRO (to the extent its provisions are effective) and

¹³ TRO at ¶ 581.

¹⁴ *Id.*, ¶ 581 and fn. 1791.

¹⁵ The proposed interconnection agreement amendments that are attached hereto and incorporated herein provide an additional and substantive point-by-point response to the issues raised in the Verizon Petition.

duly applies applicable law, including the Section 271 and the *Bell Atlantic/GTE Merger Order*.¹⁶ At the same time, the Commission must issue a standstill order to preserve business arrangements under existing interconnection agreements pending completion of the arbitration and approval by the Commission of a lawful amendment. Such a standstill order would serve to minimize uncertainty and potential disruption, and promote an orderly transition to the new interconnection agreement terms that reflect all applicable law, including the TRO, state law and the requirements of the merger conditions. Finally, such a consolidated action promotes administrative efficiency.

Regarding the substance of such an arbitration, the Commission should recognize at the outset that Verizon has failed to engage any of the CCG members in real negotiations – either individually or collectively. Indeed, Verizon’s October 2, 2003 letter (on which the company relies as the commencing negotiations) did not even contain a proposed amendment. Rather than e-mailing an editable, electronic draft Amendment that invites negotiation, Verizon’s generic letter suggested that interested CLECs should contact Verizon to begin the process of negotiations, and ultimately posted a draft Amendment with neither references to provisions of the TRO nor to sections of any the interconnection agreements Verizon proposed to modify.

¹⁶ *GTE Corporation Transferor, and Bell Atlantic Corporation Transferee, for Consent to Transfer 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, ¶316 (June 16, 2000) (BA/GTE Merger Order)*. These merger conditions require, *inter alia*, that Verizon continue to provide access to UNEs and combinations pursuant to the FCC’s UNE Remand Order (CC Docket 96-98, FCC 99-238) until such time as those requirements are replaced following a “final, non-appealable judicial decision.” *BA/GTE Merger Order* Appendix D, ¶ 39. While some carriers have sought, in other jurisdictions, to dismiss Verizon’s Petition for Arbitration based in part on the *BA/GTE Merger Order* conditions, the CCG submits that the Commission should not dismiss Verizon’s Petition based on the merger conditions but should instead consider the merger condition requirements together with the TRO and the other requirements of state and federal law.

Verizon's failure to pursue TRO Amendment negotiations at any time thereafter stands in contrast to the somewhat more diligent negotiations pursued by other Bell Operating Companies, and contradicts Verizon's assertion that it has sought negotiations in good faith.

As noted above, Verizon also failed to respond to the undersigned counsel, when the sensible TRO amendment (that is attached as Tab A) was forwarded to Verizon on behalf of a group of 16 carriers. Likewise, Verizon failed to negotiate with CCG member NewSouth when it proposed a reasonable amendment.¹⁷ Thus, Verizon's attempt, in its Petition, to claim the moral high ground is totally unavailing.

There can be no doubt that the confluence of issues arising from the implementation of TRO, the DC Circuit's decision in *USTA II*, and the interconnection and access requirements of the Act, the merger conditions and state law makes Commission action difficult. The approach presented herein – which splits the issues based on those that are firm and those yet to be resolved – provides the Commission with a lawful means to efficiently resolve the issues presented in a way that minimizes disruption to existing businesses and the consumers that are served by the carriers that comprise the CCG in Florida. Accordingly, the Commission should commence an arbitration proceeding directly on those issues on which the law is settled and address immediately the network modification and UNE commingling issues.

II. VERIZON'S PROPOSED AMENDMENT SUFFERS FROM A VARIETY OF MATERIAL SHORTCOMINGS

The CCG now turns to the material shortcomings of Verizon's proposal, many of which are described below. The CCG responds directly to Verizon's current proposal, including

¹⁷ The NewSouth amendment is attached hereto, and incorporated herein, as Tab B.

changes made in the Verizon Update, in order to satisfy any applicable requirements of section 252(b)(3) of the Act.¹⁸

A. General Shortcomings Of Verizon’s Petition And Amendment

Notwithstanding the fact that Verizon makes no effort to satisfy the standards set forth by the Commission in previous arbitration proceedings, the CCG notes that it is entirely unclear whether amendments to any of the existing interconnection agreements must be completed within the 270 period proffered by Verizon. Although the TRO set default provisions for modifying interconnection agreements, those provisions only are relevant to the extent an existing interconnection agreement contains no change of law provision.¹⁹ Verizon makes absolutely no effort to discuss or even to consider the change of law provisions in existing agreements because it knows that virtually all of those agreements contain detailed processes – some voluntarily negotiated and others arbitrated – for resolving disputes arising from efforts to amend interconnection agreement to reflect changes in law.

Verizon similarly fails to explain adequately its omission of terms, conditions, and prices for network elements that are “substitute[s] for UNEs”²⁰ and which Verizon must continue to provide under interconnection agreements, at least to the extent it wishes to continue to remain in compliance with state and federal law – including Section 251 and the *BA/GTE Merger Order*. Verizon’s sole defense for this glaring omission is its reliance on a misstatement

¹⁸ 47 U.S.C. § 252(b)(3). As noted earlier, the proposed interconnection agreement amendments attached hereto and incorporated herein provide additional and substantive point-by-point responses to the issues raised in the Verizon Petition and proposed amendment – which were largely unchanged from the original proposal. The proposed CCG amendment not only responds to the Verizon proposal but also addresses, as an amendment must, other requirements of applicable law.

¹⁹ See, TRO, ¶¶ 700-06.

²⁰ Verizon Petition.

of the holding in the Fifth Circuit’s *Coserv* decision.²¹ In a narrow opinion, the *Coserv* court upheld a decision of the Public Utility Commission of Texas to refuse to arbitrate issues that parties previously had not addressed during negotiations, and in so doing held “that where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1).”²² Thus, the *Coserv* court addressed only voluntarily negotiated items, not those mandated by federal or state law.

If Verizon’s view of *Coserv* were correct, then section 252(e)(3) of the Act would be rendered a nullity, and state commissions – including this Commission – would lack the ability to address state law issues in interconnection agreements. This simply is not the case, however. In section 252(e)(3) of the Act, entitled “preservation of authority,” Congress expressly provided that, in reviewing interconnection agreements state commission may “establish[] and enforce[] ... requirements of state law”²³ In spite of this express Congressional grant of authority to the state commissions – entirely unaddressed by and outside of the scope of the issues in *Coserv* – Verizon would have this Commission believe that it lacks authority to establish and enforce requirements arising under state law in section 252 interconnection agreements.²⁴ Far from supporting Verizon’s unsustainable position, Verizon’s use of *Coserv* highlights the company’s penchant for overreaching.

²¹ *Coserv Ltd. Liability Corp. v. Southwestern Bell Tel Co.*, 350 F.3d 482 (5th Cir. 2003) (“*Coserv*”).

²² *Id.*, 487.

²³ 47 U.S.C. § 253(e)(3). The state commissions similarly have express authority to define unbundled network elements pursuant section 251(d)(3) of the Act, 47 U.S.C. § 251(d)(3).

²⁴ Similarly, if Verizon were correct that it could constrain interconnection agreements to the bare bones requirements of sections 251(b) and (c), the resulting “agreements” would be entirely unworkable. For example, neither section 251(b) nor section 251(c) enumerates basic business terms required by contracts, including terms for dispute resolution, assignment, indemnification, or force majeure.

If Verizon's interpretation of *Coserv* were remotely reasonable, then Verizon presently would, for example, be out of compliance with its section 271 obligations in jurisdictions where Verizon is a Bell Operating Company.²⁵ In each of its section 271 applications, Verizon relied on section 252 interconnection agreements as the sole means of demonstrating checklist compliance.²⁶ This "Track A" approach was reasonable, as section 271 expressly provides that Verizon must demonstrate under that approach checklist compliance through interconnection agreements entered pursuant to section 252.²⁷ Under section 271, Verizon must continue providing checklist items that may no longer be section 251(c)(3) UNEs, such as operator services/directory assistance and unbundled DS-1 switching. If Verizon no longer has section 252 interconnection agreements that provide for those items, then it simply – and quite directly – ceases to be in compliance with section 271.

On a separate but equally important note, at least one member of the CCG received termination notices under its interconnection agreement.²⁸ Verizon, however, has not sent a complete replacement agreement that has been updated to reflect the TRO. Instead, Verizon appears to be proposing an unmanageable "agreement plus amendment" alternative that creates uncertainty concerning which document applies. Again, this serves to highlight Verizon's utter lack of seriousness regarding TRO interconnection agreement amendment negotiations.

²⁵ While 271 has very little relevance here in the context of Verizon's obligations, the Verizon amendment is designed for nationwide use, and its exclusion of complete exclusion of section 271 and other commitments highlights the illogicality of Verizon's attempted expansion of the *Coserv* holding.

²⁶ 47 U.S.C. § 271(c)(1)(A), commonly referred to as "Track A."

²⁷ § 271(c)(1)(A) and (c)(2)(A).

²⁸ See correspondence between Verizon and Xspedius, attached hereto at Tab C.

B. Substantive Shortcomings Of Verizon's Petition, Update, And Amendment

In its Petition and Update, Verizon's primary argument for approval of its one-sided amendment is that CLEC counterproposals were untimely and/or unreasonable. Tellingly, Verizon fails to offer a single fact to support its claim. To the extent it has taken time for CLECs to make counterproposals to Verizon's amendment, the explanation is equally obvious. Verizon has offered CLECs a one-sided amendment that does not comport with the TRO. Due to the patent insufficiency of Verizon's proposal, CLECs were forced to develop counterproposals true to the TRO in a format consistent as much as practicable with Verizon's format. That this effort took the CLECs some time is perfectly understandable given that the TRO spans over 480 single spaced pages and contains nearly 2500 footnotes. Moreover, while Verizon has had the ability to focus its effort on developing a single proposal for its territory, many CLECs have been engaged with similar efforts with other incumbents, including BellSouth and SBC, as well as the various TRO impairment proceedings that have been on-going since August of 2003, if not before.

Equally important, Verizon fails to acknowledge that it never has responded to the counterproposals attached hereto at Tab A and Tab B. Instead of negotiating with CLECs (to at least define if not narrow the issues) Verizon has run to the Commission for arbitration. Contrary to Verizon's claims, its amendment does not seek to modify the existing agreements in accordance with the TRO.²⁹ Following is a high-level summary of some of the major deficiencies contained in Verizon's proposal, which can be contrasted with the much more equitable language of the competitor proposals.

²⁹ Verizon Petition at 6.

1. General Conditions

In sections 1.1, 1.2, and 1.3 of its proposed General Conditions, Verizon makes no provision for access to network elements ordered by the Commission under **state law, section 271 or the BA/GTE merger conditions**. Section 1.4 preserves Verizon's ability to argue that items should not be unbundled, but makes no reciprocal provision for competitors to argue that items should be unbundled.

Similarly, numerous items contained in Verizon's proposed "**glossary**" do not comport with the definitions set forth by the FCC in its TRO implementation rules and fail to reflect applicable law. For example, the terms Call-Related Databases, Dark Fiber Transport, DS-1 Dedicated Transport, DS-3 Dedicated Transport, DS-1 Loop, DS-3 Loop, FTTH Loop, Hybrid Loops, Line Sharing, and Local Switching do not square with the definitions set forth by the FCC in the TRO. Other critical terms, such as Commingling, Enhanced Extended Loop, Line Conditioning, Line Splitting, Local Loop, and Nonqualifying Service, go undefined in Verizon's proposal. A number of other terms, including but not limited to Enterprise Switching and Mass Market Switching, are improperly defined as well. These definitional problems not only affect the glossary, but flow through into other areas of Verizon's proposed amendment, including section three, which purports to address UNE TRO Provisions.

2. UNE TRO Provisions

As noted above, the problems associated with Verizon's proposed glossary items affect other portions of Verizon's proposed amendment, including those in section three, styled "UNE TRO Provisions." For example, Verizon's inappropriate definitions of DS-1 and DS-3 loops reappear. These and numerous other definitions, such as "FTTH Loops" and "Overbuilds" need to be modified to track the FCC's rules and the TRO. The same holds true for its proposals

regarding access to subloops in section 3.3 of Verizon's proposal. More generally, Verizon's "loop" section makes no provision for on-going access to loops generally and voice grade loops in particular, which are a classic bottleneck facility that Verizon must continue to provide under applicable law.

Additionally, Verizon's draft proposes, contrary to the TRO, to limit the ability of facilities-based carriers to access DS-1 loops to serve enterprise customers. The TRO requires ILECs to provide access to DS-1 loops regardless of the technology the ILEC itself uses to provide such loops, even fiber-based technologies.³⁰ By contrast, the proposal offered by the CCG provides accurate language to address Verizon's on-going loop unbundling obligations under the TRO and applicable law.

Verizon's Update also inappropriately attempts to modify the agreement with regard to high capacity loops.³¹ Specifically, Verizon states that its draft amendment has been modified "to allow Verizon to cease providing DS1 Loops or DS3 Loops whenever a state commissions makes a finding of non-impairment as to a 'grouping' of locations 'in a particular market'."³² Verizon is thus attempting to unilaterally (and inappropriately) change the FCC's high capacity loop rules by overstating the FCC's modification of the ILECs' obligation to provide unbundled high capacity loops. The *USTA II* decision, however, did not alter the obligation of Verizon and other ILECs to provide access to high capacity loops.³³ Accordingly,

³⁰ See TRO at n. 956.

