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June 13, 2005

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

Re: Docket No. 040156-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Competitive Carrier Group are an original and fifteen copies of the Post-hearing Statement of Competitive Carrier Group in the above referenced docket. Also enclosed is a 3 ½" diskette with the document on it in MS Word 2003 format.

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

Thank you for your assistance with this filing.

Sincerely yours,

Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

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Before the
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Verizon Florida Inc. for Arbitration of an Amendment to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.	))))))	Docket No. 040156-TP Filed: June 13, 2005

POST-HEARING STATEMENT OF THE COMPETITIVE CARRIER GROUP

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TABLE OF CONTENTS

Page

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DIECA Communications, Inc. d/b/a Covad Communications Company, IDT America Corp., KMC Data LLC, KMC Telecom III LLC, KMC Telecom V, Inc., NewSouth Communications Corp., The Ultimate Connection, Inc. d/b/a DayStar Communications, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Jacksonville, LLC and XO Communications Services, Inc. (formerly XO Florida, Inc. and Allegiance Telecom of Florida, Inc.) (collectively, the "Competitive Carrier Group" or "CCG"), through counsel and pursuant to the Rule 28-106.215, Florida Administrative Code, and Order of the Florida Public Service Commission (the "Commission"), submit this Post-Hearing Statement in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

The purpose of this proceeding is to arbitrate a written interconnection agreement amendment that implements the unbundling determinations of the Federal Communications Commission ("FCC") arising under the *Triennial Review Order*[1] and the *Triennial Review*

[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd

Remand Order.[2] In those orders, the FCC established a new set of affirmative rights and obligations impacting the network elements, service arrangements, and other functions that incumbent local exchange carriers ("ILECs"), including Verizon, are obligated to provide under section 251(c)(3) of the 1996 Act;[3] and in turn, that competitive local exchange carriers ("CLECs"), including members of the Competitive Carrier Group, are entitled to obtain, on an unbundled basis, at TELRIC rates. The FCC also directed that all unbundling determinations set forth in the *Triennial Review Order* and the *Triennial Review Remand Order* be implemented in accordance with section 252 of the 1996 Act, through voluntary negotiations, and as necessary, through state commission arbitration.

In addition to Verizon's flawed legal assertions discussed more fully below, the interconnection agreement amendment framework proposed by Verizon is entirely at odds with the section 252 process mandated by the FCC. Specifically, although Verizon is heavy-handed in proposing contract language that "de-lists" unbundled network elements provided under section 251(c)(3) ("UNEs"), Verizon nonetheless submits that contract language reflecting new or clarified unbundling obligations established by the FCC is somehow unnecessary. At bottom, the *Triennial Review Order* and the *Triennial Review Remand Order* do not permit Verizon to exclude from the Amendment any affirmative unbundling obligations imposed by the FCC, including those obligations required to effectuate the FCC's transition framework for local circuit switching, dark fiber loops and transport facilities, and other high capacity (DS1 and DS3)

16978 (rel. Aug. 21, 2003), vacated and remanded in part, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004). ("*Triennial Review Order*" or "TRO")

[2] *In the Matter of Unbundled Access to Network Elements* (WC Docket No 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), Order on Remand, FCC 04-290 (rel. Feb. 4, 2005). ("*Triennial Review Remand Order*" or "TRRO")

[3] 47 U.S.C. §§ 251(c)(3). ("1996 Act")

loop and transport facilities that do not the FCC's criteria for unbundling relief. The Commission must reject claims by Verizon that any portion of the *Triennial Review Order* or the *Triennial Review Remand Order* is automatically implemented, as that simply is not the case.

Importantly, Verizon also proposes that the Commission approve, in this arbitration, modified "change of law" provisions that permit Verizon to unilaterally implement future FCC decisions to de-listing section 251(c)(3) network elements, through letters or Internet postings advising carriers that a UNE will be discontinued or re-rated within a specified time frame. Verizon is not permitted, under the *Triennial Review Order* or the *Triennial Review Remand Order*, to impose contract provisions that would supplant existing "change of law" processes set forth Verizon's Commission-approved interconnection agreements with Florida CLECs. Moreover, to do so unquestionably would violate the FCC's directives, in the *Triennial Review Order* and the *Triennial Review Remand Order,* that carriers effectuate its unbundling determinations through the negotiation and, as necessary, state commission arbitration of contract provisions that properly implement modifications to the FCC's rules limiting section 251(c)(3) obligations.

ISSUES AND POSITIONS

Issue 1: Should the Amendment include rates, terms and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger conditions?

Statement of Position: **By agreement of the Parties, this issue has been withdrawn.**

Issue 2: What rates, terms and conditions regarding implementing changes in unbundling obligations or changes of law should be included in the Amendment to the Parties' interconnection agreements?

Statement of Position: **The Amendment must not include contract language that would

> replace or modify the "change of law" processes set forth in the parties' Commission-approved interconnection agreements. The TRO and the TRRO each direct carriers to implement changes to the FCC's unbundling rules only through such established "change of law" processes, and do not permit Verizon to impose new contract provisions that would nullify existing processes in favor of a "self-effectuating" framework, exempt from state commission oversight.**

Verizon is not permitted, in this arbitration, to impose contract provisions that would supplant existing "change of law" processes set forth in Commission-approved interconnection agreements between Verizon and Florida CLECs. The FCC, in the *Triennial Review Order* and the *Triennial Review Remand Order*, directed carriers to effectuate its unbundling determinations in accordance with section 252 of the 1996 Act, and thus, to follow the binding "change of law" processes set forth in state commission-approved interconnection agreements. Verizon's efforts to forego negotiation and state commission arbitration of contract provisions that properly implement future modifications to federal rules limiting unbundling obligations flatly violate section 252 of the Act, and must be rejected by the Commission.

The Commission must not be persuaded by Verizon's claim that the "change of law" processes ostensibly agreed upon by carriers outside of this arbitration justify Verizon's unilateral interpretation of FCC-mandated unbundling rules. By participating in this arbitration, each member of the Competitive Carrier group has exercised its contractual right to arbitrate an interconnection agreement amendment that properly implements modifications to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*. The business decisions of other Florida carriers to renounce the section 252 arbitration process simply are not relevant here. Moreover, Verizon's position that the vast majority of interconnection agreements approved by the Commission permit discontinuation of section

251(c)(3) network elements upon notice to affected carriers rests solely on Verizon's unilateral interpretation of those agreements, and finds no support in any formal Commission decision.

As Verizon concedes in its responses to Staff's Interrogatories, the FCC did not direct carriers to establish new "change of law" processes to implement modifications to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*.[4] Specifically, in responding to Staff's request for references supporting its position that unbundling relief granted by the FCC may be "automatically implemented," Verizon plainly stated that the FCC did not prescribe "any particular form of change-of-law provision" that carriers must apply.[5] Accordingly, neither the *Triennial Review Order* nor the *Triennial Review Remand Order* provide any legal basis for Verizon's proposal to replace the existing "change of law" processes set forth in its Commission-approved interconnection agreements with Florida CLECs for purposes of implementing modifications to the FCC's unbundling rules. By Verizon's own admission, the scope of this proceeding is limited to addressing only new rights and obligations arising under the *Triennial Review Order* and the *Triennial Review Remand Order*, and does encompass matters addressed in existing interconnection agreements.[6] Verizon cannot have it both ways; absent a contrary directive by the FCC, the "change of law" processes agreed upon by the parties and approved by the Commission must remain in place.

Verizon's claim that the time lag associated with implementing changes to the FCC's unbundling rules through negotiation and, as necessary, state commission arbitration of

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[4] Verizon's Responses to Staff's Interrogatories, No. 128.

[5] *Id.*

[6] *See e.g.*, TR 271-78 (Verizon argues that certain of its obligations reviewed by the FCC, in the Triennial Review Order proceeding, need not be addressed in the Amendment, to the extent that its obligations ostensibly have not changed).

formal interconnection agreement amendments justifies a complete overhaul of processes mandated by section 252 of 1996 Act also finds no support in the FCC's orders. In fact, the FCC explicitly rejected this argument in the *Triennial Review Order*, and affirmed that maintaining the integrity of section 252 processes must be paramount to considerations of administrative efficiency.[7] Specifically, the FCC stated:

> [W]e decline the request of several BOCs that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions. Permitting voluntary negotiations for binding interconnection agreements is the very essence of section 251 and 252. **We do not believe that the lag involved in negotiating and implementing new contract language warrants the extraordinary step of the [FCC] interfering with the contract process.**[8]

Verizon's efforts, through its proposed contract modifications, to establish a self-effectuating framework for de-listing of section 251(c)(3) network elements going forward amounts to nothing more than a request to expedite implementation of the FCC's unbundling determinations that inure solely to the benefit of Verizon. Tellingly, where the FCC imposes new ILEC unbundling obligations, including where it reaffirms existing obligations, i.e., obligations to perform routine network modifications, commingling and conversions of wholesale services, and any future obligations to unbundle network elements, Verizon steadfastly demands that a formal interconnection agreement amendment be executed.[9] At bottom, the Commission must follow the FCC in rejecting Verizon's self-serving attempt to blatantly disregard the "change of law" processes mandated by section 252 where Verizon deems it in its interest to do so.

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[7] *Triennial Review Order* at ¶ 701.

[8] *Id.*

[9] Verizon's Responses to Staff's Interrogatories, No. 128.

Verizon also cannot credibly argue that CLEC efforts to "game" the section 252 negotiation and arbitration processes are the source of delay in this arbitration. (TR 15) As reflected in the Rebuttal Panel Testimony of the Competitive Carrier Group, any delay perceived by Verizon is very much a situation of Verizon's own making, and not the result of any CLEC's alleged efforts to "block" implementation of the FCC's modified unbundling rules. (TR 338-39) Specifically, the Petition for Arbitration initially filed by Verizon failed to comply with the requirements of section 252(b), and thus, was dismissed by the Commission. (TR 338-39) Verizon then requested an extension of the 60-day time period granted by the Commission to re-file its corrected Petition for Arbitration, acknowledging that the corrected filing should reflect the then current unbundling rules set forth in the *Interim Rules Order*. (TR 338-39) Therefore, the Commission should dismiss Verizon's suggestion that protracted CLEC foot-dragging has resulted from the "change of law" processes set forth in its Commission-approved interconnection agreements with Florida CLECs. (TR 37-38)

The FCC affirmatively decided, both in the *Triennial Review Order* and the *Triennial Review Remand Order*, that modifications to its unbundling rules, including de-listing of section 251(c)(3) network elements, are not intended to be self-effectuating.[10] Specifically, the FCC directed carriers, in *all* instances, to follow the negotiation and state commission arbitration processes mandated by section 252, and thus, established section 252 as a "default" framework for implementing changes to its unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*.[11] Indeed, Verizon's observation that the FCC did not order a specific "change-of-law provision" applicable to its unbundling determinations further supports the position that the FCC did not intend to disrupt the "change of law"

[10] *Triennial Review Remand Order* at ¶ 233; *Triennial Review Order* at ¶¶ 700-01.

[11] *Id.*

processes required by section 252, including those processes approved by the state commissions under carriers' negotiated or arbitrated interconnection agreements.[12] Verizon's proposal to establish, in this arbitration, an alternative "change of law" framework that would automatically implement future de-listing of section 251(c)(3) network elements by the FCC violates section 252 in critical respects, and thus, must be rejected by the Commission.

