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DATE: September 22, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (P. Lee, Barrett, Hallenstein, Kennedy, King, Marsh, Moss, Vickery) *MB*
Office of the General Counsel (L. Fordham, Banks) *FILE*

RE: Docket No. 040156-TP – Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

AGENDA: 11/01/05 – Regular Agenda – Post-hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Bradley, Edgar

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040156.RCM.DOC

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FPSC-COMMISSION CLERK

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Abbreviations and Acronyms

Act	Telecommunications Act of 1996
ADSL	Asymmetric Digital Subscriber Line
AICPA	American Institute of Certified Public Accountants
ARMIS	Automated Reporting Management Information System
ASR	Access Service Request
AT&T	AT&T Communications of the Southern States, LLC and TCG South Florida
BOC	Bell Operating Company
BR	Brief
CCG	Competitive Carrier Group (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, XO Communications Services, Inc. (formerly, XO Florida, Inc. and Allegiance Telecom of Florida, Inc.), Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC)
CCG Panel	Witnesses Falvey, Sanders, and Cadieux
CFR	Code of Federal Regulations
CLEC	Competitive Local Exchange Carrier
CMRS	Commercial Mobile Radio Service Providers
CO	Central Office
DACS	Digital Access Cross-Connect System
d/b/a	Doing business as
DLC	Digital Loop Carrier
DN	Docket Number
DS0	Digital Signal, level Zero. DS0 is 64,000 bits per second.
DS1	Digital Signal, level One. A 1.544 million bits per second digital signal carried on a T-1 transmission facility. A DS1 is the equivalent of 24 DS0s.
DS3	Digital Signal, level Three. A DS3 is the equivalent of 28 DS1s.
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
EEL	Enhanced Extended Link
ESF	Extended SuperFrame
EXH	Exhibit
FCC	Federal Communications Commission
FDN	Florida Digital Network, Inc. d/b/a FDN Communications
FPSC	Florida Public Service Commission

FTTC	Fiber to the Curb
FTTH	Fiber to the Home
FTTP	Fiber to the Premises
HFPL	High Frequency Portion of the Copper Loop
ICA	Interconnection Agreement
IDLC	Integrated Digital Loop Carrier
IDT	Integrated Digital Terminal
ILEC	Incumbent Local Exchange Company
Kbps	Kilobits per second
LATA	Local Access and Transport Area
LDS	Local Digital Switch
LEC	Local Exchange Carrier
MCI	MCIMetro Access Transmission Services, LLC
MDF	Main Distribution Frame
MDU	Multiple Dwelling Unit
MPOE	Minimum Point of Entry
NDA	Nondisclosure Agreement
NID	Network Interface Device
Telecom Dictionary	<i>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications & the Internet, 15th Updated, Expanded and Much Improved Edition.</i> (New York: Miller Freeman, Inc. 1999)
NGDLC	Next Generation Digital Loop Carrier
NRC	Non-Recurring Charge
OCn	Optical Carrier level N. An optical interface designed to work with a Synchronous Optical Network (SONET). OCn transmission facilities are deployed as SONET channels having a bandwidth of typically 155.52 Mbps (OC3 or the equivalent capacity of 3 DS3s) and higher, e.g., OC12 (622.08 Mbps); OC48 (2.488 Gbps); etc.
OCD	Optical Concentration Device
PCM	Pulse Code Modulation
PON	Passive Optical Networking
POTS	Plain Old Telephone Service
RADSL	Rate-Adaptive Digital Subscriber Line
RDT	Remote Digital Terminal
RNM	Routine Network Modification
RT	Remote Terminal
SGAT	Statement of Generally Available Terms
SPOI	Single Point of Interconnection
SM	Switching Module

Sprint	Sprint Communications Company Limited Partnership
TCG	TCG South Florida
TDM	Time Division Multiplexing
TELRIC	Total Element Long-Run Incremental Cost
TR	Transcript
TSI	Time Slot Interchange
UDLC	Universal Digital Loop Carrier
UNE	Unbundled Network Element
UNE-L	Unbundled Network Element-Loop
UNE-P	Unbundled Network Element-Platform
USC	United States Code
Verizon	Verizon Florida, Inc.
Verizon's Amendment 1	Verizon Florida Inc.'s Petition for Arbitration, filed September 9, 2004, Exhibit A, Amendment 1.
Verizon's Amendment 2	Verizon Florida Inc.'s Reply to Answers to Verizon Florida's Petition for Arbitration, filed October 18, 2004, Docket No. 040156-TP, Exhibit 1, Amendment 2.
Verizon Panel	Witnesses Church, Loughridge, and Richter
Verizon's Pricing Attachment	Verizon Florida Inc.'s Reply to Answers to Verizon Florida's Petition for Arbitration, filed October 18, 2004, Docket No. 040156-TP, Exhibit 1, Attachment 2, Pricing Attachment.
VG	Voice Grade
xDSL	"x" distinguishes various types of DSL
Xspedius	Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville LLC

Legal Citations

Reference Used in Recommendation	Full Citation
Court Decisions	
8th Circuit 1997	<u>Iowa Utilities Board v. FCC</u> , decided July 18, 1997, 120 F.3d 753.
8th Circuit 2000	<u>Iowa Utilities Board v. FCC</u> , decided July 18, 2000, 219 F.3d 744.
USTA I	<u>United States Telecom Ass'n v. FCC</u> , decided May 24, 2002, 290 F. 3d 415 (D.C. Cir. 2002).
USTA II	<u>United States Telecom Ass'n v. FCC</u> , decided March 2, 2004, 359 F. 3d 554 (D.C. Cir. 2004).
FCC Orders	
Local Competition Order	Order No. FCC 96-325, released August 8, 1996, CC Docket Nos. 96-98 and 95-185, <u>In Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers</u> , First Report and Order.
UNE Remand Order	Order No. FCC 99-238, released November 5, 1999, CC Docket No. 96-98, <u>In Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking</u> .
Supplemental Order	Order No. FCC 99-370, released November 24, 1999, CC Docket No. 96-98, <u>In Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order</u> .
Line Sharing Order	Order No. FCC 99-355, released December 9, 1999, CC Docket Nos. 98-147 and 96-98, <u>In Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98</u> .
Supplemental Order Clarification	Order No. FCC 00-183, released June 2, 2000, CC Docket No. 96-98, <u>In Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification</u> .
TRO	Order No. FCC 03-36, released August 21, 2003, CC Docket Nos. 01-338, 96-98, and 98-147, <u>In Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , Report and Order and Order on Remand and Further Notice of Proposed Rulemaking.
TRO Errata	Order No. FCC 03-227, released September 17, 2003, CC Docket Nos. 01-338, 96-98, and 98-147, <u>In Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , Errata.