³¹ See Verizon Update at 2 and 4.

³² *Id.* at 1.

³³ Since *USTA II* addresses the nationwide impairment finding only with respect to switching and dedicated transport, and states that "the petitions for review are otherwise denied" (*USTA II* at page 62), the court did not upset the impairment finding for high capacity loops.

there is no basis for the purported “update” to the Verizon-proposed interconnection agreement amendment.³⁴

Separately, Verizon’s language at section 3.1.1.3 regarding potential findings of non-impairment makes no provision for a **transition plan**, which suggests Verizon intends a flash cut away from UNEs upon a potential finding of no impairment. Likewise, no provisions are made for establishing rates, terms, or conditions for items that no longer are considered section 251(c)(3) UNEs, nor is any provision made for findings under state law, the merger conditions, or otherwise under the federal Act.

Verizon also attempts to wholly foreclose CLECs from obtaining access to **feeder plant** at section 3.1.3.4 of its proposed amendment. The FCC made no such blanket ruling, and instead provided access to the feeder to the extent necessary to provide a complete transmission path between the central office and the customer premises. In addition, the FCC encouraged ILECs to negotiate access with CLECs, yet Verizon has thus far refused to do so, as evidenced by its failure in any way to respond the carriers’ proposed amendment.

As for **line sharing and related items**, Verizon’s proposed amendment fails to include any language concerning “line splitting,” “line conditioning,” “maintenance, repair, and testing,” “control of the loop and splitter functionality,” “dark fiber loops,” “retirement of copper loops,” and “engineering policies, practices, and procedures” that mirror the language in the FCC’s TRO rules. In addition, Verizon’s proposed language relating to grandfathering existing line sharing arrangement and transitioning to the new rules also fails to mirror the requirements of the TRO. Finally, Verizon’s proposed language ignores the company’s obligation to provide

³⁴ This is, unfortunately, not the only instance where Verizon’s proposed modifications do not adequately track the *USTA II* decision. As noted elsewhere, the Commission should not concern itself with these *USTA II* issues at this time.

line sharing pursuant to state law in jurisdictions where Verizon has been or may be ordered to provide line sharing pursuant to state law and/or 271, where applicable.

Section 3.4 of Verizon's proposal regarding **local circuit switching** similarly does not track the language in the rules and must therefore be revised. The transitional mechanisms triggered by a finding of non-impairment are also deficient. In addition, provisions concerning access to service management systems, shared transport, nondiscriminatory access to OS/DA in the absence of customized routing and section 271 obligations, including rate setting, among other items, are also absent.

The same holds true for section 3.5 of Verizon's proposal, which ostensibly addresses **transport** issues. The entire transport section fails to track the language in the FCC's rules and the language of the TRO, and accordingly should be rejected. For example, Verizon's proposal makes no mention of transport that is provisioned to reverse collocation arrangements, does not incorporate its existing and ongoing obligations to make "routine network modifications," and excludes unbundled transport that is required under section 271 and state law (including Verizon's effective state tariffs). Moreover, the transitional mechanisms triggered by a finding of no impairment, if any such finding were to occur, are also deficient.

The entire **commingling and combinations** section, labeled as section 3.6, also falls far short of the FCC's rules and the language of the TRO. Moreover, Verizon's proposed provisions contain extraneous requirements that are simply not contemplated by the TRO, such as nonrecurring charges for commingling, restrictions on qualifying collocation arrangements (including the elimination of reverse collocation as an option), written certification requirements that exceed the FCC's architectural criteria, and one-sided audit provisions that defeat the obligation to provide loop transport combinations (*i.e.*, Enhanced Extended Links).

The same holds true in section 3.7 of Verizon's proposal, which allegedly addresses **routine network modifications**. In addition to failing to track the FCC's rules and the TRO, Verizon has attempted to inject a variety of unilateral provisions limiting its obligations. For example, Verizon attempts to exempt from its performance plan obligations any facilities that are involved in routine network modifications, in spite of the fact that the TRO makes no such provision because these modifications are by definition "routine." Further, Verizon proposes substantial discriminatory charges for performing these "routine" modifications.

As previewed above, the "**transition plan**" described at section 3.8 of Verizon's proposal is inconsistent with the language of the new rules, which state, for example, that the 90-day migration period does not commence until the end of the 90-day state commission consideration period, or a longer period if required by the parties' change of law provision. The transition plan for mass market switching similarly is inadequate. Finally, and as noted above, none of Verizon's transition language makes adequate provision for establishing pricing under section 271 or for otherwise incorporating Verizon's existing and ongoing obligations either under state law or under Commission determinations pursuant to the federal Act.

3. **Other Shortcomings of Verizon's Proposal**

In addition to the non-exhaustive summary of shortcomings provided above, the CCG notes that Verizon's proposed amendment contains no provision for ongoing CLEC access to **911, E911, or Operations Support Systems**. Obviously, continued access by CLECs to these items is critical both from a competitive standpoint as well as from a public safety standpoint. Given the importance of these items, the CCG's proposal, unlike Verizon's proposal, expressly provides for continued access to these items. Moreover, support exists in the TRO for the renewed importance of complete, accurate, and timely wholesale billing. Consequently,

requirements for wholesale billing (such as meaningful limits on Verizon's ability to backbill, the timely implementation of new pricing for loop conversions, etc.) should be included within the scope of the arbitration proceedings.

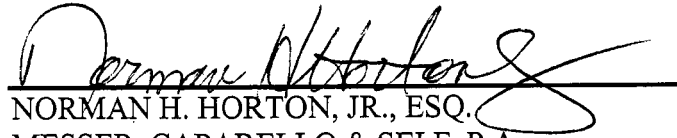
On a separate note, although Verizon has a section titled "**pricing**," Verizon offered no real pricing proposal, nor does Verizon offer a process to develop new prices. The development of pricing in any Commission arbitration proceeding addressing TRO issues is a critical piece of the relationship between CLECs and Verizon that simply must be addressed. Accordingly, the Commission must include pricing issues, including state law pricing, in any TRO implementation arbitration.

CONCLUSION

Consistent with the foregoing, the CCG requests that the Commission should reject Verizon's amendment and instead:

- (1) Assert its jurisdiction over the matters at issue;
- (2) Issue a standstill order that maintains the UNE availability *status quo* until such time as the Commission approves an interconnection agreement amendment;
- (3) Hold all issues impacted by *USTA II* in abeyance until those issues are resolved and then direct the parties to reach a negotiated agreement, with oversight by Commission Staff as appropriate, over a subsequent 135-day period. To the extent the parties cannot reach a negotiated agreement, the parties should submit to the Commission] a jointly-developed issues list at the end of that period, which would trigger another phase of the arbitration proceeding to address those issues; and
- (4) Immediately implement the FCC's clarifications that Verizon must perform routine network modifications to provision UNE orders and permit commingling of UNEs, and address Verizon's merger condition access and pricing obligations, which were not affected by *USTA II*.

Respectfully submitted,



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Counsel to the Competitive Carrier Group

Date: April 13, 2004

TAB A

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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SUITE 500

WASHINGTON, D.C. 20036

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NEW YORK, NY
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January 30, 2004

VIA EMAIL AND UPS OVERNIGHT

Anthony M. Black
Tobin O'Connor & Ewing
908 King Street
Suite 200
Alexandria, VA 22314

Re: Interconnection Agreement Amendment

Dear Mr. Black:

In accordance with our prior exchange of correspondence and on behalf of Advanced TelCom Group, Inc., BridgeCom International, Inc., Broadview Networks, Inc., Bullseye Telecom, Inc., Comcast Phone, LLC and its Subsidiaries, Comcast Business Communications, Inc., Comcast Phone of Maryland, Inc., Comcast Phone of Northern Virginia, Inc., Conversent Communications, LLC, Cordia Corporation, Covad Communications Corporation and DIECA Communications, Inc., DSCI Corporation, Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc., InfoHighway Communications Corporation, KMC Telecom III LLC, KMC Telecom V, Inc., KMC Data LLC, Metropolitan Telecommunications, Inc., VeraNet Solutions, and XO Communications, Inc., (the "Carriers") enclosed herewith please find the Carriers' proposed interconnection agreement amendment (the "Proposed Amendment"). The Proposed Amendment, which accurately reflects the Federal Communications Commission's Triennial Review Order, is in accord with your previous request that each carrier respond by "proposing any specific changes it wishes to the amendment."

While we submit this Proposed Amendment on behalf of the Carriers, each carrier reserves the right to proceed individually later in the process, as its particular interests may dictate. That right notwithstanding, it is our intention to begin the negotiation process in a collective fashion, based on the Proposed Amendment.

We look forward to discussing and hopefully resolving any issues that may exist following Verizon's review of the Proposed Amendment. In the meantime, we trust that Verizon

KELLEY DRYE & WARREN LLP

Anthony M. Black
Tobin O'Connor & Ewing
January 30, 2004
Page Two

will refrain from taking any action that is inconsistent with its obligations under applicable law and the terms of the parties' interconnection agreements, including, but not limited to, any attempts to cease the provisioning of unbundled network elements. For example, while the enclosed amendment includes terms addressing network modifications, the FCC's clarification that ILECs must perform routine network modifications to provision UNE orders is completely self-executing. The listed Carriers reserve all rights to seek enforcement of this and all other rights during the negotiation (and, if necessary, arbitration) process.

Sincerely yours,

/s/

Edward A. Yorkgitis, Jr.
Genevieve Morelli
Steven A. Augustino
Enrico C. Soriano
Andrew M. Klein
Counsel to
Advanced TelCom Inc.
BridgeCom International, Inc.
Broadview Networks, Inc.
Bullseye Telecom, Inc.
Comcast Phone, LLC and its Subsidiaries,
Comcast Business Communications, Inc.,
Comcast Phone of Maryland, Inc., and
Comcast Phone of Northern Virginia, Inc.
Conversent Communications LLC
Cordia Corporation
Covad Communications Corporation and
DIECA Communications, Inc.
DSCI Corporation
GE Capital Commercial Direct
Global Crossing Local Services, Inc., and
Global Crossing Telemanagement, Inc.
InfoHighway Communications Corporation
KMC Telecom III LLC, KMC Telecom V, Inc.,
and KMC Data LLC
Metropolitan Telecommunications, Inc.
VeraNet Solutions
XO Communications, Inc.

TAB A AMEND

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 Telecommunications Act of 1996 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, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Agreement in order to give contractual effect to the provisions of the TRO; 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 any rates set forth in 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"), unless, at ***CLEC Acronym TXT***'s option, it orders from a Verizon tariff or 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 necessarily 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 of the TRO. Notwithstanding any contrary provision in the Agreement, this Amendment, the Parties' tariffs or any Verizon SGAT, nothing contained in this Amendment shall limit either Parties' 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 either Parties' obligations under the Agreement, this Amendment, a tariff, Verizon SGAT, or Applicable Law. The Parties acknowledge that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"), and that a Writ of Mandamus relating to the TRO is presently pending before the D.C. Circuit.

6.1 Notwithstanding any other change of law provision in the Agreement, this Amendment, tariff or any Verizon SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to 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. Should the D.C. Circuit or the United States Supreme Court reverse and vacate any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed and vacated provisions shall be voidable at the written election of either Party.

6.2 Except as provided in Section 1.3, should the D.C. Circuit or the United States Supreme Court remand any or all of the TRO's provisions to the FCC for further proceedings without vacating those provisions, the terms and conditions of this Amendment that relate to the remanded provisions shall remain in effect during the pendency of the remand proceeding. In the event of a stay, or reversal and vacatur, ***CLEC Acronym TXT*** shall purchase and access UNEs and related services in accordance with the terms of the Agreement and the remaining effective terms of this Amendment, and/or, at ***CLEC Acronym TXT***'s option, Verizon's tariffs and SGATs.

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, Verizon shall be obligated to provide access to unbundled Network Elements (“UNEs”), combinations of unbundled Network Elements (“Combinations”), UNEs commingled with wholesale services (“Commingling”), and/or related services to ***CLEC Acronym TXT*** under the terms of this Amended Agreement to the extent required by (a) 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, (b) 47 U.S.C. § 271(c) and 47 C.F.R. Part 51, and/or (c) other Applicable Law (including, but not limited to, orders and rules of the ***State Commission TXT***).
- 1.2 Verizon shall offer UNEs to ***CLEC Acronym TXT*** for the purpose of offering a Qualifying Service or a combination of Qualifying and non-qualifying services. ***CLEC Acronym TXT*** may use individual UNEs, commingled UNEs, or combinations of UNEs, to provide any feature, function, capability, or service option that such UNEs are technically capable of providing, except as may be specifically limited herein.
- 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 (a) 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, (b) 47 U.S.C. § 271(c) and 47 C.F.R. Part 51, and/or (c) other Applicable Law, a UNE, Combination, or Commingling that is not offered under the Amended Agreement, the Parties will meet to negotiate an appropriate amendment to the Agreement that will contain the rates, terms and conditions for such UNE, Combination, or Commingling. In the meantime, ***CLEC Acronym TXT*** may access such UNE, Combination, or Commingling pursuant to an applicable Verizon tariff, or may access such UNE, Combination, or Commingling. In no event will Verizon delay providing such UNE, Combination, or Commingling.
- 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.

