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April 26, 2004

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040156-TP
Petition for Arbitration of Amendment to Interconnection Agreements With Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Opposition to Motions to Dismiss for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

Richard A Chapkis

Richard A. Chapkis

RAC:tas

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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 26, 2004

VERIZON FLORIDA INC.'S
OPPOSITION TO MOTIONS TO DISMISS

Pursuant to Commission Rule 28-106.204(4), Verizon Florida Inc. (Verizon) submits this opposition to the motions to dismiss filed by:

1. ACN Communication Services, Inc.; Adelphia Business Solutions Operations, Inc. d/b/a TelCove; Allegiance Telecom, Inc.; DSLnet Communications, LLC; Florida Digital Network, Inc.; PAETEC Communications, Inc.; and ICG Telecom Group, Inc. (collectively, the "Competitive Carrier Coalition" or "CCC");

2. AT&T Communications of the Southern States, LLC and TCG South Florida (collectively, "AT&T");

3. 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 (collectively, the "Competitive Carriers Group" or "CCG");

4. Eagle Telecommunications Inc. and Myatel Corporation (collectively, "Eagle");

5. Level 3 Communications, LLC ("Level 3");

6. Sprint Communications Company Limited Partnership ("Sprint");[1]

7. Time Warner Telecom of Florida, L.P. ("Time Warner"); and

8. Z-Tel Communications Inc. ("Z-Tel").

I. INTRODUCTION

There is no valid reason to delay or dismiss any aspect of this proceeding.

First, certain movants argue that Verizon's petition is premature because the Bell Atlantic/GTE merger conditions require Verizon to provide UNEs until the *Triennial Review Order* ("*TRO*") is final and non-appealable.[2] But the merger conditions were effective for only three years, which means they terminated no later than July 2003. Moreover, by their express terms, the specific condition on which the CCC relies applies only to two earlier FCC orders, not to the *TRO*.

Second, certain movants argue that the § 252 timetable does not apply here, either because it does not apply to interconnection agreements that have change-of-law provisions, or because Verizon as an incumbent was not allowed to initiate negotiations, or because it should not apply at all. All these arguments fail. The FCC clearly held that the § 252 timetable should apply to negotiations and arbitrations, even where the underlying agreement has a change-of-law provision. It also clearly held that incumbents are allowed to begin this process.

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[1] This opposition responds to Sprint's second motion to dismiss filed on April 13, 2004. On March 29, 2004, Verizon filed a separate opposition to Sprint's first motion to dismiss filed on March 16, 2004.

[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part and remanded, United States Telecomm. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

Third, certain movants argue that Verizon failed to start negotiations with its October 2, 2003 letter to all competitors. The FCC, however, deemed October 2, 2003 as the date on which negotiations commenced regardless of whether either party actually sent a request for negotiations. In any event, Verizon's October 2 letter could not have been clearer that Verizon intended to amend its interconnection agreements to conform to the *Triennial Review Order*. The FCC itself expected no less, and these competitors are simply trying to evade the requirements of federal law.

Fourth, certain movants argue that Verizon failed to comply with the procedural and formal requirements under § 252(b). However, Verizon filed its petition within the window established in the *TRO*, which is derived from the timetable established for interconnection agreement negotiation and arbitration under § 252(b). Moreover, Verizon's petition conforms to all applicable formal requirements of § 252(b). In any event, the Commission should reject an invitation to apply the provisions of § 252(b) in an overly rigid manner, in light of the unique circumstances of this case.

Fifth, Z-Tel argues that Verizon should not be permitted to update its draft amendment to respond to post-petition events, such as the recent D.C. Circuit decision affirming in part and vacating in part the *TRO*. Section 252, however, requires state commissions to resolve open issues in an arbitration under federal law *at the time of the decision*, not at the time of the filing of the petition. In any event, it is quite common for parties to change their proposed language during the course of an arbitration, whether to respond to the other party's arguments or intervening changes in law.

Sixth, certain movants argue that the law is too unsettled for the Commission to proceed with arbitration. But the *TRO* was upheld in numerous respects, particularly

insofar as it reduced prior federal unbundling requirements. Moreover, Verizon's draft TRO Amendment contains provisions that address the possibility of future legal developments with respect to the *TRO*.

Seventh, CCC argues that the Commission should dismiss Verizon's petition to the extent it concerns routine network modifications because this issue is not a product of a change of law. But, the FCC plainly stated that its network modification rule in the TRO was newly adopted, and never asserted that its prior rules required incumbents to perform routine network modifications.

Eighth, certain movants support going forward with this arbitration, but argue that the Commission should dismiss or strike Verizon's Update to its Petition to recognize the D.C. Circuit's *USTA II* decision.[3] These movants fail to acknowledge, however, that Verizon's updated Amendment will accommodate potential legal developments, including the possibilities that *USTA II* will be stayed or reversed. In addition, they fail to acknowledge that this proceeding is intended to address the unbundling obligations of the *TRO*, not some other order or ruling. Verizon's update does not change that fact, so any argument about the contractual change-of-law process relative to *USTA II* is inapposite.

Ninth, several parties assert that this Commission should, in essence, invent a new procedural schedule for resolving this proceeding. These arguments are

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[3] MCImetro Access Transmission Services, LLC, MCI WOLRDCOM Communications, Inc., Metropolitan Fiber Systems of Florida, Inc., and Intermedia Communications, Inc. (collectively, MCI) did not file a motion to dismiss. However, in its response to Verizon's arbitration petition, MCI also opposes Verizon's March 19, 2004 update on the ground that *USTA II* has not effected a "change of law" within the meaning of the parties' interconnection agreements. *See* MCI's Response at 2-3. Like AT&T's arguments, this argument should be rejected for the reasons set forth herein.

unfounded, and these parties present no authority that would allow the Commission to override the schedule the FCC required for resolution of TRO amendment arbitrations.

Tenth, CCG argues that Verizon has failed to comply with § 271 of the 1996 Act. CCG is wrong, and this proceeding is not the place to resolve § 271 claims, in any event.

Eleventh, several parties argue that Verizon failed to negotiate in good faith over its draft amendment to the interconnection agreements. They are wrong. Verizon complied with its obligations under federal law, and most CLECs either did not respond to Verizon's amendment offer or delayed in responding until shortly prior to or after the date on which Verizon filed its arbitration petition in accordance with the TRO-mandated arbitration window. In any event, no rational purpose would be served by dismissal.

For these reasons, and as set forth in greater detail below, the motions to dismiss should be denied.[4]

II. THE BELL ATLANTIC/GTE MERGER DOES NOT PREVENT IMPLEMENTATION OF THE *TRIENNIAL REVIEW ORDER*

Certain movants argue that Verizon's Petition should be dismissed because "Verizon has an independent legal obligation pursuant to the Bell Atlantic/GTE Merger

[4] US LEC of Florida Inc. (US LEC) did not file a motion to dismiss. However, in its response to Verizon's arbitration petition, US LEC requests that the Commission "conduct an individual arbitration to resolve the issues in dispute between Verizon and US LEC." US LEC Response at 2. The Commission should deny US LEC's request for an individual arbitration, for which US LEC offers no justification. Because many of US LEC's issues are common to other CLECs, it would be a waste of the Commission and Verizon's resources to litigate the same issues multiple times with individual CLECs. In addition, US LEC's allegation that Verizon "walked away from the [negotiations] table" before Verizon's Petition was filed is incorrect, as demonstrated by US LEC's own chronology, as well as the attached affidavit of Ms. Kim Wiklund, Verizon's lead negotiator with US LEC. US LEC admits that the parties are still engaged in negotiations. US LEC Response at 4–5.

Conditions to offer UNEs." CCC Motion at 2 (quoting the *BA/GTE Merger Order*);[5] *see also* Sprint Motion at 2–3. These movants are wrong. Under the plain terms of the *BA/GTE Merger Order*, Verizon's obligation to provide UNEs in accordance with the terms of the *UNE Remand Order*[6] and *Line Sharing Order*[7] was limited in two ways. First, that obligation expired as soon as there was "a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by [Verizon] in the relevant geographic area." *BA/GTE Merger Order*, 15 FCC Rcd at 14316, App. D ¶ 39. Second, all of the merger conditions expired "36 months after the Merger Closing Date" except "where other termination dates are *specifically established* herein." *Id.*, at 14331, App. D ¶ 64 (emphasis added). Any obligations to provide UNEs in accordance with the terms of the *UNE Remand Order* and *Line Sharing Order* have expired under both of these provisions.

A. The Merger Conditions Have Expired Because the D.C. Circuit's Decision in *USTA I* Is Final and Non-Appealable

The movants claim that the merger conditions have not expired because, in their view, the *TRO* is a "subsequent proceeding" that is not yet "final and non-appealable,"

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[5] *See* Memorandum Opinion and Order, *GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032 (2000) ("*BA/GTE Merger Order*").

[6] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), *petitions for review granted, United States Telecomm. Ass'n v. FCC*, 290 F. 3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

[7] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"), *vacated and remanded, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), cert. denied, 123 S. Ct. 1571 (2003).

so Verizon must continue indefinitely to provide CLECs with access to the UNEs required in the vacated *UNE Remand Order* and *Line Sharing Order*. In essence, the movants argue that Verizon agreed to provide UNEs in accordance with the requirements of the *UNE Remand Order* and the *Line Sharing Order* not only until the requirements of those orders were set aside by a final, non-appealable judicial order, but also until the conclusion of any appeals of any UNE-related proceedings that might occur *after* those orders were vacated.

That argument ignores the clear terms of the *Bell Atlantic/GTE Merger Order* and the FCC's holding in the *TRO*. Paragraph 316 of the merger order states that the obligation to provide UNEs under the *UNE Remand* and *Line Sharing Orders* lasts only "until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNE or combination of UNEs in all or a portion of its operating territory." *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14180, ¶ 316. Similarly, the merger condition itself states clearly that "[t]he provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable [FCC] orders in the UNE Remand and Line Sharing proceedings, respectively." *Id.* at 14316, App. D, ¶ 39. Both the *UNE Remand Order* and *Line Sharing Order* were vacated by the D.C. Circuit in the first *USTA* decision: *United States Telecomm. Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"), *cert. denied*, 538 U.S. 940 (2003). Because *USTA I* took effect on February 20, 2003 and *certiorari* was denied on March 24, 2003, that decision constitutes a final and non-appealable judicial decision that the prior UNE rules had no force and effect. At that point, as the FCC itself has held, "the legal obligation [to

provide access to UNEs and UNE combinations] upon which . . . existing interconnection agreements are based . . . no longer exist[ed]." *TRO*, 18 FCC Rcd at 17406, ¶ 705. That is, when the Supreme Court denied certiorari in *USTA I*, there was a "final and non-appealable judicial decision that determine[d] that [Verizon] [was] not required to provide" UNEs in accordance with the terms of the *UNE Remand Order* or *Line Sharing Order*.

This is precisely what the FCC's Common Carrier Bureau has already ruled in analogous circumstances. It held that, with respect to the same condition on which the movants rely, "[t]he *Merger Conditions* require Verizon's incumbent local exchange carriers . . . to comply with certain [FCC] rules 'until the date of any final and non-appealable judicial decision' concluding the litigation concerning those rules by invalidating them." Letter Clarification, *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 18327, 18328 (2000) (footnote omitted). Thus, if the Supreme Court were to vacate the FCC's TELRIC rules, the Bell Atlantic/GTE merger conditions "would not independently impose an obligation to follow any finally invalidated pricing rules." *Id.* Likewise, here, the *UNE Remand Order* and the *Line Sharing Order* have been "finally invalidated," and the *Bell Atlantic/GTE Merger Order* imposes no independent obligation to follow those rules.[8]

[8] Far from over-riding the clear limitation on Verizon's obligations, the reference to "subsequent proceedings" in paragraph 316 provides an *additional limitation* on the potential length of Verizon's obligation. Even if the D.C. Circuit had never vacated the *UNE Remand Order* and *Line Sharing Order*, the Merger Conditions make clear that where a subsequent FCC order on any subject within the scope of paragraph 39 became final, that too would put an end to the corresponding obligation under the Merger condition. The issue is academic, however, because *USTA I* was a final, non-appealable decision that put an end to any obligation under this provision.

Notably, in accordance with the terms of the *Bell Atlantic/GTE Merger Order*, an independent auditor has verified in its report to the Commission that the obligations imposed under paragraph 39 of the merger conditions expired on March 24, 2003.[9] One would think that if the movants really believed that their argument is valid, they would have disputed the auditor's determination before the FCC. Yet no CLEC did so.

B. The Merger Conditions Have Expired Pursuant to the Sunset Provision

The merger condition on which the movants rely — like virtually *all* of the conditions in the *Bell Atlantic/GTE Merger Order* — expired of its own force in July 2003, 36 months after the Bell Atlantic-GTE merger closed. The merger conditions contain a sunset clause, which provides that, with limited exceptions not relevant here,[10] "*all* Conditions set out in th[e] [Order] . . . *shall cease to be effective and shall no longer bind Bell Atlantic/GTE in any respect* 36 months after the Merger Closing Date." *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14331, ¶ 64 (emphases added). Because the merger closed in July 2000, virtually all of the conditions, including the one on which

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[9] *See* Letter from Deloitte and Touche LLP to Marlene H. Dortch, FCC, CC Docket 98-184 (FCC filed Oct. 17, 2003); see also *BA/GTE Merger Order*, 15 FCC Rcd at 14328, ¶¶ 56(d) ("The independent auditor may verify [Verizon's] compliance with these Conditions through contacts with the [FCC], state commissions, or [CLECs]"); *id.*, ¶ 56(e) ("The independent auditor's report shall be made publicly available.").

[10] The movants contend that the sunset provision does not apply because of the exception for maintaining conditions "where other termination dates are *specifically established*" by the Merger Order. *BA/GTE Merger Order*, App. D, 15 FCC Rcd at 14331, ¶ 64 (emphasis added). But that exception does not apply here. Paragraph 39 does not establish a "specific" termination date. Instead, that paragraph refers to events that could (and did) bring Verizon's obligations to an end before the expiration of the 36-month period. As the arbitrator in the Rhode Island *TRO*-implementation proceeding recently held, the "specific date" exception to the sunset provision does not apply because "a specific future event is not a specific date." *See In re Petition of Verizon-Rhode Island for Arbitration of an Amendment to Interconnection Agreements*, Procedural Arbitration Decision, RI PUC Docket No. 3588 at 19 (Apr. 9, 2004) (Frias, Arbitrator) ("*Rhode Island Arbitration Order*").

the movants rely, ceased to be effective no later than July 2003. The Commission should therefore conclude, like an arbitrator for the Rhode Island Public Utilities Commission, that "the sun has set on [Verizon's] obligation to provide UNEs under the Bell Atlantic/GTE Merger Order." *Rhode Island Arbitration Order* at 19. Indeed, the arbitrator there found that, even if the merger condition at issue had not sunset, it was implicitly repealed by paragraph 705 of the *TRO*, which preempted interpretations of change-of-law provisions that might delay amendment of agreements until all appeals of the *TRO* were final and non-appealable.[11]

C. Movants' Argument Is Illogical

The argument advanced by the movants is illogical. They insist that even in the face of a judicial order squarely holding that a UNE obligation is unlawful, the Merger Conditions would require Verizon – and no one else – to continue to provide that UNE indefinitely, so long as the FCC continued to hold proceedings with respect to any issue addressed in the *UNE Remand Order* and *Line Sharing Order*. Moreover, they insist that this is true even in cases where the FCC itself has repudiated a particular obligation as harmful to consumers, so long as any proceeding or appeal arising from the FCC's efforts to adopt lawful unbundling rules remains pending. It simply cannot be correct that the Merger Conditions were intended to preserve anti-competitive provisions in earlier FCC orders that were vacated by the courts and subsequently repudiated by the FCC.