Reference Used in Recommendation	Full Citation
Interim Order	Order No. FCC 04-179, released August 20, 2004, WC Docket No. 04-313 and CC Docket No. 01-338, <u>In Re: Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</u> , Order and Notice of Proposed Rulemaking.
FTTC Recon Order	Order No. FCC 04-248, released October 18, 2004, CC Docket Nos. 01-338, 96-98, and 98-147, <u>In Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , Order on Reconsideration.
TRRO	Order No. FCC 04-290, released February 4, 2005, WC Docket No. 04-313 and CC Docket No. 01-338, <u>In Re: Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</u> , Order on Remand.
Commission Orders	
Verizon UNE Order	Order No. PSC-02-1574-FOF-TP, issued November 15, 2002, Docket No. 990649B-TP, <u>In Re: Investigation into the pricing of unbundled network elements, (Sprint/Verizon Track)</u> . In December 2002, Verizon appealed the Commission's order to the Florida Supreme Court. By Order No. PSC-03-0896-FOF-TP, issued August 5, 2003, the Commission granted Verizon a stay of the UNE rates established by Order No. PSC-02-1574-FOF-TP, pending judicial review. If the Commission prevailed, the effective date of these new UNE rates would be August 5, 2003. On September 2, 2004, the Florida Supreme Court upheld the Commission's decision in all respects.
Prehearing Order	Order No. PSC-05-0463-PHO-TP, issued April 29, 2005, Docket No. 040156-TP, <u>In Re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.</u>
No-New-Adds Order	Order No. PSC-05-0492-FOF-TP, issued May 5, 2005, in Docket No. 041269-TP, <u>In Re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.;</u> Docket No. 050171-TP, <u>In Re: Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing BellSouth Telecommunications, Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO);</u> Docket No. 050172-TP, <u>In Re: Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing Verizon Florida Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO).</u> This order has been appealed.

Case Background

On August 21, 2003, the FCC released its TRO, promulgating various rules governing the scope of incumbent telecommunications service providers' obligations to provide competitors access to UNEs; the Order became effective on October 2, 2003. The TRO eliminated enterprise switching as a UNE. For other UNEs (e.g., mass market switching, high-capacity loops, dedicated transport), the FCC made a finding of impairment, but delegated to the states the task of identifying areas, if any, where impairment did not exist. Additionally, the TRO imposed new obligations on ILECs (e.g., commingling and conversion of special access to EELs). On February 20, 2004, Verizon filed its Petition for Arbitration of Amendment to Interconnection Agreements with Certain Competitive Local Exchange Companies (CLECs) and Commercial Mobile Radio Service Providers (CMRS) in Florida to implement changes resulting from the TRO.

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

By Order No. PSC-04-0671-FOF-TP, issued on July 12, 2004, in the instant docket, the Commission granted Sprint's motions to dismiss Verizon's petition, without prejudice, on the grounds that the petition and update were facially deficient under section 252(b)(2) of the Telecommunications Act of 1996 (Act). The Order also granted Verizon leave to refile a corrected petition.

As a result of USTA II, the FCC released an Interim Order on August 20, 2004. The Interim Order required ILECs to continue providing unbundled access to mass market switching, high-capacity loops, and dedicated transport until the earlier of the effective date of the final FCC unbundling rules or six months after Federal Register publication of the Order. The rates, terms, and conditions of these UNEs were required to be those applied under ILEC/CLEC interconnection agreements as of June 15, 2004.

Verizon filed its corrected petition for arbitration in the instant docket on September 9, 2004. The matter was set for an administrative evidentiary hearing, and a procedural schedule was established by Order No. PSC-04-1236-PCO-TP, issued on December 13, 2004.

On February 4, 2005, the FCC released its TRRO, setting forth revisions to certain of its unbundling rules in response to USTA II. The TRRO unbundling requirements were effective March 11, 2005. In light of the TRRO release and its possible impact on this arbitration, the procedural schedule in this docket was modified by Order No. PSC-05-0221-PCO-TP, issued on February 24, 2005. The Order also deleted Issue 17(e), which requested intervals, performance measurements, and potential remedy payments for batch hot cuts.

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AT&T requested to withdraw Issue 21(b)(3) and Issue 21(b)(4) on April 8, 2005. There were no objections and these issues were withdrawn from the proceeding. On April 26, 2005, the parties reached agreement on the disposition of Issues 1 and 26. Verizon agreed to withdraw its proposed Pricing Attachment to its Amendment 2 (Issue 26); the CLECs agreed to defer any arguments they might have that Verizon has unbundling obligations, independent of sections 251 and 252, including under state law or the Bell Atlantic/GTE merger conditions, to a proceeding that may be initiated outside of this arbitration (Issue 1).

The April 26, 2005, agreement also set forth a procedure for the hearing in which all of the pre-filed testimony, exhibits, and discovery responses were entered into the hearing record without cross-examination, and the hearing was limited to opening statements only. The Prehearing Order reflected the agreed disposition of Issues 1, 21(b)(3), 21(b)(4), 26, and deletion of Issue 17(e). An administrative hearing was held on May 4, 2005. Post-hearing briefs were filed on June 13, 2005.

This recommendation addresses only those issues remaining in dispute. Although staff has made every effort to follow a standard format throughout this recommendation, there is some variation between the issues due to the manner in which the parties addressed the issues.