- 1.5 ***CLEC Acronym TXT*** 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 under 47 U.S.C. § 251(c)(3), (b) is a Network Element Verizon is required by 47 U.S.C. § 251(c)(3) to provide to ***CLEC Acronym TXT***, ***, (c) is a Network Element under, or an item Verizon must otherwise provide pursuant to, 47 U.S.C. 271, (d) is a Network Element under, or an item Verizon must otherwise provide pursuant to, Applicable Law, or (e) is an item that Verizon is required to offer to ***CLEC Acronym TXT*** at the rates set forth in the Amended Agreement.

2. TRO Glossary

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

2.1 Act.

The Communications Act of 1934, as amended (47 U.S.C. § 151, *et. seq.*).

2.2 Applicable Law.

All laws, rules and regulations, including, but not limited to, the Act, effective rules, regulations, decisions and orders of the FCC and the ***State Commission TXT***, and all orders and decisions of courts of competent jurisdiction.

2.3 Batch Cut Process.

A process, approved by the ***State Commission TXT***, by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops from one carrier's local circuit switch to another carrier's local circuit switch on a line-by-line basis.

2.4 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 by means of physical access at the signaling transfer point linked to the unbundled databases.

2.5 Commingling.

The connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. "Commingle" means the act of commingling.

2.6 Copper Loop.

A stand-alone local loop comprised entirely of copper wire or cable. Copper loops include, but are not limited to, 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 any attached transmission electronics, including, but not limited to, time division multiplexing technology.

2.7 Copper Subloop.

A portion of a copper loop, or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technically feasible access in an incumbent LEC's outside plant and the end-user customer premises. Copper subloop includes, but is not limited to, Inside Wire and House and Riser Cable owned or controlled by the incumbent LEC. A copper subloop includes all intermediate devices (including repeaters and load coils) used to establish a transmission path between a point of technically feasible access and the demarcation point at the end-user customer premises, and includes the features, functions, and capabilities of the copper loop. Copper subloops include two-wire and four-wire analog voice-grade subloops as well as two-wire and four-wire subloops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the subloops are in service or held as spares.

2.8 Dark Fiber Loop.

Fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

2.9 Dark Fiber Transport.

Dark fiber transport consists of unactivated fiber optic interoffice transmission facilities.

2.10 Dedicated Transport.

Transmission facilities that connect incumbent LEC switches or wire centers, that are dedicated to a particular customer or carrier.

2.11 Demarcation Point.

As defined at section 68.3 of the FCC's rules.

2.12 DS1 Dedicated Transport.

Consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.

2.13 DS3 Dedicated Transport.

Consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.

2.14 DS1 Loop.

A digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.

2.15 DS3 Loop.

A digital local loop having a total digital signal speed of 44.736 megabytes per second.

2.16 Enhanced Extended Link.

Consists of a combination of an unbundled loop and unbundled dedicated transport, and may sometimes include additional electronics (e.g., multiplexing equipment) and/or entrance facility, together with any facilities, equipment, or functions necessary to combine those network elements.

2.17 Effective Date.

The date on which this Amendment is approved by the ***State Commission TXT*** or becomes effective pursuant to operation of law.

2.18 Enterprise Switching.

Local circuit switching that is used for the purpose of serving ***CLEC Acronym TXT*** customers using DS1 or above capacity loops.

2.19 FCC. The Federal Communications Commission.

2.20 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.

2.21 Fiber-to-the-Home (FTTH) Loop.

A local loop consisting entirely of fiber optic cable, whether dark or lit, and serving an end user's customer premises.

2.22 House and Riser Cable.

A distribution facility in Verizon's network 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/or controlled by Verizon.

2.23 Hybrid Loop.

A local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

2.24 Inside Wire.

All loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in § 68.105 of the FCC's rules and the point of demarcation of the incumbent LEC's network as defined in section 68.3 of the FCC's rules.

2.25 Intermodal.

Refers to facilities or technologies other than those found in traditional telephone networks, but that are utilized to provide competing services. Intermodal facilities or technologies include, but are not limited to, traditional or new cable plant, wireless technologies, and power line technologies.

2.26 Line Conditioning.

The removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.

2.27 Line Sharing.

The process by which a requesting telecommunications carrier provides digital subscriber line (DSL) service over the same copper loop that the incumbent LEC uses to provide voice service, with the incumbent LEC using the low frequency portion of the loop and the requesting telecommunications carrier using the high frequency portion of the loop. The high frequency portion of the loop consists of the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions. This portion of the loop includes the features, functions, and capabilities of the loop that are used to establish a complete transmission path on the high frequency range between the incumbent LEC's distribution frame (or its equivalent) in its central office and the demarcation point at the end-user customer premises, and includes the high frequency portion of any inside wire owned or controlled by the incumbent LEC.

2.28 Line Splitting.

The process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop.

2.29 Local Circuit Switching.

Encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. Local circuit switching includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.

2.30 Local Loop.

A transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. The local loop includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and

intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

2.31 Mass Market Switching.

Local Circuit Switching or Tandem Switching that is used for the purpose of serving ***CLEC Acronym TXT*** customers using DS0 loops.

2.32 Minimum Point of Entry (MPOE).

As defined at section 68.105 of the FCC's rules.

2.33 Network Interface Device (NID).

Any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose.

2.34 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, 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. Nonconforming Facility does not include facilities that Verizon is required to provide pursuant to Applicable Law, including, but not limited to, Section 271 of the Act and State-specific regulatory requirements.

2.35 Non-Qualifying Service.

A service that is not a Qualifying Service.

2.36 Operator Services.

Any automatic or live assistance to a customer to arrange for billing or completion, or both, of a telephone call.

2.37 Operations Support Systems.

Consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.

2.38 Point of Technically Feasible Access.

Any point in the incumbent LEC's outside plant where a technician can access the copper wire within a cable without removing a splice case.

Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. A point of technically feasible access, as used in relation to access to multiunit premises wiring, is any point in the incumbent LEC's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premises. Such points include, but are not limited to, a pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, and the feeder/distribution interface.

2.39 Qualifying Service.

A telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of the incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone services, and access services, such as digital subscriber line services and high-capacity circuits.

2.40 Rolling Access.

The use of unbundled local circuit switching for a limited period of time for end-user customers to whom a requesting telecommunications carrier seeks to provide service.

2.41 Route.

A transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g., wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

2.42 Routine Network Modification.

An activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber

loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

2.43 Service Management Systems.

Computer databases or systems not part of the public switched network that interconnect to the service control point and send to the service control point information and call processing instructions needed for a network switch to process and complete a telephone call, and provide a telecommunications carrier with the capability of entering and storing data regarding the processing and completing of a telephone call.

2.44 Shared Transport.

The transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.

2.45 Signaling Networks.

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

2.46 State Commission.

State Commission TXT. Generally, the commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers. As referenced in this Amended Agreement, this term may include the FCC if it assumes responsibility for a proceeding or matter, pursuant to Section 252(e)(5) of the Act or § 51.320 of the FCC's rules. This term shall also include any person or persons to whom the state commission has delegated its authority under sections 251 and 252 of the Act and the FCC's rules.

2.47 Subloop for Access to Multiunit Premises Wiring.

Any portion of the loop that is technically feasible to access at a terminal in the incumbent LEC's outside plant at or near a multiunit premises. One category of this subloop is inside wire, which is defined elsewhere in this agreement.

2.48 Sub-Loop Distribution Facility.

The 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.

2.49 Tandem Switching.

A subset of local circuit switching network element that is required to be provided by the incumbent LEC on an unbundled basis. See definition of "Local Circuit Switching."

2.50 Transitional Four-Line Carve-Out.

The four-line "carve-out" for unbundled switching established in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3822-31, paras. 276-98 (1999), reversed and remanded in part sub. nom. United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002).

2.51 Triennial Review Order.

The FCC's *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket Nos. 01-338, 96-98, and 98-147 (rel. August 21, 2003; errata rel. September 17, 2003).

2.52 Verizon East.

The legacy Bell Atlantic/NYNEX territory.

3. UNE TRO Provisions

3.1 Local Loops. Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to the local loop on an unbundled basis, in accordance with Section 251(c)(3) of the Act, sections 51.319(a)(1) through 51.319(a)(9) of the FCC's rules, and Applicable Law (including, but not limited to, 47 U.S.C. §271 and State Law).

3.1.1 Copper Loops. Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to the copper loop on an unbundled basis. The availability of DS1 and DS3 copper loops shall be subject to the requirements of sections 51.319(a)(4) and 51.319(a)(5) of the FCC's rules, and Applicable Law.

3.1.2 Hi-Cap Loops. Notwithstanding any other provision of the Agreement:

3.1.2.1 DS1 Loops. Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to a DS1 loop on an unbundled basis in accordance with Applicable Law (including, but not limited to, 47 U.S.C. §271 and State Law), except as otherwise provided in Section 3.1.2.3 below.

3.1.2.2 DS3 Loops. Subject to the cap set forth in 47 C.F.R. section 51.319(a)(5)(iii) of the FCC's rules, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to a DS3 loop on an unbundled basis in accordance with Applicable Law (including, but not limited to, 47 U.S.C. §271 and State Law), except as otherwise provided in Section 3.1.2.3 below.

3.1.2.3 Nonimpairment. Subject to the provisions of Section 3.9, Verizon shall be relieved of its obligation under Section 251(c)(3) of the Act only to provide ***CLEC Acronym TXT*** with access to DS1 Loops or DS3 Loops under the Amended Agreement at a specific customer location upon a finding, in a final and non-appealable order by the [***State Commission TXT***] or the FCC, that requesting telecommunications carriers are not impaired without access to such DS1 Loops or DS3 Loops at such customer location.

3.1.2.4 Notwithstanding anything to the contrary, Verizon shall provide or continue to provide ***CLEC Acronym TXT*** with nondiscriminatory access to DS1 loops and/or DS3 loops as required pursuant to Applicable Law, including, but not limited to, Section 271 of the Act and State-specific requirements, which loops shall not be considered Nonconforming Facilities.

3.1.3 FTTH Loops.

3.1.3.1 New Builds. Verizon shall not be required to provide nondiscriminatory access to an FTTH loop on an unbundled basis pursuant to Section 251(c)(3) when Verizon deploys such a loop to an end-user customer premises that previously has not been served by any loop facility.

- 3.1.3.2 Overbuilds. Verizon shall not be required to provide nondiscriminatory access to an FTTH loop on an unbundled basis pursuant to Section 251(c)(3) when Verizon has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:
- 3.1.3.2.1 Verizon shall maintain the existing copper loop connected to the particular customer premises after deploying the FTTH loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless Verizon retires the copper loop pursuant to Section 3.1.3.3 of this Amendment and in accordance with Applicable Law (including, but not limited to, Section 51.319(a)(3)(iii) of the FCC's rules).
 - 3.1.3.2.2 In the event that Verizon maintains the existing copper loop pursuant to Section 3.1.3.3 of this Amendment and Section 51.319(a)(3)(ii)(A) of the FCC's rules, Verizon need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to section 51.319(a)(3)(ii)(A) of the FCC's rules, in which case Verizon shall restore the copper loop to serviceable condition upon ***CLEC Acronym TXT***'s request.
 - 3.1.3.2.3 If Verizon retires the copper loop pursuant to Section 3.1.3.3 of this Amendment and Section 51.319(a)(3)(iii) of the FCC's rules, Verizon shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis.
- 3.1.3.3 Retirement of Copper Loops or Copper Subloops. Prior to retiring any Copper Loop or Copper Subloop that has been replaced with an FTTH loop, including, but not limited to, House and Riser Cable and Insider Wire, Verizon must comply with (a) the network disclosure requirements set forth in Section 251(c)(5) of the Act and in section 51.325 through section 51.335 of the FCC's rules, and (b) any applicable state requirements, and provision an alternative service over any available,

compatible facility (e.g., copper or fiber) to ***CLEC Acronym TXT*** or its end user

3.1.4 Hybrid Loops Generally.

3.1.4.1 Hybrid Loops: Verizon shall be required to provided nondiscriminatory access to hybrid loops on an unbundled basis, including narrowband and/or broadband transmission capabilities, pursuant to Applicable Law, including, but not limited to, Section 271 of the Act and state law.

3.1.4.2 Broadband Services. Pursuant to Section 251(c)(3), when ***CLEC Acronym TXT*** seeks access to a Hybrid Loop for the provision of "broadband services," as such term is defined by the FCC, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis, to establish a complete transmission path between Verizon's central office and an 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.

3.1.4.3 Narrowband Services. Pursuant to Section 251(c)(3), when ***CLEC Acronym TXT*** seeks access to a Hybrid Loop for the provision of "narrowband services," as such term is defined by the FCC, Verizon shall either (a) provide nondiscriminatory access, on an unbundled basis, to a spare home-run copper Loop serving that customer, or (b) provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology.

3.1.5 IDLC Hybrid Loops. 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 provide ***CLEC Acronym TXT*** unbundled access to a transmission path over hybrid loops served by IDLC systems, which shall be either through a spare copper facility or through the availability of Universal DLC systems. If neither of the aforementioned options is available, Verizon shall provide ***CLEC Acronym TXT*** a technically feasible method of unbundled access.

3.1.6 Dark Fiber Loops. Except as otherwise provided in this section, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to a dark fiber loop on an unbundled basis. Subject to the provisions of Section 3.9, Verizon shall be relieved of its obligation under Section 251(c)(3) of the Act to provide ***CLEC Acronym TXT*** with access to Dark Fiber Loops under the Amended Agreement at a specific customer location upon a finding in a final and non-appealable order by the [***State Commission TXT***] or the FCC that requesting telecommunications carriers are not impaired without access to such Loops at such customer location.