The modified "change of law" processes proposed by Verizon effectively override its current obligations, under section 252, to negotiate and arbitrate, before the state commissions, contract modifications that properly implement changes to the FCC's unbundling rules, and instead, permit Verizon to unilaterally impose on CLECs its self-serving interpretation of its own unbundling obligations. Verizon's statements that discontinuation of a network element de-listed under section 251(c)(3) is a simple process that does not necessitate formal modifications to existing interconnection agreements marginalizes the complexity of the disagreements before the Commission in this arbitration. Indeed, the FCC's unbundling mandates are subject to varying interpretations that must be resolved through negotiation, and if necessary, state commission arbitration. The 1996 Act did not grant Verizon the authority to unilaterally assess the meaning of its own unbundling obligations, and the Commission should not do so here. Moreover, Verizon's proposal to automatically implement de-listing of section 251(c)(3) network elements by the FCC would divest the Commission of its authority, under section 252, to oversee Verizon's compliance with, and to enforce modifications to the FCC's rules, including transition plans and transition rates mandated by the FCC for such de-listed network elements.

[12] Verizon's Responses to Staff's Interrogatories, No. 128.

Perhaps least convincing is Verizon's claim that the Commission should approve Verizon's proposed interconnection agreement amendment because other Florida CLECs ostensibly have agreed to contract provisions that permit Verizon to discontinue network elements de-listed under section 251(c)(3) upon written notice to the affected carrier. (TR 224-25) As noted above, those interconnection agreements executed by CLECs outside of this arbitration are not relevant to the issues before the Commission here. Moreover, Verizon's argument arrogantly assumes that its unilateral interpretation of its interconnection agreements with Florida CLECs outside of this arbitration is correct. However, as demonstrated by certain members of the Competitive Carrier Group participating as Intervenors, a number of the contract provisions asserted by Verizon to automatically implement de-listing of section 251(c)(3) network elements by the FCC are not as clear cut as Verizon would like the Commission to believe. Indeed, as Verizon concedes, the Commission has not yet ruled definitively as to the meaning of the "change of law" language disputed in this arbitration. (TR 226)

Issue 3. What obligations under federal law, if any, with respect to unbundled access to local circuit switching, including mass market and enterprise switching (including four-line carve-out switching) and tandem switching should be included in the Amendment to the Parties' interconnection agreements?

Statement of Position: **The Amendment must include rates, terms and conditions that accurately reflect the 12-month transition period ordered by the FCC for unbundled local circuit switching that Verizon no longer is obligated to provide under section 251(c)(3), and must clarify that Verizon remains obligated to provide unbundled local circuit switching to CLECs' "embedded base" of customers, including new lines, and modifications to existing arrangements necessary to serve those customers.**

As noted in response to Issue 2, the purpose of this proceeding is to implement, through a written amendment to existing interconnection agreements, modifications to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand*

Order. Notwithstanding its decision to provide unbundling relief for mass market local circuit switching, the FCC established a new set of affirmative rights and obligations applicable to the local circuit switching UNE to ensure an orderly transition from those facilities that the ILECs no longer are obligated to provide under section 251(c)(3) of the 1996 Act. Specifically, under the *Triennial Review Remand Order*, Verizon is obligated to provide to CLECs, for a period of twelve months, unbundled access to local circuit switching, subject to the transition rates, terms and conditions established by the FCC; and CLECs are entitled to obtain, for the purpose of serving their "embedded" customers, local circuit switching arrangements provided by the ILECs. The rights and obligations established by the *Triennial Review Remand Order* with regard to mass local circuit switching are set forth in the FCC's modified unbundling rules, at section 51.319(d)(2)(iii).

The parties to this arbitration appear to agree that the transition rates, terms and conditions applicable to mass market local circuit switching provided by Verizon are "mandatory," and thus, must be applied as directed by the FCC.[13] Therefore, Verizon's reluctance to expressly include in the Amendment the precise transition framework ordered by the FCC for the local circuit switching UNE is illogical at best. The interconnection agreement amendment proposed by the Competitive Carrier Group sets forth rates, terms and conditions ordered by the FCC for local circuit switching that Verizon no longer is obligated to provide under section 251(c)(3), and imposes no more and no less than the *Triennial Review Remand Order* itself. By stating in clear and certain terms the parties' rights and obligations under the *Triennial Review Remand Order* with regard to unbundling of local circuit switching, the

[13] Verizon's Responses to Staff's Interrogatories, No. 125.

Amendment ensures clarity, and provides a vehicle for Commission oversight, as required by section 252 of the 1996 Act.

Consistent with Verizon's position on most issues before the Commission, the interconnection agreement amendment proposed by Verizon includes contract language that reflects only the unbundling relief granted by the FCC, and does not include provisions that adequately detail the affirmative obligations imposed on Verizon by the *Triennial Review Remand Order*,[14] including the obligation of Verizon to provide local circuit switching, subject to the transition rates, terms and conditions established by the FCC, for a period of twelve months following the effective date of the *Triennial Review Remand Order* (through March 10, 2006). The purpose of the Amendment is not to simply absolve Verizon of existing unbundling obligations eliminated or modified by the *Triennial Review Remand Order*. Rather, as discussed in the Direct Panel Testimony of the Competitive Carrier Group, section 252 of the 1996 Act requires that Verizon negotiate and, as necessary, arbitrate before the Commission contract language implementing the complete unbundling framework for local circuit switching ordered by the FCC, in the *Triennial Review Remand Order*, and set forth in the FCC's modified unbundling rules. (TR 154-56) Verizon's position that the Amendment should address only the permanent de-listing of section 251(c)(3) network elements is not supported by the *Triennial Review Remand Order*, and thus, should by rejected by the Commission.

In response to Staff's Interrogatories, Verizon provides absolutely no legal support for statements by Mr. Ciamporcero that the section 252 interconnection agreement amendment process designated by the FCC to implement the *Triennial Review Remand Order* does not include the transition framework applicable to local circuit switching that Verizon no

[14] Verizon's Responses to Staff's Interrogatories, Nos. 127-28.

longer is obligated to provide under section 251(c)(3) of the 1996 Act.[15] Therefore, Verizon's claim that portions of the *Triennial Review Remand Order* and the FCC's modified unbundling rules setting forth transition rates, terms and conditions for unbundled local circuit switching may be automatically implemented, without the need for a written amendment to existing interconnection agreements, is entirely without merit.

Although Verizon and the Competitive Carrier Group largely appear to agree on the substance of the FCC's transition framework for unbundled local circuit switching, the scope of the transition plan remains in dispute. As discussed in the Direct Panel Testimony of the Competitive Carrier Group and related responses to Staff's Interrogatories, the *Triennial Review Remand Order* clearly states that the transition plan established by the FCC for local circuit switching used to serve mass market customers applies to "the embedded customer base," which includes any customer served by a CLEC as of March 11, 2005. (TR 154-56)[16] Consistent with the *Triennial Review Remand Order*, the FCC's rules, at section 51.319(d)(2)(iii), require that "an incumbent LEC shall provide access to local circuit switching on an unbundled basis for a requesting carrier **to serve its embedded based of end-user customers.**" Indeed, neither the *Triennial Review Remand Order*, nor the FCC's modified unbundling rules, support Verizon's claim that it need not provide, on an unbundled basis, any new or additional local switching arrangement requested to serve an "embedded" CLEC customer, including a "UNE-P customer move." Contrary to Verizon's narrow and selective reading of the *Triennial Review Remand Order*, the transition framework for local circuit switching established by the FCC must be construed to include any UNE-P arrangement used to serve an "embedded" CLEC customer, and

[15] Verizon's Responses to Staff's Interrogatories, No. 4.

[16] *See also* Competitive Carrier Group's Responses to Staff's Interrogatories, No. 6.

must not be limited to "embedded" lines, without regard to the CLEC customer's ongoing business needs.

Importantly, Verizon's refusal to provide to CLECs new local switching arrangements, as necessary to serve "embedded" CLEC customers, severely undermines the principal policy objective articulated by the FCC in establishing a detailed transition framework, including transition rates, for local circuit switching that the ILECs no longer are required to provide under section 251(c)(3). Specifically, in the *Triennial Review Remand Order*, the FCC stated at the outset that "eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors."[17] As correctly concluded by an Administrative Law Judge of the Illinois Commerce Commission, a determination precluding CLECs from answering the needs of their existing customers during the transition period for local circuit switching would adversely affect market dynamics, and would not be competitively neutral.[18] In addressing this critical issue, the Commission concluded:

> If the CLEC cannot meet customers' changing needs during the transition, those customers would have to choose between doing without service modifications or changing carriers. The first choice would likely diminish service quality, while the second may be adverse to the customer, particularly if the choice was triggered by an emergency.[19]

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[17] *Triennial Review Remand Order* at ¶ 226.

[18] *Cbeyond Communications, LLP, Global TelData II, LLC f/k/a Global TelData, Inc., NuVox Communications of Illinois, Inc. and Talk America Inc. v. Illinois Bell Telephone Company* (Docket No. 05-0154); *XO Illinois, Inc. and Allegiance Telecom of Illinois, Inc. v. Illinois Bell Telephone Company Complaint Pursuant to 220 ILCS 5/13-515* (Docket No. 05-0156); *McLeodUSA Telecommunications Services, Inc. v. Illinois Bell Telephone Company, Verified Complaint Pursuant to 220 ILCS 5/13-515(e)* (Docket No. 05-174), Administrative Law Judge's Decision, affirmed June 2, 2005.

[19] *Id.*

Therefore, consistent with the plain language of the *Triennial Review Remand Order* and the FCC's modified unbundling rules, as well as the policy objectives of the FCC, the Commission must approve contract language that expressly includes within the "embedded" base of CLEC customers existing customers for which a CLEC is providing additional or modified services or facilities on or after the effective date of the Amendment, or for customers whose connectivity is changed (e.g., technology migration, hot cut, loop reconfiguration, UNE-P to UNE-L, etc.) on or after the effective date of the Amendment, as proposed by the Competitive Carrier Group.

Issue 4: What obligations under federal law, if any, with respect to access to unbundled DS1 loops, unbundled DS3 loops and unbundled dark fiber loops should be included in the Amendment to the Parties' interconnection agreements?

Statement of Position: **The Amendment must state that Verizon is obligated to provide nondiscriminatory access to unbundled DS1 and DS3 loops at wire center locations that do not satisfy the FCC's criteria for section 251(c)(3) unbundling relief, and must incorporate those criteria, including a list of wire centers determined in this docket to meet those criteria. For loops that Verizon no longer is obligated to provide under section 251(c)(3), including dark fiber loops, the Amendment must include provisions that accurately reflect the transition framework and rates ordered by the FCC.**

As discussed in response to Issue 3, the Competitive Carrier Group maintains that the amendment to parties' interconnection agreements implementing changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* must detail all rights and obligations established by the FCC, including the complete transition framework for network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the Act. Contrary to Verizon's claims throughout this arbitration, a document that simply lists network elements to be discontinued or re-priced by Verizon at some future date does not comport with section 252 of the 1996 Act, as expressly required by the FCC. Thus, consistent with the *Triennial Review Remand Order*, the Commission must approve the

contract language proposed by the Competitive Carrier Group, that includes the transition rates, terms and conditions applicable to DS1, DS3 and dark fiber loops that Verizon no longer is obligation to provide under section 251(c)(3).