Overview of Key Issues and Recommendations

Given the breadth of the TRO and TRRO, the issues addressed in this recommendation are wide-ranging. When considered in their totality, however, most of the issues and recommendations can be categorized into discontinued obligations, new or modified obligations, sometimes and continuing obligations. Where an incumbent local exchange company (ILEC) such as Verizon is no longer required to provide unbundled access under §251(c)(3) of the Act, the FCC often has established transition plans to ease the impact on CLECs and their end users. Unfortunately, the transition plans and provisions related to new and modified obligations sometimes generate additional questions of interpretation, application, and implementation. In view of the myriad complex issues addressed herein, staff has prepared this brief overview. Because of overlap and similarities between certain issues, this overview is not necessarily in the same order as the recommendation, but instead, addresses related topics together for ease of understanding.

In evaluating impairment, which is the standard for determining under what circumstances unbundled access should be required, the FCC established some important, underlying principles in the TRRO:

- Impairment should be evaluated with regard to the capabilities of a reasonably efficient competitor.
- Access should not be permitted for the exclusive provision of wireless service and long distance service, based on the competitive nature of these markets.
- Reasonable inferences can be drawn from geographic markets with wireline competitive deployment regarding prospects for competitive entry in other markets.
- Availability of ILEC tariffed offerings is not dispositive when evaluating impairment.

Subject to the transition periods set forth in the TRRO, the parties agree that Verizon no longer has a §251(c)(3) obligation to provide unbundled local circuit switching and dark fiber loops, and its obligation to provide unbundled DS1 and DS3 loops and dedicated transport depends on the number of fiber-based collocators and/or business line counts in a wire center(s). The FCC's thresholds for determining that no impairment exists (i.e., unbundled access is no longer required) are higher for DS1 and DS3 loops, as compared to those applicable for dedicated transport, because the revenues needed to justify the underlying costs of competitive deployment are higher for loops. Of further note, based on the TRO, staff believes that the FCC eliminated Verizon's previous limited obligation to unbundle packet switching, without establishing a transition period.

Where the thresholds for discontinuing the provision of DS1 and DS3 loops and dedicated transport as unbundled network elements (UNEs) have been met, there is much debate on whether lists of these wire centers should be included in present and future contract amendments. Staff recommends that wire center lists not be included in contract amendments as this approach would preclude the addition of new wire centers as they become "non-impaired," creating a lag in implementation. Staff believes that Verizon is not precluded from providing notice of discontinuance in advance of FCC-established effective dates for removal of unbundling requirements.

With respect to converting discontinued UNEs to alternative arrangements, the TRRO established a 12-month transition period for unbundled local circuit switching and DS1 and DS3 loops and transport, which ends March 10, 2006. For dark fiber loops and transport, the TRRO established an 18-month transition period, which ends September 10, 2006. As CLECs submit conversion orders for de-listed UNEs during the applicable transition period established in the TRRO, there is a question as to whether the required transitional rates apply to the end of the transition period. Staff believes that CLECs are entitled to the transitional rates until the end date of the specified transition period, and Verizon is entitled to re-price existing arrangements in accordance with the FCC's transitional rates. Once a transition period ends, rates will go to market-based levels.

The parties disagree on what non-recurring charges, if any, should apply when converting existing UNE arrangements to alternative arrangements. Staff recommends that Verizon may assess the existing Commission-established non-recurring charges for disconnecting UNEs, since the Commission did not set forth any exceptions and established distinct non-recurring charges for connection and disconnection. Any reconnection charges should be pursuant to a commercially negotiated contract.

Where UNEs have been removed from the required list, subject to a transition period, there is also a question as to whether a CLEC can obtain new UNEs for existing customers served by the CLEC as of March 11, 2005, the effective date of the TRRO. In the case of de-listed UNEs, staff believes the TRRO prohibits CLECs from adding new UNE arrangements, not merely new UNE customers, and this prohibition is self-effectuating (unlike other changes which staff believes do not alter parties' rights under existing interconnection agreements and require completion of any change-of-law process in those contracts).

With respect to new or modified obligations, the TRO eliminated the previous restriction on commingling UNEs with wholesale services, but there is some ambiguity on whether Verizon believes its obligation extends to resold services. Based on the TRO, staff concludes that Verizon's commingling obligation includes resold services. Further, based on the TRRO, the commingling obligation continues until the UNE is de-listed and any applicable transition period has ended. Since the TRO did not override the §252 process and unilaterally change all interconnection agreements, staff believes that all commingling should be implemented with the effective date of a contract amendment, not the effective date of the TRO (October 2, 2003) as some CLECs argue. Further, staff believes that conversions from wholesale services to UNEs or UNE combinations are permissible under the TRO, as of the effective date of an amendment.

There are several implementation issues related to UNE EELs (unbundled loop and transport combinations) and commingled EELs (loop and transport combinations where one is a UNE). The TRO identifies service eligibility criteria for UNE EELs and commingled EELs, which are designed to confirm that the circuit will be used for local voice service. Disagreements arise, however, because the TRO provides for a CLEC self-certification process, but does not specify the form and any required detail. Since the TRO does not require a CLEC to provide detailed, verifiable information, a CLEC should need only to submit a letter, either manually or electronically. When converting existing circuits/services to EELs, staff believes

Verizon is presently precluded from assessing any charges for the conversion inasmuch as Verizon withdrew its pricing attachment from this proceeding.

Under the TRO, Verizon has a right to audit for CLEC compliance with the EEL service eligibility criteria using an independent third-party, but the parties disagree on implementation matters. Staff recommends that the audit request need not include pre-identification of circuits to be audited on the basis that such pre-identification is not required by the TRO, could delay the audit, and would not be a random sample. The parties also disagree on what extent of compliance/noncompliance with the service eligibility criteria, as determined through the audit, will trigger one party's obligation to reimburse the other for costs incurred with the audit. Since the applicable paragraphs of the TRO use the term "material," staff concludes that material compliance/noncompliance is the determining factor.

There are several issues that address access in various loop and subloop situations. Key areas are line sharing, line splitting, fiber to the premises (FTTP) loops, hybrid copper-fiber loops, routine network modifications, and line conditioning. In addition, there are issues with unbundled access when an end user is served by Integrated Digital Loop Carrier (IDLC) or located in a multitenant dwelling. The Network Interface Device (NID), which connects loop facilities to inside wiring at the end user's premises, continues to be a required UNE, pursuant to the TRO.