3.2 Line Sharing and Line Splitting.

3.2.1 Line Sharing.

3.2.1.1 Verizon shall provide nondiscriminatory access to Line Sharing on an unbundled basis pursuant Applicable Law, including, but not limited to, Section 271 of the Act and state law.

3.2.1.2 The *Triennial Review Order* has no impact on the independent obligations on Verizon East pursuant to Section 271 of the Act, under which Verizon must provide Line Sharing on an unbundled basis, at just and reasonable Commission approved UNE rates.

3.2.1.3 Notwithstanding anything to the contrary, Line Sharing elements and facilities that are required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the ***State Commission TXT***, a court of competent jurisdiction, and Section 271 of the Act, shall not be considered Nonconforming Facilities.

3.2.1.4 Pursuant to section 251(c)(3), Verizon shall also provision new Line Sharing arrangements under the Agreement. New Line Sharing arrangements means those arrangements serving end user customers acquired after October 2, 2003. Verizon shall provide new Line Sharing arrangements on a transitional basis pursuant to the rates, terms and conditions prescribed by the FCC in the *Triennial Review Order* and 47 C.F.R. Part 51, and as otherwise required by Applicable Law (including, but not limited to, 47 U.S.C. §271 and State Law).

- 3.2.1.5 Grandfathered Line Sharing. Pursuant to section 251(c)(3), any existing Line Sharing arrangement in place with an end user customer of ***CLEC Acronym TXT*** will be grandfathered at existing rates, provided ***CLEC Acronym TXT*** acquired the end user customer for xDSL service, using or with the intent to use Line Sharing, prior to October 2, 2003, and only so long as ***CLEC Acronym TXT*** has not ceased providing xDSL service to that end user customer.
- 3.2.2 Line Splitting. Verizon shall provision Line Splitting arrangements under the Agreement pursuant to Applicable Law, including, but not limited to, Sections 271 and 251(c)(3), 47 C.F.R. Part 51, and State Law. Verizon shall enable ***CLEC Acronym TXT*** to engage in line splitting using a splitter collocated at the Central Office.
- 3.2.2.1 Verizon's obligation to provide ***CLEC Acronym TXT*** with the ability to engage in line splitting applies regardless of whether the carrier providing voice service provides its own switching or obtains local circuit switching as an unbundled network element pursuant to 47 U.S.C. §251(c)(3), 47 U.S.C. §271(c), or Applicable Law.
- 3.2.2.2 Verizon shall make all necessary network modifications, including providing nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.
- 3.2.2.3 ***CLEC Acronym TXT*** CLECs may utilize the LSR process to order line splitting.
- 3.3 Line Conditioning.

Verizon shall condition a copper loop, at no cost, where ***CLEC Acronym TXT*** seeks access to a copper loop, the high frequency portion of a copper loop, or a copper subloop to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not Verizon offers advanced services to the end-user customer on that copper loop or copper subloop.

- 3.3.1 Insofar as it is technically feasible, Verizon shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

3.3.2 Where ***CLEC Acronym TXT*** seeks access to the high frequency portion of a copper loop or copper subloop and Verizon claims that conditioning that loop or subloop will significantly degraded, as defined in section 51.233 of the FCC's rules, the voiceband services that Verizon is currently providing over that loop or subloop, Verizon must either:

(a) Locate another copper loop or copper subloop that has been or can be conditioned, migrate Verizon's voiceband service to that loop or subloop, and provide ***CLEC Acronym TXT*** with access to the high frequency portion of that alternative loop or subloop; or

(b) Make a showing to the state commission that the original copper loop or copper subloop cannot be conditioned without significantly degrading voiceband services on that loop or subloop, as defined in section 51.233 of the FCC's rules, and that there is no adjacent or alternative copper loop or copper subloop available that can be conditioned or to which the end-user customer's voiceband service can be moved to enable line sharing.

3.3.3 If, after evaluating Verizon's showing under section 51.319(a)(1)(ii)(D)(2) of the FCC's rules, the state commission concludes that a copper loop or copper subloop cannot be conditioned without significantly degrading the voiceband service, Verizon cannot then or subsequently condition that loop or subloop to provide advanced services to its own customers without first making available to ***CLEC Acronym TXT*** the high frequency portion of the newly conditioned loop or subloop.

3.4 Maintenance, Repair, and Testing. Verizon shall provide, on a nondiscriminatory basis, physical loop test access points to ***CLEC Acronym TXT*** at the splitter, through a cross-connection to ***CLEC Acronym TXT***'s collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.

3.5 Subloop. Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to subloops on an unbundled basis pursuant to Applicable Law.

3.5.1 Copper Subloops. Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to a copper subloop on an unbundled basis.

- 3.5.2 Collocation. Access to the copper subloop shall be subject to sections 51.321 and 51.323 of the FCC's collocation rules.
- 3.5.3 Access to Multiunit Premises Wiring. Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to the subloop for access to multiunit premises wiring on an unbundled basis regardless of the capacity level or type of loop that the ***CLEC Acronym TXT*** seeks to provision for its customer.
- 3.5.4 Single Point of Interconnection. Upon notification by ***CLEC Acronym TXT*** that it requests interconnection at a multiunit premises where Verizon owns, controls, or leases wiring, Verizon shall provide a single point of interconnection that is suitable for use by multiple carriers. This obligation shall be in addition to Verizon's obligations, under section 51.319(b)(2) of the FCC's' rules, to provide nondiscriminatory access to a subloop for access to multiunit premises wiring, including any inside wire, at any technically feasible point. If Verizon and ***CLEC Acronym TXT*** are unable to negotiate rates, terms, and conditions under which Verizon will provide this single point of interconnection, then any issues in dispute regarding this obligation shall be resolved in state proceedings under Section 252 of the Act.
- 3.5.5 Technical Feasibility. If Verizon and ***CLEC Acronym TXT*** are unable to reach agreement through voluntary negotiations as to whether it is technically feasible, or whether sufficient space is available, to unbundled a copper subloop or subloop for access to multiunit premises wiring at the point where ***CLEC Acronym TXT*** requests, Verizon shall have the burden of demonstrating to the state commission, in state proceedings under Section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible to unbundled the subloop at the point requested by ***CLEC Acronym TXT***.
- 3.5.6 Best Practices. Once one state commission has determined that it is technically feasible to unbundled subloops at a designated point, Verizon, in any state, shall have the burden of demonstrating to the state commission, in state proceedings under Section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own subloops at such a point.
- 3.6 Network Interface Device. Apart from its obligation to provide the network interface device (NID) functionality as part of an unbundled loop or subloop, Verizon shall provide nondiscriminatory access to the NID on an unbundled basis. Verizon shall permit ***CLEC Acronym TXT*** to connect its own loop facilities to on-premises wiring through Verizon's NID, or at any other technically feasible point.

- 3.7 Unbundled Local Circuit Switching. Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to local circuit switching, including tandem switching, on an unbundled basis, in accordance with Applicable Law, which includes, but is not limited to, Sections 251 and 271 of the Act, Section 51.319(d) of the FCC's rules, and specific State law requirements.
- 3.7.1 Mass Market Switching. Verizon shall provide Mass Market Switching to ***CLEC Acronym TXT*** under the Amended Agreement. Such Mass Market Switching will be provided on a nondiscriminatory, unbundled basis, in accordance with Applicable Law, which includes, but is not limited to, Sections 251 and 271 of the Act, Section 51.319(d) of the FCC's rules, and specific State law requirements.
- 3.7.1.1 **[Insert for NY Agreement:** In addition to any other requirements set forth herein or mandated by Applicable Law, Verizon will provide Mass Market Switching under the Amended Agreement in accordance with the Pre-Filing Statement of Bell Atlantic-New York, filed with the New York Public Service Commission on April 6, 1998 in Case 97-C-0271, the Verizon Incentive Plan, approved by the Commission on February 27, 2002 in Case 00-C-1945, settlements or stipulations filed by Verizon, and any other Orders, Rules or requirements of the Commission.] **[Insert for PA Agreement:** In addition to any other requirements set forth herein or mandated by Applicable Law, Verizon will provide local circuit switching in accordance with the determination of the Pennsylvania Public Utility Commission that the FCC's *Triennial Review Order* does not relieve Verizon of its obligation to provide requesting carriers with access to its local circuit switching. See, e.g., *Joint Petition of NextLink, et al*, Docket Nos. P-00991648 and P-00991649, Opinion and Order (entered Sept. 30, 1999); *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Docket No. I-00030100, Order, (Dec. 18, 2003); 47 U.S.C. § 271]
- 3.7.2 Enterprise Switching. Verizon shall be obligated to provide Enterprise Switching where the ***State Commission TXT*** has ordered Verizon to provide Enterprise Switching under state law or where the ***State Commission TXT*** petitions the FCC for a waiver of the FCC's finding of no impairment in accordance with the conditions set forth in 47 C.F.R. Section 51.319(d)(2)(i) and the FCC grants such waiver. During the pendency of the state

commission investigation and the FCC's resolution of the state commission's waiver petition, Verizon shall continue to provide Enterprise Switching to ***CLEC Acronym TXT***.

[Insert for NY Agreement: In addition to any other requirements set forth herein or mandated by Applicable Law, Verizon will provide switching under the Amended Agreement in accordance with the Pre-Filing Statement of Bell Atlantic-New York, filed with the New York Public Service Commission on April 6, 1998 in Case 97-C-0271, the Verizon Incentive Plan, approved by the Commission on February 27, 2002 in Case 00-C-1945, settlements or stipulations filed by Verizon, and any other Orders, Rules or requirements of the Commission.]

[Insert for PA Agreement: In addition to any other requirements set forth herein or mandated by Applicable Law, Verizon will provide switching in accordance with the determination of the Pennsylvania Public Utility Commission that the FCC's *Triennial Review Order* does not relieve Verizon of its obligation to provide requesting carriers with access to its local circuit switching. See, e.g., *Joint Petition of NextLink, et al*, Docket Nos. P-00991648 and P-00991649, Opinion and Order (entered Sept. 30, 1999); *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Docket No. I-00030100, Order, (Dec. 18, 2003); 47 U.S.C. § 271]

- 3.7.2.1 In the absence of an obligation on Verizon to provide Enterprise Switching pursuant to Applicable Law or during the pendency of an FCC waiver petition, ***CLEC Acronym TXT*** shall transfer its end-user customers served using Enterprise Switching to an alternative network arrangement or at its option an alternative price structure to be negotiated by the Parties, pursuant to the just and reasonable pricing standards required by the Act, within 90 days of the Effective Date or such longer period as may be specified in the Amended Agreement. Should ***CLEC Acronym TXT*** and Verizon be unable to agree upon an alternative price structure within 60 days, either Party may file for arbitration of the issue with the ***State Commission TXT*** or other appropriate regulatory authority, or pursue the matter in another appropriate forum in accordance with Applicable Law.
- 3.7.2.2 Nothing in Section 3.7.2 or its subparts shall be construed to eliminate or in any way limit Verizon's obligation to provide Enterprise Switching under 47 U.S.C. §271(c).

3.7.3 Other Local Circuit Switching-Related Elements to be Unbundled. Verizon shall make available on an unbundled basis elements relating to the local circuit switching as set forth in section 51.319(d)(4)(i) and section 51.319(d)(4)(ii) of the FCC's rules.

3.7.3.1 Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with Sections 251(c)(3) and 271 of the Act, section 51.319 of the FCC's rules and the orders and rules of the ***State Commission TXT***..

3.7.3.1.1 Where ***CLEC Acronym TXT*** purchases unbundled local circuit switching from Verizon pursuant to Sections 251(c)(3) and 271 of the Act or state law, Verizon shall allow ***CLEC Acronym TXT*** to use Verizon's service control point element in the same manner, and via the same signaling links, as Verizon itself.

3.7.3.1.2 Where ***CLEC Acronym TXT*** purchases unbundled local circuit switching from Verizon pursuant to Sections 251(c)(3) and 271 of the Act or state law, Verizon shall allow ***CLEC Acronym TXT*** to use its service management systems by providing ***CLEC Acronym TXT*** with the information necessary to enter correct, or format for entry, the information relevant for input into Verizon's service management system, including access to design, create, test, and deploy advanced intelligent network-based services at the service management system, through a service creation environment, that Verizon provides to itself. Verizon shall not be required to unbundle the services created in the advanced intelligent network platform and architecture that qualify for proprietary treatment.

3.7.3.2 Verizon shall provide ***CLEC Acronym TXT*** nondiscriminatory access to operator services and directory assistance on an unbundled basis, in accordance with Sections 251(c)(3) and 271 of the Act, section 51.319 of the FCC's rules and state law, if Verizon does not provide ***CLEC Acronym TXT*** with customized routing, or a compatible signaling protocol, necessary to use either a competing provider's operator

services and directory assistance platform or ***CLEC Acronym TXT***'s own platform.

3.7.4 End-User Transition. Where the ***State Commission TXT*** has found that requesting telecommunications carriers are not impaired within the terms of 47 U.S.C. §251(c)(3) without access to Mass Market Switching in a particular market, ***CLEC Acronym TXT*** shall commit to an implementation plan with Verizon for the migration of the embedded unbundled switching mass market customer base within two (2) months of the date the state commission Order finding nonimpairment becomes final and non-appealable. ***CLEC Acronym TXT*** may no longer obtain access to unbundled local circuit switching pursuant to 47 U.S.C. §251(c)(3) five (5) months after the state commission determination, except, where applicable, on a transitional basis as described in section 51.319(d)(3)(iii)(C) of the FCC's rules. In the event an end user cannot be migrated to a UNE-Loop arrangement, whether due to the existence of IDLC or another impediment, ***CLEC Acronym TXT*** may continue to serve the end user utilizing unbundled Local Circuit Switching and the full UNE-Platform (at TELRIC rates).