As is the case with regard unbundled local circuit switching, Verizon and the Competitive Carrier Group largely appear to agree on the substance of the FCC's transition framework for loops that Verizon no longer is obligated to provide under section 251(c)(3), including darks fiber loops and other high capacity (DS1 and DS3) loops satisfying the service eligibility criteria for unbundling relief established by the FCC. However, as discussed in response to Issue 3, the scope the FCC's transition framework for de-listed DS1, DS3 and dark fiber loops remains in dispute. Consistent with the *Triennial Review Remand Order* and the FCC's modified unbundling rules, the Commission must decide that the transition framework for dark fiber loops and de-listed high capacity (DS1 and DS3) loops established by the FCC includes any loop used to serve an "embedded" CLEC customer, and must not be limited to "embedded" loop facilities, without regard to the CLEC customer's ongoing business needs.

Through the Rebuttal Testimony of Alan F. Ciamporcero, Verizon also disputes that the Amendment may include contract language addressing its designation of wire center locations for which the FCC's service eligibility criteria for section 251(c)(3) loop unbundling relief are satisfied, including a comprehensive list of those wire center locations at which Verizon no longer is obligated to provide DS1 or DS3 loops under section 251(c)(3) of the 1996 Act.[20] (TR 246-47) Specifically, Verizon argues that the Commission must not approve contract provisions consistent with the *Triennial Review Remand Order* that inform the CLEC self-

[20] As noted by Verizon, no wire center location within the State of Florida current satisfies the FCC's service eligibility criteria for section 251(c)(3) loop unbundling relief. However, this doe not obviate the parties' obligations to include in the Amendment contract provisions addressing the future de-listing of section 251(c)(3) network elements.

certification process for requesting unbundled DS1 and DS3 loops, and that ensure proper application by Verizon of the FCC's service eligibility criteria for section 251(c)(3) loop unbundling relief. The interconnection agreement amendment proposed by the Competitive Carrier Group includes reasonable requirements that are critical to an orderly implementation of the FCC's transition framework for dark fiber, DS1 and DS3 loops that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, and that fully comport with the *Triennial Review Remand Order*. Contrary to the arguments offered by Verizon, the *Triennial Review Remand Order* provides no compelling reason why those provisions should be rejected by the Commission.

Through the Rebuttal Testimony of Alan J. Ciamporcero, Verizon seemingly implies that the interconnection agreement amendment proposed by the Competitive Carrier Group fails to accurately reflect the CLEC self-certification and dispute resolution process established by the FCC to implement the service eligibility criteria for section 251(c)(3) loop unbundling relief set forth in the *Triennial Review Remand Order*. (TR 248-50) However, contrary to Verizon's claims, the Competitive Carrier Group proposed contract language that expressly incorporates the process asserted by Verizon to apply. Specifically, under the terms and conditions of the interconnection agreement amendment proposed by the Competitive Carrier Group, a CLEC must self-certify to Verizon compliance with the service eligibility criteria for section 251(c)(3) loop unbundling relief. In turn, that amendment obligates Verizon to promptly and fully process a CLEC's self-certified request for unbundled DS1 or DS3 loops, and permits Verizon to challenge, before the Commission, any such self-certified CLEC request that Verizon believes to be inaccurate. At bottom, there is no cognizable distinction between the self-certification and dispute resolution process set forth in the *Triennial Review Remand Order*

and the contract modifications proposed by the Competitive Carrier Group that support Verizon's objection.

Verizon also complains, without justification, that supplemental disclosure requirements and dispute resolution provisions not specifically ordered by the FCC should be excluded from the Amendment. As noted above, the contract language proposed by the Competitive Carrier Group is critical to informing the self-certification process, and to ensuring that disputes regarding the accuracy of self-certified requests for unbundled DS1 or DS3 loops are efficiently resolved. Moreover, the proposed contract provisions do not burden Verizon, and in fact, substantially enhance Verizon's ability to avail itself of the section 251(c)(3) loop unbundling relief granted by the FCC. Importantly, the requirements set forth in the interconnection agreement amendment proposed by the Competitive Carrier Group are not foreclosed by the *Triennial Review Remand Order*, and are entirely consistent with the transition framework for unbundled DS1 and DS3 loops that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act.

The interconnection agreement amendment proposed by the Competitive Carrier Group obligates Verizon to provide to a CLEC, upon request, the information necessary to determine whether, in the future, a specific wire center location satisfies the service eligibility criteria for section 251(c)(3) loop unbundling relief, including the number of Business Lines and Fiber-Based Collocators in each Verizon serving wire center, and related back-up data. Consistent with the *Triennial Review Remand Order*, the information specified by the Competitive Carrier Group unquestionably would facilitate a CLEC's "reasonably diligent inquiry" for purposes of self-certifying compliance with the service eligibility criteria for section 251(c)(3) loop unbundling relief established by the FCC. Furthermore, by ensuring that Verizon

and Florida CLECs apply the service eligibility criteria to the same base of relevant facts, the contract language proposed by the Competitive Carrier Group would substantially reduce the frequency of disputes regarding the accuracy of self-certified CLEC requests for DS1 or DS3 loops, and in turn, the frequency of costly Commission dispute resolution proceedings, that would unnecessarily drain the resources of carriers and the Commission alike. Of further importance, a fully informed CLEC self-certification process would minimize Verizon's obligation to provide unbundled DS1 and DS3 loops at wire center locations that Verizon believes do not satisfy the service eligibility criteria for section 251(c)(3) loop unbundling relief, and then to bring its disagreement before the Commission.

Conversely, the interconnection agreement amendment proposed by the Competitive Carrier Group does not obligate Verizon to collect or maintain any information beyond that which is necessary for Verizon's ordinary business operations. Of course, for the purpose of reviewing CLEC self-certified requests for unbundled DS1 and DS3 loops, Verizon likely would review a current record of the number of Business Lines and Fiber-Based Collocators in each of its serving wire centers, along with the back-up data used to support its analysis. Moreover, because the Competitive Carrier Group proposes only that Verizon produce such information in response to a specific CLEC request, the amendment would not obligate Verizon to undertake efforts to make the information publicly available. As a practical matter, Verizon – and only Verizon – is capable of maintaining complete and accurate information necessary to apply the service eligibility criteria for section 251(c)(3) loop unbundling relief set forth in the *Triennial Review Remand Order*. Thus, the contract language proposed by the Competitive Carrier Group is both reasonable and entirely consistent with implementing the

transition framework established by the FCC for DS1 and DS3 loops that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act.

For the reasons set forth above, the Amendment also must include a comprehensive list of the wire center locations currently designated by Verizon to satisfy the service eligibility criteria for section 251(c)(3) loop unbundling relief set forth in the *Triennial Review Remand Order*. Verizon rejects this proposal as well, claiming that the Amendment must not serve as a vehicle to "freeze" its initial designation of wire center locations at which Verizon no longer is obligated to provide DS1 or DS3 loops under section 251(c)(3) of the 1996 Act. (TR 250) The interconnection agreement amendment proposed by the Competitive Carrier Group addresses Verizon's expressed concern through contract language that expressly permits Verizon to update, on an annual basis, the list of wire center locations subject to section 251(c)(3) loop unbundling relief appended to the Amendment. There is no basis to exclude from the Amendment a comprehensive list of the wire center locations designated by Verizon to satisfy the service eligibility criteria for section 251(c)(3) loop unbundling relief set forth in the *Triennial Review Remand Order*.

As a final matter, for disagreements between Verizon and Florida CLECs in connection with the service eligibility criteria for section 251(c)(3) loop unbundling relief, Verizon asserts that the Amendment should not permit a CLEC to avail itself of the dispute resolution processes set forth in its Commission-approved interconnection agreements. Verizon's assertion that the FCC intended to establish, in the *Triennial Review Remand Order*, an exclusive method for resolving such disagreements is entirely without merit, and should be rejected by the Commission. Indeed, the plain language of the *Triennial Review Remand Order* provides that the FCC's established "mechanism for addressing incumbent LEC challenges to

self-certifications is simply a *default process*, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements."[21] Moreover, as discussed in response to Issue 2, the FCC directed carriers to implement changes to its unbundling rules as directed by section 252, and in so doing, expressly declined proposals by the BOCs, including Verizon, to override existing "change of law" and "dispute resolution" provisions.

Issue 5: What obligations under federal law, if any, with respect to unbundled access to dedicated transport, including dark fiber transport, should be included in the Amendment to the Parties' interconnection agreements?

Statement of Position: **The Amendment must state that Verizon is obligated to provide nondiscriminatory access to unbundled DS1 and DS3 transport, and related entrance facilities, for routes that do not satisfy the FCC's criteria for section 251(c)(3) unbundling relief, and must incorporate those criteria, including a list of Tier 1 and Tier 2 wire centers determined in this docket to meet those criteria. For dedicated transport that Verizon no longer is obligated to provide under section 251(c)(3), including dark fiber transport, the Amendment must include provisions that accurately reflect the transition framework and rates ordered by the FCC.**

As discussed in response to Issues 3 and 4, the Competitive Carrier Group maintains that the amendment to parties' interconnection agreements implementing changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* must detail all rights and obligations established by the FCC, including the complete transition framework for network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the Act. Thus, consistent with the *Triennial Review Remand Order*, the Commission must approve the contract language proposed by the Competitive Carrier Group, that includes the transition rates, terms and conditions applicable to DS1, DS3 and dark fiber transport that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996.

[21] *Triennial Review Remand Order* at ¶ 234, n. 660. (emphasis added)

As is the case with regard to unbundled local circuit switching and loops, Verizon and the Competitive Carrier Group largely appear to agree on the substance of the FCC's transition framework for dedicated transport that Verizon no longer is obligated to provide under section 251(c)(3), including dark fiber transport and other high capacity (DS1 and DS3) dedicated transport satisfying the service eligibility criteria for unbundling relief established by the FCC. (TR 251-53) However, as discussed in response to Issues 3 and 4, the scope of the FCC's transition framework for de-listed DS1, DS3 and dark fiber dedicated transport remains in dispute. Consistent with the *Triennial Review Remand Order* and the FCC's modified unbundling rules, the Commission must decide that the transition framework for dark fiber transport and de-listed high capacity (DS1 and DS3) dedicated transport established by the FCC includes any transport facilities used to serve an "embedded" CLEC customer, and must not be limited to "embedded" transport facilities, without regard to the CLEC customer's ongoing business needs.

As discussed more fully in response to Issue 4, the Amendment also should detail the self-certification and dispute resolution processes established by the FCC to implement its service eligibility criteria for DS1 and DS3 dedicated transport facilities that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, and should include a comprehensive list of Tier 1 and Tier 2 wire centers designated by Verizon to satisfy those criteria. Moreover, the Commission should reject efforts by Verizon to exclude from the Amendment contract provisions setting forth guidelines for disclosure of information by Verizon, as necessary to properly apply the service eligibility criteria for section 251(c)(3) transport unbundling relief.

Issue 6: Under what conditions, if any, is Verizon permitted to re-price existing arrangements which are no longer subject to unbundling under federal

law?

Statement of Position: **Verizon is not permitted to re-price existing arrangements, except that Verizon may impose the transition rates ordered by the FCC for arrangements that it no longer is obligated to provide under section 251(c)(3). Any rate increase imposed by Verizon, under the FCC's transition framework, must be set forth in the Amendment, and such rate increase may take effect only after the Amendment is executed by the Parties, subject to true-up, where applicable to the effective date of the TRRO.**

On the basis of the testimony and responses to Staff's Interrogatories filed in this arbitration, Verizon and the Competitive Carrier Group appear to agree that the transition rates established by the FCC, and set forth in the *Triennial Review Remand Order*, will apply for all network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act. (TR 257-58) Consistent with the positions of the Competitive Carrier Group for Issues 2, 3, 4 and 5, the transition rates established by the FCC for the network elements subject to its transition framework must be specified in the Amendment, and such rates will be assessed only on a prospective basis, from the date on which the Amendment is executed by the parties. To the extent expressly permitted by the FCC, Verizon may true-up such transition rates charged to members of the Competitive Carrier Group to March 11, 2005, the effective date of the *Triennial Review Remand Order*.