Indeed, the pro-consumer benefits of removing certain unbundling obligations are precisely why the FCC made clear that the provisions in the *TRO* must be implemented

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[11] *Rhode Island Arbitration Order* at 13.

now. *See TRO*, 18 FCC Rcd at 17406, ¶ 705 (stating that it would be "unreasonable and contrary to public policy to preserve our prior rules for months or even years pending any reconsideration or appeal of this Order"). The FCC emphasized that *any* delay in implementing the *TRO* would "have an adverse impact on investment and sustainable competition in the telecommunications industry." *Id.* at 17405, ¶ 703. There is no basis for perpetuating a set of UNE obligations that were struck down in a final and non-appealable decision nearly two years ago (*USTA I*).

III. THE § 252 TIMETABLE APPLIES

In Part VIII.D of the *Triennial Review Order*, the FCC established that the timetable set forth in 47 U.S.C. § 252(b) – which governs the arbitration of new interconnection agreements under the Act – also applies to amending interconnection agreements with respect to any of the *TRO*'s unbundling requirements and limitations that are not self-effectuating. Thus, the FCC stated that "incumbent and competitive LECs [should] use section 252(b) as a default timetable for modification of interconnection agreements that are silent concerning change of law and/or transition timing." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703.[12] Contrary to the parties that insist that § 252 timetable does not apply to agreements with a change-of-law provision, *see* Z-Tel Motion at 6–8, Eagle Motion at 11–13, the FCC made clear that the timing set forth in § 252(b) applies "even in instances where a change of law provision exists." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 704. As a result, the FCC

[12] As the FCC stated, "under the section 252(b) timetable, where a negotiated agreement cannot be reached, parties would submit their requests for state arbitration as soon as 135 days after the effective date of this Order but not longer than 160 days after this Order becomes effective." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703. The *TRO* became effective on October 2, 2003; Verizon filed its petition within the 135-160 day window on February 20, 2004.

noted that, in all such cases, "a state commission should be able to resolve a dispute over contract language at least within the nine-month timeframe for new contract arbitrations." *Id.* at 17406, ¶ 704.

Although the FCC adopted the section 252(b) timetable for the amendment process, it did not say that all of the procedural requirements that govern the arbitration of *new* interconnection agreements would apply to proceedings to amend *existing* interconnection agreements. And although parties argue that only a competitor can start an arbitration or negotiations, *see* Z-Tel Motion at 6, Eagle Motion at 9–11, the FCC made clear that the Act's timeframe for negotiation and arbitration "would commence immediately" upon the request for a contract change "by either party." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 704. As the FCC explicitly said, "Although section 252(a)(1) and section 252(b)(1) refer to requests that are made *to* incumbent LECs, we find that in the interconnection amendment context, either the incumbent or the competitive LEC may make such a request, consistent with the parties' duty to negotiate in good faith pursuant to section 251(c)(1)." *Id.* at 17405, ¶ 703 n.2085. No movant cites any authority that would allow this Commission to override the FCC's decision on this point.

This makes sense because the FCC *de-listed* several UNEs in the *TRO* in the hope of spurring facilities-based investment,[13] meaning that CLECs using these UNEs might lack an incentive to negotiate promptly in cases where the de-listing is not self-effectuating under an interconnection agreement. If, in such cases, incumbent LECs

[13] *See, e.g.*, *Triennial Review Order*, 18 FCC Rcd at 17132-33, ¶ 255 (removing the obligation to unbundle the high-frequency portion of the copper loop for competitors desiring to provide broadband services over incumbent LECs' facilities).

were forced to wait for CLEC requests to negotiate – which may never come – amendments to reflect the de-listings pursuant to the *TRO* might be delayed for months or even years under any agreements with respect to which such de-listings are not self-effectuating. That result, as the FCC found, would "have an adverse impact on investment and sustainable competition in the telecommunications industry." *Id.* at ¶ 703.

The process established by the FCC is binding federal law. Because Verizon has complied with the FCC-mandated process, this Commission has the responsibility, under the Act and the *TRO*, to resolve disputed issues presented by Verizon's petition in accordance with that timeline. *See Triennial Review Order*, 18 FCC Rcd at 17405-06, ¶¶ 703-704. Eagle asserts that the FCC's directions to use the § 252 timetable can be ignored because the FCC's statements are "not only pure dicta, they are ineffective." Eagle Motion at 12.

Contrary to Eagle's contention, these FCC statements are not just gratuitous remarks, but clear and specific directions for carriers to follow to amend their interconnection agreements. The FCC did not attempt to amend the Act; rather, it simply opted to use the section 252(b) timetable as an off-the-shelf guide rather than devising a *TRO*-implementation scheme from scratch. Eagle has cited no authority for the proposition that this scheme for implementing the *TRO* is unlawful. The Act is silent as to the procedures for arbitrating amendments to existing interconnection agreements, and the FCC's interpretation of the Act is therefore entitled to deference. *See Chevron U.S.A., Inc. v. Natural Res. Defense Council*, 467 U.S. 837, 843 (1984). Moreover, substantive challenges to the lawfulness of FCC orders are foreclosed

outside of the context of direct appeals pursuant to the Hobbs Act. *See* 28 U.S.C. §§ 2342, 2344; *ICC v. Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 285-86 (1987) (stating that a claim that the ICC's order was unlawful "should have been sought many months earlier, by an appeal from the original order."); *U.S. West Comm. v. MFS Intelent, Inc.*, 193 F.3d 1112, 1120 (9th Cir. 1999) ("The FCC order is not subject to collateral attack in this proceeding. The Hobbs Act grants exclusive jurisdiction to courts of appeals to determine the validity of all final orders of the FCC. An aggrieved party may invoke this jurisdiction only by filing a petition for review of the FCC's final order in a court of appeals naming the United States as a party"). Thus, even if Eagle could somehow overcome *Chevron* deference, it is too late in the day to challenge the lawfulness of the *Triennial Review Order*.

IV. THE FCC'S AMENDMENT PROCESS APPLIES TO CONTRACTS WITH OR WITHOUT CHANGE-OF-LAW PROVISIONS

Certain parties contend that Verizon's petition should be dismissed because, according to these parties, it failed to follow contractual change-of-law provisions. *See, e.g.*, Eagle Motion at 9–11; CCG Motion at 9 (complaining that Verizon failed to "consider the change of law provisions in existing agreements").

According to Z-Tel, whose motion is most detailed on this point, the change-of-law provision in its Interconnection Agreement lays out the following three-step process: (1) Upon the issuance of a "regulatory . . . order" that materially affects any material provision of this Agreement," the parties shall "promptly renegotiate" the terms of the Agreement; (2) the renegotiation shall commence when one party gives notice to the other party "in writing;" and (3) if the parties are "unable to negotiate" an amendment within 45 days of the written notice, "either party may pursue any remedies available to

it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the [state] Commission, the FCC, or a court of competent jurisdiction." Z-Tel Motion to Dismiss at 2–3 (quoting Z-Tel/Verizon Interconnection Agreement § 4.6). Z-Tel argues that Verizon failed to follow the provisions of the Interconnection Agreement, so that Verizon did not make a valid request to renegotiate the Interconnection Agreement. Z-Tel further alleges that, even if the negotiation process had commenced, the sole remedy available to Verizon to compel Z-Tel to respond and negotiate was to commence a dispute resolution proceeding. *Id.* at 2–5. Each of these contentions is wrong.

First, Z-Tel claims that due to *USTA II*, there was never any change in law at all. Z-Tel Motion at 3–4. But as discussed below, *USTA II* upheld almost all aspects of the *Triennial Review Order* that cut back on unbundling requirements. Besides, it is black-letter law that a regulation is effective unless and until it is stayed or vacated, and nothing in the Interconnection Agreement prohibits a party from implementing a regulatory order until that order has been upheld on appeal. Even if the Interconnection Agreement had any such provision, the FCC preempted all such provisions of interconnection agreements. See *Triennial Review Order*, 18 FCC Rcd at 17406, ¶ 705 (holding that any change-of-law provision relying on "final and unappealable [judicial] orders" should be deemed satisfied when the original *USTA* decision was final or the *TRO* took effect) (alteration in original). As the Rhode Island Commission found, arguments for dismissal for failure to follow change-of-law provisions are "not

persuasive," because "the FCC's TRO indicated that an ICA arbitration is appropriate 'even in instances where a change of law provision exists.'"[14]

Second, no CLEC can reasonably deny that it was unaware of Verizon's intent to enter into negotiations for amendments to the Interconnection Agreement, and that such negotiations commenced on October 2, 2003. Verizon provided written notice of the *TRO* and the commencement of negotiations to amend the Interconnection Agreement, when Verizon delivered its October 2, 2003 notice entitled "NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT" (the "October 2 Notice"). Once Verizon gave all parties notice that negotiations had commenced, these parties had the obligation to respond to Verizon's proposed amendments.[15] Z-Tel admits that it did not do so.

Certain movants claim not to have understood that the October 2 Notice was an invitation to engage in negotiations with Verizon to amend the Interconnection Agreement. *See* Z-Tel Motion to Dismiss at 2–5. Instead, these parties attack the October 2 Notice, mischaracterizing it in numerous ways. But the October 2 Notice could not have been clearer in making available an amendment and inviting all parties to engage in negotiations with Verizon by stating that:

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[14] *Rhode Island Arbitration Order,* at 13.

[15] Moreover, the FCC specifically held that "a party cannot contend that the negotiation time period did not begin because another party failed to send a request for negotiation." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703 n.2088. This is because the *TRO* states that "negotiations will be deemed to commence upon the effective date of this Order." *Id.* Verizon explained this aspect of the TRO in its October 2, 2003 notice to CLECs.

In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment.

To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.

Verizon' proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@Verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.

October 2 Notice at 2 (emphasis in original).

In response to virtually identical notices, some CLECs engaged in negotiations with Verizon regarding the terms of that amendment. Z-Tel, like other CLECs, admits that it chose *not* to respond to Verizon's invitation to negotiate the terms of Verizon's draft amendment. *See* Z-Tel Motion to Dismiss at 2 – 5. Even though other carriers correctly understood that the October 2 was "seeking negotiation of the proposed TRO

Amendment,"[16] Z-Tel claims that it understood the October 2 Notice as nothing more than a "general industry-wide notification to all CLECs that Verizon was willing to negotiate changes in law as a result of the *Triennial Review Order* if CLECs so chose to engage in such discussions." *Id.* at 5. Z-Tel ignores, however, the text that was bolded in the October 2 Notice: "To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice." October 2 Notice at 2. In addition, Verizon noted that "*either* party may request the state regulatory commission to arbitrate the terms of the contract amendment." *Id.* (emphasis added). There is nothing more Verizon could have done to make clear its intent both to implement the *TRO*'s changes, and to request arbitration from this Commission in the event that negotiations with the various CLECs left unresolved issues.

Third, Z-Tel claims that it "reasonably" believed that it should "await the outcome" of the *TRO* appeals and the state implementation proceedings before engaging in any contract negotiations. Z-Tel Motion to Dismiss at 9. But this belief could not have been reasonable, given the FCC's stated expectation that "[o]nce a contract change is requested by either party, we expect that negotiations and any timeframe for resolving the dispute would commence immediately." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 704. Z-Tel's failure even to reply to the October 2 Notice was therefore inconsistent with Z-Tel's obligation under both the Interconnection Agreement and Section 251(c) of the Act to negotiate in good faith. *See id.* at 17406, ¶ 706 ("Finally, we reiterate that section 251(c) imposes a good faith negotiation requirement that

[16] *See, e.g*, AT&T's Response to Verizon's Arbitration Petition, at 4 (April 13, 2004).

applies to both incumbent LECs and competitive LECs."); *Interconnection Agreement*, §4.6 ("the Parties shall promptly renegotiate in good faith").

The same is true for all other CLECs that failed to respond to Verizon's October 2 Notice or to engage in meaningful negotiations on a timely basis.[17] The Commission should enter an order finding that all of these CLECs failed to negotiate in good faith.

Finally, after Z-Tel refused to negotiate an amendment to the Interconnection Agreement during the prescribed statutory period, Verizon had the right to file the Petition with the Commission. Nothing in the Interconnection Agreement requires Verizon (or any party) to use the dispute resolution process *before* filing an appropriate petition with this Commission. In fact, that result would be contrary to the Act and the *TRO*'s setting of October 2 as the start date for the negotiation/arbitration process. Even if the dispute resolution provisions Z-Tel cites were relevant (and they are not), Verizon acted consistently with them: "either party may pursue any remedies available to it under this Agreement, *at law*, in equity, or otherwise, *including*, but not limited to, *instituting an appropriate proceeding before the [state] Commission*, the FCC, or a court of competent jurisdiction." Z-Tel Motion to Dismiss at 2 (quoting Interconnection Agreement §4.6) (emphasis added). After Z-Tel failed to negotiate, Verizon initiated this arbitration – "an appropriate proceeding before the [state] Commission." Neither the interconnection nor anything else required Verizon to undertake any other dispute resolution procedures before doing so.

[17] See attached affidavits of John C. Peterson and Anthony M. Black.

V. VERIZON'S PETITION COMPLIES WITH THE APPLICABLE REQUIREMENTS OF § 252(B)

Certain movants claim that Verizon failed to satisfy the elements of § 252(b)(2)(A), which requires the petitioning party to provide the State commission all relevant documentation concerning — (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties. *See* CCC Motion at 5–8; Z-Tel Motion at 10–12, Eagle Motion at 14–15. This claim is wrong.

The requirements that apply to a petition for arbitration of a *new* agreement under § 252(b)(2) do not necessarily apply to Verizon's petition to *amend* existing agreements. The FCC has held that the "section 252(b) *timetable*" and negotiation process applies,[18] but it never held that a petition seeking resolution of disputes over amendments with respect to the *TRO* would necessarily have to comply with all of the formal requirements of a petition for arbitration of a brand new agreement. The *Triennial Review Order* presents a novel situation, prompting the need to quickly amend thousands of interconnection agreements nationwide. State regulatory commissions can be expected to undertake reasonable procedures that fit this unique situation, rather than adhere to an overly formalistic approach that will undermine the FCC's directive for parties to "make the necessary changes to their interconnection agreements in response to [the *TRO*] in a timely manner." *TRO* at 17405, ¶ 702.

Even assuming that the technical requirements of § 252(b)(2) do apply, however, Verizon has complied with those requirements in light of the circumstances of this proceeding. Verizon has set forth the issues presented by its draft amendment and has

[18] *TRO*, 18 FCC Rcd at 17405-06, ¶¶ 703-704 (emphasis added).

explained its position in detail. Because Verizon has initiated a consolidated proceeding, it has not been possible to describe "the position of each of the parties" on the "unresolved issues." Verizon has generally received little in the way of response to its proposal, and because most of the responses that Verizon has received did not represent serious efforts at negotiation and arrived very late in the process (*e.g.*, about four months after Verizon made its draft amendment available to CLECs on October 2, 2003 – which was only about 10 business days before Verizon filed its petition pursuant to the TRO-mandated arbitration window), Verizon was simply unable to set forth other parties' position on the various issues.[19] As this Commission is aware, however, each of the parties had the opportunity in its response to Verizon's petition to set forth its own position on each of the issues in its own words, and several parties have already done so. Now that the CLECs' responses have been filed, Verizon expects that the Commission will schedule the customary issues identification conference, where the parties will very specifically define the issues in the case, so there will be no doubt about the matters to be resolved.

Verizon has complied with the purpose behind § 252(b)(2), which is to set forth the disputed issues that the Commission may be called upon to resolve, so there is no reason to dismiss its Petition.