3.7.4.1 Month 13: Thirteen months after the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable, ***CLEC Acronym TXT*** must submit migration orders for one-third of all its unbundled local circuit switching end-user customers.

3.7.4.2 Month 20: Twenty months after the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable, ***CLEC Acronym TXT*** must submit migration orders for half of its remaining unbundled local circuit switching end-user customers, as calculated pursuant to section 51.319(d)(2)(iv)(A)(1) of the FCC's rules; and

3.7.4.3 Month 27: Twenty-seven months after the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable, ***CLEC Acronym TXT*** must submit migration orders for its remaining unbundled local circuit switching end-user customers.

3.7.4.4 Operational Aspects of Migration. ***CLEC Acronym TXT*** and Verizon shall jointly submit the details of their implementation plans for each market to the state

commission within two (2) months of the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable. ***CLEC Acronym TXT*** shall notify the state commission when it has submitted its orders for migration. Verizon shall notify the state commission when it has completed the migration.

- 3.7.5 Until the ***State Commission TXT*** completes its review to determine whether to require continued provision of unbundled local switching pursuant to Section 251(c)(3), ***CLEC Acronym TXT*** may obtain from Verizon unbundled switching pursuant to State-specific obligations or requirements, and/or, at ***CLEC Acronym TXT***'s option, the four-line "carve-out" established in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3822-31, paras. 276-98 (1999), *reversed and remanded in part sub. nom., United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

[Insert for NY Agreement: In addition to any other requirements set forth herein or mandated by Applicable Law, Verizon will provide switching under the Amended Agreement in accordance with the Pre-Filing Statement of Bell Atlantic-New York, filed with the New York Public Service Commission on April 6, 1998 in Case 97-C-0271, the Verizon Incentive Plan, approved by the Commission on February 27, 2002 in Case 00-C-1945, settlements or stipulations filed by Verizon, and any other Orders, Rules or requirements of the Commission.]

[Insert for PA Agreement: In addition to any other requirements set forth herein or mandated by Applicable Law, Verizon will provide switching in accordance with the determination of the Pennsylvania Public Utility Commission that the FCC's *Triennial Review Order* does not relieve Verizon of its obligation to provide requesting carriers with access to its local circuit switching. *See, e.g., Joint Petition of NextLink, et al*, Docket Nos. P-00991648 and P-00991649, Opinion and Order (entered Sept. 30, 1999); *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Docket No. I-00030100, Order, (Dec. 18, 2003); 47 U.S.C. § 271]

3.7.6 Where the ***State Commission TXT*** has found that impairment would be removed by implementation of transitional rolling access to local circuit switching on an unbundled basis for the longer of (a) one year, or (b) the period established by the ***State Commission TXT*** for the particular market, such transitional access must be implemented as set forth in section 51.319(d)((2)(iii)(C) of the FCC's rules. The rolling access time limit set by the ***State Commission TXT*** shall apply to each request for access to unbundled local circuit switching by ***CLEC Acronym TXT*** on a per customer basis.

3.8 Unbundled Interoffice Facilities.

3.8.1 General Requirements. Verizon shall provide Dedicated Transport and Dark Fiber Transport under the Agreement in accordance with and to the extent required by Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(3) and 271, 47 C.F.R. Part 51 and State Law. In ordering Dedicated Transport and Dark Fiber Transport, ***CLEC Acronym TXT*** represents that it is obtaining access to the subject facility in order to provide a Qualifying Service or a combination of Qualifying and Non-qualifying services. Verizon will provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(2) and 271. ***CLEC Acronym TXT*** may thus obtain from Verizon, at TELRIC rates, Unbundled Interoffice Facilities (Dedicated Transport and/or Dark Fiber Transport) to connect the ***CLEC Acronym TXT*** premises or Point of Presence (POP) with the Verizon network. Should the ***CLEC Acronym TXT*** premises or POP be located within the area served by the Verizon serving wire center with which it is interconnected, the facility connecting the two locations will be priced as a UNE Loop.

3.8.2 Dedicated Transport.

3.8.2.1 Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis. The Parties acknowledge that, notwithstanding Verizon's obligation to provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Section 251(c)(2) of the Act, the FCC redefined Dedicated Transport in the *Triennial Review Order* to include the transmission facility or service between a Verizon switch or wire center and another Verizon switch or wire center.

The *Triennial Review Order* has no impact on the independent obligations on Verizon East pursuant to Section 271 of the Act, under which Verizon must provide Transport, unbundled from switching or other services, at just and reasonable rates.

3.8.2.2 Cap on Dedicated Transport. ***CLEC Acronym TXT*** may obtain on an unbundled basis a maximum of twelve (12) DS3 Dedicated Transport circuits or 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.

3.8.2.3 Nonimpairment. Subject to the provisions of Section 3.9 and the requirements of Applicable Law, Verizon shall be relieved of its obligation under Section 251(c)(3) of the Act to provide or continue providing ***CLEC Acronym TXT*** with access to DS1 Dedicated Transport or DS3 Dedicated Transport on an unbundled basis under the Amended Agreement on a particular Route upon a finding in a final and non-appealable order 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). Notwithstanding anything to the contrary, DS1 and DS3 Transport that are required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the ***State Commission TXT***, a court of competent jurisdiction, and/or Section 271 of the Act, shall not be considered Nonconforming Facilities.

3.8.3 Dark Fiber Transport.

3.8.3.1 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. The Parties acknowledge that the FCC redefined Dedicated Transport in the *Triennial Review Order* to include the transmission facility or service between a Verizon switch or wire center and another Verizon switch or wire center. The *Triennial Review Order* has no impact on the independent obligations of the Verizon East entities pursuant to Section 271 of the Act, nor on any other obligations on Verizon pursuant to Applicable Law.

CLEC Acronym TXT may combine Dark Fiber Transport with a Local Loop.

3.8.3.2 Nonimpairment. Subject to the provisions of Section 3.9 below, Verizon shall be relieved of its obligation under Section 251(c)(3) of the Act to provide ***CLEC Acronym TXT*** with access to Dark Fiber Transport on an unbundled basis under the Amended Agreement on a particular Route upon a finding in a final and non-appealable order by the ***State Commission TXT*** or the FCC that requesting telecommunications carriers are not impaired without access to Dark Fiber Transport, respectively, on the subject Route(s). Notwithstanding anything to the contrary, Dark Fiber Transport required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the ***State Commission TXT***, a court of competent jurisdiction, and/or Section 271 of the Act, shall not be considered Nonconforming Facilities.

3.9 Transitional Issues.

3.9.1 With respect to those network elements that are Nonconforming Facilities as of the effective date of this Amendment ("Existing Nonconforming Facilities") (e.g., OCn loops and transport) the Parties agree that Verizon shall continue to provide unbundled access to such Nonconforming Facilities in accordance with this Section. Notwithstanding anything to the contrary, elements and facilities that are required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the ***State Commission TXT***, a court of competent jurisdiction, and Section 271 of the Act, shall not be considered Nonconforming Facilities.

3.9.1.1 Transition from Existing Nonconforming Facilities will be handled on a project basis. The Parties agree to establish a transition schedule within the longer of (a) the period dictated by the terms of the Agreement, or (b) 90 days of the Effective Date of this Amendment. Should the Parties be unable to agree on a schedule within such period, then either Party may utilize the dispute resolution procedures set forth in the Amended Agreement. At the end of the transition period (established by agreement or via dispute resolution), unless ***CLEC Acronym TXT*** has submitted an LSR or ASR (as appropriate) to Verizon requesting disconnection or migration of the Existing Nonconforming Facility, Verizon shall convert the subject Existing Nonconforming Facilities to the most closely

analogous access service available, or if no analogous access service is available, to such other service arrangement as Verizon and ***CLEC Acronym TXT*** may agree upon (e.g., by separate agreement); provided, however, that where there is no analogous access service, and ***CLEC Acronym TXT*** and Verizon have failed to reach agreement as to a substitute service, then Verizon may, upon 30 days' written notice, institute the market-based rates set forth in such notice for the Existing Nonconforming Facilities. Where the Existing Nonconforming Facilities are converted to an analogous access service, Verizon shall provide such access services in accordance with the rates, terms and conditions of Verizon's applicable access tariff.

3.9.2 As to those network elements that the ***State Commission TXT*** determines, after the Effective Date of this Amendment, to be Nonconforming Facilities, the Parties agree to amend the Agreement promptly to reflect the change and establish a mutually acceptable transitional mechanism if no transitional mechanism has been previously agreed upon or specifically dictated by the ***State Commission TXT***. Notwithstanding anything to the contrary, elements and facilities that are required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the ***State Commission TXT***, a court of competent jurisdiction, and Section 271 of the Act, shall not be considered Nonconforming Facilities.

3.10 Commingling and Combinations.

3.10.1 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 permit the commingling of a UNE or a combination of UNEs ("Qualifying UNEs") pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, network elements provided pursuant to Section 271(c), and wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement ("Qualifying Wholesale Services"), to the extent required by Applicable Law. Moreover, to the extent and so long as required by Applicable Law, Verizon shall, upon request of ***CLEC Acronym TXT***, perform the functions necessary to commingle Qualifying UNEs, network elements provided pursuant to Section 271(c) or Qualifying Wholesale Services. 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, if

applicable) will apply to the Qualifying UNEs and network elements provided pursuant to Section 271(c). "Ratcheting," as that term is defined by the FCC, shall not be required.

3.10.2 Combinations.

3.10.2.1 Verizon shall provide any technically feasible UNE combination upon request, including, but not limited to, combinations of DS0, DS1, DS3 and Dark Fiber Loop and Transport facilities. Where Verizon claims that a combination is not technically feasible, Verizon must prove to the ***State Commission TXT*** that the request to combine UNEs in a particular manner is not technically feasible or would undermine the ability of other carriers to obtain access to UNEs or to interconnect with Verizon's network.

3.10.2.2 Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, Verizon shall bill ***CLEC Acronym TXT*** at UNE rates for each element that is fully a UNE.

3.10.3 Service Eligibility Criteria for Certain Combinations and Commingled Facilities and Services.

3.10.3.1 In addition to other requirements of Applicable Law, Verizon shall be obligated to provide:

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

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

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

3.10.3.1.4 unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service, or

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

3.10.3.2 once ***CLEC Acronym TXT*** certifies, through a reasonably compliant method of its choosing, for each DS1 circuit that it is in compliance with each of the conditions set forth in 47 C.F.R. § 51.318. Verizon will provide ***CLEC Acronym TXT*** unimpeded UNE access based upon self-certification, subject to later verification based upon cause in accordance with Section 3.10.3.8. If combined and/or commingled facilities are subsequently determined to be noncompliant following an Audit, the noncompliant facilities will be treated as a Nonconforming Facility, from the date that the Audit is confirmed by the ***State Commission TXT*** or FCC, and subject to the provisions of Section 3.9. The foregoing shall apply whether the facilities in question are being provisioned to establish a new combined and/or commingled facility or to convert an existing wholesale service, or any part thereof, to combined and/or commingled unbundled network elements. Notwithstanding anything to the contrary, network elements that are required to be unbundled pursuant to Applicable Law, including, but not limited to, and order of the ***State Commission TXT***, a court of competent jurisdiction, and Section 271 of the Act, shall not be considered Nonconforming Facilities.

3.10.3.3 The certification to be provided by ***CLEC Acronym TXT*** will certify that the following criteria are satisfied for each DS1 circuit or DS1 equivalent on a DS3 EEL:

3.10.3.3.1 A local number will be assigned to each circuit to be provided;

3.10.3.3.2 Each DS1-equivalent circuit on a DS3 EEL must have its own local number assignment;

3.10.3.3.3 Each circuit will have 911/E911 capability;

3.10.3.3.4 Each circuit will terminate in a collocation arrangement, including a reverse collocation arrangement, in accordance with 47 C.F.R. § 51.318(c);

3.10.3.3.5 Each circuit will be served by an interconnection trunk that meets the requirements set forth in 47 C.F.R. § 51.318(d); (for each 24 DS1 EELs, there must

be at least one active DS1 interconnection trunk meeting this requirement), and

3.10.3.3.6 Each circuit will be served by a switch capable of switching local voice traffic.

3.10.3.4 Should Verizon wish to challenge ***CLEC Acronym TXT***'s certification, it may not engage in self-help by withholding the circuit(s) in question; rather, Verizon must provision the circuit(s) and may subsequently initiate audit procedures in accordance with the *Triennial Review Order*.

3.10.3.5 Audits. Verizon will have a limited right to audit compliance with the qualifying service eligibility criteria.

3.10.3.5.1 To invoke this limited right, Verizon will send a Notice of Audit to ***CLEC Acronym TXT***, identifying the specific cause. This Notice of Audit will include, at a minimum, the particular circuits involved and the specific service eligibility criteria with which Verizon asserts noncompliance.

3.10.3.5.2 The audit will examine ***CLEC Acronym TXT***'s compliance in all material respects with those specific service eligibility criteria applicable to EELs with which Verizon has asserted noncompliance. Any such audit shall be conducted no more than once annually.