Consistent with the policy concerns expressed by the FCC in the *Triennial Review Remand Order*, the Amendment must include language to ensure that the conversion of section 251(c)(3) network elements to alternative service arrangements, upon expiration of the transition periods mandated by the FCC, is seamless, and does disrupt the service provided to CLECs' end user customers, or otherwise produce adverse effects to service quality.[22] Moreover, because the transition of section 251(c)(3) network elements to alternative service arrangements requires

[22] *See e.g., Triennial Review Remand Order* ¶ 226.

nothing more than modifications to Verizon's existing billing records, the Amendment should preclude non-recurring charges typically imposed by Verizon, including charges for terminating and re-connecting service. As discussed more fully in response to Issue 8, the transition by Verizon of section 251(c)(3) network elements to alternative service arrangements does not constitute a service performed by Verizon at a CLEC's request, but rather, an activity undertaken voluntarily by Verizon to avail itself of higher rates for the services and facilities that it currently provides. Thus, as the cost causer with regard to transition activities, Verizon – and not the CLECs – should incur any costs that otherwise might be recovered through non-recurring charges.

Issue 7: Should Verizon be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements?

Statement of Position: **No. The TRO and TRRO do not permit Verizon to unilaterally discontinue any section 251(c)(3) arrangement only upon notice to impacted carriers. As ordered by the FCC, Verizon must implement changes to the federal unbundling rules in accordance with section 252, and thus, must negotiate and/or arbitrate an interconnection agreement amendment that properly reflects any right of Verizon to discontinue an arrangement that it currently provides. In so doing, Verizon is bound by the "change of law" processes set forth in its current agreements.**

Verizon is not permitted, under the *Triennial Review Order* or the *Triennial Review Remand Order*, to unilaterally dictate the date on which the de-listing of certain section 251(c)(3) network elements, including local circuit switching, dark fiber loop and dedicated transport facilities, and DS1 and DS3 loop and dedicated transport facilities that do not satisfy the FCC's eligibility criteria for unbundling relief, will take effect. Verizon appears to acknowledge, through the Rebuttal Testimony of Alan J. Ciamporcero, that the FCC established in the *Triennial Review Order* and the *Triennial Review Remand Order*, specific timeframes within which the ILECs, including Verizon, may discontinue providing network elements that no

longer are subject to an unbundling obligation under section 251(c)(3) of the 1996 Act. (TR 260-61) However, notwithstanding the network element-specific transition frameworks established by the FCC, both the *Triennial Review Order* and the *Triennial Review Remand Order* made clear that the ILECs, including Verizon, must implement its unbundling determinations, including the de-listing of section 251(c)(3) network elements, in accordance with section 252 and the "change of law" processes required by existing interconnection agreements. As set forth in response to Issues 2, 3, 4 and 5, the *Triennial Review Order* and the *Triennial Review Remand Order* simply do not permit Verizon to discontinue providing section 251(c)(3) network elements only upon notice to affected CLECs, and without a written amendment to existing interconnection agreements. Thus, Verizon's claim that prior correspondence "discontinuing" network elements impacted by the *Triennial Review Order* should be given effect is irrelevant to the extent that its interconnection agreements with members of the Competitive Carrier Group are not yet amended to reflect the FCC's unbundling determinations thereunder.

In his Rebuttal Testimony, Mr. Ciamporcero asserts, rather unconvincingly, that the interconnection agreement amendment proposed by the Competitive Carrier Group purports to extend the transition periods for de-listed section 251(c)(3) network elements mandated by the FCC in the *Triennial Review Remand Order*. (TR 260-61) To the contrary, in addressing the transition periods applicable to unbundled local circuit switching, dark fiber loop and transport facilities, and other high capacity (DS1 and DS3) loops facilities that no longer are subject to an unbundling obligation under section 251(c)(3), the proposed amendment of the Competitive Carrier Group expressly provides that the FCC's transition rates, terms and conditions are effective as of and after the effective date of the *Triennial Review Remand Order*. Moreover,

that proposed amendment mirrors the timeframes ordered by the FCC for the transition of each network element de-listed under section 251(c)(3) of the 1996 Act, and does not impose on Verizon unbundling obligations beyond the transition periods specified in the *Triennial Review Remand Order*.

Issue 8: Should Verizon be permitted to assess nonrecurring charges for the discontinuance of a UNE arrangement or the reconnection of service under an alternative arrangement?

Statement of Position: **No. The transition rates ordered by the FCC for local circuit switching, high capacity loops and high capacity dedicated transport facilities that Verizon no longer is obligated to provide under section 251(c)(3) do not contemplate additional nonrecurring charges for discontinuing UNE arrangements and reconnecting alternative arrangements. Moreover, because the discontinuation of UNE arrangements is initiated by Verizon (the "cost causer"), Verizon should bear all costs it incurs for the disconnection and reconnection of service to CLECs.**

The framework ordered by the FCC for the transition of section 251(c)(3) network elements to alternative service arrangements clearly does not contemplate additional non-recurring charges, including charges to terminate and re-connect service, imposed by Verizon for ministerial changes to Verizon's billing records necessary to re-rate arrangements that previously were priced at TELRIC rates. In the *Triennial Review Remand Order*, the FCC took great pains to detail transition plans for each network element de-listed under section 251(c)(3) of the 1996 Act, including establishing transition rates, none of which permit a separate mechanism for recovery of costs that Verizon allegedly incurs for activities undertaken to raise the price of its services. Thus, the contract provisions proposed by the Competitive Carrier Group limiting the ability of Verizon to assess non-recurring charges, in addition to the FCC-mandated transition rates, for discontinuing a network element provided under section 251(c)(3) and establishing an alternative service arrangement are both lawful and appropriate.

As an initial matter, Verizon cannot reasonably assert that the charges assessed by Verizon in connection with the transition of section 251(c)(3) network elements to alternative service arrangements is beyond the reach of state commission authority under section 252 of the 1996 Act. As set forth in response to Issues 2, 3, 4 and 5 above, the FCC explicitly ordered that its unbundling determinations under the *Triennial Review Order* and the *Triennial Review Remand Order*, including the de-listing of certain section 251(c)(3) network elements, be implemented as directed by section 252 of the 1996 Act. Thus, the state commissions may regulate, through the interconnection agreement amendment arbitration process, the rates charged by Verizon for all activities undertaken by Verizon in connection with discontinuing section 251(c)(3) network elements and establishing alternative service arrangements. As discussed in response to Issue 6, Verizon and the Competitive Carrier Group appear to agree that the appropriate rates for network elements provided on an unbundled basis during the transition period are those rates established by the FCC for de-listed local circuit switching, and high capacity (DS1, DS3 and dark fiber) loops and dedicated transport facilities) and specified in the *Triennial Review Remand Order.*

The *Triennial Review Remand Order* does not provide, in addition to the transition rates established by the FCC, a separate framework for allocation of costs that may be associated with activities undertaken by Verizon to re-price service arrangements that no longer are subject to a 251(c)(3) unbundling obligation.[23] In consideration of the meticulous detail employed by the FCC to establish all other aspects of its mandatory transition plans for de-listed section 251(c)(3) network elements, the silence of the *Triennial Review Remand Order* could not be an oversight. Moreover, upon price increases for service arrangements subject to its transition

[23] *See id.* at ¶¶ 145, 198, 228.

framework, the FCC stated clearly its intent "to ensure an orderly transition by mitigating rate shock that could be suffered by competitive LECs if TELRIC pricing were immediately eliminated for these network elements," while at the same time protecting the interests of incumbent LECs in those situations where unbundling is not required."[24] A cost recovery mechanism that permits Verizon to assess unregulated nonrecurring charges for the transition of section 251(c)(3) network elements to alternative service arrangements obviously would not serve the FCC's expressed interest in controlling potential adverse consequences to CLECs and consumers as the result of higher, non-TELRIC rates. The plain language of the *Triennial Review Remand Order* supports that a delicate balance is achieved by the FCC's transition rates applicable to network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the Act. Thus, the Amendment must include the contract provisions proposed by the Competitive Carrier Group that would preserve that balance through the transition rates ordered by the FCC.

Verizon's efforts to deny the reasonable, cost causation analysis offered by AT&T and the Competitive Carrier Group on this Issue are nonsensical, and must be rejected the Commission. At bottom, Verizon suggests that Florida CLECs ultimately should bear financial responsibility for administrative activities undertaken by Verizon to offer its services at substantially higher rates than those currently imposed. The *Triennial Review Remand Order* does not require Verizon to abandon existing TELRIC rates for local circuit switching, and high capacity (DS1, DS3 and dark fiber) loops and dedicated transport facilities; rather, the *Triennial Review Remand Order* simply permits Verizon to re-price specified network elements where the FCC has determined that TELRIC pricing no longer is necessary to prevent impairment to local

[24] *Id.* at 145.

telecommunications competition. Accordingly, in the event that Verizon elects to avail itself of the section 251(c)(3) unbundling relief granted by the FCC, there can be no question that Verizon should bear the financial consequences of any activity that it undertakes to do so.

Issue 9: What terms should be included in the Amendment's "Definitions" section, and how should those terms be defined?

Statement of Position: **The Amendment must define all terms necessary to properly implement the TRO and TRRO. The Amendment's "Definitions" section must include any previously defined term modified by the FCC, under the TRO or TRRO , and any new defined term introduced by the FCC, in the TRO or TRRO. The Commission should adopt the complete list of defined terms, and their respective definitions, set forth on the interconnection agreement amendment proposed by the CCG.**

The Amendment must define all terms necessary to properly implement the *Triennial Review Order* and the *Triennial Review Remand Order*. The Amendment's "Definitions" section must include any previously defined term modified by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, and any new defined term introduced by the FCC, in the *Triennial Review Order* or the *Triennial Review Remand Order*. As set forth in the Direct Panel Testimony of the Competitive Carrier Group, the terms and definitions proposed by the Competitive Carrier Group accurately reflect the FCC's rules and orders. (TR 170-71) Thus, the Commission should adopt the complete list of defined terms, and their respective definitions, set forth on the interconnection agreement amendment proposed by the Competitive Carrier Group.

Issue 10: Should Verizon be required to follow the change of law and/or dispute resolution provisions in existing interconnection agreements if it seeks to discontinue the provision of UNEs?

Statement of Position: **Yes. The FCC made clear, in TRO and TRRO, that modifications to its unbundling rules are not self-effectuating, and must be implemented by carriers in accordance with section 252. Therefore, Verizon must follow the "change of law" processes set forth in its Commission-approved interconnection agreements, which require that the Parties

negotiate and/or arbitrate an interconnection agreement amendment that properly reflects any right Verizon may have to discontinue a section 251(c)(3) UNE arrangement that it currently provides.**

As discussed more fully in response to Issues 2, 3, 4 and 5, the *Triennial Review Order* and the *Triennial Review Remand Order* each require that Verizon implement changes to the FCC's unbundling rules as directed by section 252 of the 1996 Act, and in accordance with the "change of law" processes set forth in Verizon's Commission-approved interconnection agreements with Florida CLECs. Thus, to properly effectuate the unbundling determinations of the FCC, including de-listing of certain section 251(c)(3) network elements, Verizon must arbitrate modifications to its existing interconnection agreements that reflect all changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*, including the mandatory transition plans established by the FCC for each de-listed section 251(c)(3) network element. Verizon's proposal to replace, in this arbitration, existing change of law processes set forth in its Commission-approved interconnection agreements with Florida CLECs is flatly inconsistent with the section 252 of the 1996 Act, the FCC's orders and the FCC's modified unbundling rules, and thus, must be rejected by the Commission.