In the TRO, the FCC eliminated the line *sharing* requirement wherein the ILEC provided voice service over the low frequency portion of the loop, and a CLEC provided xDSL service over the high frequency portion of the loop. The parties agree that line *sharing* is a discontinued facility under §251(c)(3). Verizon objects to CLEC proposals to include the FCC's transition plan in contract amendments, and staff recommends this disagreement be resolved by referencing the applicable FCC rules. In contrast, staff believes that the TRO and TRRO did not affect Verizon's line *splitting* obligation, which gives a CLEC that obtains an unbundled copper loop the ability to split off the high frequency portion of the loop for provision of xDSL service by a second CLEC.

The TRO addresses both newly built and overbuilt FTTP loops and establishes separate and distinct rules for each. While AT&T argues that Verizon is obligated to provide access to a narrowband transmission path in newly built FTTP situations, staff believes that the TRO released Verizon from all obligations to provide unbundled access where the end user was not previously served by a Verizon loop facility. Where Verizon deploys overbuilt FTTP and elects to retire the pre-existing copper loops, the parties agree that some level of unbundled access is required, yet disagree on the required bandwidth. Staff believes the TRO is clear that a 64 kbps transmission path must be provided; however, any service provided over this path may have an effective transmission speed of less than 64 kbps due to needed signaling. Finally, Verizon's existing network modification disclosure requirements would cover, in staff's opinion, the retirement of copper loops in a FTTP overbuild situation; therefore, no contract amendment should be needed on this point.

For hybrid copper-fiber loops, the parties agree that the TRO imposes an access requirement, but disagree on whether there are limitations on Verizon's obligation to provide access to hybrid loops for provision of broadband service via DS1 and DS3. Staff believes the

TRO and associated FCC rule are clear that Verizon's obligation is limited to time division multiplexing (TDM) features, functions and capabilities and does not include any requirement to provide unbundled access to next-generation or packetized capabilities. Any elimination of DS1 and DS3 loop unbundling obligations pursuant to the TRRO would apply equally to hybrid loops.

Access to hybrid loops for the provision of narrowband services is required per the TRO, but the parties disagree on the scope of the access (the entire loop or merely a narrowband voice-grade transmission path). Staff believes that the TRO, and the associated rule on this point, limit access to a non-packetized transmission path capable of voice grade service. Further, the TRO offers ILECs the option of providing a homerun copper loop, but staff does not find support for the argument that a CLEC could require Verizon to provide a copper loop.

There is a continuing obligation to provide routine network modifications, which involve activities that Verizon regularly undertakes for its own end users, but the parties disagree on whether the TRO imposed limitations, such as parity with retail operations. With the exception of constructing a new loop, staff believes the TRO obligates Verizon to perform routine network modifications at parity with that provided for its own retail customers.

The TRO refers to line conditioning as a type of routine network modification that involves removal of devices such as bridged taps and load coils, which can diminish the capability to provide xDSL service over the loop. In addition to the parity standard referenced above, the TRO and associated FCC rules, in staff's opinion, limit Verizon's obligation to perform line conditioning to that needed to ensure xDSL delivery in the same manner as provided for its own retail customers. AT&T believes that line conditioning should be performed at no additional cost, but there is no evidence that the existing Commission-established line conditioning rates are not compliant with the current state of the law.

When an end user is served by IDLC, there seems to be agreement among the parties that access can be provided using spare copper facilities or Universal Digital Loop Carrier (UDLC), if available. Where these options are not available, the parties disagree on whether Verizon may meet its access obligation by constructing new facilities and recovering the associated costs from the CLEC. Since there is evidence of other engineering solutions, and the FCC did not list construction of new facilities as an option, staff is of the opinion that Verizon must present a technically feasible method that does not rely solely on new construction.

With multitenant dwellings, there are various issues regarding where access should be provided. Staff believes that subloop access should be provided at any technically feasible point in Verizon's outside plant at or near the dwelling, including inside wire between the minimum point of entry to the building and the point of demarcation between Verizon's network and the end user's premises.

In general, the remaining issues not specifically addressed in this overview cover general terms and conditions (definitions and effective date of amendment) and less contentious matters, such as situations where an obligation did not change (interconnection) or an issue is purely hypothetical (reverse collocation at a CLEC's premises) and not ripe for decision.

Discussion of Issues

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?

Recommendation: The amendment to the parties' interconnection agreements should include rates, terms, and conditions relating to the changes in unbundling obligations resulting from the TRO and the TRRO. Neither the TRO nor TRRO ordered changes to change-of-law provisions in existing interconnection agreements. Therefore, no new change-of-law provisions need to be included in the amendment to the parties' ICAs. (P. Lee)

Position of the Parties

Verizon: The Amendment should make clear that Verizon's unbundling obligations under the ICA are the same as they are under federal law. Once Verizon's obligation to unbundle an element under §251(c)(3) is eliminated, the Amendment should permit Verizon to discontinue that element upon 90 days' written notice.

AT&T: Existing interconnection agreements should be amended to reflect the actual changes in unbundling obligations that the FCC has directed. The FCC did not order any change to the change-of-law provisions in existing ICAs. Therefore, Verizon's attempt to insinuate changes to ICA's existing change of law provisions should be rejected.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: The Commission should maintain the change of law language that exists in MCI's current interconnection agreement with Verizon. The FCC has not invalidated change of law provisions in interconnection agreements. The effect of Verizon's proposal is to eliminate the need to negotiate contract amendments to implement changes in law that reduce its contract obligations and to implement those changes by giving notices of discontinuance to carriers. The Commission should deny Verizon's proposal.

Sprint: All functions being performed under the master ICA with respect to UNEs should be included in the Amendment consistent with the Federal Unbundling Rules and the new FCC TRRO Order. However, it is Sprint's position that the FCC's rules with respect to the pricing and timing of the transition period were self-effectuating commencing in March.