3.10.3.5.3 The Parties will mutually agree on the auditor, who shall perform the audit in accordance with the standards established by the American Institute for Certified Public Accountants. The auditor, who shall be paid by Verizon, will be independent, not affiliated with either Party, and regularly utilized by both ILECs and CLECs. The auditor may not be substantially dependent upon either Party for work.

3.10.3.5.4 To the extent the independent auditor's report concludes that ***CLEC Acronym TXT*** failed to comply with the service eligibility criteria specified by Verizon, then ***CLEC Acronym TXT*** must convert the noncompliant circuits to the appropriate service, true up any different

in payments, and make appropriate payments on a going-forward basis. If the independent auditor's report concludes that ***CLEC Acronym TXT*** failed to comply with the service eligibility criteria identified by Verizon in all material respects, ***CLEC Acronym TXT*** will reimburse Verizon for the pro-rata cost of the independent auditor, in proportion to the number of circuits found to be noncompliant.

3.10.3.5.5 Should the independent auditor confirm ***CLEC Acronym TXT***'s compliance in all material respects with the service eligibility criteria identified by Verizon on the particular circuits, then ***CLEC Acronym TXT*** shall provide to Verizon a statement of ***CLEC Acronym TXT***'s costs associated with the audit, and Verizon shall then reimburse ***CLEC Acronym TXT*** for its costs within thirty (30) days. ***CLEC Acronym TXT*** shall maintain appropriate records to support its certification.

3.11 Conversions

- 3.11.1 There will be no charge for conversions from wholesale to UNEs or UNE combinations.
- 3.11.2 Until such time as Verizon implements its ASR-driven conversion process in Verizon East, conversion of access circuits to unbundled Network Elements will be performed manually pursuant to Verizon's conversion guidelines. The effective bill date for conversions is the first day of the month following Verizon's receipt of an accurate and complete ASR or electronic request for conversion pursuant to Verizon's conversion guidelines (which are posted on the web at _____).
- 3.11.3 All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access.
- 3.11.4 All requests for conversions will be processed within fifteen (15) days.
- 3.11.5 Should Verizon deny a request from ***CLEC Acronym TXT*** for a UNE, including, but not limited to, based on a lack of facilities, Verizon shall, at ***CLEC Acronym TXT***'s request, convert an

equivalent special access service within thirty (30) days, with no minimum period termination liability.

3.12 Routine Network Modifications.

3.12.1 General Conditions. Verizon shall make routine network modifications to unbundled facilities, at no additional cost or charge, where the requested transmission facility has already been constructed. A routine network modification is an activity that Verizon regularly undertakes for its own customers. Verizon will perform routine network modifications to unbundled facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf of, or in accordance with the specifications of, any particular carrier. Where facilities are unavailable, Verizon will not be required to build a loop from scratch by trenching or pulling cable to provision an order of ***CLEC Acronym TXT***. Verizon will recover the costs of routine network modifications in its monthly recurring rates.

3.12.2 Routine network modifications applicable to Loops or Transport include, but are not limited to: rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; adding electronics to available wire or fiber facilities to fill an order for an unbundled DS1 circuit; cross-connecting the common equipment to the wire or fiber facility running to the end user; terminating a DS1 loop to the appropriate NID; accessing manholes, and deploying bucket trucks to reach aerial cable.

3.12.3 Routine network modifications applicable to Dark Fiber Loops or Transport include routine activities needed to enable ***CLEC Acronym TXT*** to have light continuity and functional signal carriage across both ends of a Dark Fiber Transport or Loop facility that it has obtained from Verizon under the Amended Agreement. Routine network modifications include, but are not limited to, splicing of dark fiber; accessing manholes, and deploying bucket trucks to reach aerial cable.

3.12.4 Performance Plans. Verizon's performance in connection with the provisioning of Loops or Transport (including Dark Fiber) for which routine network modifications are necessary shall be subject to standard provisioning intervals, included in the calculation of performance measurement results, and factored into the calculation

of any remedies contained in the Amended Agreement or elsewhere.

3.13 Signaling Networks.

In addition to the requirement that Verizon provide access to signaling where it is required to provide unbundled switching, set forth above, and Verizon's obligations under Applicable Law, including but not limited to 47 U.S.C. § 271, Verizon must provide for interconnection between its signaling networks and those of alternative providers, which the Parties acknowledge has been proven to be technically feasible.

3.14 Call-Related Databases.

In addition to the requirement that Verizon provide access to Call-Related Databases where it is required to provide unbundled switching, addressed hereinbefore, and Verizon's obligations under Applicable Law, including but not limited to 47 U.S.C. § 271, Verizon must provide unbundled access to the 911 and E911 databases. Furthermore, to the extent the development of competition leads to incomplete CNAM databases, that would impede the availability of nondiscriminatory dialing parity, the Parties acknowledge that the FCC or ***State Commission TXT*** may undertake appropriate action.

3.15 Operator Services and Directory Assistance (OS/DA).

In addition to the requirement that Verizon provide access to OS/DA where it is required to provide unbundled switching, addressed hereinbefore, Verizon shall provide access to OS/DA in accordance with Applicable Law, including, but not limited to, 47 U.S.C. § 271.

3.16 Operations Support System Functions (OSS).

In addition to the requirements for access to OSS addressed elsewhere in this Amendment and contained in Applicable Law, Verizon shall provide unbundled access to OSS on a UNE basis. Verizon has an ongoing obligation to provide access to OSS, which includes making those modifications as may be necessary to ensure nondiscriminatory access and Verizon's compliance with all of its UNE, resale and interconnection obligations – including any new obligations established in the *Triennial Review Order*. Verizon's obligation includes, but is not limited to, the provision of nondiscriminatory access to the same detailed loop information that is available to Verizon and its affiliated entities.

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.

Exhibit A

TAB B

AMENDMENT NO. 1

to the

INTERCONNECTION AGREEMENT

between

VERIZON FLORIDA INC., F/K/A GTE FLORIDA INCORPORATED

and

NEWSOUTH COMMUNICATIONS CORP.

This Amendment No. 1 (the "Amendment") is made by and between Verizon Florida Inc., f/k/a GTE Florida Incorporated ("Verizon"), a Florida corporation with offices at 201 N. Franklin street, Tampa, FL 33602-5167, and NewSouth Communications Corp., a corporation with offices at Two North Main Street, Greenville, SC 29601 ("NSC"), and shall be deemed effective on January 6, 2004 (the "Amendment Effective Date"). Verizon and NSC 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 of Florida (the "State").

WITNESSETH:

WHEREAS, pursuant to an adoption letter dated July 25, 2003 (the "Adoption Letter"), NSC adopted in the State of Florida, the interconnection agreement between AT&T Communications of the Southern States Inc. 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, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Agreement in order to give contractual effect to 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 of the TRO. 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's or NSC'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 Florida Public Service Commission, the FCC, any court or any other governmental authority related to, concerning or that may affect Verizon's obligations under the Agreement, this Amendment, any Verizon tariff or SGAT, or Applicable Law. The Parties acknowledge that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"), and that a Writ of Mandamus relating to the TRO is presently pending before the D.C. Circuit. Notwithstanding any other change of law provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to 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. Should the D.C. Circuit or the United States Supreme Court reverse any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed provisions shall be voidable at the election of either Party; provided, however, that should such an election result in any unbundled network element or combination of unbundled network elements becoming unavailable, the parties shall mutually agree upon a transition plan. Should the parties be unable to agree on such a plan, the dispute resolution provisions of the Agreement shall apply.
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.

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SIGNATURE PAGE

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

NEWSOUTH COMMUNICATIONS CORP.

VERIZON FLORIDA INC.

By: _____

By: _____

Printed: Jake E. Jennings _____

Printed: John C. Peterson _____

Title: Senior Vice President of Regulatory Affairs
and Carrier Relations _____

Title: Director – Contract Administration _____

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 UNEs commingled with wholesale services ("Commingling"), to NSC under the terms of this Amended Agreement and to the full extent, but only to the extent, required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or the FCC or the Commission's orders and, (b) Verizon may decline to provide access to UNEs, Combinations, or Commingling to NSC 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 or the FCC or the Commission's orders.

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1.2 NSC 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 or the FCC's or the Commission's orders to provide such UNE, Combination, or Commingling to NSC.

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 NSC pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 or the FCC's or the Commission's orders, a UNE, a Combination, or Commingling that is not offered under the Amended Agreement to NSC as of the Amendment Effective Date, the rates, terms, conditions for such UNE, Combination, or Commingling shall be as provided in the Agreement prior to being amended herein, or, if rates, terms and conditions are not contained in the original Agreement, as provided in an applicable Verizon tariff, or, in the absence of an applicable Verizon tariff, as mutually agreed in writing by the Parties. The negotiation such mutually agreed upon provisions shall be subject to the good faith requirements set forth in Section 4 of the General Terms and Conditions.

1.4

Deleted: Verizon reserves the right to argue in any proceeding before the Florida Public Service Commission, 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 NSC, or (c) is an item that Verizon is not required to offer to NSC at the rates set forth in the Amended Agreement.

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 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. Dark fiber facilities between (i) a Verizon wire center or switch and (ii) a switch or wire center of NSC or a third party, if not collocated in a Verizon wire center, are not Dark Fiber Transport.

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. Transmission facilities or services provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of NSC or a third party, if not collocated in a Verizon wire center, are not Dedicated Transport.

2.4 DS1 Dedicated Transport.

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

2.5 DS3 Dedicated Transport.

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

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. This loop type is more fully described in Verizon TR 72575, as revised from time to time. A DS-1 Loop includes, the electronics necessary to provide the DS-1 transmission rate.

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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. This Loop

type is more fully described in Verizon TR 72575, as revised from time to time. A DS-3 Loop ~~includes, the electronics necessary to provide the DS-3 transmission rate.~~

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Enterprise Customer.

- 2.8 A NSC customer using DS1 or above capacity Loops or as defined by the relevant state commission, Enterprise Switching.

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Local Switching or Tandem Switching that, if provided to NSC would be used for the purpose of serving an Enterprise Customer.

- 2.9 Feeder.

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

- 2.10 FTTH Loop.

A Loop 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.

- 2.11 House and Riser Cable.

A distribution facility in Verizon's network, ~~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 or controlled by Verizon.~~

Deleted: other than in a FTTH Loop,

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- 2.12 Hybrid Loop.

A local Loop composed of both fiber optic cable and copper wire or cable.

- 2.13 Line Sharing.

The process by which NSC 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.

- 2.14 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); (c) usage (including the connection of lines to lines,

Deleted: that are provided to Verizon's local exchange service Customers served by that switch

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).

Mass Market Customer.

A NSC customer that is not an Enterprise Customer.

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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, and that is provided to NSC to serve NSC's Mass Market Customers.

Deleted: end user customers over DS0 Loops

2.16 Nonconforming Facility.

Any facility that Verizon was providing to NSC on an unbundled basis pursuant to the Agreement or a Verizon tariff or SGAT prior to the effective date of this Agreement, 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, by operation of either the TRO, as implemented herein, or a subsequent nonimpairment finding issued by the Florida Public Service Commission or the FCC. By way of example and not by way of limitation, Nonconforming Facilities may include any of the following: (a) DS1 Dedicated Transport, DS3 Dedicated Transport, or Dark Fiber Transport on a Route or Routes as to which the Florida Public Service Commission or the FCC, finds telecommunications carriers to be nonimpaired without access to such facilities; (b) Enterprise Switching; (c) Mass Market Switching in any market in which the Florida Public Service Commission or the FCC, finds telecommunications carriers to be nonimpaired without access to such facilities; (d) Until such time as the Commission determines otherwise, 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"); (e) OCn Loops and OCn Dedicated Transport; (f) the Fiber Feeder portion of a Loop; (g) Line Sharing; (h) an EEL that does not meet the service eligibility criteria established in the TRO; (i) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with NSC's use of Verizon Mass Market Switching; (j) Signaling that is not provisioned in connection with NSC's use of Verizon's Mass Market Switching; (k) FTTH Loops (lit or unlit) in a new build environment used to provide service to Mass Market Customers; (l) FTTH Loops (lit or unlit) in an overbuild environment used to provide service to Mass Market Customers, subject to the limited exceptions set forth herein; or (m) any facility or class of facilities as to which the Florida Public Service Commission or the FCC, on or after the effective date of this Amendment, makes a general finding of nonimpairment.

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Deleted: (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;

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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.

2.18 Qualifying Service.

A telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of the incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone services, data service, and access services, such as digital subscriber line services and high-capacity circuits, and CMRS.

2.19 Route.

A transmission path between one of Verizon's wire centers or switches and another of Verizon's wire centers or switches within a LATA. 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.

2.20 Signaling.

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

2.21 Sub-Loop for Multiunit Premises Access.

Any portion of a 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. [n. 1041].

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2.22 Sub-Loop Distribution Facility.

The copper portion of a Loop in Verizon's network that is between the demarcation point, at an end user customer premises and any technically feasible point of access in Verizon's outside plant, including, but not limited to, Verizon's feeder/distribution interface, a pole or pedestal, the serving area interface, the minimum point of entry or any remote terminal.

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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.