Issue 11: How should any rate increases and new charges established by the FCC in its final unbundling rules or elsewhere be implemented?

Statement of Position: **As required by section 252, the transition rates ordered by the FCC must be implemented through the "change of law" processes set forth in the Parties' Commission-approved interconnection agreements. Any rate increase or new charge imposed by Verizon, consistent with the TRO and TRRO, must be set forth in the Amendment, and may not be billed by Verizon until such time as the Amendment is executed by the Parties, subject to true-up, where applicable, to the effective date of the TRRO.**

As discussed more fully in response to Issues 2, 3, 4, 5, 6 and 8 above, the Amendment must include contract language implementing the transition rates ordered by the

FCC for network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including local circuit switching, dark fiber loops and dedicated transport facilities, and other high capacity (DS1 and DS3) loops and dedicated transport facilities that satisfy the FCC's eligibility criteria for section 251(c)(3) unbundling relief. The Amendment also should prohibit nonrecurring charges imposed by Verizon, including charges for disconnecting and re-establishing service, in connection with the transition of section 251(c)(3) network elements to alternative service arrangements upon expiration of the transition period ordered by the FCC.

Issue 12: Should the interconnection agreements be amended to address changes arising from the TRO with respect to commingling of UNEs with wholesale services, EELs and other combinations? If so, how?

Statement of Position: **Yes. The Amendment must clearly and affirmatively state that CLECs may commingle UNEs and combinations of UNEs with wholesale services that Verizon provides, including, without limitation, switched and special access services, and that Verizon must perform the functions necessary to effectuate commingling. The Amendment also should expressly prohibit practices and policies by Verizon that would impede or prejudice CLECs' ability to implement new or converted commingled arrangements in a timely manner, and in a manner that does not impact service quality.**

As reflected by the testimony and responses to Staff's Interrogatories filed in this arbitration, Verizon does not appear to dispute its obligation, under the *Triennial Review Order*, to include in the Amendment contract language that affirmatively permits commingling of section 251(c)(3) network elements and other services provided by Verizon. (TR 268-69) Therefore, consistent with the *Triennial Review Order*, the Amendment must reflect that the FCC's modified unbundling rules "affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (*e.g.*, switched and special access services offered pursuant to tariff)," and "require incumbent LECs to perform the necessary functions to

effectuate such commingling upon request." However, through its proposed interconnection agreement amendment, Verizon seeks to impose limitations on commingling that are flatly inconsistent with the FCC's mandates, including those that unduly restrict the scope of Verizon's commingling obligation, that openly permit Verizon to forego commingling through modifications to its tariffs and SGATs, and that improperly exclude commingling from Commission-approved intervals and performance measurements, and potential remedy payments. Although Verizon complains that CLEC-proposed amendments are too permissive with regard to implementing ILEC commingling obligations, the truth of the matter is that Verizon cannot muster support for its contract proposals either in the *Triennial Review Order* or in the FCC's unbundling rules.

Although somewhat unclear on the basis of its proposed Amendment II (now outdated by the *Triennial Review Remand Order*), Verizon appears to suggest that it need not perform commingling of de-listed section 251(c)(3) network elements that Verizon remains obligated to provide in accordance with the transition rates, terms and conditions established by the FCC.[25] Although the *Triennial Review Remand Order* permits Verizon, upon expiration of the relevant transition periods, to discontinue providing such network elements as section 251(c)(3) UNEs, the FCC did not exempt those network elements from Verizon's commingling obligations prior to the date of actual transition to an alternative service arrangement. Thus, Verizon's proposed contract language unduly restricts the scope of network elements (or combinations of network elements) that Verizon must commingle with the services that it provides.

[25] *See* Verizon's Responses to Staff's Interrogatories, No. 70.

The interconnection agreement amendment proposed by Verizon is similarly flawed with regard to the "Qualifying Wholesale Services" encompassed by its commingling obligations. Specifically, Verizon appears to include in its list of wholesale services subject to commingling only tariffed access services and non-section 251 services provided by Verizon under a commercial agreement. However, for the purpose of the FCC's commingling rules, the *Triennial Review Order* broadly defines "wholesale services" to include *any* network element or combination of network elements provided by an incumbent LEC "pursuant to any method other than unbundling under section 251(c)(3) of the Act."[26] Thus, consistent with the *Triennial Review Order*, the Amendment must not preclude commingling of network elements with section 251(c)(4) resale services and, where applicable, services provided under section 271 of the 1996 Act and state law.[27]

The interconnection agreement amendment proposed by Verizon also implies that Verizon is permitted to evade its commingling obligations entirely, through unilateral changes to its SGATs and tariffs that effectively would eliminate or restrict commingling obligations for certain network elements and services. A determination by the Commission that facilitates this result would render the ILEC commingling obligations ordered by the FCC in the *Triennial Review Order* and set forth in the Amendment potentially meaningless. Thus, contract provisions proposed by the Competitive Carrier Group and other CLEC parties, requiring negotiated modifications to the parties' interconnection agreements consistent with changes to Verizon's SGATs and tariffs that ultimately will impact agreed-upon commingling rights and obligations, are critical to properly implementing the FCC's commingling rules arising under the *Triennial Review Order*.

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[26] *Triennial Review Order* at ¶ 579.

[27] *Id.* at ¶¶ 579, 584.

In its proposed interconnection agreement amendment, Verizon further attempts to frustrate CLEC requests for commingling of network elements and wholesale services provided by Verizon through contract language that expressly exempts commingling from Commission-approved intervals and performance measurements, and potential remedy payments, that otherwise may apply. As discussed more fully in response to Issue 17, the parties to this arbitration already have acknowledged that matters related to Verizon's Performance Measurement Plan for the State of Florida currently are governed through Docket No. 000121C-TP, and thus, the Competitive Carrier Group submits that the appropriate intervals and performance measurements, and potential remedy payments applicable to commingling should not be decided here. Contrary to Verizon's responses to Staff's Interrogatories, the Amendment should not foreclose application of any intervals and performance measurements, and potential remedy payment that now or in the future may be approved by the Commission in Docket No. 000121C-TP.

Issue 13: Should the interconnection agreements be amended to address changes arising from the TRO with respect to conversion of wholesale services to UNEs/UNE combinations? If so, how?

Statement of Position: **Yes. The Amendment must clearly and affirmatively state that CLECs may convert wholesale and special access services that Verizon provides to UNEs or combinations of UNEs, except to the extent that such conversion is precluded by the service eligibility criteria set forth in the FCC's rules.**

Consistent with the *Triennial Review Order*, the Amendment must clearly and affirmatively state that CLECs may convert wholesale and special access services to section 251(c)(3) network elements (and combinations of network elements), and also may convert section 251(c)(3) network elements (and combinations of network elements) to wholesale and special access services, except to the extent that such conversion is precluded by the service

eligibility criteria set forth in the FCC's rules. As discussed more fully in response to Issue 21, the Amendment must fully address the service eligibility criteria for high capacity loop and transport combinations ("EELs") established in the *Triennial Review Order*, including the process for CLEC self-certification of compliance with the FCC's service eligibility criteria and for compliance audits by Verizon.

Issue 14: Should the interconnection agreements be amended to address changes, if any, arising from the TRO with respect to:

(a) line splitting;
(b) newly built FTTP loops;
(c) overbuilt FTTP loops;
(d) access to hybrid loops for the provision of broadband services;
(e) access to hybrid loops for the provision of narrowband services;
(f) retirement of cooper loops;
(g) line conditioning;
(h) packet switching;
(i) network interface device (NID);
(j) line sharing?

Statement of Position: (a) **The Amendment must expressly incorporate the FCC's determination that the ILECs, including Verizon, must enable CLECs to engage in line splitting arrangements where the requesting carrier purchases the entire loop and uses its own splitter collocated in Verizon's central office. Consistent with the TRO, the Amendment also must require that Verizon make all necessary network modifications, including providing nondiscriminatory access to OSS, for pre-ordering, ordering, provisioning, maintenance and repair, and billing, for loops used in line splitting arrangements.**

(b) **The Amendment must reflect changes to the FCC's unbundling rules addressing FTTH Loops deployed by Verizon to an end user's customer premises that previously was not served by any Verizon Loop. Under the TRO, Verizon is not obligated to provide to CLECs nondiscriminatory access to such newly built FTTH Loop on an unbundled basis. The unbundling relief granted by the FCC applies only to "FTTH" Loops; the FCC's rules and orders do not define the "FTTP" Loop.**

(c) The Amendment must reflect changes to the FCC's unbundling rules addressing FTTH Loops deployed by Verizon parallel to, or in replacement of, an existing copper Loop facility. In overbuild situations,

Verizon must maintain the existing copper Loop connected to the customer premises after deploying FTTH Loop, and provide to CLECs nondiscriminatory access to that copper Loop, unless it is properly retired, in accordance with the Amendment. The unbundling relief granted by the FCC applies only to "FTTH" Loops, as defined by the FCC.**

(d) **The Amendment must reflect the FCC's unbundling determinations for Hybrid Loops set forth in the TRO. Verizon must provide to CLECs nondiscriminatory access to the time division multiplexing features, functions and capabilities of the Hybrid Loop for the provision of broadband services, including DS1 and DS3 capacity, where available, on an unbundled basis, to establish a complete transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises.**

(e) **Consistent with the TRO, Verizon must provide, upon request by a CLEC for access to the Hybrid Loop for the provision of narrowband services, nondiscriminatory access to a spare home-run copper Loop serving the relevant customer premises, on an unbundled basis, or the entire Hybrid Loop capable of voice grade service using time division multiplexing technology. If specified, Verizon must provide access to the unbundled copper Loop using Routine Network Modifications, unless no such facility can be made available via Routine Network Modifications.**

(f) **The Amendment must incorporate comprehensive network disclosure requirements to ensure that Verizon does not, through retirement of its copper loop facilities, deny access to Loops that it is obligated to provide under the FCC's rules, including such requirements set forth in the TRO for FTTH overbuild situations. The Amendment also must require that Verizon provide nondiscriminatory access to a 64 kbps transmission path over FTTH Loops on an unbundled basis, at TELRIC pricing, where cooper loop facilities are retired.**

(g) **Consistent with the FCC's rules, the Amendment must require that Verizon perform line conditioning to ensure that a copper loop or copper subloop is suitable for providing xDSL services to a requesting carrier's end user customer, and further, to the extent technically feasible, that Verizon test and report troubles for all features, functions and capabilities of conditioned copper lines. The Amendment must include the processes ordered by the FCC to address any claim by Verizon that line conditioning will significantly degrade the voiceband that it currently provides.**

(h) **Notwithstanding the FCC's unbundling determinations for stand-alone packet switching, the Amendment must not place unlawful limitations on the use of a packet switch to perform local circuit switching

functionality where Verizon remains obligated to provide local circuit switching pursuant to the transition rates, terms and conditions ordered by the FCC in the TRRO.**

(i) **Consistent with the FCC's rules, and as affirmed in the TRO, the Amendment must require that Verizon provide nondiscriminatory access to the NID on an unbundled basis, and further, that Verizon permit a CLEC to connect its own loop facilities to on-premises wiring through Verizon's NID, or at any other technically feasible point.**

(j) **The Amendment must incorporate the FCC-ordered framework for existing and new line sharing arrangements, including the transition period for new line sharing arrangements. The Amendment must require that Verizon grandfather line sharing arrangements existing prior to October 2, 2003, where a CLEC continues to provide xDSL service to its end user customer (or successor or assign) at the same location. For new line sharing arrangements, the Amendment must incorporate by reference the transitional rates, terms and conditions set forth in the TRO.**

(a) Line Splitting:

Through the Rebuttal Testimony of Alan J. Ciamporcero, Verizon objects to the contract provisions proposed by the Competitive Carrier Group only to the extent that the *Triennial Review Order* did not impose on Verizon any new obligations applicable to line splitting. (TR 271) However, as stated in the *Triennial Review Order*, the FCC adopted new rules applicable to line splitting "for purposes of clarity and regulatory certainty."[28] Verizon provides no legitimate basis to exclude from the Amendment changes to the FCC's rules impacting the parties' rights and obligations with regard to line splitting. Such rule changes constitute a "change of law" under the parties' Commission-approved interconnection agreements, and therefore must be properly implemented through the section 252 interconnection agreement amendment process.