Staff Analysis: The parties appear to agree that existing interconnection agreements (ICAs) should be amended to reflect the changes in unbundling requirements resulting from the FCC's

TRO, USTA II, and the TRRO. (TR 8-9) This includes both those network elements de-listed by the TRO and TRRO as well as new obligations ordered. The fundamental dispute is whether existing ICA change-of-law provisions should be amended to provide that any future deletions to the FCC's unbundling rules would be self-effectuating. The Prehearing Order in this proceeding (Order No. PSC-02-1574-FOF-TP, issued April 29, 2005), notes the parties' agreement that only rates, terms, and conditions arising from federal unbundling regulations pursuant to 47 USC §§251 and 252 will be litigated in this arbitration. (Prehearing Order at 54) Arguments regarding unbundling obligations that Verizon may or may not have independent of §§251 and 252, including under state law or the Bell Atlantic/GTE merger conditions, are deferred to a proceeding that may be initiated outside of this arbitration.

PARTIES' ARGUMENTS

Verizon, AT&T, and MCI note that the purpose of this arbitration is to conform the ICAs to changes in law arising from the TRO and the TRRO. (Verizon BR at 1-2; Nurse TR 62-63; MCI BR at 3) In particular, Verizon states that the TRO and TRRO eliminated any obligation to provide unbundled access to the following network elements:

- Local circuit switching
- OCn-level loops and transport
- Certain DS1 and DS3 loops and transport
- The feeder portion of a loop
- Packet switching
- Fiber-to-the-premises (FTTP) loops
- Hybrid copper-fiber for broadband purposes
- Entrance facilities
- Line sharing
- Dark fiber loops
- Certain dark fiber transport
- Signaling networks and virtually all call-related databases. (Verizon BR at 1-2)

Verizon acknowledges that the FCC anticipated that its decisions in the TRO would be implemented in amendments to ICAs through the §252 process, within nine months of the effective date of the TRO, October 3, 2003. However, Verizon asserts that the FCC took a much different approach to implementing the TRRO conclusions. Verizon believes that, rather than requiring contract amendments, the TRRO was self-effectuating regarding the continued provisioning of de-listed UNEs after the Order's effective date, March 11, 2005. Verizon notes that this Commission also concluded that the UNE-P "no-new-adds" directive took effect on March 11, 2005, and did not require an amendment to the existing ICAs. (BR at 2-3)

Verizon witness Ciamporcero asserts that the CLECs' fundamental dispute with Verizon's amendment is with the proposed provision that allows for automatic implementation of future reductions in unbundling obligations without the need for an amendment. (TR 40, 223, 224-226, 233, 236; EXH 6, pp. 35-36) Specifically, Verizon proposes to discontinue a de-listed UNE upon 90-days notice, without the need for an amendment. (Ciamporcero TR 221; Verizon's Amendment 1, §§3.1.1, 3.1.2) Witness Ciamporcero believes this approach is reasonable

because it would bring the ICAs at issue in this proceeding more in line with Verizon's other ICAs. (TR 224) Additionally, witness Ciamporcero contends that the CLECs have used the existing change-of-law provisions, which call for negotiation of amendments before discontinuation of UNEs, to block the implementation of new FCC rules. For this reason alone, claims the witness, the current change-of-law language should be changed to provide that further FCC elimination of unbundling obligations be implemented without the need for an amendment. (TR 234-235; EXH 6, pp. 34-35) Moreover, Verizon posits that even though the TRO contemplated that ICAs might need to be amended to reflect current unbundling obligations, the FCC never prohibited adoption of provisions that incorporate current and future requirements of federal law without need for an amendment. (Verizon BR at 14-15) On the other hand, Verizon acknowledges that the FCC has not prescribed any particular form of change-of-law provision that should apply when an unbundling obligation is eliminated. (EXH 6, p. 147)

AT&T, CCG, and MCI consider Verizon's revised change-of-law provisions inappropriate, a "self-serving attempt to blatantly disregard the 'change of law' process," and unreasonable. (Nurse TR 64; Darnell TR 199; EXH 3, p. 15; AT&T BR at 5; CCG BR at 6; MCI BR at 3) The AT&T, CCG, and MCI witnesses testify that change-of-law provisions in existing ICAs should not be revised for several reasons. First, the witnesses argue that nothing in the TRO, USTA II, Interim Order, or TRRO invalidated the current change-of-law provisions in existing contracts. (Nurse TR 63; CCG Panel TR 153; Darnell TR 356) Also, the current process of implementing changes in law is something the parties have already agreed to in existing ICAs. (Nurse TR 62-63; Darnell TR 198) Therefore, contend the CLECs, Verizon's proposal to modify the current change-of-law provisions in existing contracts is outside the scope of this proceeding and should not be considered. (Nurse TR 64, 621; Darnell TR 355-356; Sprint BR at 3)

Second, AT&T witness Nurse and MCI witness Darnell assert that Verizon's proposal would allow it to unilaterally implement all future FCC rules based solely on Verizon's interpretation of those rules. (Nurse TR 64, 324; Darnell TR 198-199) MCI asserts that Verizon not only wants to be permitted to decide unilaterally which changes of law should be automatically incorporated into the ICA, but how the changes of law should be interpreted, and which changes of law should not be automatically incorporated into the ICA. (Darnell TR 199; MCI BR at 3) AT&T witness Nurse observes that while Verizon objected to the FCC's sub-delegation to the states in the TRO, it now "seeks this Commission's sub-delegation of authority to Verizon." (TR 62-63)

Third, AT&T, CCG, and MCI criticize Verizon's mechanism as being one sided – de-listings are self-effectuating while new unbundling obligations would require an amendment. (EXH 7, pp. 131-134; CCG Panel TR 345; Darnell TR 355; MCI BR at 4) AT&T notes that current change-of-law provisions are symmetrical in that they require negotiations before effecting any changes to the contract, whether those are discontinuations, modifications, or expansions. (EXH 7, pp. 131-134) Giving Verizon unilateral, arbitrary implementation of future rates, terms, and conditions, AT&T contends, is the polar opposite of bilateral negotiation or neutral-party adjudication. (EXH 7, pp. 135-136) The CCG Panel opines that parties can

voluntarily agree to a particular type of change-of-law that is self-effectuating. However, absent a voluntary agreement, such language should not be forced on CLECs. (EXH 3, pp. 16-17)