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[19] For example, Adelphia Business Solutions Operations of Florida, Allegiance Telecom of Florida Inc., DSLnet Communications LLC, Level 3 Communications, LLC did not even offer a counterproposal to Verizon's proposed amendment. *See* attached Affidavit of John C. Peterson. Similarly, seven members of the CCG did not offer a counterproposal. Of the CCG members that did offer a counterproposal, none did so in a timely manner, but rather waited until shortly prior to the TRO-mandated arbitration window. *See* Attached Affidavit of Anthony M. Black. As noted above, Z-Tel admits that it did not respond to Verizon's October 2, 2003 amendment offer. Section X, below, discusses in greater detail the CLECs' unresponsiveness to Verizon's October 2, 2003 amendment offer.

VI. VERIZON PROPERLY RETAINED THE RIGHT TO AMEND ITS PETITION TO CONFORM TO *USTA II*

In its Petition, Verizon explicitly acknowledged that there were pending proceedings in the D.C. Circuit and before the FCC that might affect the applicability of the *Triennial Review Order*. *See* Verizon Petition at 4–5. Verizon stated that in the event of any change in law, it might be necessary to modify the petition accordingly. Z-Tel, however, suggests that because the *Triennial Review Order* has been "unravel[ed]," there has "been no net change in law," and this Commission should therefore retain the "*status quo ante*" during this time of "legal uncertainty." Z-Tel Motion at 13.

Z-Tel's arguments are meritless. In the first place, the true "*status quo ante*" is that there are *no* unbundling obligations at all, as the D.C. Circuit struck down both the *UNE Remand Order* and the *Line Sharing Order* in 2002. *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); *Triennial Review Order*, 18 FCC Rcd 17406, ¶ 705 (noting that the "legal obligation upon which the existing interconnection agreements are based will no longer exist" once the *USTA* decision was final or the *Triennial Review Order* took effect). Furthermore, Z-Tel's claim that the *Triennial Review Order* has been "unravel[ed]," or that there has been "no net change in law" betrays a serious misreading of the *USTA II* decision, which affirmed virtually every portion of the *Triennial Review Order* insofar as it cut back on incumbents' unbundling requirements. *See, e.g.*, *USTA II*, 2004 WL 374262, at *26 (upholding FCC's decision not to unbundle broadband capacity of hybrid loops); *id.* at *28 (upholding FCC's decision not to unbundle "fiber-to-the-home" loops); *id.* at *29 (affirming FCC's decision not to unbundle line sharing); *id.* at *31 (upholding FCC's decision not to unbundle

enterprise switching); *id.* at *32 (upholding FCC's decision not to unbundle signaling or call-related databases except in narrow circumstances); *see also id.* at *21 (upholding FCC's decision to require routine network modifications).[20] The FCC has emphasized that *any* delay in implementing the *TRO* would "have an adverse impact on investment and sustainable competition in the telecommunications industry." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703. Z-Tel's arguments present no reason to ignore either the *Triennial Review Order* or the D.C. Circuit's *USTA II* decision.

Finally, Z-Tel complains that Verizon had no right to acknowledge the then-forthcoming D.C. Circuit decision, and argues that this Commission should reject any modifications that Verizon may make. Z-Tel Motion at 13. It relies on § 252(b)(4)(A), which provides that a state commission "shall limit its consideration" to the "issues set forth in the petition and the response." *Id.* at 13 (quoting § 252(b)(4)(A)). But this Commission knows from experience that parties to ongoing § 252 arbitrations commonly adjust their positions during arbitrations, including in reaction to intervening court decisions, particularly decisions that affect the validity of the very rule being applied. And in any event, while *USTA II* might affect *how the issues are resolved*, the issues remain the same. Thus, taking *USTA II* into account does not require this Commission to consider *any* issues that are not "set forth in the petition and the response."

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[20] By contrast, the portions of the *Triennial Review Order* that were overturned by the D.C. Circuit were primarily those that either required unbundling or that delegated authority to state commissions. *See, e.g.*, *id.* at *12 (vacating all portions of the *Triennial Review Order* that "delegate to state commissions the authority to determine whether CLECs are impaired without access to network elements"); *id.* at *14 (vacating FCC's nationwide unbundling mandate as to mass market switching); *id.* at *18 (vacating the "national impairment findings with respect to DS1, DS3, and dark fiber").

VII. THE LAW IS NOT UNCERTAIN WITH RESPECT TO MATTERS ADDRESSED IN THE AMENDMENT, AND PROMPT IMPLEMENTATION OF THE *TRIENNIAL REVIEW ORDER* IS CRITICAL

Certain movants claim that this proceeding should be dismissed, because the law on which the Petition purports to be based is still undetermined.[21] They point to the fact that FCC Commissioners sought a stay of the D.C. Circuit's mandate in *USTA II*, that the Court has vacated portions of the *TRO*, that Verizon has filed a modified version of its *TRO* amendment, and/or that Verizon has requested state commissions to abate their nine-month *TRO* implementation proceedings. CCC Motion at 8-12; Eagle Motion at 9.

But the D.C. Circuit's decision in *USTA II* provides no basis for deferring this proceeding. *USTA II* did not affect the process the FCC required carriers to use to change their interconnection agreements in response to the *TRO*. The FCC directed carriers to use the timeline established in § 252(b), and the Commission has the responsibility to resolve disputed issues presented by Verizon's petition in accordance with that timeline. *See TRO*, 18 FCC Rcd at 17405-06, ¶¶ 703-704.

Moreover, although the D.C. Circuit vacated certain portions of the *TRO*, many of the FCC's rulings (and, in fact, all or almost all of the FCC's rulings delisting UNEs) were left in place by the court's decision, either because the court upheld the relevant rules or because they were not challenged in the first place. There is thus no need to wait for the outcome of the D.C. Circuit's decision before amending interconnection agreements to reflect these rulings, to the extent that they are not self-effectuating.

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[21] After moving to dismiss on these grounds, Eagle moves in the alternative to abate the proceeding until the state of the law "becomes more clear." Eagle Motion at 16–17. The Commission should deny Eagle's motion to abate on the same basis as its motion to dismiss. The reasons for denying these motions are set forth in detail below.

Indeed, the FCC specifically anticipated that some parties might argue that the new rules contained in the *TRO* should not be implemented until all appellate challenges were exhausted, and it rejected that argument. *See id.* at 17406, ¶ 705.

The *TRO* decisions that remain effective under *USTA II* are of critical importance. Those *TRO* decisions include those where the FCC:

- Determined that the broadband capabilities of hybrid copper-fiber loops and fiber-to-the-home facilities are not subject to unbundling.
- Eliminated the obligation to provide line sharing as a UNE and adopted transitional line-sharing rules.
- Eliminated unbundling requirements for OCn loops, OCn transport, entrance facilities, enterprise switching, and packet switching.
- Eliminated unbundling requirements for signaling networks and virtually all call-related databases, except when provisioned in conjunction with unbundled switching.
- Required ILECs to make routine network modifications to unbundled transmission facilities.
- Eliminated unbundled access to the feeder portion of the loop on a stand-alone basis.
- Required ILECs to offer unbundled access to the network interface device (NID) on a stand-alone basis.
- Found that the pricing and UNE combination rules in § 251 do not apply to portions of an incumbent's network that must be unbundled solely pursuant to § 271.

Interconnection agreements should promptly be amended to reflect the *TRO* rulings that remain effective under *USTA II*. The fact that some other aspects of the *TRO* were vacated or remanded (*e.g.*, those concerning mass-market switching and high-capacity facilities) is no reason to dismiss this arbitration.[22] Verizon's proposed

[22] Verizon has not, as the CCC claims, acted inconsistently in requesting that state commissions cease their *Triennial Review Order* impairment proceedings, given that the D.C. Circuit invalidated the FCC's delegation of authority for states to even hold those proceedings. *See USTA II*, 359 F.3d at 568-69 (vacating the *TRO* rules that "delegate to state commissions the authority to determine whether CLECs are impaired without access to network elements").

Amendment accommodates any further legal developments, including those that may result from the D.C. Circuit's decision and possible subsequent appellate and FCC actions. Thus, there is no need to delay this proceeding as to any aspect of Verizon's proposed Amendment.

The movants' effort to delay the implementation of the requirements of the *TRO* is directly contrary to the FCC's explicit determination that the new unbundling requirements – and particularly the newly enacted *limitations* on unbundling – must be implemented promptly. The FCC held "that delay in the implementation of the new rules we adopt in this Order will have an adverse impact on investment and sustainable competition in the telecommunications industry." *TRO*, 18 FCC Rcd at 17405, ¶ 703. No party challenged the FCC's determinations in this regard on review. Accordingly, the proceeding that Verizon has initiated is of critical importance to the realization of the 1996 Act's pro-competitive purposes. Given this Commission's strong endorsement of those pro-competitive goals, this proceeding should be of the highest priority.

Although movants refer to an order of the North Carolina Utilities Commission (NCUC) holding in abeyance the proceeding that Verizon initiated in that state, and to a Maryland PSC letter rejecting Verizon's proceeding in that state, the determinations of those two state commissions do not support the motions to dismiss. First, movants fail to acknowledge that, in approximately twenty other states, proceedings to amend existing interconnection agreements are underway and have not been dismissed. Second, both the NCUC and the Maryland PSC acted as they did in large measure because they erroneously concluded that the D.C. Circuit's decision in *USTA II*, which

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Verizon's present Petition, as already explained, seeks to implement the *Triennial Review Order* rulings that were *upheld*, including portions, such as the routine network modification requirements, that are favorable to CLECs.

vacated the *TRO* in part, warranted at least a delay in acting on Verizon's petition. As discussed above, however, the fact that certain aspects of the *TRO* (in particular, that state commissions would make impairment determinations) have been vacated provides no basis to postpone the task of amending interconnection agreements to reflect the *TRO*'s limitations on unbundling, which were upheld essentially in their entirety in *USTA II*. To be clear, through this Amendment, Verizon seeks to memorialize the portions of the *TRO* that were *upheld* by the D.C. Circuit and to adequately care for those portions of the TRO that were vacated. Verizon is therefore seeking reconsideration of the Maryland PSC's decision and asking to lift the NCUC's stay.

VIII. THE COMMISSION SHOULD NOT DISMISS THE PETITION AS TO ROUTINE NETWORK MODIFICATIONS

As an alternative to dismissing Verizon's entire Petition, the CCC argues that the Commission should dismiss the Petition insofar as it relates to routine network modifications. *See* CCC Motion at 12-13. It claims that the *TRO* "did not establish new law," but rather "clarified that Verizon's refusal to perform such modifications violated existing law." *Id.* at 13 (citing *TRO*, 18 FCC Rcd at 17377, ¶ 639 n.1940). Thus, argues the CCC, no change to the interconnection agreement is necessary.

The CCC's interpretation of the *TRO* is incorrect. The FCC explicitly recognized that, by adopting a rule as to routine network modifications, it was at long last "resolv[ing] a controversial competitive issue that has arisen repeatedly, in both this proceeding and in the context of several section 271 applications." 18 FCC Rcd at 17372, ¶ 632. Indeed, the FCC explicitly referred to "[t]he routine modification requirement *that we adopt today*." *Id.* (emphasis added). The CCC fails to explain how

a requirement that the FCC "adopt[ed] today" – that is, in the *Triennia Review Order* – was preexisting. Thus, the requirement to provide routine network modifications was, in the FCC's own words, a new obligation.[23] Moreover, the FCC had previously approved of Verizon's policy regarding the type of provisioning activities that it would undertake to make UNEs available as consistent with the requirements of section 251(c)(3). *See Virginia 271 Order*,[24] 17 FCC Rcd at 21959, ¶ 141, 21960, ¶ 144; *New Hampshire/Delaware 271 Order*,[25] 17 FCC Rcd 18724-26, ¶¶ 112-114; *New Jersey 271 Order*,[26] 17 FCC Rcd 12349-50, ¶ 151. The CCC cannot argue that Verizon is required to undertake *additional* provisioning activities in response to the *TRO* while simultaneously arguing that Verizon's legal obligations are unchanged.[27]

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[23] Verizon, of course, was previously required to remove bridge taps and load coils from loops, and some interconnection agreements already contain the terms, conditions, and rates upon which Verizon is required to perform these limited activities. The *TRO*, however, significantly expanded the list of activities that Verizon is required to perform, so as to include certain installation activities, modifications to interoffice transport facilities, modifications to dark fiber facilities, and other activities.

[24] Memorandum Opinion and Order, *Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, 17 FCC Rcd 21880 (2002) ("*Virginia 271 Order*").

[25] Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization To Provide in-Region, InterLATA Services in New Hampshire and Delaware*, 17 FCC Rcd 18660 (2002) ("*New Hampshire/Delaware 271 Order*").

[26] Memorandum Opinion and Order, *Application by Verizon New Jersey Inc., at al., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, 17 FCC Rcd 12275 (2002) ("*New Jersey 271 Order*").

[27] The CCC also suggests that Verizon's Petition "to arbitrate rates and terms associated with routine network modifications is unjustified and should be dismissed" because the Virginia State Corporation Commission "has already rejected Verizon's attempt in the *TRO* Amendment to impose additional charges for network modifications." *See* CCC Motion at 13. This is not true. The Virginia Commission has not issued any order forbidding Verizon in Virginia to charge for network modifications in the *TRO* Amendment proceedings.

IX. THERE IS NO GOOD REASON TO DISMISS VERIZON'S UPDATE TO ITS PETITION

AT&T does not oppose going forward with this consolidated arbitration of an Interconnection Agreement amendment to memorialize the changes in the unbundling rules flowing from the *TRO* – an arbitration required by the FCC in the absence of a negotiated amendment, to the extent changes in unbundling obligations are not self-effectuating. With its motion to dismiss or strike, however, AT&T inexplicably seeks to eliminate from the record Verizon's March 19, 2004 update to its arbitration petition, in which Verizon provided a slightly revised version of its draft *TRO* Amendment to propose some language reflecting the impact of the D.C. Circuit's decision reviewing the *TRO* in *USTA II*.

AT&T wants the Commission to ignore the D.C. Circuit decision in this arbitration, and then negotiate and arbitrate *again* with regard to that decision. This proposal makes no sense and would result in nothing but wasted resources, needless delay in the implementation of the FCC's new unbundling rules and a multiplicity of arbitrations before the Commission. Indeed, the few changes Verizon proposed to its original draft amendment do not harm, and mostly benefit, CLECs like AT&T. Thus, AT&T's motion can have no reasonable basis other than to delay, complicate and confuse this arbitration proceeding.

The premise of AT&T's motion, moreover -- that "USTA II has not yet taken effect" and therefore should not be acknowledged in this arbitration -- is not accurate. (AT&T Motion at 1). The D.C. Circuit's stay, which now expires June 15, 2004,[28]

[28] *United States Telecom Ass'n v. FCC,* No. 00-1012 (Order entered April 13, 2004) (extending stay of mandate through June 15, 2003).

applies *only* to portions of the *TRO* that the court vacated, such as unbundling of mass-market switching and dedicated transport.[29] The D.C. Circuit's holdings *affirming* the FCC on many other issues that are also relevant to this arbitration were not subject to the stay, and the FCC's new unbundling regulations on these issues remain in effect (for example, enterprise switching, line sharing and broadband unbundling, among others). Similarly, AT&T urges this Commission to ignore the D.C. Circuit because the FCC "might" petition the U.S. Supreme Court for review, and that Court "might" accept review, "might" issue a stay pending appeal and "might" reverse the D.C. Circuit, but this is all nothing but wishful speculation on AT&T's part and cannot form the basis for dismissal of Verizon's pleading.