(b) Newly Built FTTP Loops:

(c) Overbuilt FTTP Loop:

[28] *Id.* at ¶ 251.

On the basis of the testimony and responses to Staff Interrogatories filed in the arbitration, it appears that Verizon does not dispute the contract language proposed by the Competitive Carrier Group applicable to newly built and overbuilt "FTTP" loop. Rather, as stated in the Rebuttal Testimony of Alan J. Ciamporcero, the parties disagree with respect to the terminology set forth in the Amendment. (TR 272-73) The FCC's current unbundling rules do not define "Fiber-to-the-Premises" or "FTTP" Loop,[29] and Verizon provides no compelling reason why the Amendment should depart from the terms employed by the FCC, as defined in the *Triennial Review Order* and the FCC's unbundling rules. To the extent that Verizon believe that the term "Fiber-to-the-Home" or "FTTH" Loop is not the best or most accurate term to characterize the network element at issue here, that is not for the Commission to decide.

(d) Access to Hybrid Loops for Provision of Broadband Services:

(e) Access to Hybrid Loops for Provision of Narrowband Services:

Through its testimony and responses to Staff's Interrogatories filed in this arbitration, Verizon does not dispute the specific portions of the interconnection agreement amendment proposed by the Competitive Carrier Group addressing access to hybrid loops for the provision of broadband and of narrowband services. As discussed in the Direct Panel Testimony of the Competitive Carrier Group, the contract language proposed by the Competitive Carrier Group expressly incorporates section 51.319(a)(2) of the FCC's rules. (TR 176)

(f) Retirement of Copper Loops:

Through its testimony and responses to Staff's Interrogatories filed in this arbitration, Verizon does not dispute specific portions of the interconnection agreement amendment proposed by the Competitive Carrier Group addressing retirement of copper loops.

[29] 47 C.F.R. 51.319(a)(3)(i)(A).

As discussed in the Direct Panel Testimony of the Competitive Carrier Group, the contract language proposed by the Competitive Carrier Group fully comports with section 51.319(a)(3)(ii) of the FCC's rules. (TR 176)

(g) Line Conditioning:

Through the Rebuttal Testimony of Alan J. Ciamporcero, Verizon objects to the contract provisions proposed by the Competitive Carrier Group only to the extent that the *Triennial Review Order* did not impose on Verizon any new obligations applicable to line conditioning. (TR 274-75) Although the FCC did not establish new rules applicable to Verizon's obligation to provide line conditioning for the provision of xDSL services, the FCC expressly re-adopted, in the *Triennial Review Order*, existing line conditioning rules setting forth Verizon's obligation.[30] Thus, the contract language proposed by the Competitive Carrier Group is entirely appropriate for purposes of clarifying Verizon's existing line conditioning obligations in the context of *Triennial Review Order*.

(h) Packet Switching:

Consistent with the *Triennial Review Order*, the interconnection agreement amendment proposed by the Competitive Carrier Group does not impose unbundling obligations for packet switching. However, notwithstanding the FCC's unbundling determinations for stand-alone packet switching, the Amendment must not place unlawful limitations on the use of a packet switch to perform local circuit switching functionality where Verizon remains obligated to provide local circuit switching pursuant to the transition rates, terms and conditions ordered by the FCC in the *Triennial Review Remand Order*.

(i) Network Interface Device:

[30] *Triennial Review Order* at ¶ 642.

Through the Rebuttal Testimony of Alan J. Ciamporcero, Verizon objects to the contract provisions proposed by the Competitive Carrier Group only to the extent that the *Triennial Review Order* did not impose on Verizon any new obligations applicable to Network Interface Device ("NID"). **(TR 277-78)** Although the FCC did not establish new rules applicable to Verizon's obligation to provide nondiscriminatory access to the NID, on a stand-alone basis, that obligation is reviewed at length in the *Triennial Review Order*.[31] Thus, the contract language proposed by the Competitive Carrier Group is entirely appropriate for purposes of clarifying Verizon's existing obligation to provide unbundled access to the NID, under section 251(c)(3) of the 1996 Act, in the context of *Triennial Review Order*.

(j) Line Sharing:

As discussed in response to Issues 2, 3, 4 and 5, the Competitive Carrier Group maintains that the amendment to parties' interconnection agreements implementing changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* must detail all rights and obligations established by the FCC, including the complete transition framework for network elements and services that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act. Thus, consistent with the *Triennial Review Order*, the Amendment must incorporate the FCC-ordered framework for existing and new line sharing arrangements, including the transition period for new line sharing arrangements.[32] The Amendment also must require that Verizon grandfather line sharing arrangements existing prior to October 2, 2003, where a CLEC continues to provide xDSL service to its end user customer (or successor or assign) at the same location.[33] For new line

[31] *See id.* at ¶¶ 356-58.

[32] *See id.* at ¶¶ 264-69.

[33] *See id.* at ¶ 264.

sharing arrangements, the Amendment must incorporate by reference the transitional rates, terms and conditions set forth in the *Triennial Review Order*.

Issue 15: What should be the effective date of the amendment to the Parties' agreements?

Statement of Position: **The effective date of the Amendment should be the date of the last signature executing the Amendment.**

On the basis of the testimony and responses to Staff's Interrogatories filed in this arbitration, Verizon and Competitive Carrier Group appear to agree that the effective date of the Amendment should be the date of the last signature executing the Amendment. (TR 278-79)

Issue 16: How should CLEC requests to provide narrowband services through unbundled access to a loop where the end user is served via Integrated Digital Loop Carrier (IDLC) be implemented?

Statement of Position: **The Amendment must state that Verizon will provide to CLECs unbundled access to a transmission path over Hybrid Loops served by IDLC systems to provide narrowband services. Verizon may provide unbundled access through a spare copper loop facility or through UDLC systems, or if neither is available, Verizon must provide to CLECs a technically feasible method of unbundled access to requested Loop facilities using Routine Network Modifications, as necessary, or other rearrangements of Verizon's existing equipment.**

On the basis of the testimony and responses to Staff's Interrogatories filed in this arbitration, it appears that Verizon and the Competitive Carrier Group do not dispute that the Amendment must include contract provisions setting forth Verizon's obligation, under the *Triennial Review Order*, to provide to CLECs a transmission path over hybrid loops served by Integrated DLC ("IDLC"), either through a spare cooper or through the availability of Universal DLC ("UDLC") systems. (TR 300-301) Further, where neither of the aforementioned options is available, the FCC ordered that incumbent LECs, including Verizon, "present requesting carriers a technically feasible method of unbundled access."[34] The interconnection agreement

[34] *Id.* at ¶ 297.

amendment proposed by the Competitive Carrier Group, as well as that proposed by AT&T, reflect the express language of the *Triennial Review Order* setting forth Verizon's unbundling obligation application to IDLC-served hybrid loops.

The interconnection agreement amendment proposed by Verizon, by contrast, unduly limits the range of technically feasible options for providing unbundled access to IDLC-served hybrid loops where a spare cooper or UDLC system is unavailable, permitting only that a CLEC may obtain access to the requested Hybrid Loop by constructing the necessary copper loop or UDLC facilities that Verizon is otherwise unable to provide. Thus, Verizon's proposed contract language excludes from consideration a significant number of technically feasible and cost efficient reconfigurations of its own network that also would satisfy its unbundling obligations under the *Triennial Review Order*. As discussed at length in the Direct Testimony of E. Christopher Nurse on behalf of AT&T, (TR 109-110) and as supported by facts gathered in the *Triennial Review Order* proceeding,[35] Verizon's proposal to construct loop plant or a UDLC system to provide CLECs unbundled access to an IDLC-served Hybrid Loop serves no purpose other to inflate costs and to delay CLECs' unbundling requests.

Issue 17: Should Verizon be subject to standard provisioning intervals or performance measurements, and potential remedy payments, if any, in the underlying agreement or elsewhere, in connection with its provision of:

(a) unbundled loops in response to CLEC requests for access to IDLC-served hybrid loops;
(b) commingled arrangements;
(c) conversion of access circuits to UNEs;
(d) loops or transport (including dark fiber transport and loops) for which Routine Network Modifications are required;
(e) batch hot cut, large job hot cut and individual hot cut processes?

Statement of Position: (a)-(d) **Yes. For the items set forth in the Commission's Order

[35] *Id.* at ¶ 297, n. 855.

> Establishing Procedure, Verizon must be subject to all applicable standard provisioning intervals and/or performance measurements approved by the Commission, and all potential remedy payments imposed by the Commission for noncompliance by Verizon. For avoidance of doubt, the Amendment should incorporate by reference such standard provisioning intervals and/or performance measurements and potential remedy payments.**
>
> (e) By Order No. PSC-05-02210PCO-TP, dated February 24, 2005, sub-issue (e) has been withdrawn.

Through the Rebuttal Testimony of Alan J. Ciamporcero, Verizon expressly acknowledges that it currently is subject to intervals and performance measurements, including potential remedy payments, approved by the Commission in the Stipulation of Verizon Florida Inc. Performance Measurement Plan in Docket No. 000121C-TP, and further, that the Commission maintains that docket for review of intervals and performance measurements, and potential remedy payments applicable the network elements and services that Verizon provides. (TR281-282) The Commission must not, in this arbitration, approve contract language proposed by Verizon that would exclude the network elements and service arrangements set forth in the Order Establishing Procedure from Commission-approved intervals and performance measurements, and potential remedy payments that may otherwise apply. To the extent that Verizon believes existing intervals and performance measurements, and potential remedy payments do not accurately reflect the network elements, service arrangements and related functions that Verizon is obligated to provide, under the *Triennial Review Order*, including routine network modifications, commingling and conversions of wholesale service to section 251(c)(3) network elements, and unbundled loops in response to CLECs' requests for access to IDLC-served hybrid loops, Verizon must demonstrate to the Commission, in the appropriate docket, that revisions to its existing Performance Measure Plan are necessary. Conversely, the Amendment should incorporate, by reference, any applicable intervals and performance

measurements, and potential remedy payments that the Commission has approved, or may approve, in Docket No. 000121C-TP.