3.1.1 Hi-Cap Loops. Notwithstanding any other provision of the Agreement or a Verizon tariff or SGAT,

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3.1.1.1 DS1 Loops. Upon NSC's written request, Verizon shall provide NSC 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, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 or the FCC's or Commission's orders. DS1 Loops used to provide service to Enterprise Customers shall be available, without limitation, regardless of the technology used to provide such loops, e.g., two-wire and four-wire HDSL or SHDSL, fiber optics or radio, used by Verizon to provision such loops. The unbundling obligation associated with DS1 Loops used to provide service to Enterprise Customers is in no way limited by sections 3.1.2 or 3.1.3 below. [n. 956]

3.1.1.2 DS3 Loops. Upon NSC's written request, Verizon shall provide NSC 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, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 or the FCC's or Commission's orders. DS3 Loops used to serve Enterprise Customers shall be available, without limitation, regardless of the technology used to provide such loops, e.g., two-wire and four-wire HDSL or SHDSL, fiber optics or radio, used by Verizon to provision such loops. The unbundling obligation associated with DS3 Loops used to provide service to Enterprise Customers is in no way limited by sections 3.1.2 or 3.1.3 below. [n. 956]

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3.1.1.2.1 Cap on DS3 Loops. NSC 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 NSC at said end user location above the two (2) Loop cap shall be considered a Nonconforming Facility.

3.1.1.3 Nonimpairment. Without limiting any other rights Verizon may have under the Amended Agreement or under Applicable Law, subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing NSC with nondiscriminatory access to DS-1 Loops or DS3 Loops under the Amended Agreement at a specific end user location if the Florida Public Service Commission or the FCC finds that NSC or CLECs generally are not impaired without access to such DS1 Loops or DS3 Loops at such end user location. Any DS1 Loops or DS3 Loops previously made available to NSC at the subject end user location shall be considered Nonconforming Facilities immediately on the effective date of the nonimpairment finding and thereafter.

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3.1.2 FTTH Loops.

3.1.2.1 New Builds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, but subject to 3.1.1.1 and 3.1.1.2, NSC 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 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, but subject to 3.1.1.1 and 3.1.1.2 NSC 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; 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, Verizon shall provide NSC with nondiscriminatory access on an unbundled basis to a transmission path from Verizon's serving wire center to the demarcation point at the end user's customer premises, Verizon shall comply with all applicable FCC and Commission rules before retiring copper Loops.

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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, but subject to section 3.1.1.1 and 3.1.1.2, NSC shall not be entitled to obtain access to the Packet Switching Capability of any Hybrid Loop on an unbundled basis.

3.1.3.2 Broadband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, but subject to section 3.1.1.1 and 3.1.1.2 when NSC seeks access to a Hybrid Loop for the provision of "broadband services," as such term is defined by the FCC, to Mass Market Customers, 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, Verizon shall provide NSC with 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.

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3.1.3.3 Narrowband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, when NSC seeks access to a Hybrid Loop for the provision to its Mass Market 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, or the FCC's or Commission's orders, Verizon shall either (a) provide 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 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, using time division multiplexing technology.

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3.1.3.4 Feeder. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of the effective date of this amendment, NSC shall not be entitled to obtain access to the Fiber Feeder portion of a Loop on an unbundled, standalone basis.

3.1.4 IDLC Hybrid Loops.

If NSC requests, unbundling of a Loop 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 the FCC's or Commission's orders, provide NSC unbundled access to such Loops, to the end user customer served by the Hybrid Loop.

3.1.5. High Bit-Rate Enterprise Customer Loops. To the extent Verizon offers to its Enterprise Customers transmission at rates in excess of 1.54 megabytes per second (but less than the equivalent of two DS3 Loops), regardless of the technology utilized, whether packet-based and/or fiber-based, Verizon shall make such transmission facilities available to NSC to serve NSC's Enterprise Customer, between the customer premises and Verizon's central office at parity with the provisioning of such transmission by Verizon to Verizon's own customers or any Verizon affiliate. Verizon and NSC will negotiate the rates, terms and conditions of such loop facility, subject to the requirements of section 4 of the General Terms and Conditions; provided, however that such price shall be based on Total Element Long-Run Incremental Cost ("TELRIC") principles. CLEC shall be permitted to combine or commingle the loop facilities contemplated in this section 3.1.5, to the same extent as any other unbundled Local Loop.

3.2 Line Sharing [reserved]

3.2.1.1 _____

3.3 Sub-Loop.

3.3.1 Sub-Loop for Access to Multiunit Premises. As of the effective date of this Amendment, all provisions in the Agreement governing NSC 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 the effective date of the Amendment. Upon request by NSC, Verizon shall provide to NSC 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 or the FCC's or Commission's 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, or the FCC's or Commission's orders, upon request by NSC, Verizon shall provide to NSC access to a House and Riser Cable

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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 NSC. NSC may access a House and Riser Cable only between the MPOE for such cable and the demarcation point at a technically feasible access point. Such points include, but are not limited to, a pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection ("SPOI"), and the feeder/distribution interface. 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. Verizon shall provide access to subloops to access multiunit premises without requiring collocation.

3.3.1.1.1 NSC must satisfy the following conditions before ordering access to a House and Riser Cable from Verizon:

3.3.1.1.1.1 NSC 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, NSC 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 NSC'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 NSC's facilities or equipment are located in a space where Verizon plans to locate its facilities or equipment. [newsouth still reviewing; basis for these limitations unclear]

3.3.1.1.1.4 NSC shall identify its facilities as those of NSC.

3.3.1.1.2 To provide NSC 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 NSC that Verizon does not own or control or otherwise have a right to access, (c) secure space for NSC in any building, (d) secure access to any portion of a building for NSC or (e) reserve space in any building for NSC.

3.3.1.1.3 Verizon shall perform cutover of a Customer to NSC service by means of a House and Riser Cable subject

to a negotiated interval, recognizing that time is of the essence for such cutover. Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to NSC's facilities, and Verizon shall reasonably determine how to perform such installation. NSC shall coordinate with Verizon to ensure that House and Riser Cable facilities are converted to NSC in accordance with NSC's order for such services.

- 3.3.1.1.4 If proper NSC facilities are not available at the time of installation, Verizon shall bill NSC, and NSC 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 NSC's use of Verizon's House and Riser Cable. All NSC 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 NSC. NSC 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) NSC reports to Verizon a Customer trouble, (b) NSC 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 NSC 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 NSC is not available at the appointed time, giving the Customer contact such reasonable grace period as Verizon provides its own customers. If as the result of NSC 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 NSC by Verizon. If as the result of NSC 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 NSC 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, or the FCC's or the Commission's orders, upon request by NSC and provided that the conditions set forth in Subsections 3.3.1.2.1 and 3.3.1.2.2 are satisfied, Verizon shall provide a single point of interconnection that is suitable for use by multiple carriers. If the parties are unable to negotiate the rates, terms

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and conditions for the construction of a SPOI at a particular premises, 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 NSC 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 via the newly provided single point of interconnection.

3.3.2 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, or the FCC's or the Commission's order, upon site-specific request, NSC 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 to NSC 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. Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, as of the effective date of this amendment, with the exception of the foregoing 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 NSC, and any Local Switching or Tandem Switching previously made available to NSC shall be considered a Nonconforming Facility that shall be subject to the transition provisions of Section 3.8 below.

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3.4.2 Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to continue to provide NSC with nondiscriminatory access to Mass Market Switching on an unbundled basis under the Amended Agreement upon a finding by the Florida Public Service Commission or the FCC that requesting telecommunications carriers are not impaired without access to Mass Market Switching in a particular market, or where the Florida Public Service Commission has found that all impairment would be cured by implementation of a transition plan for unbundled circuit switching in a particular market.

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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 or the FCC's or Commission's orders. Specifically, notwithstanding any other provision of the Agreement or any Verizon tariff or

SGAT, and subject to the provisions of Section 3.8, 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 NSC 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 or the FCC's or Commission's orders. 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 (except for the 911 and E911 Call-Related Databases, as noted above).

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3.5 Unbundled Interoffice Facilities.

3.5.1 General Requirements. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, (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 the FCC's or the Commission's orders; and (b) Verizon shall provide Dedicated Transport and Dark Fiber Transport to NSC only if NSC obtains access to the subject facility in order to provide a "Qualifying Service" on a common carrier basis; *provided, however, that once NSC has obtained access to the Dedicated Transport or Dark Fiber Transport or provide a Qualifying Service, NSC may use those UNEs to provide any additional services, including non-qualifying services and information services.*

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3.5.2 Dedicated Transport. On or after the effective date of this Amendment, 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, or the FCC's or the Commissions' orders:

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3.5.2.1 Upon NSC's written request, Verizon shall provide NSC with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis pursuant to the Amended Agreement, Verizon will provide access to DS1 Dedicated transport and DS3 Dedicated Transport regardless of the underlying technology Verizon employs, including SONET transport.

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3.5.2.2 Cap on Dedicated Transport. NSC 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 and shall be available as special access or other tariffed service.

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3.5.2.3 Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing NSC with nondiscriminatory access to DS1 Dedicated Transport or DS3 Dedicated Transport on an unbundled basis under the Amended Agreement on a particular Route upon a finding by the Florida Public Service Commission 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 NSC on the subject Route(s) shall be considered Nonconforming Facilities immediately on the effective date of the nonimpairment finding and thereafter.

3.5.3 Dark Fiber Transport. On or after the effective date of this Amendment, 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, or the FCC's or the Commission's orders:

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3.5.3.1 Upon NSC's written request, Verizon shall provide NSC 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 NSC or any third party that is not located in a Verizon wire center, 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.

3.5.3.2 Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing NSC with nondiscriminatory access to Dark Fiber Transport on an unbundled basis under the Agreement or the Amended Agreement on a particular Route upon a finding by the Florida Public Service Commission 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 NSC on the subject Route(s) shall be considered a Nonconforming Facility as of the effective date of the nonimpairment finding.

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 ~~shall~~ commingle 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 under an Verizon UNE tariff ("Qualifying UNEs"), with wholesale services obtained from Verizon under a Verizon access tariff, services obtained through resale pursuant to section 251(c)(4), or separate non-251 agreement ("Qualifying Wholesale Services"), but only to the extent and so long as commingling 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, Verizon shall, upon request of NSC, perform the functions necessary to commingle Qualifying UNEs with Qualifying Wholesale Services. Subject to Section 3.8.3 below, the rates, terms and conditions of the applicable access tariff, resold service, 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

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applicable, will apply to the Qualifying UNEs. "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 shall not deny access to a UNE or a combination of UNEs on the ground that the UNE or UNE combination shares part of Verizon's network with access services or other non-qualifying services.

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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:

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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,

unless and until NSC: (a) certifies in writing to Verizon for each DS1 circuit or DS1 equivalent circuit that it is in compliance with each of the service eligibility criteria set forth in 47 C.F.R. § 51.318. NSC must remain in compliance with said service eligibility criteria for so long as NSC 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.

3.6.2.2 Each written certification to be provided by NSC pursuant to Section 3.6.2.1 shall state that each requested circuit is in compliance with eligibility criteria set forth in 47 C.F.R. § 51.318. At NSC's option, NSC may include in such certification letter 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

Deleted: 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.

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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. Notwithstanding section 3.6.2.7, if NSC provides the information identified in this section 3.6.2.2 for any circuit, Verizon shall have no right to audit such circuit for compliance service eligibility criteria.

- 3.6.2.3 The charges for conversions are as specified in the Pricing Attachment to this Amendment and apply for each circuit converted. [newsouth to review/no reason they should be different than existing charges?]
- 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 will be performed manually pursuant to Verizon's conversion guidelines. The effective bill date for conversions is the date of 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. [newsouth to review] Verizon shall ensure that the conversion of qualifying circuits from special access to UNEs, or from UNEs to special access, shall be accomplished in a manner that does not disrupt the customer's service or perception of service quality.
- 3.6.2.6 All requests for conversions will be handled as a project and will be excluded from all ordering and provisioning metrics.
- 3.6.2.7 Once per calendar year, and based on a specific and demonstrable concern that NSC is not in compliance with the service eligibility criteria, Verizon may obtain and pay for an independent auditor to audit NSC'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. Such audits will require compliance testing designed by the independent auditor, including an examination of a sample selected in accordance with the independent auditor's judgment. To the extent the independent auditor's report concludes that NSC materially failed to comply with the service eligibility criteria, then NSC 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. For

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Deleted: for any DS1 or DS1 equivalent circuit,

purposes of both true up charges and going-forward charges. NSC may adopt any applicable Verizon term and volume plan. Should twenty percent (20%) of more of audited circuits fail to comply with service eligibility criteria, NSC will reimburse Verizon for the entire cost of the audit within thirty (30) days after receiving a statement of such costs from Verizon. NSC shall have the right to contest the audit findings with respect to any circuit the audit purports to find in noncompliance. NSC shall provide written notice to Verizon identifying disputed circuits. The parties shall each designate a senior representative to attempt to negotiate a resolution to such dispute. If the representatives are unable to settle such dispute within 30 days of their designation, either party may file a complaint in the appropriate state commission or the FCC. NSC shall not be required to convert any disputed circuit unless and until such dispute has been resolved against NSC, in which case NSC shall true up charges as of the date of the conclusion of the audit. Should the independent auditor confirm NSC's material compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit, then NSC shall provide to the independent auditor for its verification a statement of NSC's out-of-pocket costs of complying with any requests of the independent auditor, and Verizon shall then reimburse NSC for its out-of-pocket costs within thirty (30) days of the auditor's verification of the same. NSC shall maintain records adequate to support its compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit, provided, however that NSC shall only be required to maintain such records as it maintains in the ordinary course of business.