A. The Updated Amendment Will Expedite This Proceeding Without Causing Any Harm to CLECs

AT&T's motion makes little sense substantively, and can only be intended as a delay tactic. Where Verizon prevailed before the D.C. Circuit in *USTA II*, the update does not harm AT&T (or any other CLEC) in any way. Indeed, where Verizon lost in the Court of Appeals, the update *helps* AT&T. For example, the update removes the distinction between qualifying and non-qualifying carriers. One of the few other changes to the Amendment includes the implementation of the D.C. Circuit's reversal of the FCC's adoption of a route-specific market definition with respect to high-capacity facilities. *See, e.g.*, Update Amendment § 3.1.1.3. But even there, the update is innocuous in that it leaves ample room for the possibility that the *TRO* will not be vacated. That is, the newly revised § 3.1.1.3 enables the Commission (or the FCC) to

[29] *USTA II*, 359 F.3d at 595 ("As to the portions of the Order that we vacate, we temporarily stay the vacatur (i.e., delay the issue of the mandate)").

conduct its granular impairment inquiry on a "route-specific" basis or a "grouping" basis, depending upon which ultimately becomes the law. Given the flexibility of the updated Amendment, the changes proposed by Verizon should be uncontroversial – at least absent a desire by AT&T to make this *TRO*-implementation proceeding as complicated, piecemeal, and lengthy as possible.

The updated Amendment makes sense because its flexible language will eliminate the need to have multiple, follow-up arbitrations after every legal development in this ongoing saga.[30] Under the cumbersome approach favored by AT&T, the Commission would proceed with this arbitration as if *USTA II* was never decided. The Commission would then conduct a second arbitration (potentially commencing before this arbitration is complete), to effectuate contractual changes arising from *USTA II*, and then a *third* arbitration following a decision by the Commission or the FCC identifying specific mass market switching and dedicated transport routes or markets that need no longer be unbundled.

Because this scheme is absurd, other state commissions have endorsed as "reasonable" and "understandable" Verizon's efforts to make these *TRO*-implementing arbitrations as efficient as possible through its updated Amendment.[31] State

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[30] AT&T argues that "[t]his Commission has enough work to do to arbitrate the issues that are in fact ripe for review. It makes little sense to arbitrate issues that have not yet matured and may, in fact, never come to pass." AT&T Motion at 2-3. But the only "issue" is how to draft appropriate language that accommodates the different outcomes that may arise during the course of ongoing litigation. The work that will be required for this simple task is dwarfed by the work that will be required if such language is not included in the Amendment.

[31] *See, e.g.*, *Re Petition of Verizon Hawaii, Inc. for Arbitration of an Amendment to Interconnection Agreements*, Docket No. 04-0040, Order No. 20846, at 2 ("It is understandable that Verizon Hawaii is considering possible modifications to its filed arbitration petition due to the filing of the D.C. Circuit Order, and its proposal to file any such modifications by March 19, 2004 appears to be reasonable."). *Petition of Verizon Washington, D.C., Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, TAC-19-14, Order No. 13129, ¶ 5

commissions already have the challenging task of arbitrating *TRO* amendment disputes within the timeframe mandated by the FCC, and they are understandably reluctant to accept an invitation to make these proceedings even more complicated. Amendment language that eliminates the need for follow-up arbitrations, such as that proposed by Verizon, will substantially reduce complexity and delay.[32] Given that the parties to this arbitration have had ample notice and opportunity to respond to the updated Amendment, there is no reason why it should be stricken.

Clearly, the Commission cannot render a decision that ignores the dictates of federal law as laid out in *USTA II*. The update to Verizon's petition is the procedural mechanism for raising these issues early in the proceeding, rather than waiting until the briefing or exception stage. If *USTA II* is stayed on further appeal to the United States Supreme Court, as AT&T predicts but Verizon doubts, the Commission's order may reflect that fact, consistent with the amendment's flexible language accommodating this development.

B. The Change-of-Law Provision in AT&T's Interconnection Agreement Is Inapposite

AT&T contends that once the *USTA II* mandate issues, Verizon will be obligated to follow the change-of-law provision in section 9.3 of its interconnection agreement with

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("The Commission agrees that the *USTA II* decision may affect some of Verizon DC's proposed interconnection agreement amendments contained in its Petition. The Commission believes that granting Verizon DC until March 19, 2004 to file any amendments to its Petition is reasonable.").

[32] The FCC asserted that "delay in the implementation of the new rules . . . will have an adverse impact on investment and sustainable competition in the telecommunications industry." Report and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, 17405, ¶ 703 (203) ("*TRO*").

AT&T. AT&T Motion at 3. In fact, the "change of law" that has occasioned this proceeding is the FCC's issuance of the *TRO* and its resulting new unbundling regulations, and this arbitration proceeding is therefore mandated "even in instances where a change of law provision exists." *TRO* at ¶ 704. Put differently, although *USTA II* may eventually alter the unbundling obligations of the *TRO*, it is still the unbundling obligations of the *TRO*, not some other order or ruling, that are being implemented in this proceeding. The revision to the Amendment merely modifies the language that Verizon is proposing with respect to the change of law created by the *TRO* in light of events after Verizon first proposed its *TRO* Amendment six months ago. Nothing prohibits a party to a negotiation or arbitration from modifying its original position in this FCC-mandated proceeding to account for subsequent events.

If granted, AT&T's motion would bar Verizon from proposing contract language in this proceeding consistent with *USTA II*, but apparently would leave AT&T free to press its own language interpreting that decision. AT&T has indeed proposed to amend § 6 of the *TRO* Amendment to state that the D.C. Circuit Court has "issued a decision vacating and remanding certain portions and affirming other portions of the TRO but stayed its vacatur and remand." (*See* TRO Amendment and Attachment, redlined by AT&T to show its proposed changes, filed as Exhibit 1 to AT&T Response to Verizon Petition for Arbitration.) AT&T also seeks to amend the definitions of Dark Fiber Transport and Dedicated Transport in § 2 of the *TRO* Attachment to include entrance facilities, apparently in light of the D.C. Circuit's remand of that issue to the FCC in *USTA II*. *Id.* Exhibit 1. AT&T cannot justify this blatantly prejudicial double standard, and its motion should be denied.

X. THE COMMISSION SHOULD NOT ALTER THE FCC'S MANDATORY PROCEDURES

Some movants have suggested that the Commission should use novel procedural devices. None of these are appropriate, and the Commission should adhere to the § 252 timetable, just as the FCC ordered.

The CCG, for example, has said that the Commission should "issue a standstill order that maintains the *status quo.*" CCG Motion at 4. Then the Commission should wait until all issues affected by *USTA II* have been finally resolved, at which point the parties should have an extra 135 days to renegotiate. *Id.* Only *then* would Verizon be allowed to initiate a proceeding akin to this one.

This argument must be rejected. First, the 1996 Act precludes the Commission from issuing a blanket determination that existing interconnection agreements may not be revised in order to take into account the new unbundling rules. "By promulgating a generic order binding on existing agreements without reference to a specific agreement or agreements," the Ninth Circuit held, the Commission would be "act[ing] contrary to the Act's requirements that interconnection agreements are binding on the parties . . . ." *Pacific Bell v. Pac-West Telecomm., Inc.*, 325 F.3d 1114, 1125-26 (9th Cir. 2003). CCG's requested standstill order – which would be tantamount to a determination in a generic order that change-of-law provisions may not be utilized to implement the new unbundling rules – is contrary to this decision. It would also deprive Verizon of the benefit of contract provisions that permit Verizon to cease providing UNEs at such time as Verizon is no longer required to provide them.

Second, the CCG presents no authority that would allow either a "standstill" order, or that would allow Verizon to exceed the § 252 timetable by such a wide margin.

The FCC has said that the start date for negotiations regarding the *Triennial Review Order* is October 2, 2003, and this date necessarily implies that a petition must be filed between February 14, 2004, and March 10, 2004. The CCG may wish to delay indefinitely, but it has no citations that would support its wishes. Its proposal – which is clearly designed to delay these proceedings in violation of the FCC's mandate[33] – ignores the fact that the period for negotiations *has already expired* pursuant to the timetable established by the FCC. After adopting the statutory timetable in § 252(b), the FCC stated that the effective date of the *TRO* "shall be deemed the notification or request date for contract amendment negotiations." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703. This means that there already has been a 140-day period for negotiations, from October 2, 2003 (the effective date of the *TRO* and the date on which Verizon proposed its TRO Amendment to every CLEC in Florida) through February 20, 2004 (the date on which Verizon filed its petition for arbitration). If the CCG's members had been serious about negotiation, rather than simply seeking to delay an amendment that reflects unbundling rules that the CCG members dislike, they would (and should) have engaged in good faith negotiations during the time specified by the Act and the FCC, but they failed to do so.[34] Of course, the parties remain free to negotiate during the course of the arbitration, and Verizon, in fact, continues to negotiate with CLECs that are willing to do so. But the Commission should reject CCG's proposal to initiate a

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[33] *See Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703 (finding that "delay in the implementation of the new rules . . . will have an adverse impact on investment and sustainable competition in the telecommunications industry").

[34] *See* Affidavit of Anthony M. Black at ¶¶ 7-20 (describing CCG members' failure to respond to Verizon's amendment offer or to engage in timely or meaningful negotiations despite Verizon's efforts).

distinct, new negotiation period – a procedural delay tactic that was invented out of thin air with no supporting legal authority.

Certain parties think that dismissal is appropriate because they are in the process of negotiating new interconnection agreements with Verizon. *See, e.g.*, TimeWarner Response at 1-4; Level 3 Letter (April 12, 2003). This argument is unavailing. As long as any party continues to operate under an existing interconnection agreement, that agreement must be amended to reflect the *Triennial Review Order*. That Order set February 14 through March 10 as the window for filing arbitration petitions. It is inevitable that some carriers will also be in various stages of negotiation or arbitration for new interconnection agreements which must also be *TRO*-compliant, but that is not a valid reason not to amend existing agreements. Many months, perhaps even a year or more, could elapse before the parties complete their negotiations and any arbitration that may be necessary. Verizon may agree to voluntary dismissal at such time as these parties execute a new agreement that conforms to the *Triennial Review Order* in those separate proceedings; in the meantime, their existing interconnection agreements must be amended to reflect the *Triennial Review Order*.

XI. CLEC CLAIMS REGARDING THEIR INDIVIDUAL NEGOTIATIONS WITH VERIZON ARE WRONG

In its Petition, Verizon pointed out that "virtually none" of the CLECs provided a timely response to Verizon's October 2, 2003 notice initiating negotiations. Yet some CLECs claim that Verizon failed to negotiate, and argue for dismissal on that basis. These allegations are wrong, and provide no basis for dismissing this proceeding. Indeed, as Verizon's attached affidavits concerning negotiations history show, the Commission should issue an order finding the complaining CLECs guilty of bad faith.

In footnote 16 of the CCC's motion to dismiss, the CCC claims that "several CLECs, including members of the Coalition in this state. . . were timely in providing redlines of Verizon's amendment back to Verizon." This claim is false or, at best, misleading. Verizon has reviewed all available records, including a TRO-specific spreadsheet (which summarizes the status of requests for negotiation) and its contract database (which houses all requests for negotiation that Verizon has received). As stated in the affidavit of John Peterson, the following CLECs have not provided Verizon with a counterproposal to Verizon's draft TRO Amendment: Adelphia Business Solutions Operations of Florida, Allegiance Telecom of Florida Inc., Florida Digital Power, and DSLnet Communications LLC. Mr. Peterson's affidavit further states that Level 3 Communications, LLC, who is not a member of the CCC here, has not provided Verizon with a counterproposal. Indeed, Verizon's records reveal that none of the above CLECs have engaged in any effort to negotiate the terms and conditions of a TRO Amendment. Affidavit of John Peterson at ¶¶ 6 - 7. ICG provided a counterproposal, but not until February 26, 2004, after it was forced to do by Verizon's filing of its arbitration petition. Affidavit of Anthony Black at ¶ 6. Paetec provided a counterproposal on January 22, 2004 – more than three months after Verizon offered an amendment -- and Verizon has attempted to schedule calls with Paetec to discuss the proposed changes.

The members of CCG were also slow to respond to respond to Verizon, if they responded at all. Indeed, despite repeated prodding by Verizon of CCG members throughout the negotiation period, the CCG delayed for nearly *four* months – until 10 days prior to the opening of TRO-mandated arbitration window – and then submitted in

essence an entire rewrite of Verizon's amendment, including numerous provisions that are contrary to applicable law. *See* Affidavit of Anthony M. Black at ¶¶ 7-12. The substance and timing of the CCG proposal shows that it was designed to avoid or delay implementing the *TRO*. In fact, seven of the CCG members never submitted an amendment proposal at all. *Id.* at ¶ 11. The CCG also claims that Verizon "failed to respond to the undersigned counsel, when the sensible TRO amendment (that is attached as Tab A) was forwarded to Verizon." CCG Motion at 8. That claim is false. After filing its arbitration petition, Verizon continued to seek the CCG's cooperation in negotiating an amendment, but that effort was ignored except as to NewSouth and ITC^DeltaCom, who did engage in limited negotiations regarding their untimely amendment proposals. *Id.* at ¶¶ 13-20 (describing, among other things, Verizon's March 15 letter to which CCG members did not respond).

The CCC argues that the failure of one particular CCC member to provide Verizon with a counterproposal -- Florida Digital Network Inc. ("FDN") -- is excusable because a Verizon employee allegedly represented that negotiations were unnecessary. FDN cites an October 16, 2003 e-mail from Renee Ragsdale, a former Verizon employee who is not a lawyer, responding to an e-mailed question from Matthew Feil, an FDN attorney. Ms. Ragsdale's e-mail does not excuse FDN's failure to negotiate. The FCC unequivocally required carriers to negotiate amendments to promptly reflect the TRO rulings, to the extent necessary, and established October 2, 2003 as the start date for those negotiations. *See* TRO at ¶¶ 700-05. Verizon's October 2 letter plainly confirmed the initiation of these negotiations.

If FDN did not understand its legal obligations under the *TRO* or the meaning of Verizon's October 2 letter, FDN's legal counsel should have contacted a Verizon attorney for clarification. Ms. Ragsdale has since retired, so it is not possible to know just what she meant in her e-mail. The more important point, however, is that FDN's attorney should not have sought legal counsel from a non-lawyer, and FDN cannot reasonably rely on Ms. Ragsdale's informal response as a convenient excuse for ignoring a duty to negotiate imposed by the FCC. Verizon cannot be held accountable for FDN's failure to understand its legal obligations.

In any event, the TRO expressly states that "to ensure there is no undue delay in commencing the renegotiation of interconnection provisions, the effective date of the rules we adopt in this Order shall be deemed the notification or request date for contract amendment negotiations. . . ." *TRO*, ¶ 703. Thus, October 2, 2003 marked the negotiation request date as a matter of law, and an informal remark by a non-attorney for Verizon could not change this fact.

In its first motion to dismiss, filed March 16, 2004, Sprint claimed that Verizon failed to negotiate. Verizon rebutted this claim in its March 29, 2004 response to this first motion to dismiss. Sprint has now filed a second (unauthorized) motion to dismiss, so Verizon is compelled to respond to those allegations once again. *See, e.g.*, Sprint Motion and Response at 1 (highlighting contention in its first motion to dismiss that Verizon failed to negotiate in good faith).