Issue 18: **How should sub-loop access be provided under the TRO?**

Statement of Position: **Verizon must provide to CLECs nondiscriminatory access to Copper Subloops and Inside Wire Subloops, on an unbundled basis, at any technically feasible point, and all features, functions and capabilities of the Subloop, including loop concentration/multiplexing functionality, loop distribution and on-premises wiring owned or controlled by Verizon. Verizon must provide to CLECs access to Inside Wire Subloops regardless of the capacity or type of media employed for the Inside Wire Subloop, and upon request, must provide a SPOI suitable for use by multiple carriers.**

As noted by the Competitive Carrier Group in response to the vast majority of Issues identified in this arbitration, the interconnection agreement amendment proposed by Verizon conspicuously excludes Verizon's affirmative unbundling obligations arising under the *Triennial Review Order* and the *Triennial Review Remand Order*, and instead, incorporates only discreet limitations on those obligations, as may have been established by the FCC. Verizon's position regarding its obligations, under the *Triennial Review Order*, to provide to CLECs unbundled access to copper subloops and subloops for access to multiunit premises (including insider wire subloops) does not depart from its pattern of selectively implementing the FCC's modified unbundling rules. The interconnection agreement amendment proposed by the Competitive Carrier Group mirrors precisely section 51.319(b) of the FCC's modified unbundling rules, and fully incorporates each of the rights and obligations set forth in the *Triennial Review Order* with regard to unbundled subloops, including the concepts of "technical feasibility" established by the FCC. The Competitive Carrier Group also proposes detailed contract language necessary to implement Verizon's obligation to provide a single point of interconnection ("SPOI") for use by multiple carriers at a multiunit premises. By contrast,

Verizon provides no justification, through testimony or responses to Staff's Interrogatories, why such clearly stated FCC mandates should be excluded from the Amendment.

Issue 19: Where Verizon collocates local circuit switching equipment (as defined by the FCC's rules) in a CLEC facility/premises, should the transmission path between that equipment and the Verizon serving wire center be treated as unbundled transport? If so, what revisions to the Parties' interconnection agreements are needed?

Statement of Position: **The Amendment must reflect the FCC's determination, in the TRO, that the facility between Verizon's local circuit switching equipment located at a CLEC premises and the Verizon serving wire center must be treated as dedicated interoffice transport subject to the FCC's unbundling rules.**

Through the Rebuttal Testimony of Alan J. Ciamporcero, Verizon acknowledges that the FCC permits the ILECs, under the *Triennial Review Order*, to collocate local switching equipment at a CLEC's premises or a common location for the purpose of interconnection, and further, that the transmission path between an ILEC's "reverse collocated" equipment in a non-ILEC's premises back to the ILEC's wire center shall be "unbundled transport between [ILEC] switches and wire centers."[36] (TR 282-83) Although Verizon submits that such "reverse collocation" arrangements currently do not exist within the State of Florida, (TR 282-83) current circumstances should not preclude modifications to existing interconnection agreements between Verizon and Florida CLECs that accurately reflect the FCC's rules regarding reverse-collocated equipment. Thus, the Amendment must state that the facility between Verizon's local circuit switching equipment located at a CLEC premises and the Verizon serving wire center shall be treated as dedicated interoffice transport subject to the FCC's unbundling rules.

Issue 20: Are interconnection trunks between a Verizon wire center and a CLEC wire center interconnection facilities under section 251(c)(2) that must be provided at TELRIC?

[36] *Id.* at ¶ 369, n. 1126.

Statement of Position: **Yes. Under section 251(c)(2) of the 1996 Act, Verizon must interconnect with a CLEC's network via interconnection trunks for transmission and routing of telephone exchange service and exchange access. The rates, terms and conditions that apply for interconnection trunks provided by Verizon, including TELRIC pricing, must be in accordance with sections 251 and 252 of the 1996 Act.**

On the basis of statements made by witness Alan J. Ciamporcero on behalf of Verizon, it appears that Verizon does not dispute its obligation, under section 251(c)(2) of the 1996 Act, to interconnect with a CLEC's network via interconnection trunks for transmission and routing of telephone exchange service and exchange access, and further, that such interconnection trunks must be subject to TELRIC pricing. Indeed, Mr. Ciamporcero references statements by AT&T witness E. Christopher Nurse citing portions of both the *Triennial Review Order* and *Triennial Review Remand Order* that expressly clarify this obligation. (TR 284) Therefore, the Amendment must include contract language proposed by the Competitive Carrier Group, as well as by AT&T, that similarly clarifies CLECs' rights to obtain access to section 251(c)(2) interconnection facilities, including transport facilities and equipment between a CLEC switch and the Verizon tandem switch or other point of interconnection designated by the CLEC, used for the exchange of traffic between the CLEC and Verizon.

Issue 21: What obligations under federal law, if any, with respect to EELS, should be included in the amendment to the Parties' interconnection agreements?

(a) What information should a CLEC be required to provide to Verizon as certification to satisfy the service eligibility criteria (47 C.F.R. § 51.318) of the TRO in order to: (1) convert existing circuits/services to EELs; or (2) order new EELs?

(b) Conversion of existing circuits/services to EELs:

(1) Should Verizon be prohibited from physically disconnecting, separating or physically altering the existing facilities when a CLEC requests a conversion of existing circuits/services to an EEL unless the CLECs requests such facilities alteration?

(2) In the absence of a CLEC request for conversion of existing access circuits/services to UNE loops and transport combinations, what types of charges, if any, can Verizon impose?

(3) Should the EELs ordered by a CLEC prior to October 2, 2003 be required to meet the TRO's service eligibility criteria?

(4) For conversion requests submitted by a CLEC prior to the effective date of the Amendment, should CLECs be entitled to EELs/UNE pricing effective as of the date the CLEC submitted the request (but not earlier than October 2, 2003)?

(c) What are Verizon's rights to obtain audits of CLEC compliance with the service eligibility criteria in 47 C.F.R. § 51.318?

Statement of Position: (a) **The Amendment must require that CLECs self-certify, by written or electronic notification, compliance with the service eligibility criteria established by the FCC to convert a circuit to an EEL or to obtain a new EEL. A requesting CLEC must affirmatively state that it is certificated to provide local voice service in the relevant area, and that each combined circuit satisfies the criteria set forth in 47 C.F.R. 51.318(b)(2). The Amendment must not impose requirements in addition to such criteria established by the FCC.**

(b)(1) **Yes. The Amendment must expressly state that Verizon is not permitted to physically disconnect, separate, alter or change, in any fashion, equipment and facilities employed by a CLEC to provide wholesale service, except as requested by the CLEC.**

(b)(2) **Consistent with the FCC's rules, the Amendment must expressly state the Verizon is not permitted to impose any charge for converting an existing circuit to an EEL, except if the Commission approves a specific tariffed charge for that purpose.**

(b)(3) **By agreement of the Parties, sub-issue (b)(3) has been withdrawn.**

(b)(4) **By agreement of the Parties, sub-issue (b)(4) has been withdrawn.

(c) **The Amendment must expressly incorporate the audit rights and obligations established by the FCC to confirm compliance with the service eligibility criteria for converted and new EELs, and must not include additional requirements not approved by the FCC. Upon proper notice to a CLEC, including documents evidencing

noncompliance with such criteria, Verizon may conduct one audit per year, through a mutually agreed upon independent auditor, subject to the standards of the AICPA.**

(a) Consistent with the *Triennial Review Order*, the Amendment must detail reasonable processes that permit CLECs to self-certify compliance with the service eligibility criteria for new or converted high capacity EELs established by the FCC. Although the *Triennial Review Order* does not specify the method or content of self-certification by CLECs requesting high capacity EELs, the FCC made clear that ILECs, including Verizon, must not impose requirements that would burden or delay the initiation of the ordering and conversion process.[37] Accordingly, the Commission must reject proposals by Verizon that improperly limit the methods of self-certification available to CLECs, and that impose on CLECs exhaustive content requirements for self-certifying compliance with the service eligibility criteria beyond those set forth in the *Triennial Review Order*.

Notwithstanding changes to the substantive service eligibility criteria applicable to high capacity EELs, the FCC concluded that the *Triennial Review Order* and its predecessor, the *Supplemental Order Clarification*, "share the basic principles of entitling requesting carrier unimpeded UNE access based upon self-certification, subject to later verification based upon cause." The certification and auditing procedures directed by the *Triennial Review Order* are comparable to those previously established in the *Supplemental Order Clarification*, and importantly, do not permit the ILECs, including Verizon, to require a requesting CLEC to submit to a compliance audit prior to obtaining a requested EEL.[38] Indeed, the FCC concluded, in the *Triennial Review Order*, that "nondiscriminatory access is preventing the imposition of any

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[37] *Id.* at ¶ 623.

[38] *Id.* at ¶¶ 621-22.

undue gating mechanism that could delay initiation of the ordering or conversion process."[39] Thus, consistent with the FCC's policy objectives stated in the *Triennial Review Order*, the Commission must reject efforts by Verizon to impose on CLECs self-certification obligations that effectively "audit" CLEC compliance with service eligibility criteria as a pre-condition to ordering a new or converted high capacity EEL.

The plain English meaning of the word "certify" is "to attest as certain; confirm; testify or vouch for in writing; guarantee; endorse; or assure or inform with certainty."[40] Consistent with that meaning, the self-certification process for high capacity EELs set forth in the *Triennial Review Order* should require nothing more than an affirmative statement by a CLEC that each of the service eligibility criteria established by the FCC is satisfied for the requested DS1 circuit or DS1 equivalent circuit. At bottom, if the FCC intended a process that would permit Verizon to verify CLECs' compliance with the service eligibility criteria it established prior to provisioning a high capacity EEL, the self-certification requirements demanded by Verizon would have been included in the *Triennial Review Order*. The contract language proposed by Verizon, compelling that a CLEC provide, for each new or converted high capacity EEL requested, precise data supporting compliance with the service eligibility criteria set forth in the *Triennial Review Order*, unquestionably would frustrate the self-certification process contemplated by the FCC.

Under the *Triennial Review Order*, Verizon also may not impose practical impediments to the CLEC self-certification process for high capacity EELs, including rigid limitations on the methods of self-certification that may be employed by CLECs. Indeed, Verizon's efforts to foreclose a written notification of compliance with the service eligibility

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[39] *Id.* at 623.

[40] Webster's New World Dictionary, Second College Edition (1984).

criteria is flatly inconsistent with the FCC's conclusion that any "practical" method, including a letter, is acceptable.[41] Moreover, even Verizon witness Ciamporcero conceded that a "batch" method of self-certification, as proposed by the Competitive Carrier Group, would not create an obstacle to Verizon's processing of CLEC requests for high capacity EELs.[42] At bottom, Verizon's efforts to permit only electronic self-certification of compliance with the service eligibility criteria for high capacity EELs does not comport with the *Triennial Review Order*.

(b)(1) The Amendment must expressly state that Verizon will not, in converting a wholesale service used by a CLEC to a high capacity EEL, physically disconnect, separate, alter or change, in any other fashion, equipment and facilities employed to provide the wholesale service, except at the request of a CLEC. The contract language proposed by the Competitive Carrier Group, as well as by AT&T, is critical to ensuring that the conversion process does not disrupt service to any CLEC customer, or otherwise adversely affect service quality. On the basis of the testimony and responses to Staff's Interrogatories, it appears that Verizon does not oppose the contract language proposed by the Competitive Carrier Group, and moreover, the Verizon does not intend to separate, alter or change equipment and facilities used to provide a wholesale service in the conversion process. Thus, the Commission should approve the contract language proposed by the Competitive Carrier Group. (TR 290-91)

(b)(2) Consistent with the *Triennial Review Order*, the Amendment must expressly state that Verizon is not permitted to impose any charge for converting an existing wholesale service to an EEL, except if the Commission approves a specific tariffed charge for that purpose. The FCC expressly concluded, in the *Triennial Review Order*, that termination charges, charges for disconnecting and reconnecting service, and nonrecurring charges

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[41] *Triennial Review Order*. at ¶¶ 620, 624.