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3.6.2.8 Verizon shall convert stand-alone circuits purchased as wholesale circuits to individual UNEs. NSC shall not be required to certify compliance with the eligibility criteria in section 3.6.2.1 for such conversions. The bill effective date for the conversion of stand-alone UNEs shall be the date of receipt a NSC's request for such conversion.

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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, Verizon shall make such routine network modifications, as are necessary to permit access by NSC to the Loop, Dedicated Transport, and Dark Fiber Transport facilities available under the Amended Agreement, including DS1 Loops and DS1 Dedicated Transport, and DS3 Loops and DS3 Dedicated Transport. Verizon will not perform trenching, pull cable, construct wholly new Loops or Transport or install new aerial, buried, or underground cable to provision an order of NSC. 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, and adding a drop. Routine network modifications applicable to Dark Fiber Transport may include, but are not limited to, splicing

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of in-place dark fiber at existing splice points; accessing manholes; deploying bucket trucks to reach aerial cable; and routine activities, if any, needed to enable NSC to light a Dark Fiber Transport facility that it has obtained from Verizon under the Amended Agreement.

Deleted: 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. To the extent that performing routine modifications to existing loop facilities affects loop provisioning intervals, Verizon's performance in connection with the provisioning intervals 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 for provisioning intervals, if any, contained in the Amended Agreement or elsewhere, except to the extent that the relevant state Commission adopts, modifies or clarifies performance intervals to account for such network modifications.

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3.7.3 Cost Recovery. Verizon may recover reasonable and attributable forward looking costs of routine network modifications to the extent that Verizon demonstrates that such costs are not included in the recurring rates for the relevant Network Elements. Until such time as the relevant State Commission determines the appropriate cost-recovery mechanism, including appropriate non-recurring charges, if any, Verizon shall not levy any charges for routine network modifications. Nothing in this section 3.7.3 shall preclude Verizon from assessing charges set forth in the existing standard pricing schedule.

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3.8 Transitional Provisions for Nonconforming Facilities.

3.8.1 Nonconforming Facilities – Switching. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 or the FCC's or Commission's orders, Verizon and NSC will abide by the following transitional procedures with respect to Mass Market Switching and Enterprise Switching:

3.8.1.1 Mass Market Switching. Upon a finding by the Florida Public Service Commission 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, except where applicable, on a transitional basis as set forth in section 51.319(d)(2)(iii)(C). Counting from the date of the Florida Public Service Commission's order finding no impairment in a particular market or markets, NSC 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 NSC's own or a third party's facilities, in accordance with the following schedule: (a) during month 13, NSC must submit orders to migrate one-third of its embedded base of end user customers; (b) during month 20, NSC must submit orders to migrate one-half of the remaining embedded base of end user customers; and (c) during month 27, NSC 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 Florida Public Service Commission shall not be included in the embedded base.

3.8.1.2 Enterprise Switching. Verizon will provide NSC with at least thirty (30) days advance written notice of the date on which Verizon will cease provisioning Enterprise Switching to NSC. Verizon agrees to continue provisioning Enterprise Switching to NSC 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, NSC 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 NSC's own or a third party's facilities.

3.8.2 Other Nonconforming Facilities. With respect to any Nonconforming Facility not addressed in Section 3.8.1 above, Verizon will notify NSC in writing as to any particular unbundled facility previously made available to NSC that is or becomes a Nonconforming Facility, as defined herein. ~~During a transitional period of three years, from the date of such notice, Verizon agrees to continue providing the Nonconforming Facilities where such facilities were in use, or were ordered, as of the date of the notice. For those Network Elements that the FCC identified in the TRO as no longer subject to unbundling pursuant to section 251(c)(3), such notice period shall begin on the effective date of this Amendment. At the end of that three-year period, unless NSC 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 tariff service, if available, or if no analogous tariff service is available, to such other service arrangement as NSC may have separately secured from Verizon (e.g., a separate agreement at just and reasonable rates or resale); provided, however, that where there is no analogous tariff service, if NSC has not separately secured from Verizon, subject to Section 3.8.3 below, a substitute service within such three year period, then Verizon may disconnect the Nonconforming Facilities. Where the Nonconforming Facilities are converted to an analogous tariff service, Verizon shall, subject to Section 3.8.3 below, provide such tariff services at the month-to-month rates, or, at the election of NSC, an applicable term and volume plan, including incorporating the Nonconforming Facilities into an existing term and volume plan, and in accordance with the terms and conditions, of Verizon's applicable tariff, with the effective bill date being the first day following the three year notice period. Unless otherwise provided by the the FCC or the relevant state Commission, NSC shall pay all applicable termination charges, if any, for any Nonconforming Facilities that NSC 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"), ~~and such Substitute Service is not available in any Verizon tariff or as a resold service, any negotiations regarding the rates, terms or conditions of such Substitute~~

Deleted: The Parties acknowledge that such notice was issued prior to the execution of this Amendment with respect to certain Nonconforming Facilities.

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Deleted: ; 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 NSC, 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.

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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. Notwithstanding the forgoing, the parties agree to conduct such negotiations in good faith. If, despite the parties' good faith efforts, the parties fail to negotiate the terms, rates and conditions of a Substitute Service, either party may invoke the dispute resolution provisions of the agreement. Pending the outcome of the dispute resolution process, Verizon shall not, except upon the written request of NSC, disconnect the Nonconforming Facility, and shall continue to charge NSC the existing UNE rate.

3.8.4 Conversion Process. Verizon shall not convert a UNE to a Substitute Service unless and until the parties have agreed upon a conversion process that is seamless and minimizes customer disruption. ▲

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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 NSC in writing of such Charge in accordance with, and subject to, the notices provisions of the Amended Agreement and thereafter shall bill NSC, and NSC shall pay to Verizon, for Services provided pursuant to this Amendment on the Amendment Effective Date and thereafter in accordance with such Charge; provided, however that should NSC dispute the charge, and withhold all or a portion of the payment pending the resolution of such dispute, which resolution shall, if necessary, be resolved pursuant to the dispute resolution provisions of the Agreement. Subject to NSC's dispute such charge, any Charges set out in a notice provided by Verizon to NSC 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 NSC and thereafter.

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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 Florida Public Service Commission or the FCC (including, but not limited to, in a tariff that has been filed with the Florida Public Service Commission 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*

Florida		
<u>Description - UNE DS-0 Network Modifications</u>	Non-Recurring Charge	Monthly Recurring Charge
ENGINEERING QUERY ¹	\$169.64	\$0.00
ENGINEERING WORK ORDER ²	\$650.31	\$0.00
EXPEDITE ENGINEERING QUERY ³	\$242.46	\$0.00
EXPEDITE ENGINEERING WORK ORDER ³	\$1,029.03	\$0.00
REMOVAL OF LOAD COILS - Initial - Greater than 12K ft.	\$249.91	\$0.00
REMOVAL OF LOAD COILS- Subsequent - Greater than 12K ft.	\$270.78	\$0.00
REMOVAL OF BRIDGED TAPS - Initial - Greater than 12K ft.	\$318.71	\$0.00
REMOVAL OF BRIDGED TAPS- Subsequent - Greater than 12K ft.	\$34.88	\$0.00
REMOVAL OF BRIDGED TAPS & LOAD COILS - Initial - Greater than 12K ft.	\$568.62	\$0.00
REMOVAL OF BRIDGED TAPS & LOAD COILS - Subsequent - Greater than 12K ft.	\$34.88	\$0.00
LINE & STATION TRANSFER	\$147.75	\$0.00
COPPER TO DLC REARRANGEMENT	\$295.50	\$0.00
INSTALLATION OF REPEATER	\$946.93	\$0.00
INSTALLATION OF RANGE EXTENDER	\$946.93	\$0.00
CLEAR DEFECTIVE PAIR	\$225.00	\$0.00
SERVING TERMINAL INSTALLATION (Existing Facilities)	Time & Materials	\$0.00
UPGRADE EXISTING SERVING TERMINAL (Existing Facilities)	Time & Materials	\$0.00
ACTIVATE DEAD COPPER CABLE PAIR	\$147.75	\$0.00
REASSIGNMENT OF EXISTING NON-WORKING CABLE PAIR	\$75.00	\$0.00
BINDER GROUP FACILITY REARRANGEMENT	\$147.75	\$0.00
REARRANGEMENT - IDLC TO COPPER	\$147.75	\$0.00
REARRANGEMENT - IDLC TO UDLC	\$147.75	\$0.00
DISPATCH - CHANNEL UNIT INTO EXISTING COTTED/UDLC	\$62.50	\$0.00
PERFORM COPPER REARRANGEMENT	\$147.75	\$0.00
OTHER REQUIRED MODIFICATIONS	Time & Materials	\$0.00
<u>Description - UNE DS-1, DS-3 Network Modifications</u>	Non - Recurring Charge	Monthly Recurring Charge
ENGINEERING QUERY ¹	\$ 169.64	\$0.00
ENGINEERING WORK ORDER ²	\$ 650.31	\$0.00
EXPEDITE ENGINEERING QUERY ³	\$ 242.46	\$0.00
EXPEDITE ENGINEERING WORK ORDER ³	\$ 1,029.03	\$0.00
DS-1 / DS-3 NETWORK MODIFICATION ⁴	\$ 1,000.00	\$0.00
OTHER REQUIRED MODIFICATIONS	Time & Materials	\$0.00
Notes:		
¹ Engineering Query Charges apply in addition to other listed rates.		
² Engineering Work Order Charges apply in addition to other listed rates.		
³ Expedite Engineering Query Charges or Expedite Engineering Work Order Charges apply in addition to other listed rates.		

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

* DS-1 / DS-3 Network Modifications include the following: Installation of new apparatus case, multiplexer reconfiguration, installation of new multiplexer, removal/installation of required electronics, copper rearrangement (DS-1 only), removal of load coils, installation of double card, cross-connection to existing fiber facility, installation of line card, removal of bridge taps, clear defective pair (where feasible).

When routine network modifications are performed on a loop and transport that are combined, charges apply to both loop and transport.		
Other	Non-Recuring Charge	
Commingled Arrangements - per UNE circuit		\$50.00
Access To Splice Point Sub-loop Unbundling	Time & Materials	
Unbundled Fiber To The Home Loop Narrowband	TBD-NRC	TBD-MRC
Conversion Charges		
	Non-Recuring Charge	
Voice Grade/DSO 1- 24 Circuits per service order		\$99.77
Voice Grade/DSO 25+ Circuits - First Service Order (MOG) per service order		\$99.77
Voice Grade/DSO 25+ Circuits - Additional Service Order (MOG) per service order		\$4.56
Voice Grade/DSO Per Circuit Conversion Charge		\$41.64
DS1 and above 1-24 Circuits per service order		\$117.27
DS1 and above 25+ Circuits - First Service Order (MOG) per service order		\$117.27
DS1 and above 25+ Circuits - Additional Service Order (MOG) - per service order		\$4.56
DS1 and above Per Circuit Conversion Charge		\$41.64
Circuit Retag per circuit		\$20.00
Dark Fiber		
Dark Fiber Routine Network Modifications	Time and Materials	

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[NewSouth objects to these charges to the extent that they are different from or in addition to any existing, agreed upon charges].

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

3.2.1 Line Sharing.

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.

Grandfathered Line Sharing. Any existing Line Sharing arrangement over a copper Loop or Sub-Loop in place with an end user customer of NSC will be grandfathered at existing rates, provided NSC 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 NSC has not ceased providing xDSL service to that end user customer at the same location over that Loop or Sub-Loop.

TAB C

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets



Wholesale Markets
800 Hidden Ridge, HQE03D52
P.O. Box 152092
Irving, TX 75038

Phone 972-718-5988
Fax 972-719-1519

john.c.peterson@verizon.com

VIA FAX AND AIRBORNE EXPRESS

November 26, 2003

James C. Falvey
Vice President - Regulatory Affairs
Xspedius Management Co. Switched Services L.L.C.
7125 Columbia Gateway Drive Suite 200
Columbia, MD 21046
FAX: 301-361-4277

Subject: Termination of Agreement

This is to inform you that the Comprehensive Agreement between GTE Southwest Incorporated, d/b/a Verizon Southwest ("Verizon") and Xspedius Management Co. Switched Services L.L.C. in the state of Texas (the "Agreement") is being noticed for termination effective on May 26, 2004. As required, Verizon Communications is hereby providing written notice for the termination of said agreement.

In order that services between Xspedius Management Co. Switched Services L.L.C. and GTE Southwest Incorporated, d/b/a Verizon Southwest continue uninterrupted, Verizon recommends that Xspedius Management Co. Switched Services L.L.C. respond to this letter with a request to begin negotiations for a new agreement.

If you have any questions, or wish to initiate negotiations under Section 251/252, please provide a written request to Verizon at contract.management@verizon.com or fax your request to 972-718-1279 prior to December 10, 2003.

Sincerely yours,

A handwritten signature in cursive script that reads "John C. Peterson".

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

c: Scott Miles
8913

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U.S. Mail on this 13th day of April, 2004.

Lee Fordham, Esq.*
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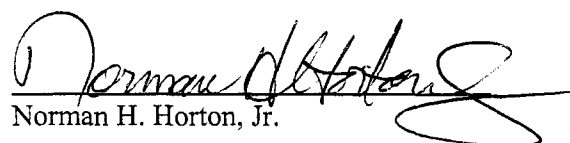
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