ANALYSIS

Staff observes that in the TRO, the FCC expressed that the Order was not self-executing, and recognized that modification of existing agreements to reflect the new unbundling rules would not be automatic. (TRO ¶¶700-706) The FCC specifically declined to preempt the section 252 negotiation and arbitration process by unilaterally changing all agreements, as had been requested by the ILECs. (TRO ¶701) Instead, the FCC acknowledged there were change-of-law provisions in existing contracts and allowed for negotiation to implement the TRO findings. (TRO ¶700) Similarly, in the TRRO, the FCC directed implementation of its findings as outlined in section 252 of the Act. (TRRO ¶233) ILECs and CLECs were ordered to modify their ICAs, including completing any change-of-law processes, by March 10, 2006. (TRRO ¶143, ¶196, ¶227) However, staff notes that the Commission found that the FCC's "no-new-adds" directive was self-effectuating beginning March 11, 2005, and therefore not subject to the change-of-law process requiring negotiations. (No-New-Adds Order, p. 6) Simply put, nothing in the TRO or the TRRO invalidates the current change-of-law provisions in existing contracts.

The purpose of this arbitration, as all the parties agree, is to conform ICAs to reflect changes in law arising from the TRO and the TRRO. (Verizon BR at 1; AT&T BR at 1-2; CCG BR at 1-2; CCG Panel TR 153; Darnell TR 356; Nurse TR 56; Sprint BR at 1) As acknowledged by all parties, a new change-of-law provision does not arise from the TRO, USTA II, FCC's Interim Order, or the TRRO. (Nurse TR 63; CCG Panel TR 153; Darnell TR 356; EXH 6, pp. 147-149) Moreover, staff believes that Verizon's proposal is not symmetrical since UNE de-listings would be self-effectuating, while any new obligations would require negotiation and a contract amendment.

Staff observes that the FCC has not prescribed a particular form of change-of-law provision that should apply when an unbundling obligation is eliminated. Verizon asserts that de-listed UNEs should be automatically implemented upon 90 days written notice, as most of Verizon's ICAs provide, without the need for an amendment. (Ciamprovero TR 42, 223; Verizon BR at 72) However, Verizon provided no basis, either legal or factual, why such a provision should be required. The fact that some CLECs voluntarily agreed to such a provision in negotiations does not support Verizon's view that it can unilaterally impose it here because CLECs in this proceeding specifically negotiated to include the current change-of-law language in their ICAs.

CONCLUSION

Staff recommends that the amendment to the parties' interconnection agreements include rates, terms, and conditions relating to the changes in unbundling obligations resulting from the TRO and the TRRO. Neither the TRO nor TRRO ordered changes to change-of-law provisions in existing interconnection agreements. Therefore, no new change-of-law provisions need to be included in the amendment to the parties' ICAs.

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?

Recommendation: Staff recommends that the amendment indicate that Verizon has no §251(c)(3) obligation under federal law to provide unbundled local circuit switching, including mass market and enterprise switching, and tandem switching to CLECs. However, the amendment should include Verizon's obligations to provide unbundled access to the embedded base of local circuit switching arrangements at the transitional rates established in the TRRO through the 12-month transition period, beginning March 11, 2005. The amendment should also indicate that (1) CLECs are entitled to receive the TRRO transitional rates for the full transition period, as this will provide for the orderly and smooth transition of the embedded base of local circuit switching arrangements to alternative arrangements as intended by the FCC in the TRRO; (2) transitional rates for local circuit switching end March 10, 2006; (3) CLECs, not Verizon, are to submit the conversion orders, and conversions are required by March 10, 2006; (4) CLEC unbundled access during the 12-month transition period is limited to the customer switching arrangements existing at March 11, 2005; (5) CLECs are prohibited from accessing on an unbundled basis anything requiring a new UNE-P arrangement; and (6) CLECs have continued unbundled access to shared transport, signaling, and call-related databases for embedded local circuit switching arrangements during the transition period. Transition procedures, such as CLECs having continued use of Verizon's systems to submit repair and maintenance orders for their embedded base of customers and specific conversion procedures, can and should be addressed through business-to-business negotiations and need not be spelled out in the amendment.

Additionally, the amendment should define the following terms in the exact manner in which they are defined in the TRO or TRRO:

- Local circuit switching
- Enterprise switching
- Mass market switching
- Tandem switching
- Signaling
- Call-related databases (P. Lee)

Position of the Parties

Verizon: In accordance with the TRO and the TRRO, the Amendment must clearly state that Verizon is not required to provide any local circuit switching as a UNE. The Commission cannot approve any proposals suggesting that amendments are necessary to implement the TRRO's mandatory transition plan.

AT&T: The amendment should contain provisions for the 12-month transition period established applicable to all UNE-P arrangements. The four-line carve-out is superseded by the TRRO. During the transition period, CLECs are to be allowed to continue to serve the existing customer base including the use of signaling, call related databases and shared transport for

existing UNE-P arrangements. The Amendment should address that Verizon is no longer obligated to provide Enterprise switching and how this change should be implemented.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: If the Commission accepts the stipulation and the scope of the Amendment is limited to include only Verizon's obligations under section 251 of the Act, then MCI submits that language should be included in the Amendment listing unbundled local switching, unbundled high cap loops, and unbundled dedicated transport as "de-listed" UNEs as of the effective date of the Amendment, subject to the terms and conditions that are identical to those set forth in the TRRO.

Sprint: The terms and conditions should be consistent with the Federal Unbundling Rules and the FCC TRRO Order.

Staff Analysis: In the TRO, the FCC defined local circuit switching to encompass line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. (TRO ¶433; 47 CFR 51.319(d)(1)) This definition was not challenged in the D.C. Circuit Court. The TRO distinguished local circuit switching based on mass market and enterprise market differences. Mass market customers were defined as analog voice customers being served at the DS0 capacity level; enterprise market customers were defined as customers served at the DS1 capacity and above. (TRO ¶7, ¶451, ¶459, ¶497)

The FCC concluded in the TRO that CLECs were not impaired with respect to enterprise switching, but allowed states to petition the FCC in cases in which the general national finding did not apply. (TRO ¶17, ¶¶451-458) The FCC found that CLECs were not impaired without unbundled access to packet switching. (TRO ¶¶537-539) The enterprise switching rules ordered in the TRO were upheld in USTA II, and the finding regarding packet switching was not challenged in the D.C. Circuit Court.