[42] Deposition Transcript of Alan J. Ciamporcero at 21.

associated with establishing service are "inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable and nondiscriminatory rates, terms and conditions," and further, that such charges are "inconsistent with section 202 of the Act, which prohibits carriers from subjecting an person or class of persons (e.g., competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or disadvantage."[43] On the basis of testimony and responses to Staff's Interrogatories filed in this arbitration, it appears that Verizon does not dispute the contract language proposed by the Competitive Carrier Group, and thus, the contract language proposed by the Competitive Carrier Group must be approved by the Commission.

(c) The Amendment must expressly incorporate the audit rights and obligations established by the FCC to confirm compliance with the service eligibility criteria for new and converted high capacity EELs, and must not impose on CLECs any additional requirements not approved by the FCC. Foremost, the Commission must dismiss Verizon's baseless assertion that the *Triennial Review Order* granted the ILECs an "unconditional" right to audit CLECs' compliance with the service eligibility criteria established for high capacity EELs.[44] To the contrary, the FCC historically has promoted reasonable limitations on audits of CLEC compliance with existing service eligibility criteria applied to high capacity EELs, and expressly upheld the same policy considerations supporting such limitations in the *Triennial Review Order*. Thus, consistent with the *Triennial Review Order*, the Amendment must permit no more than one audit in a twelve-month period, and to that end, must explicitly state that such annual audit will be initiated by Verizon only to the extent reasonably necessary to determine a

[43] *Triennial Review Order* at ¶ 584.

[44] Verizon's Responses to Staff's Interrogatories, No. 166(a).

CLEC's compliance with the service eligibility criteria for high capacity EELs, and only upon the identification of a basis for Verizon's suspicion that certain CLEC circuits are noncompliant.

As discussed in response to Issue 21(a), the basic principles applied to CLEC self-certification and compliance audits set forth in the *Triennial Review Order* mirror those previously ordered by the FCC, in the *Supplemental Order Clarification.*[45] Importantly, the *Triennial Review Order* did not disturb the FCC's earlier conclusion that "limited" audits may be initiated "only to the extent reasonably necessary to determine a requesting carrier's compliance" with existing service eligibility criteria for high capacity EELs.[46] Specifically, in the *Supplemental Order Clarification*, the FCC concluded that "audits will not be routine practice, but only will be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local service."[47] Notwithstanding its departure from the substantive service eligibility criteria set forth in the *Supplemental Order Clarification*, the FCC expressly re-affirmed, in the *Triennial Review Order*, that the process of self-certification and audits it established is consistent with its objective of "entitling requesting carriers unimpeded UNE access based upon self-certification, **subject to later verification based upon cause.**"[48] Thus, there can be no doubt that the audit right provided under the *Triennial Review Order* is not "unconditional," as Verizon would lead the Commission to believe.

Importantly, the Commission also must reject efforts by Verizon exclude from the Amendment the concept of "materiality" governing the compliance audit framework set forth in

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[45] *Triennial Review Order* at ¶ 622.

[46] *Id.* at ¶ 621.

[47] *Id.*

[48] *Id.* at ¶ 623.

the *Triennial Review Order*. Indeed, Verizon's claim that *any* infraction of the service eligibility criteria for high capacity EELs triggers a CLEC's obligation, under the *Triennial Review Order*, to reimburse Verizon for the full costs of a compliance audit is unlawful, and patently unreasonable.[49] The FCC expressly determined that the concept of "materiality" set forth in the AICPA Attestation Standards must govern audits of CLEC compliance with service eligibility criteria for high capacity EELs, and further, that a CLEC shall be obligated to assume the costs of a compliance audit only "to the extent the independent auditor's report concludes that the competitive LEC **failed to comply in all material respects** with the respective service eligibility criteria."[50] At bottom, the concept of "materiality" governing compliance audits is not something that Verizon is free to ignore. Thus, the Commission must approve the contract language proposed by the Competitive Carrier Group, which properly incorporates the "materiality" standard.

Issue 22: How should the Amendment reflect an obligation that Verizon perform routine network modifications necessary to permit access to loops, dedicated transport, or dark fiber transport facilities where Verizon is required to provide unbundled access to those facilities under 47 U.S.C. § 251(c)(3) and 47 C.F.R. part 51?

Statement of Position: **As clarified by the TRO, Verizon must make such Routine Network Modifications in a nondiscriminatory fashion as are necessary to permit access by a CLEC to the Loop and Dedicated Transport, including high capacity (DS1, DS3 and Dark Fiber) Loop and Dedicated Transport made available under the Amendment, including any prospective or reactive activities that Verizon regularly undertakes when establishing or maintaining network connectivity for its own retail customers. Such obligation must be clearly and affirmatively stated in the Amendment.**

Consistent with the *Triennial Review Order*, the Amendment must clearly and affirmatively state Verizon's obligation to provide to CLECs, in a nondiscriminatory fashion,

[49] *See* Verizon's Responses to Staff's Interrogatories, Nos. 46, 115, 116.

[50] *Triennial Review Order* at ¶¶ 626-27.

routine network modifications as are necessary to permit access by CLECs to loops (including DS1, DS3 and dark fiber loops, as available under the Amendment) and dedicated transport (including DS1, DS3 and dark fiber dedicated transport, as available under the Amendment), including those prospective or reactive activities that Verizon regularly undertakes when establishing or maintaining network connectivity for its own retail customers. Through the Rebuttal Testimony of Alan J. Ciamporcero, Verizon agrees to provide each of the following routine network modifications required by the FCC, under the *Triennial Review Order*, and to specify those routine network modifications in the Amendment: rearranging or splicing of in-place cable; adding an equipment case; adding a doubler or repeater; line conditioning; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; accessing manholes; attaching electronic and other equipment that Verizon ordinarily attached to a DS1 loop to activate such loop for its own customer; and deploying bucket trucks to reach aerial cable. Verizon also agrees to provide the following routine network modifications applicable to dark fiber transport, and to specify those routine network modifications in the Amendment: splicing in-place dark fiber; accessing manholes; deploying bucket trucks to reach aerial cable; installing equipment casings; and routine activities, if any, needed to enable a CLEC to light a Dark Fiber Transport facility that it has obtained from Verizon under the Amendment. (TR 309-310)

Issue 23: Should the Parties' retain their pre-Amendment rights arising under their agreements, tariffs and SGATs?

Statement of Position: **Yes. The Amendment should expressly state that the Parties retain their pre-Amendment rights arising under existing interconnection agreements, tariffs and SGATs, except to the extent that such rights are modified by the TRO and the TRRO, as set forth in the Amendment.**

The Amendment should expressly state that the Parties retain their pre-Amendment rights arising under existing interconnection agreements, tariffs and SGATs, except to the extent that such rights are modified by the *Triennial Review Order* and the *Triennial Review Remand Order*, as set forth in the Amendment. As discussed more fully in response to Issues 2, 3, 4, and 5, the Amendment should expressly incorporate the parties' rights and obligations arising under the *Triennial Review Order* and the *Triennial Review Remand Order*. Thus, Verizon should not be permitted, through modifications to its existing tariffs or SGATs, to evade any obligations imposed by those orders and corresponding changes to the FCC's unbundling rules properly implemented in accordance with the section 252 interconnection agreement amendment process.

Issue 24: Should the Amendment set forth a process to address the potential effect on the CLECs' customers' services when a UNE is discontinued?

Statement of Position: **Yes. To avoid any adverse effect on CLEC customers where certain network elements no longer are subject to an unbundling obligation under section 251(c)(3), the FCC established element-specific transition plans and transition rates for discontinuation of such network elements, including unbundled local circuit switching, high capacity loops and high capacity dedicated transport. The Amendment must expressly incorporate the transition framework ordered by the FCC for each network element de-listed under the TRRO.**

As discussed in response to Issues 2, 3, 4 and 5, the FCC, in the *Triennial Review Remand Order*, established transition rates, terms and conditions applicable to network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including local circuit switching, dark fiber loops and dedicated transport facilities, and other high capacity (DS1 and DS3) loops and dedicated transport facilities that satisfy the FCC's criteria for unbundling relief. In so doing, the FCC concluded that the transition of de-listed section 251(c)(3) network elements to alternative arrangements must be completed in manner that is

least disruptive to CLEC businesses, and more importantly, to CLECs' end user customers. Thus, consistent with the policy objectives stated by the FCC, in the *Triennial Review Remand Order*, the Amendment must expressly incorporate the transition framework ordered by the FCC for each network element de-listed under section 251(c)(3) of the 1996 Act.

Issue 25: How should the Amendment implement the FCC's service eligibility criteria for combinations and commingled facilities and services that may be required under 47 U.S.C. § 251(c)(3) and 47 C.F.R. part 51?

Statement of Position: **The Amendment must require that CLECs self-certify, by written or electronic notification, compliance with the service eligibility criteria established by the FCC for combinations or commingled arrangements. A requesting CLEC must affirmatively state that it is certificated to provide local voice service in the relevant area, and that each combined circuit satisfies the criteria set forth in 47 C.F.R. 51.318(b)(2). The Amendment must not impose requirements in addition to such criteria established by the FCC.**

As discussed more fully in response to Issue 21, the Amendment must fully address the service eligibility criteria for high capacity loop and transport combinations ("EELs") established in the *Triennial Review Order*, including the process for CLEC self-certification of compliance with the FCC's service eligibility criteria and for compliance audits by Verizon. The Amendment must require that CLECs self-certify, by written or electronic notification, compliance with the service eligibility criteria established by the FCC for combinations or commingled arrangements. A requesting CLEC must affirmatively state that it is certificated to provide local voice service in the relevant area, and that each combined circuit satisfies the criteria set forth in 47 C.F.R. 51.318(b)(2). The Amendment must not impose requirements in addition to the service eligibility criteria established by the FCC as a pre-condition to providing EELs requested by a Florida CLEC.

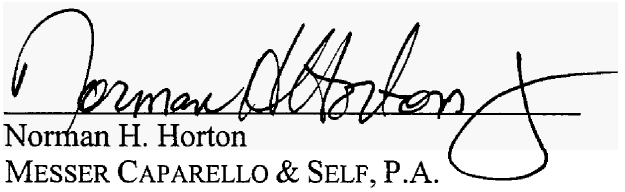
Issue 26: Should the Commission adopt the new rates specified in Verizon's Pricing Attachments on an interim basis?

Statement of Position: **By agreement of the Parties, Issue 26 has been withdrawn.**

CONCLUSION

For the reasons set forth herein, the Commission must approve the position statements and the interconnection agreement amendment submitted by the Competitive Carrier Group.

Respectfully submitted,



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Dated: June 13, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U.S. Mail on this 13th day of June, 2005.

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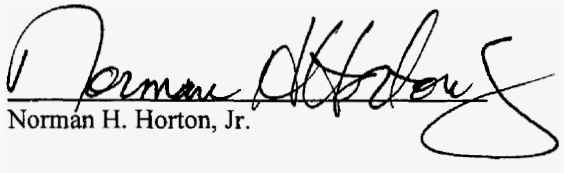

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