In addition, in its second motion to dismiss, Sprint asks the Commission to ignore the alternative relief Sprint requested in its first motion to dismiss—that is, to dismiss Sprint from the proceeding—and to instead dismiss the entire arbitration based on

Sprint's allegation that Verizon filed its Petition "without even a minimal attempt to engage in good faith negotiations" with CLECs in general. Sprint Motion and Response at 4. Sprint cannot claim to have any knowledge about Verizon's negotiations with other CLECs (and even got its own negotiating history wrong), and the Commission cannot rely on Sprint's unfounded speculation about other parties' negotiations to dismiss the entire arbitration proceeding. In any event, the attached affidavits concerning Verizon's efforts to negotiate with other CLECs prove Sprint's speculation to be wrong.[35]

While Verizon disagrees with the CLECs' accounts of the discussions with respect to the *TRO* amendment, those kinds of arguments will not advance the process of promptly concluding the amendment process. It makes no sense for the Commission to dismiss the Petition, either with regard to particular movants or all parties, and order Verizon to re-initiate negotiations, just because these parties failed to reach agreement on a *TRO* amendment, particularly since doing so would only reward many parties for failing to respond timely to Verizon's amendment proposal and to negotiate in good faith. Dismissing any of these parties from the proceeding would mean only that Verizon – after another round of posturing and delay tactics by CLECs who have no desire to implement the TRO – would have to file individual arbitration petitions, raising the same issues as those presented in this consolidated arbitration. It is unlikely that, after conducting a consolidated arbitration, the Commission will make different decisions on the same issues in a party-specific arbitration. This inefficient approach makes no sense, either for the Commission or the parties.

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[35] Two other parties to this proceeding, Eagle and Myatel, presented a "counterproposal" that was not an amendment at all, but rather consisted of a copy of various FCC rules adopted as a result of the TRO. See attached letter from James G. Pachulski, counsel to Verizon, to W.Scott McCollough, counsel to Eagle and Myatel, dated January 23, 2004.

XII. EAGLE'S MOTION FOR PROCEDURAL FLEXIBILITY

After moving to dismiss, Eagle moves in the alternative for "procedural flexibility." In the motion for procedural flexibility, Eagle makes two requests.

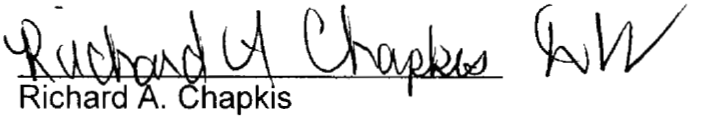
First, Eagle asks the Commission to seek assurances from Verizon that it will not seek redress from the FCC pursuant to 47 U.S.C. 252(e)(5) as long as the arbitration continues in a timely fashion. Eagle Motion at 17–18. As Verizon previously advised Staff, Verizon wishes to have the arbitration completed as soon as possible, but, if necessary, is willing to negotiate a reasonable waiver of the 9-month arbitration deadline, so Eagle's request is unnecessary and inappropriate.

Second, Eagle asks the Commission to allow CLECs not to participate in the proceeding so long as they agree to be bound by the results. *Id.* Verizon does not oppose this request so long as Verizon and any such non-participating CLECs are able to agree on a stipulation that is carefully drafted to ensure that the parties will, in fact, be bound by the arbitration's results. Verizon is willing to make available a stipulation for this purpose upon CLEC request.

XIII. CONCLUSION

For the reasons stated above, the Commission should deny the various motions to dismiss addressed herein.

Respectfully submitted,



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April 26, 2004

BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE STATE OF FLORIDA

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

AFFIDAVIT OF ANTHONY M. BLACK

STATE OF VIRGINIA)
)
COUNTY OF ARLINGTON)

I, Anthony M. Black, being duly sworn upon oath, state as follows:

1. I am a fulltime employee of Verizon. My job title is Assistant General Counsel. Prior to assuming this position with Verizon on January 26, 2004, I represented Verizon as outside counsel at the law firm Tobin, O'Connor & Ewing.

2. As part of my job responsibilities as an attorney for Verizon, I assist with the negotiation of interconnection agreements with CLECs, including many CLECs that operate in Florida.

3. On August 21, 2003, the FCC issued its *Triennial Review Order* ("TRO"), which required incumbent LECs and competitive LECs to amend their interconnection agreements to reflect new unbundling rules. I am knowledgeable about the efforts made by Verizon and CLECs to negotiate TRO-related amendments to their Florida interconnection agreements.

4. On October 2, 2003, when the TRO became effective, Verizon sent a letter to CLECs in Florida, including the CLECs identified in the paragraphs below, according to Verizon's business records. This letter proposed a draft TRO Amendment that was available on Verizon's wholesale website to all CLECs via an electronic link provided in the letter. The letter invited CLECs to review the draft amendment and to contact Verizon to proceed with completion of the contracting process. The letter further advised CLECs that the TRO deemed October 2, 2003 as the notification request date for contract

amendment negotiations, and that, in accordance with 47 U.S.C. § 252(b), either party could request arbitration during the window from the 135th day to the 160th day after such negotiation request date.

5. I have reviewed available records, including (but not limited to) my personal correspondence with several CLECs. To the best of my knowledge, the following paragraphs accurately describe the course of negotiations with the specific CLECs discussed herein.

6. According to Verizon's business records, ICG Telecom Group ("ICG") did not respond to Verizon's October 2, 2003 amendment offer until February 26, 2004, after Verizon had filed arbitration petitions in certain states where ICG has interconnection agreements with Verizon. In its February 26 email, ICG raised questions regarding certain provisions of Verizon's draft amendment. Representatives of the parties subsequently held a conference call on which the parties discussed those questions. ICG did not provide a redline of its proposed changes to Verizon's amendment until March 25, 2004, after Verizon filed its arbitration petition in Texas. On April 2 and 8, 2004, the parties held conference calls on which they discussed ICG's proposed changes. The parties resolved some issues, but were unable to agree on a resolution of others.

7. Most other CLECs failed to respond to Verizon's October 2 amendment offer, delayed in responding until shortly before the TRO-mandated arbitration window opened, or failed to engage in meaningful negotiations regarding an amendment. These CLECs include the members of the "Competitive Carrier Group," or "CCG," which is represented by the law firm of Kelley, Drye & Warren ("Kelley Drye"). I understand that in Florida, this group includes: BullsEye Telecom Inc., Business Telecom, Inc., DIECA Communications Inc. d/b/a Covad Communications Co., ITC DeltaCom Communications Inc., Global Crossing Local Services Inc., IDT America Corp., KMC Data LLC, KMC Telecom III LLC, KMC Telecom V Inc., NewSouth Communications Corp., 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.

8. On October 31, 2003, Kelley Drye sent a letter to Jeffrey Masoner of Verizon in response to Verizon's October 2, 2003 TRO amendment offer. The letter was on behalf of several entities, including three entities that appear to be members of the coalition that Kelley Drye represents in this proceeding: Covad Communications, Global Crossing North America, and KMC Telecom. The October 31 letter acknowledged that those CCG members were obligated to negotiate a TRO amendment, but did not offer a counterproposal to the TRO amendment that Verizon had offered on October 2, 2003.

9. On November 21, 2003, I, on behalf of Verizon, sent a letter to Kelley Drye responding to its October 31, 2003 letter. A copy of that letter is attached hereto as Exhibit A. In my November 21 letter I noted that more than 50 days had elapsed since Verizon had offered its TRO amendment, and that Verizon still had not received any input from the Kelley

Drye coalition regarding that amendment. I requested that those CLECs respond as soon as possible, proposing any specific changes they wished to make to the draft amendment.

10. On December 16, 2003, I received a letter from Kelley Drye in response to my letter of November 21, 2003. Kelley Drye's December 16 letter stated, *inter alia*, that it anticipated forwarding to Verizon "in the next two or three weeks" a TRO amendment counterproposal.

11. At 6:59 p.m. on Friday, January 30, 2004 – nearly four months after Verizon offered its TRO amendment and only 10 business days prior to the date on which the TRO-mandated arbitration window opened – I received from Kelley Drye a letter and amendment that Kelley Drye offered as a counterproposal to Verizon's TRO amendment. Kelley Drye's counterproposal consisted of essentially an entire rewrite of Verizon's draft amendment, and included numerous provisions that are contrary to applicable law. Kelley Drye indicated that it submitted the counterproposal on behalf of various entities including the following entities that appear to be members of the coalition that Kelley Drye represents in this proceeding: Bullseye Telecom, Inc., DIECA Communications, Inc., Global Crossing Local Services, Inc., KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC. Kelley Drye did not offer its proposal on behalf of following nine members of the coalition it represents in this proceeding, nor, to my knowledge, did those CLECs separately offer any TRO amendment proposal (with the exception of ITC^DeltaCom Communications Inc. and NewSouth Communications Corporation, which I address separately in Paragraphs 15 and 17): IDT America Corp., ITC^DeltaCom Communications, 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.

12. Thus, many of the Kelley Drye coalition members did not respond with any counterproposal to Verizon's October 2, 2003 amendment offer. Those members of the Kelley Drye coalition that did respond delayed for nearly four months (with the exception of ITC^DeltaCom and NewSouth, who delayed even longer as described below), only then to produce an unreasonable rewrite just 10 business days prior to the opening of the TRO-mandated arbitration window. In paragraph 705 of the TRO, the FCC stated that "any refusal to negotiate or cooperate with the contractual dispute resolution process, including taking actions that unreasonably delay these processes, could be considered a failure to negotiate in good faith and a violation of section 251(c)(1)." Verizon concluded that Kelley Drye's counterproposal represented not a sincere effort to negotiate, but rather a procedural gambit indicating that Kelley Drye's clients were unwilling to implement the TRO despite their obligation to do so. Accordingly, Verizon included those CLECs in the consolidated arbitration petitions that it filed with the applicable State Commissions in accordance with the TRO-mandated arbitration window. Verizon, during the period since Verizon filed its arbitration petitions, has negotiated with CLECs that have been willing to do so.

13. On March 15, 2004, I, on behalf of Verizon, attempted to advance negotiations with the Kelley Drye coalition by sending a letter asking that those CLECs, upon receipt of the then-forthcoming amendment as revised to reflect the March 2, 2004 decision of the U.S. Court of Appeals for the District of Columbia Circuit,[1] demonstrate good faith by submitting promptly, in red-line format, any changes to that document that those CLECs contend in good faith are consistent with the parties' rights and obligations under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. A copy of that letter is attached hereto as Exhibit B. I stated in my letter that this approach would bring the Kelley Drye coalition into the mainstream with other CLECs that have either executed Verizon's amendment with no changes or, at minimum, found it to be a reasonable starting point for negotiations. I further suggested that this approach would assist the various State Commissions in their efforts to resolve on a consolidated basis issues that are common to numerous parties. The Kelley Drye coalition, however, has not responded to that March 15 request.

14. In the paragraphs that follow, I describe other efforts of Verizon to engage in negotiations with members of the CCG separately from the above communications with Kelley Drye.

15. ITC^DeltaCom Communications, Inc. ("ITC"). According to Verizon's business records, ITC did not respond to Verizon's October 2, 2003 TRO amendment offer until February 6, 2004, more than four months after Verizon offered the amendment and just five business days prior to the date on which the TRO-mandated arbitration window opened. Verizon examined ITC's counterproposal and determined that it consisted of the Kelley Drye amendment proposal with a few variations. Thus, it was essentially an entire rewrite of Verizon's draft amendment, and contained numerous provisions that were plainly contrary to applicable law. On March 2, 2004 I discussed ITC's amendment proposal on a conference call with a representative of ITC. The parties scheduled a further conference call on March 9, 2004, but ITC failed to join that call at the scheduled time. On March 10, 2004, Verizon received an email from ITC's representative, Nanette Edwards, stating that she had overlooked the previous day's call on her calendar. During the period after March 10 the parties exchanged some emails regarding how the March 2, 2004 decision of the U.S. Court of Appeals for the District of Columbia Circuit would affect Verizon's TRO Amendment. On March 19, 2004, Verizon filed a TRO amendment with revisions reflecting the D.C. Circuit's March 2 decision. On March 26, 2004, a representative of Verizon sent an email to Ms. Edwards stating that Verizon remained willing to continue with TRO amendment negotiations in order to resolve any areas of disagreement and thereby narrow the number of outstanding issues. Because ITC's amendment contained numerous provisions that were contrary to applicable law and did not represent a sincere effort to negotiate, Verizon asked in its March 26, 2004 email that ITC review Verizon's revised amendment of March 19 and provide a redline of reasonable changes that are consistent with the parties' respective rights and obligations under 47 U.S.C. section 251(c)(3) and 47 C.F.R. Part 51. ITC has not responded to this request.

16. IDT America Corp. ("IDT"). According to Verizon's business records, IDT did not respond to Verizon's October 2, 2003 amendment offer until January 14, 2004 -- more than three months after Verizon offered the amendment. On that date, IDT sent a letter to Jeffrey Masoner of Verizon in which IDT requested to extend the negotiation period. On February 12, 2004, I sent a letter on behalf of Verizon to IDT in response to its January 14, 2004 letter. A copy of that letter is attached hereto as Exhibit C. In my February 12 letter, I declined on Verizon's behalf to extend the negotiation period. I pointed out that, as of that date, Verizon had not even received any input from IDT regarding the draft amendment that Verizon offered on October 2, 2003. I further stated that Verizon stood ready to engage in negotiations aimed at promptly concluding an amendment, and asked that IDT respond at its earliest convenience regarding Verizon's draft amendment. On February 24, 2004 -- after Verizon had filed its arbitration petition in Florida -- I received a letter from IDT in response to my letter of February 12, 2004. IDT's letter cited various reasons for IDT's delay in responding to Verizon's October 2, 2003 amendment proposal, but did not offer a counterproposal to Verizon's TRO amendment.

17. NewSouth Communications Corporation ("NewSouth"). According to Verizon's business records, NewSouth did not respond to Verizon's October 2, 2003 amendment offer until October 31, 2003. On that date NewSouth sent a letter to Jeffrey Masoner of Verizon in which NewSouth, inter alia, stated that it was prepared to begin negotiations. On November 11, 2003, a representative of Verizon sent NewSouth an email acknowledging NewSouth's October 31 letter. On January 6, 2004, I sent a letter to NewSouth in which I stated that more than three months had elapsed since Verizon's October 2 notice, yet Verizon still had not received any input from NewSouth regarding the draft amendment. A copy of my January 6, 2004 letter is attached hereto as Exhibit D. In that letter I requested that NewSouth respond as soon as possible regarding Verizon's draft amendment. I further stated that, upon receipt of input from NewSouth, Verizon stood ready to engage in negotiations aimed at promptly concluding an amendment. On January 15, 2004 I received a letter from NewSouth in which it stated, *inter alia*, that NewSouth was "in the process of reviewing Verizon's proposed amendment to implement the Triennial Review Order, and will be providing written comments in short order."

18. On February 13, 2004 – more than four months after Verizon offered an amendment and just one day before the date on which the TRO-mandated arbitration window opened – Verizon received NewSouth's redline proposing substantial revisions to Verizon's draft amendment. Verizon promptly circulated NewSouth's proposed changes to the appropriate Verizon personnel for analysis. Verizon, so as not to waive its right to resolve any disputed issues in accordance with the TRO mandated arbitration window, included NewSouth in the consolidated arbitration petition that it filed on February 20, 2004. On March 3, 2004 – less than three weeks after receiving NewSouth's substantial proposed changes to Verizon's amendment -- Verizon sent NewSouth an email proposing a conference call to discuss those changes.