In the TRRO, the FCC concluded that as of March 11, 2005, ILECs have no obligation to provide CLECs with unbundled access to mass market local circuit switching pursuant to §251(c)(3) of the Act. However, concerned with possible service disruptions to customers, as well as CLECs' business plans, if unbundled access to ILEC switching were eliminated on a flash cut basis, the FCC adopted a transition plan applicable only to the CLECs' embedded base of unbundled local circuit switching used to serve mass market customers. (TRRO ¶226) Specifically, the 12-month transition period:

- requires CLECs to submit orders to convert their local switching customers, including UNE-P customers, to alternative arrangements within twelve months of the effective date of the TRRO, March 11, 2005. (TRRO ¶199, ¶227)

- prohibits CLECs from adding new switching UNEs. (TRRO ¶227)
- permits CLECs to retain access to the UNE platform¹ (UNE-P) at the higher of (1) the UNE-P rate on June 15, 2004, plus one dollar, or (2) the rate a state public utility commission establishes, if any, between June 16, 2004, and March 11, 2005, for UNE-P plus one dollar. (TRRO ¶5, ¶199, ¶228)
- permits CLECs to retain unbundled access to signaling, call-related databases, and shared transport facilities to the extent that local circuit switching is required to be unbundled. (TRRO ¶227; TRRO fn 627; TRRO Appendix B, p. 149)
- requires CLECs to migrate their embedded mass market local circuit switching UNEs to alternative facilities or arrangements by March 10, 2006. (TRRO ¶¶226-228; TRRO Appendix B, p. 148)

Accordingly, access at TELRIC rates for local circuit switching ends March 10, 2006. ILECs and CLECs have the 12-month transition period to modify existing interconnection agreements, including completing any change-of-law processes, to implement the TRRO unbundling requirements. (TRRO ¶227)

Staff observes that the parties appear to agree in principle on several points with regard to Verizon's switching obligations. Specifically, the parties agree that:

- The purpose of this arbitration is to conform Verizon's ICAs with certain CLECs to changes in federal law arising from the TRO and TRRO. (Verizon BR at 1; Nurse TR 63; CCG BR at 9; MCI BR at 5)
- Verizon no longer has any obligations under federal law to unbundle switching, including the Four-Line Carve-Out. (Ciamporcero TR 238, 243; EXH 9, MCI Responses to Staff's First Set of Interrogatories, Item Nos. 1-3, p. 6; Verizon BR at 21; Nurse TR 65; CCG Panel TR 155; Darnell TR 219; EXH 20; Sprint BR at 4)
- The TRRO established a 12-month transition period and transitional rates for the embedded base of unbundled local circuit switching arrangements existing as of March 11, 2005. CLECs retain access to UNE-P at the higher of (1) the UNE-P rate on June 15, 2004, plus one dollar, or (2) the rate a state public utility commission establishes, if any, between June 16, 2004, and March 11, 2005, for UNE-P, plus one dollar. (EXH 6, pp. 10-12; CCG Panel TR 155; Nurse TR 65-67; EXH 20; Verizon BR at 21-22; Sprint BR at 4; EXH 9, p. 5)
- The transitional rates are subject to true-up back to the effective date of the TRRO, March 11, 2005. (EXH 6, pp. 10-12; CCG Panel TR 155; Nurse TR 65-67; EXH 20; Verizon BR at 21; Sprint BR at 4; EXH 9, p. 5)
- CLECs are prohibited from adding new unbundled switching after March 11, 2005. (Ciamporcero TR 239-240; AT&T BR at 7; CCG BR at 12; Nurse TR 65-67)
- CLECs have twelve months from March 11, 2005, to submit orders to convert their mass market customers to an alternative service arrangement. (Verizon BR at 21; AT&T BR at 6; CCG BR at 10; Sprint BR at 4)

¹ The UNE platform consists of an unbundled loop, unbundled local circuit switching, and shared transport.

Although there is agreement on many aspects of this issue, there are two points that remain in dispute relating to the FCC's transition framework: (1) the application of transitional rates, and (2) the meaning and implementation of the TRRO's "no-new-adds" directive. Staff's summary of the parties' arguments as well as staff's analysis will only focus on these points remaining in dispute.

PARTIES' ARGUMENTS

Application of Transitional Rates²

Verizon agrees to explicitly recognize in the amendment to the parties' ICAs its obligation to continue serving the embedded base of TRRO de-listed facilities during the transition periods, at the TRRO transitional rates. (Ciamporcero TR 240) Verizon opines that the ICA amendments do not need to reflect the actual transition procedures for the 12-month transition plan. Verizon asserts that the actual procedures for conversion of the embedded base of customers are best addressed through individual, business-to-business operational negotiations. (Ciamporcero TR 242) However, Verizon asserts that the amendment should clearly state that the CLECs are entitled to the TRRO's transitional rates only for those embedded arrangements not yet converted. At the time an embedded switching arrangement is converted to alternative facilities, the transitional rates cease to apply. (BR at 36) Verizon argues that the TRRO does not require Verizon to provide replacement services at transitional rates. Such an approach, Verizon posits, would frustrate the FCC's intent for a gradual transition to alternative arrangements. (BR at 31)