19. On March 4, 2004, NewSouth asked whether Verizon would agree to extend any

impending arbitration deadline. On March 10, 2004, I sent an email to NewSouth in which I declined to extend the deadline in light of NewSouth's past unresponsiveness to Verizon's amendment offer and because, in any event, Verizon had already filed its consolidated arbitration petition on February 20, 2004. I stated, however, that if NewSouth were to execute an amendment or if the parties were able to resolve any areas of disagreement without arbitration, then Verizon would agree to dismiss NewSouth from the consolidated arbitration. A copy of the foregoing email exchange is attached hereto as Exhibit E. On March 11, 2004, the parties held a conference call during which they discussed NewSouth's proposed changes and agreed to have a further conference call to continue negotiations. On March 17, 2004, New South sent a letter in which it stated, *inter alia*, that NewSouth believed "it would be prudent to hold off scheduling our next call until Verizon has completed its revisions [to reflect the D.C. Circuit's March 2, 2004 decision] and NewSouth has had an opportunity to review them." On March 19, 2004, Verizon filed at the Commission a revised amendment and served a copy of that amendment on NewSouth according to Verizon's business records.

20. On April 9, 2004, not having heard from NewSouth regarding Verizon's March 19 amendment update, I sent to NewSouth via electronic mail a letter in which I proposed to schedule a further call to continue negotiations regarding the TRO amendment. On April 16, 2004, I received an email from NewSouth in which NewSouth stated that it expected to notify Verizon soon of its intention to engage in negotiations for commercial arrangements, and that "it makes sense to temporarily hold our TRO amendment negotiations in abeyance" while the parties undertake such negotiations. On April 16, 2004, I responded to NewSouth with an email in which I stated that Verizon stands ready to engage in commercial negotiations with NewSouth. I pointed out, however, that any commercial arrangements would be addressed in a separate non-251 wholesale agreement, and that Verizon intended to continue to seek, in accordance with the existing procedural schedule, resolution of any disputed issues with respect to the TRO amendment to NewSouth's existing interconnection agreements. I stated that, in that regard, Verizon remained willing to attempt to negotiate a resolution of any such issues regarding the TRO amendment.

[1] Verizon filed such revisions on March 19 and April 2, 2004 and served copies on the Kelley Drye coalition members.

I certify that the foregoing is true and accurate to the best of my recollection and belief.

Signed: _____
Anthony M. Black

Dated: April 23, 2004

Subscribed and sworn to me, a Notary Public, this 23 day of April, 2004.

_____
Notary Public

My Commission Expires:

JENNIFER LYNN HOH
Notary Public
Commonwealth of Virginia
My Commission Expires February 28, 2007

BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE STATE OF FLORIDA

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

AFFIDAVIT OF MICHAEL A. DALY

STATE OF VIRGINIA)
) ss.
COUNTY OF ARLINGTON)

I, Michael A. Daly, being duly sworn upon oath, state as follows:

1. I am a full time employee of Verizon Services Corp. ("Verizon"). My position is Director.

2. As part of my job responsibilities, I am charged with negotiating interconnection agreements with AT&T on behalf of Verizon in the state of Florida.

3. I have been involved with efforts to negotiate new language in the AT&T/Verizon interconnection agreement in Florida in response to the *Triennial Review Order* ("TRO"), which became effective on October 2, 2003.

4. Verizon sent AT&T a letter on October 2, 2003, which proposed a draft TRO Amendment that was available on Verizon's wholesale website to all CLECs via an electronic link provided in the letter. The letter invited CLECs to review the draft amendment and to contact Verizon to proceed with completion of the contracting process. The letter further advised CLECs that the TRO deemed October 2, 2003 as the notification request date for contract amendment negotiations, and that, in accordance with 47 U.S.C. § 252(b), either party could request arbitration during the window from the 135th day to the 160th day after such negotiation request date. (The October 2 letter is attached as Exhibit A).

5. When undertaking contract negotiations, it is standard industry practice for the recipient of a written proposal to "markup" the initial proposal (typically in "redline" format – a function that is available in modern word-processing software) so that the negotiating parties may easily see the alterations and deletions proposed by each other.

6. AT&T did not respond with a markup of Verizon's proposed amendment until February 6, 2004 – over four months from the date of Verizon's initial proposal. This response was just ten days before the "arbitration window" opened pursuant to the *Triennial Review Order*. Moreover, AT&T's response came only after Verizon urged AT&T to make a counterproposal in redline format on November 7, 2003 – three months before AT&T finally responded.

I certify that the foregoing is true and accurate to the best of my recollection and belief.

Signed: _____
Michael A. Daly

Dated: April 23, 2004

Subscribed and sworn to me, a Notary Public, this 23rd day of April, 2004.

_____
Notary Public

My Commission Expires: 9/30/07

BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE STATE OF FLORIDA

Petition of Verizon Florida Inc. and Verizon North 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

AFFIDAVIT OF STEPHEN C. HUGHES

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Stephen C. Hughes, being duly sworn upon oath, state as follows:

1. My name is Stephen C. Hughes. My business address is 1095 Avenue of the Americas, 17th Floor, New York, New York. I am Negotiations Manager for Verizon Services Corporation.

2. As part of my responsibilities, I was the primary Verizon negotiator with Sprint in the effort to amend the parties' existing interconnection agreement in light of the FCC's *Triennial Review Order* ("TRO").

3. The purpose of this affidavit is to respond to allegations made by Mr. John S. Weyforth in his affidavit in support of Sprint's Motion to Dismiss, filed on March 16, 2004. In particular, I explain that Verizon has negotiated in good faith with Sprint over a TRO amendment to the parties' existing Interconnection Agreement in Florida. Verizon actively communicated with Sprint concerning Verizon's draft TRO amendment,

carefully reviewed and considered Sprint's comments to the draft, and provided substantive and meaningful responses to those counterproposals. Although Verizon rejected Sprint's proposed changes to its language, Verizon continues to negotiate with Sprint, notwithstanding the filing of the Petition for Arbitration.

4. The TRO, which was released on August 21, 2003, outlined the procedures for incumbents and CLECs to follow in implementing the new unbundling rules established in the order. In particular, the FCC directed incumbents and CLECs to use the timetable in section 252(b) of the Act for modification of agreements in light of the TRO, and established the commencement date for negotiations for amendments as the effective date of the TRO.

5. On October 2, 2003, the effective date of the TRO, Verizon sent a letter initiating negotiations to each CLEC, including Sprint, in which Verizon proposed a draft TRO amendment. In his affidavit, Mr. Weyforth outlines his version of the negotiations between the parties both before and after Sprint responded to Verizon's draft TRO amendment. His chronology, however, has numerous inaccuracies.

6. For example, after Verizon's request to commence negotiations on October 2, 2003, the first communication that Verizon received from Sprint was an October 7, 2003 e-mail from Shelley Jones of Sprint to me and to Gary Librizzi, another Verizon representative (the email is attached hereto as Exhibit A). Contrary to Mr. Weyforth's claim (Aff. ¶ 6, 10/07/03 entry), Ms. Jones did not "ask[] if it was Verizon's intention to hold up other interconnection agreement amendments for line-splitting and EELs that had been requested by Sprint in August '03 because of the TRO amendment." Rather, her actual question was as follows:

> Other than having an interconnecting company request to amend their agreement and consent to use the Verizon amendment, does Verizon have any plans to incorporate this amendment in with other amendments that are outstanding, such as the EELs and Line Splitting amendments Sprint requested several months ago?

In his affidavit, Mr. Weyforth claims that Ms. Jones "received no response from Verizon" to this question. This is not true. I personally responded to Ms. Jones' question by voicemail on October 10, 2003 (just three days later), informing her that the TRO amendment contained the EEL language that would now be compliant with the TRO. Mr. Weyforth admits this in his affidavit, and therefore I do not understand how he can claim that Verizon did not answer Ms. Jones' question. Moreover, as I explain below, the parties negotiated – and executed – an amendment to incorporate line splitting terms effective November 1, 2003, thus eliminating any concern raised by Ms. Jones with respect to the line splitting amendment.

7. Mr. Weyforth is also wrong that Ms. Jones thereafter "received no response" from Verizon to her request for a conference call to discuss the proposed amendment. Ms. Jones first requested a conference call on October 14, 2003 in a voicemail to Mr. Librizzi, as Mr. Weyforth indicates in his affidavit. (Aff. ¶ 6, 10/14/03 entry) Mr. Librizzi forwarded that voicemail to me, and I responded by email the very next day, requesting that Ms. Jones provide me with the Sprint team's availability for a call during that week and the next. After an exchange of emails, we mutually agreed to a date and time, and on October 17, 2003, Ms. Jones provided me a call-in number for the conference call, at my request. The relevant emails outlining this exchange are attached to this affidavit as Exhibit B.

8. That conference call took place on October 20, 2003. Mr. Librizzi, Mr. Paul Rich (Verizon's attorney) and I participated on behalf of Verizon, and Ms. Jones, Mr. Weyforth, and Joseph Cowin (Sprint's attorney) participated on behalf of Sprint. In his affidavit, Mr. Weyforth complains that "[t]here were no definitive responses from Verizon" to "concerns and questions" presented by Sprint on the conference call. However, at that time, Sprint had not provided Verizon redlined comments on the proposed amendment, and thus it would have been impossible for Verizon to give "definitive" responses to Sprint's generalized concerns and questions. Verizon responded appropriately to the extent that Sprint clearly identified issues on the conference call.

9. Verizon received Sprint's redlined comments on Verizon's draft TRO amendment on October 29, 2003. As soon as we received them, Mr. Librizzi and I forwarded the comments to the various subject matter experts within Verizon for review. That review lasted until mid-December, at which time Verizon conducted an internal legal review of Sprint's proposed language in light of the input from the subject matter experts. During this period, Mr. Librizzi and I responded to all of Sprint's inquiries concerning the status of Verizon's review of the contract language, but could not yet provide substantive comments on Sprint's proposed revisions to the contract language.

10. On February 12, 2004, Mr. Librizzi, Mr. Rich, and I participated on a conference call with Sprint representatives to discuss Sprint's written comments on the draft TRO amendment. Although Mr. Weyforth claims "Verizon did not at any time negotiate" (Aff. ¶ 6, 2/12/04 entry), that is not true. Verizon informed Sprint that several of the changes were not acceptable and verbally explained the reasons why Verizon disagreed

with Sprint's position, and further asked several clarifying questions in an attempt to understand the reasoning underlying other proposed changes for the purpose of providing a written response to Sprint's proposals. In fact, Verizon indicated to Sprint on that call that a written response would be forthcoming.

11. Thereafter, in a telephone conversation on or about March 9, 2004 between Sprint's attorney Mr. Cowin and Verizon's attorney Mr. Rich, Sprint inquired whether Verizon was accepting or rejecting Sprint's proposed changes. Mr. Rich indicated that Verizon disagreed with Sprint's proposals. On March 11, 2004, Verizon provided a written statement of its objections to Sprint's proposed changes (a copy is attached as Exhibit C).

12. Although Sprint claims that its proposed changes to the TRO amendment "did not materially affect the integrity of the Verizon document" and thus "a quick turn-around time was expected," that is not true either. Several of Sprint's proposed changes did, in fact, materially affect Verizon's TRO amendment and were unacceptable to Verizon for the reasons outlined in Verizon's March 11, 2004 comments. Verizon had valid, substantive reasons for rejecting Sprint's proposals.

13. As Sprint is aware, moreover, the filing of an arbitration petition under section 252(b) does not signal the end of party-to-party negotiations. Verizon has negotiated interconnection agreements with Sprint and its affiliates in numerous states, and some of those negotiations have resulted in arbitrations while the negotiations were still ongoing. In those cases, after the arbitration petition was filed, Verizon and Sprint have successfully resolved issues without commission involvement, thus narrowing the scope of the issues for arbitration. The ongoing nature of the negotiations is apparent, since

Sprint has provided Verizon new redlined comments in response to a more recent version of Verizon's proposed TRO amendment (which Verizon filed in this docket on March 18, 2004 and has posted on its website), which are far more extensive than its October 29, 2003 comments.

14. It should also be noted that Mr. Weyforth is wrong that Verizon did not respond to his March 2, 2004 email request for a "complete list of where consolidated arbitrations had been filed and copies of those documents." (Aff. ¶ 6, 03/02/04 entry) I spoke to Mr. Weyforth by telephone on that same day, and told Mr. Weyforth that Sprint's attorney, Mr. Cowin, had made a similar request to Verizon's attorney, Paul Rich, who was pulling together the materials. Mr. Rich provided the requested documents to Mr. Cowin on March 5, 2004.

15. In addition to these factual inaccuracies relating to the TRO amendment, Mr. Weyforth's chronology of the negotiations includes information that is irrelevant to the parties' negotiation of a TRO amendment in this state. For example, Mr. Weyforth repeatedly refers to Sprint's request to adopt the AT&T agreement in Virginia. This is puzzling, since Verizon honored Sprint's request to adopt that agreement within a reasonable timeframe, and that adoption has nothing to do with the negotiations for a TRO amendment.

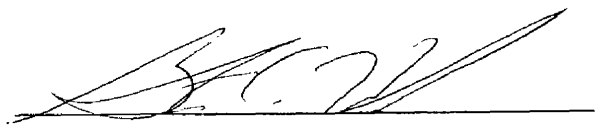
16. In addition, Mr. Weyforth refers to the parties' negotiations for an amendment to add line splitting terms. This amendment, however, was negotiated separately, and has already been executed by the parties, effective November 1, 2003. Nevertheless, Mr. Weyforth implies a lack of good faith by Verizon by claiming that on October 27, 2003, Verizon "finally" sent Sprint a draft line splitting amendment that it had requested in

August 2003. (Aff. ¶ 6, 10/27/03 entry.) Mr. Weyforth further claims that Verizon "rais[ed] a possible roadblock that they could decide to change the amendments if they felt the amendments did not conform to the TRO." Mr. Weyforth mischaracterizes what actually occurred. Until August 21, 2003, Verizon had not yet seen the FCC order to determine the extent to which it may have impacted Verizon's line splitting obligations. Nevertheless, Verizon provided draft language to Sprint within a reasonable time frame (less than a month after the FCC's rules became effective). A copy of my October 27, 2003 email to Ms. Jones transmitting draft amendments is attached hereto as Exhibit D. Although in that email, Verizon reserved its right to make changes to that draft language, it certainly was not a "roadblock" to negotiations, since the parties executed the line splitting amendment without ***any*** changes.

17. Finally, Mr. Weyforth makes much of Verizon's rejection of certain UNE loop orders in Texas. As an initial matter, rejection of orders in ***Texas*** has nothing to do with the parties' relationship in Florida. Moreover, as Verizon explained to Sprint on several occasions (by Mr. Librizzi on February 26, 2004 and by Val Perez, Verizon account manager, on March 5, 2004, and on other calls in between), those orders were rejected because certain network modifications – specifically, the purchase and installation of new electronic multiplexing equipment – would have been required. Verizon's existing interconnection agreement with Sprint in Texas does not provide terms and conditions for installation of electronics for the provisioning of unbundled network elements. Moreover, the parties have not yet agreed upon terms and conditions to compensate Verizon for this work. Although Mr. Weyforth claims that this is because Verizon was refusing to negotiate an amendment with Sprint, to the best of my knowledge, Sprint has

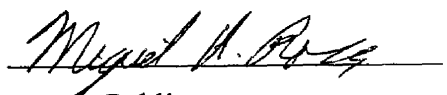
never indicated either verbally or in writing to Verizon whether it would be willing to agree to the charges for such network modifications that Verizon has proposed for the TRO amendment (those rates and charges are published on Verizon's website) or otherwise provided any counter-proposal to the rates proposed by Verizon.

I hereby declare under oath and penalty of perjury that the foregoing Affidavit is true and correct to the best of my knowledge.



Stephen C. Hughes

Subscribed and sworn to before me this 23rd day of April, 2004.



Notary Public

MIGUEL A. ROSA
Notary Public, State of New York
No. 43-4771951, Qualified in Kings County
Certificate Filed in New York County
Commission Expires Nov. 30, 2006

EXHIBIT A

"Jones, Shelley E [CC]" <sjones37@sprintspectrum.com>

10/07/2003 06:14 PM

To: Stephen Hughes/EMPL/NY/Verizon@VZNotes, Gary Librizzi/EMPL/NY/Verizon@VZNotes
cc: "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject:

Stephen and Gary,

Sprint is reviewing the TRO amendment that appeared on the Verizon website. What are Verizon's intentions for this amendment? Other than having an interconnecting company request to amend their agreement and consent to use the Verizon amendment, does Verizon have any plans to incorporate this amendment in with other amendments that are outstanding, such as the EELs and Line Splitting amendments Sprint requested several months ago?

I am curious as to its intended use and the status of the amendments that were already requested.

Please fill me in. Thanks,

Shelley Jones
Sprint - Carrier & Interconnection Management KSOPHN0214
913-315-9388
913-315-0752 fax

EXHIBIT B

"Jones, Shelley E [CC]" <sjones37@sprintspectrum.com>

10/17/2003 05:01 PM

To: Stephen Hughes/EMPL/NY/Verizon@VZNotes
cc: Gary Librizzi/EMPL/NY/Verizon@VZNotes, "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject: RE: Conference Call

Thank you Stephen. Please call 1-816-650-0612 code 5256637

Shelley Jones
Sprint - Carrier & Interconnection Management
KSOPHN0214-2A562
913-315-9388
913-315-0752 ax

-----Original Message-----
From: stephen.c.hughes@verizon.com [mailto:stephen.c.hughes@verizon.com]
Sent: Friday, October 17, 2003 3:48 PM
To: Jones, Shelley E [CC]
Cc: gary.r.librizzi@verizon.com; Weyforth, Jack S [CC]
Subject: RE: Conference Call

Shelley: Verizon would be available to participate in a conference call on Monday, October 20 from 2:30-3:30 eastern time. If you have a conference bridge available, please forward it to us or we can use one of ours.

Thank you.

Steve Hughes
212-395-2875

To: Stephen Hughes/EMPL/NY/Verizon@VZNotes
cc: Gary Librizzi/EMPL/NY/Verizon@VZNotes, "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject: RE: Conference Call

Stephen,

The timely scheduling of this call is important to Sprint. Please respond with a date/time slot that works for Verizon. Sprint is very concerned that Verizon is attempting to use the recent TRO to hold up Sprint's CLEC activity in Verizon territory.

Shelley Jones
Sprint - Carrier & Interconnection Management
KSOPHN0214-2A562
913-315-9388
913-315-0752 ax

-----Original Message-----

From: Jones, Shelley E [CC]
Sent: Wednesday, October 15, 2003 1:05 PM
To: 'stephen.c.hughes@verizon.com'
Cc: gary.r.librizzi@verizon.com; Weyforth, Jack S [CC]
Subject: RE: Conference Call

Eastern time slots for a 1 hour call:

10/17 2-3
10/20 2-3:30
10/21 10-11 or 2-4

I am out of the office 10/22 until the following week. I'd like to be here for the call but it is not required.

Shelley Jones
Sprint - Carrier & Interconnection Management
KSOPHN0214-2A562
913-315-9388
913-315-0752 ax

-----Original Message-----
From: stephen.c.hughes@verizon.com [mailto:stephen.c.hughes@verizon.com]

Sent: Wednesday, October 15, 2003 12:50 PM
To: Jones, Shelley E [CC]
Cc: gary.r.librizzi@verizon.com
Subject: Conference Call

Shelley, your voice mail to Gary was forwarded to me. In preparation for a conference call between Sprint and Verizon, would you please forward the Sprint team's availability for this week and next week.

Thank you.

Steve Hughes
212-395-2875

EXHIBIT C

Paul A. Rich
03/11/2004 08:51 PM

To: "Cowin, Joseph P [CC]" <Joseph.Cowin@mail.sprint.com>
cc: (bcc: Stephen Hughes/EMPL/NY/Verizon)
Subject: RE: Verizon TRO Amendment

Mr. Cowin,

In our recent discussions, Sprint's representatives have asked for a more detailed explanation of why Verizon has declined to accept Sprint's proposed revisions to the draft TRO amendment. The explanation is attached. If you need more information on Verizon's positions, please call me.

On a related note, Verizon is planning to propose revisions to the draft TRO amendment to address the D.C. Circuit Court of Appeals' March 2, 2004 TRO decision.

Paul Rich

TRO Amend Response.dc

Paul A. Rich
Legal Department
Verizon Services Corp.
1515 North Courthouse Road, Suite 500
Arlington, VA 22201
Telephone No.: 703-351-3118
Fax No.: 703-351-3659
Email: paul.a.rich@verizon.com

Verizon Response to Sprint TRO Amendment Issues

1. Section 2.14, "Local Switching." "Verizon switch (as identified in the LERG) that provides local circuit switching." Verizon does not understand how this change in language improves the clarity of Verizon's proposed language: "on a circuit switch in Verizon's network (as identified in the LERG)."

2. Section 2.16 (e). Addition of "[***State Commission TXT***] established multiline end user loop maximum." As a result of the D.C. Circuit Court of Appeals' recent TRO decision, inclusion of this language does not appear to be appropriate. The D.C. Circuit's decision, which vacates both the FCC's impairment finding as to Mass Market Switching and the FCC's delegation of non-impairment findings to the state commissions, means that the state commissions will not be establishing a multiline end user loop maximum. At this time, it is unknown whether on remand the FCC will establish a multiline end user loop maximum.

3. Section 2.16(e). Deletion of reference to the FCC's "Four-Line Carve Out Rule." Since the "Four-Line Carve Out Rule" is prescribed by the FCC's rules, deletion of this provision would not be appropriate.

4. Section 2.16. Deletion of "(g) the Feeder portion of a Loop." Retention of this language would appear appropriate in light of Section 3.1.3.4.

5. Section 2.16(j) and (k). Replacement of "use of" with "purchase of." Verizon does not understand why Sprint believes that this change is needed.

6. Section 2.16(j) and (k). Replacement of "Mass Market Switching" with "UNE Switching." This change is not appropriate. "UNE Switching" could include not only "Mass Market Switching," but also "Enterprise Switching." Verizon does not have a continuing obligation to provide "Enterprise Switching." Because of this, Verizon does not have a continuing obligation to provide "Databases" or "Signaling" for use with "Enterprise Switching," and "Databases" and "Signaling" for use with "Enterprise Switching" therefore are properly classified as "Nonconforming Facilities."

7. Section 2.18, "Qualifying Service." "Once a UNE has been provided subject to the provision of a qualifying service it is permissible to provide a non-qualifying service over the same facility pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51." The D.C. Circuit's decision has disapproved the FCC's distinction between "Qualifying Services" and "Non-Qualifying Services." Sprint's proposed sentence is therefore inappropriate. Verizon is considering deletion of this section from the TRO Amendment. Also, Sprint's concern on this point appears to be addressed by Section 1.2 of the TRO Amendment.

8. Section 2.19, "Route." Deletion of the phrase "within a LATA" at the end of the first sentence. This change is not appropriate. (See TRO, Paragraph 365 and Footnote 1111.)

9. Section 2.20, "Service Management Systems." Verizon is concerned that the proposed language, while adopting the text of the FCC's rule, may in actual practice be overly broad. In preparing the TRO Amendment, Verizon did not see a need to expressly address Service Management Systems. If there is a need to expressly address Service Management Systems, more narrowly tailored language should be used.

10. Section 2.20, "Signaling Networks." While the term proposed by Sprint, "Signaling Networks," is the term used in the FCC's rules, the more recent Verizon agreements with Sprint (NY, MA, MD, PA) generally do not use this term on a stand-alone basis. Rather, these agreements typically refer either to "signaling" or to the specific signaling arrangements and signaling networks that will be used by the parties. Thus, use of the term "Signaling," especially since the definition is that adopted by the FCC for "Signaling Networks," is appropriate.

11. Section 3.1.1.3. Verizon does not agree with the addition of the phrase "or at the end of any transition period set forth in the finding." As the term "Nonconforming Facility" is used in the amendment, a facility becomes a "Nonconforming Facility" at the time of a non-impairment determination, even if there is a transition period during which Verizon must continue to provide the facility.

12. Section 3.3.1.1.1. Verizon believes that this section should remain in the amendment. It is substantially the same as the language in Sprint's Massachusetts interconnection agreement on access to House and Riser Cable.

13. Section 3.3.1.2. Sprint has questioned the need for the Parties to "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." Verizon believes this approach is necessary because of the potentially differing circumstances at each premises and the consequent difficulty of covering all installations through general language in the Amended Agreement and generally available rates.

14. Section 3.4.1. See 2, above.

15. Section 3.4.3. See 9 and 10, above.

16. Section 3.5.2.3. See 11, above.

17. Section 3.5.3.2. See 11, above.

18. Section 3.6.1, first sentence, third line, ". . . Verizon will not prohibit the commingling by Sprint of an unbundled Network Element . . .". Verizon does not understand why Sprint believes this revision is needed.

19. Section 3.6.1, "but Verizon's performance will conform at parity with how it provisions like service to its own customers, itself, and to its affiliates." Verizon disagrees with the addition of this phrase. First, it is unclear what the term "parity" means. Second, if Verizon has some obligation under applicable law to provide service in a non-discriminatory manner, in light of the general "compliance with applicable law" provisions usually contained in interconnection agreements, there would not seem to be a need to have a special "parity" or "non-discrimination" provision in Section 3.6.1.

20. Section 3.6.2.7, "reimburse Verizon for the entire cost of the audit." Verizon believes that Sprint should bear the entire cost for an audit, since the audit would not have been necessary if Sprint had adhered to applicable FCC rules for use of EELs.

21. Section 3.6.2.7, final sentence. Sprint has questioned the need for it to retain records "for at least eighteen (18) months." Verizon believes this interval is reasonable given the "[o]nce per calendar year" timing of audits.

22. Section 3.7.1. Verizon believes that the language it has proposed accurately reflects the TRO.

23. Section 3.7.2. See 19, above.

24. Rates. The rates that Verizon has proposed are either existing effective state commission approved rates or rates that Verizon will substantiate in the applicable state commission arbitration proceedings.

'EXHIBIT D

Stephen Hughes
10/27/2003 02:34 PM

To: "Jones, Shelley E [CC]" <sjones37@sprintspectrum.com>
cc: "Weyforth, Jack S [CC]" <jweyfo01@sprintspectrum.com>
Subject: Sprint Line Splitting Amendments

Shelley, attached are draft Line Splitting amendments for MA, MD, NJ, NY, PA (East) and PA (West). The amendments are being sent in a draft form for Sprint's comments. Verizon is still reviewing the language of the amendments to assure that it conforms to the FCC's Triennial Review Order and the revisions that Verizon will be making to its template interconnection agreement to conform the template to the Triennial Review Order. Verizon therefore reserves the right to revise the draft amendments.

Please let me know if you have any questions.

Thank you.

Steve Hughes
Verizon Negotiations Manager
1095 Avenue of the Americas, 1705F
New York, NY 10036
212-395-2875

Sprint-MA-Line Split-Amend 102503. sprint-MD-line split-amend 102503. sprint-nj-line split-amend 102503.

Sprint-NY-Line Split-Amend 102503. Sprint-PA-Line Split-Amend 102503. sprint-PAw-line split-amend 102503.

BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE STATE OF FLORIDA

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

AFFIDAVIT OF JOHN PETERSON

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, John C. Peterson, being duly sworn upon oath, state as follows:

1. I am a fulltime employee of Verizon Wholesale Markets. My job title is Director, Contract Performance and Administration.

2. As part of my job responsibilities, I serve as a central point of contact for Competitive Local Exchange Carriers ("CLECs") requesting negotiations and tracking the status of those negotiations. My department also manages Verizon's contract database, maintains noticing addresses for all CLECs with effective contracts, and distributes formal notices to CLECs. I am therefore highly knowledgeable about negotiations with CLECs in Florida and the October 2, 2003 notice sent to CLECs regarding the FCC's *Triennial Review Order* ("TRO").

3. On August 21, 2003, the FCC issued the TRO, which required incumbent LECs and competitive LECs to amend their interconnection agreements to reflect new unbundling rules. I am knowledgeable about the efforts made by Verizon to negotiate TRO-related amendments with CLECs to their Florida interconnection agreements.

4. In a October 2, 2003 notice sent to all CLECs with an effective interconnection agreement, Verizon proposed a draft TRO Amendment that was available on Verizon's wholesale website to all CLECs via an electronic link provided in the notice. The notice invited CLECs to review the draft amendment and to contact

Verizon to proceed with completion of the contracting process. The notice advised CLECs that the TRO deemed October 2, 2003 as the notification request date for contract amendment negotiations, and that, in accordance with 47 U.S.C. § 252(b), either party could request arbitration during the window from the 135th day to the 160th day after such negotiation request date. (The October 2, 2003 letters to the carriers mentioned in paragraphs below are attached as Exhibit A).

5. I understand that arbitration for the purpose of implementing a TRO Amendment is currently pending before the Florida Public Service Commission, and that certain CLECs have argued (or implied) that Verizon had not negotiated in good faith.

6. I have reviewed all available records, including a TRO-specific spreadsheet (which summarizes the status of requests for negotiation) and our contract database (which houses all requests for negotiation that Verizon has received). To the best of my knowledge, the CLECs in the CCC that have not provided Verizon with a counterproposal to Verizon's draft TRO Amendment include: Adelphia Business Solutions Operations of Florida, Allegiance Telecom of Florida Inc., Level 3 Communications, Inc., and DSLnet Communications LLC.

7. Only one of the CLECs listed above, DSLnet Communications LLC, contacted Verizon and indicated that it intended to send a redline markup of Verizon's draft TRO Amendment. As of today's date, it has not done so.

8. Renee Ragsdale was an employee of Verizon Wholesale Markets prior to November 20, 2003, when her employment terminated. Ms. Ragsdale assisted with administering interconnection agreements, and I was her supervisor. Ms. Ragsdale was not an attorney.

I certify that the foregoing is true and accurate to the best of my recollection and belief.

Signed: _____
John C. Peterson

Dated: April 23, 2004

Subscribed and sworn to me, a Notary Public, this 23rd day of April, 2004.

_____
Notary Public

My Commission Expires: 5/1/04

MICHELLE D. MILLER
Notary Public, State of Texas
My Commission Expires
May 01, 2004

Exhibit A

Jeffrey A Masoner
Vice President Interconnection Services

verizon

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Janet S. Livengood
Director of Legal and Regulatory Affairs
Adelphia Business Solutions of Florida L.L.C.
1 North Main Street
Coudersport, PA 16915-1630

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Florida Inc. and Adelphia Business Solutions of Florida L.L.C. for the State of Florida.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Adelphia Business Solutions of Florida L.L.C. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Adelphia Business Solutions of Florida L.L.C. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
4. Dark Fiber Feeder Subloop
5. Fiber to the Home (lit and unlit) – new builds
6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
7. Hybrid Loops – subject to exceptions for TDM and narrowband applications
8. Line Sharing

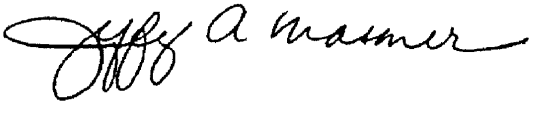
In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment.

To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.



Vice President Interconnection Services

JAM:kar

Jeffrey A Masoner
Vice President Interconnection Services

verizon

2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Mary C. Albert
Vice President - Regulatory and Interconnection
Allegiance Telecom of Florida Inc.
1919 M Street NW Suite 420
Washington, DC 20036

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Florida Inc. and Allegiance Telecom of Florida Inc. for the State of Florida.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

Pursuant to the Triennial Review Order, Verizon's obligations under the Act have been materially modified in numerous respects. Among other things, certain facilities that Verizon was previously required to offer on an unbundled basis pursuant to Section 251(c)(3) are no longer subject to unbundling. Verizon has completed its preliminary assessment of the impact of the Triennial Review Order on its current operations, and has decided to cease providing the unbundled network elements set forth below. As Verizon continues this review process, we expect to provide notice of additional discontinuances in the near future.

Accordingly, Verizon is hereby providing formal notice to Allegiance Telecom of Florida Inc. of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

1. OCn Transport
2. OCn Loops
3. Dark Fiber Transport between Verizon Switches or Wire Centers and Allegiance Telecom of Florida Inc. Switches or Wire Centers (a/k/a Dark Fiber Channel Terminations or Dark Fiber Entrance Facilities)
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6. Fiber to the Home (lit and unlit) – overbuilds, subject to limited exceptions
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8. Line Sharing

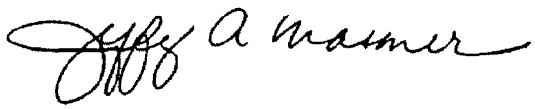
In addition, this letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment.

To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice.

Verizon's proposed contract amendment implementing the provisions of the Triennial Review Order has been posted on Verizon's Wholesale Web Site and may be accessed via the electronic link at the bottom of this letter. This proposed contract amendment also explains the mechanism for transitioning existing service arrangements that will no longer be available on an unbundled basis to alternative services.

Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process. You can either send an email to contract.management@verizon.com or contact Renee L. Ragsdale, Manager Interconnection Services. Ms. Ragsdale's address is 600 Hidden Ridge, Irving, TX 75038 and her telephone number is 972-718-6889.

Please be advised that the Triennial Review Order provides that October 2, 2003 shall be deemed to be the notification request date for contract amendment negotiations associated with the Triennial Review Order. In accordance with Section 252(b) of the Act, from the 135th day to the 160th day after such negotiation request date, either party may request the state regulatory commission to arbitrate the terms of the contract amendment.



Vice President Interconnection Services

JAM:kar

Jeffrey A. Masoner
Vice President Interconnection Services

verizon

2107 Wilson Blvd
11th Floor
Arlington, Va 22201
Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Interconnection Services
Director
Level 3 Communications LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Florida Inc. and Level 3 Communications LLC for the State of Florida.

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Accordingly, Verizon is hereby providing formal notice to Level 3 Communications LLC of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

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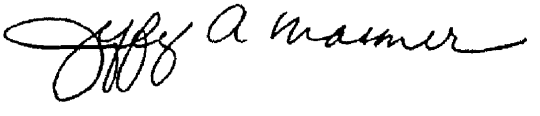

Vice President Interconnection Services

JAM:kar

Jeffrey A Masoner
Vice President Interconnection Services

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Tel. 703 974-4610
Fax 703 974-0314

VIA AIRBORNE EXPRESS

October 2, 2003

Mike Romano
Attorney
Level 3 Communications LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

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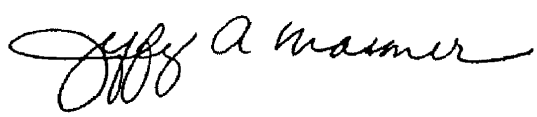

Vice President Interconnection Services

JAM:kar

Jeffrey A Masoner
Vice President Interconnection Services

verizon

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11th Floor
Arlington, Va 22201
Tel. 703 974-4610
Fax 703 974-0314

October 2, 2003

Stephen Zamansky
545 Long Wharf Drive 5th Floor
New Haven, CT 06511

Subject: **NOTICE OF DISCONTINUATION OF UNBUNDLED NETWORK ELEMENTS AND NOTICE OF AVAILABILITY OF CONTRACT AMENDMENT**

This letter is a **formal notice** under the interconnection agreement between Verizon Florida Inc. f/k/a GTE Florida Incorporated and DSLnet Communications LLC for the State of Florida.

In its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, released on August 21, 2003 (the "Triennial Review Order"), the Federal Communications Commission promulgated new rules and regulations pertaining to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act"). Those rules and regulations, together with the other relevant provisions of the Triennial Review Order, take effect today (October 2, 2003).

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Accordingly, Verizon is hereby providing formal notice to DSLnet Communications LLC of Verizon's intention, to the extent permitted by your interconnection agreement, to discontinue the provisioning of the following unbundled network elements, in accordance with the provisions of the Triennial Review Order, thirty (30) days from the date of this letter, or immediately following any longer notice period as may be required by your interconnection agreement:

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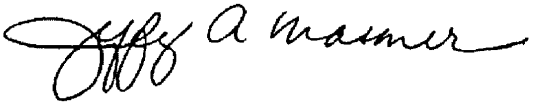

Vice President Interconnection Services

JAM:kar

BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE STATE OF FLORIDA

Petition of Verizon Florida Inc. and Verizon North 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

AFFIDAVIT OF KIM WIKLUND

STATE OF MARYLAND)
) ss.:
CITY OF BALTIMORE)

I, Kim Wiklund, being duly sworn upon oath, state as follows:

1. My name is Kim Wiklund. My business address is 1 East Pratt Street, 8th Floor, Baltimore, Maryland. My current title is Manager, Regulatory Affairs for Verizon Maryland Inc. Prior to March 1, 2004, I was Negotiations Manager for Verizon Services Corporation.

2. As part of my responsibilities as Negotiations Manager, I was the primary Verizon negotiator with US LEC in the effort to amend the parties' existing interconnection agreement in light of the FCC's *Triennial Review Order* ("TRO").

3. The purpose of this affidavit is to respond to allegations made in the Response of US LEC of Florida Inc. to Verizon Florida Inc.'s Consolidated Petition for Arbitration, filed April 13, 2004. In particular, I explain that Verizon did not "walk[] away from the [negotiating] table just prior to filing its consolidated arbitration petition." (Response at

2) To the contrary, Verizon actively negotiated with US LEC before the filing of its Petition for Arbitration, and continues to negotiate with US LEC, as US LEC's own chronology of the negotiations shows.

4. The TRO, which was released on August 21, 2003, outlined the procedures for incumbents and CLECs to follow in implementing the new unbundling rules established in the order. In particular, the FCC directed incumbents and CLECs to use the timetable in section 252(b) of the Act for modification of agreements in light of the TRO, and established the commencement date for negotiations for amendments as the effective date of the TRO.

5. On October 2, 2003, the effective date of the TRO, Verizon sent a letter initiating negotiations to each CLEC, including US LEC, in which Verizon proposed a draft TRO amendment. US LEC provided redlined comments on the TRO amendment on October 15 and October 23, 2004. In its Response to Verizon's Petition for Arbitration, US LEC outlines its version of the negotiations after US LEC provided its redlined comments. (Response at 3-5, ¶ 3-19) This chronology, however, has several inaccuracies and important omissions.

6. For example, US LEC implies that Verizon failed to respond to US LEC's requests to negotiation the TRO amendment with Verizon after it provided its redlined responses to Verizon's proposed language. (Response at 3, ¶¶ 3-4) What US LEC fails to inform the Commission is that the parties were also separately negotiating interconnection agreements to conform to arbitration decisions in North Carolina and Pennsylvania that were unrelated to the TRO (the "Conforming Agreements"). After US LEC provided its October redlines, Verizon and US LEC mutually agreed to put

discussions concerning the TRO Amendment on hold until the negotiations for the Conforming Agreements were completed. In fact, the December 4, 2003 negotiation conference call referenced in US LEC's Response (at 3, ¶ 5) was actually a conference call to discuss the Conforming Agreements, not the TRO Amendment. In addition, Todd Murphy, US LEC's negotiator, informed me that US LEC had hired a new Deputy General Counsel (Terry Romine), who would not start in her new position until after the December holidays. He told me that US LEC wanted to wait until she got settled into her new position to discuss the TRO amendment. Verizon agreed to US LEC's request to postpone the negotiations until January 2004.

7. The parties participated in their first conference call to discuss the TRO amendment on January 14, 2004. On that call, the parties agreed to go through the entire proposed TRO amendment, section by section, to identify the main areas of dispute. This undertaking took time, and therefore it was necessary to conduct another conference call a week later, on January 20, 2004, to finish going through the document. Thereafter, another conference call was scheduled for January 27, 2004, but US LEC asked to cancel the call due to bad weather in Charlotte, North Carolina.

8. On February 2, 2004, based on discussions on the two prior calls in January, US LEC and Verizon each identified the main areas of dispute and exchanged their respective positions on those issues. US LEC claims that "[a]fter February 2, 2004, US LEC never received any of the promised responses from Verizon to the disputed issues." (Response at 4, ¶ 13) That is not true. Verizon and US LEC participated on two conference calls – one on February 5, 2004 and another on February 10, 2004 – during which Verizon outlined its position on each of the issues identified by the parties on

February 2, 2004. Thereafter, on February 23, 2004, US LEC provided Verizon a new statement of its positions and proposals for Verizon's consideration.

9. On February 27, 2004, I called Mr. Murphy to advise him that I was changing positions within Verizon as of March 1, 2004, but that I would continue to be involved in the negotiations with US LEC regarding the TRO amendment and the Conforming Agreements until my replacement started in her new position on April 1, 2004. I provided Mr. Murphy with my new telephone number, but indicated that my email address would not change. Thereafter, although Mr. Murphy contacted me several times concerning the status of the Conforming Agreements, he did not inquire about the status of the TRO amendment.

10. On April 1, 2004, I sent an email to Mr. Murphy, informing him that Margaret Detch would replace me as the Verizon negotiations manager and providing Ms. Detch's contact information. I assured Mr. Murphy that I would work with Ms. Detch during the transition. Mr. Murphy responded a week later, on April 7, 2004. Later that same day, Mr. Murphy, Ms. Detch and I had a brief introductory conference call. Since that time, Verizon has provided US LEC with its positions on the various outstanding issues, conducted two conference calls (on April 14 and April 19, 2004), and scheduled a third conference call for Wednesday, April 28, 2004.

11. Verizon filed its Petition for Arbitration on February 20, 2004, within the statutory arbitration window prescribed in section 252(b) of the Act. Although US LEC claims that Verizon did not "give US LEC a hint that Verizon intended to file the consolidated arbitration petition rather than continue to negotiate" (Response at 4, ¶ 15), this is disingenuous, since US LEC representatives acknowledged that they were aware

of the statutory arbitration window during the parties' conference calls. US LEC never requested that the parties agree to any kind of extension of that mandatory timeframe. Nor did Verizon file its Petition *in lieu of* continuing negotiations with US LEC. As US LEC is aware, the filing of an arbitration petition under section 252(b) does not signal the end of party-to-party negotiations, and Verizon never told US LEC otherwise. Verizon has negotiated interconnection agreements with US LEC in other states, and some of those negotiations have resulted in arbitrations while the negotiations were still ongoing. In those cases, after the arbitration petition was filed, Verizon and US LEC successfully resolved issues without commission involvement, thus narrowing the scope of the issues for arbitration. In fact, this is exactly what happened in the North Carolina and Pennsylvania arbitrations with US LEC. Moreover, US LEC's own chronology of events demonstrates that the parties are still actively negotiating terms. US LEC acknowledges that as of April 7, 2004, "the companies [were] attempting to schedule a negotiations session during the week of April 12." (Response at 4-5, ¶ 17) And as I indicate above, since April 12, 2004, the parties have had *two* conference calls and scheduled a third. Obviously, Verizon has not "walked away from the table" at all.

I hereby declare under oath and penalty of perjury that the foregoing Affidavit is true and correct to the best of my knowledge.

Kim Wiklund

Subscribed and sworn to before me this 21st day of April, 2004.

Elizabeth A. Dawson

Notary Public

TechNet Law Group, P.C.[sm]
1100 New York Ave., NW, Suite 365
Washington, DC 20005-3934
Voice: (202) 589-0120
Fax: (202) 589-0121
E-Mail: jpach@technetlaw.com
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James G. Pachulski, Esq. (D.C. Ill. & Penn.)
Joseph C. Fenech, Esq. (Ill. & Mich.)

Paralegal
Joyce Thaden

January 23, 2004

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. W. Scott McCollough
Stumpf Craddock Massey & Pulman
1250 Capital of Texas Highway South
Building One, Suite 420
Austin, TX 78746

RE: Implementation of FCC *Triennial Review Order*

Dear Mr. McCollough:

I am writing in response to your electronic mail message sent on December 4, 2003 to Mr. Anthony Black, outside counsel for Verizon, regarding implementation of 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, released on August 21, 2003 (the "TRO"). In the above-referenced e-mail, you claim to represent certain CLECs[1] in TRO matters and present on those CLECs' behalf a proposed amendment for Verizon's review.

Verizon reviewed the proposed amendment you sent. It is not in the form of an amendment, but rather is simply a copy of various FCC Rules adopted as a result of the TRO. In fact, in correspondence sent to Mr. Black on December 3, 2003, you indicated that the "text will in large part merely restate the FCC's UNE rules, as amended in the TRO. We do not see the need to do anything more . . . ." Verizon disagrees. The FCC

[1] According to the electronic correspondence received on December 4, 2003, the competing carriers under your representation include: Acme (Indiana), Eagle (Florida), Essex (Illinois), Foremost (Texas), ICCI (California and Texas), Koyote (Texas), MyaTel (Florida), New Frontiers (Maryland), PriorityOne (Oregon), and USCOM (Texas).

directed the parties to negotiate amendments to implement the TRO.[2] If the FCC had intended carriers to sign a copy of the Commission's Rules, it would have said so.

Furthermore, copying (in whole and in part) sections of the FCC Rules and employing those sections as a proposed "amendment" is problematic for several reasons. First, your proposed amendment ignores the form and construction of the existing interconnection agreements ("ICAs") executed by the CLECs you represent. Second, the general composition of the FCC Rules fails to build on the established operations detailed within each CLEC's ICA. Third, your proposed "amendment" remains silent in regards to its impact on associated ICA provisions and applicable Verizon tariffs.

For these reasons, Verizon strongly encourages the CLECs represented by you to consider working from Verizon's TRO Amendment and submit any edits to that document in red-line format. You may obtain the most recent copy of Verizon's TRO Amendment by accessing Verizon's Wholesale website (http://www22.verizon.com/wholesale/clecsupport/content/1,16835,east-wholesale-resources-2003_industry_letters-clec-10_02b,00.html). If they do not do so, Verizon will regard those CLECs as not fully satisfying their duty to negotiate in good faith as required by the TRO.[3]

Finally, there is another matter that requires your attention. In a letter dated October 7, 2003 from Mr. Vance Swaggerty of Matrix DataCom to Jeffrey Masoner of Verizon, Mr. Swaggerty explains that you serve as counsel for Matrix DataCom ("MXD") and will handle all related TRO negotiations. MXD, however, was not addressed in the aforementioned December 4, 2003 electronic correspondence. Please verify whether MXD was inadvertently excluded from your previous correspondence or whether your will manage MXD on an independent basis.

I look forward to your response, and please do not hesitate to call me with any questions or comments.

Sincerely,

James G. Pachulski

JGP/jt

cc: Michael A. Browne

---

[2] *See* TRO ¶ 704.

[3] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that copies of Verizon Florida Inc.'s Opposition to Motions to Dismiss in Docket No. 040156-TP were sent via U.S. mail on April 26, 2004 to the parties on the attached list.

Richard A. Chapkis

Richard A. Chapkis

Lee Fordham, Staff Counsel
Florida Public Service Commission
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Dir.-Legal and Regulatory Affairs
Adelphia Business Solutions of
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Kaye Davis
Access Point Inc.
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Robert E. Heath
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Mario L. Soto
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Arrow Communications Inc.
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