In its brief, AT&T asserts that the ICA amendment should explicitly address the TRRO's requirements regarding mass market switching, rather than leaving the interpretation and implementation solely to Verizon. (BR at 8) AT&T expresses specific concern with Verizon's apparent position that a CLEC's order to convert de-listed UNEs to alternative arrangements should take effect before the end of the transitional period, at which point those arrangements would no longer be subject to the transitional rates. (BR at 9) AT&T argues that CLECs are entitled to the transitional rates throughout the entire transition period (March 11, 2005 – March 10, 2006), regardless of when a CLEC submits orders for converting UNEs to alternative facilities. In support of its position, AT&T opines that the TRRO is clear that the transitional rates were set for a specifically defined period to prevent potential disruption from flash-cutting to commercial pricing. Further, AT&T asserts that Verizon's proposal will discourage CLECs from submitting orders to convert de-listed arrangements in a timely and efficient manner during the transition period and will incent CLECs to wait until the end or near the end of the transition period and then submit the conversion orders in mass. (BR at 9; EXH 7, pp. 14-16) Such is not what the TRRO contemplates, contends AT&T. AT&T opines that the TRRO gives CLECs the full 12-month transition period to submit orders to convert to alternative arrangements. (Nurse TR 69; BR at 10) Moreover, AT&T asserts that the TRRO expressly identifies that CLECs will initiate conversion orders, not ILECs. For this reason, AT&T argues, Verizon must not be

² Staff notes that the same dispute arises in Issues 4 and 5. Therefore, the conclusions made with respect to the application of transitional rates for local circuit switching are equally applicable to high-capacity loops and dedicated transport.

allowed to unilaterally change any UNE-P arrangements and particularly prior to the end of the transition period. (Nurse TR 68-69; BR at 10)

AT&T concludes that the ICA amendment should include specific detail regarding the parties' rights and obligations during the transition periods. AT&T notes that while some issues can be addressed through business-to-business negotiations, it is essential that the ICA is sufficiently detailed to remove the possibility of misunderstandings and avoidable disputes. (Nurse TR 69; AT&T BR at 10-11; EXH 7, pp. 13, 17)

The CCG Panel witnesses assert that the amendment to the ICAs must reflect the transition plans established in the TRO and TRRO. (TR 345) The witnesses also believe that the amendment should include precise instructions to Verizon to convert and re-rate UNEs over a specified period of time, and in accord with a specified pricing scheme. (TR 345) To this end, claim the CCG Panel, Verizon's proposed amendment does not comport with the TRRO mandates. (TR 345) Additionally, the CCG Panel contend that the amendment must state that CLECs will continue to have access to UNE-P at transitional rates until Verizon migrates existing UNE-P customers to alternative arrangements. (TR 155) The CCG Panel believe that the ICA amendment must define "embedded customer base" and clarify that any UNE-P line added, moved or changed by a CLEC, at the request of a UNE-P customer served by the CLEC's network on or before March 11, 2005, is within the CLECs' "embedded customer base" for which the transition rate applies. (TR 155-156)

Meaning and Implementation of the TRRO's "No-New-Adds" Directive³

Verizon emphasizes in its brief that, during the transition period, the TRRO does not permit CLECs to add new UNE-P arrangements using unbundled access to local circuit switching. (BR at 21) Verizon notes that the Commission confirmed the March 11, 2005, effective date for the FCC's nationwide bar on new UNE-P orders in the No-New-Adds Order. (BR at 22) Verizon asserts in response to staff discovery that modifications or rearrangements, such as adding features or changing telephone numbers, are permitted during the 12-month transition period. However, argues Verizon, anything requiring a new UNE-P arrangement (such as a UNE-P customer move) is not permitted because the TRRO specifically stated that the transition period prohibits adding new UNE-P arrangements. (EXH 6, pp. 14-15) Although Verizon witness Ciamporcero claims it is not necessary, he states that Verizon has no objection to explicitly recognizing its obligation to continue serving the embedded base of TRRO de-listed facilities during the 12-month transition period, at the rates established in the TRRO, and in fact has done so. (TR 240; EXH 6, pp. 237-239) Witness Ciamporcero asserts there is no need for more detailed provisions on the transition plans. (TR 240)

AT&T witness Nurse recognizes that the TRRO allows CLECs to continue serving their embedded customer base during the 12-month transition period while prohibiting CLECs from

³ Staff notes that the same dispute arises in Issues 4 and 5. Therefore, the conclusions made with respect to "no-new-adds" for local circuit switching are equally applicable to high-capacity loops and dedicated transport.

adding new UNE-P arrangements as of March 11, 2005, the effective date of the TRRO.⁴ (TR 65-67; AT&T BR at 6-7; EXH 13, p. 19) According to AT&T, the embedded customer base includes those customers existing on March 11, 2005, whose connectivity is subsequently changed (e.g. technology migration, hot cut, loop reconfiguration, UNE-P to UNE-L, etc.). (EXH 13, p. 19) To ensure that AT&T's embedded customer base continues to enjoy quality service without interruption during the 12-month transition period, AT&T asserts that Verizon is required to provide 1) feature change orders, 2) record orders, 3) disconnect orders, and 4) reconfigurations. (Nurse TR 68-69; EXH 7 pp. 3-4) Witness Nurse believes that AT&T should be allowed continued use of Verizon's preordering, ordering, provisioning, maintenance and repair, and billing systems to serve existing embedded arrangements during the transition period. AT&T is silent with regard to the addition of new lines to embedded switching arrangements.

In its brief, the CCG asserts that notwithstanding the FCC's decision in the TRRO to provide unbundling relief for mass market local circuit switching, the FCC established a new set of affirmative rights and obligations to ensure an orderly transition from those facilities for which there is no longer an unbundling obligation under §251(c) of the Act. (BR at 10) CCG believes that CLECs are entitled to obtain, for the purpose of serving their "embedded" customers, local circuit switching arrangements from Verizon for the duration of the transition period, including a UNE-P move. (CCG BR at 10; CCG Panel TR 155-156)

MCI believes that the 12-month transition period ensures that MCI's embedded base of customers will continue to have access to unbundled switching at transitional rates. Moreover, MCI believes that under the TRRO Verizon is required to provide MCI's embedded customers during the transition period (1) additional UNE-P lines, and (2) moves, changes and restores in UNE-P lines to serve customers. (EXH 20)

ANALYSIS

Application of Transitional Rates

To provide sufficient time for CLECs to migrate their embedded base of customers away from de-listed mass market local switching UNEs, the TRRO established a 12-month transition plan, to begin March 11, 2005. By the end of the transition period, CLECs are required to transition the affected de-listed UNEs to alternative facilities or arrangements. (TRRO ¶216, ¶227) Indeed, the FCC concluded that twelve months was sufficient for CLECs and ILECs "to perform the tasks necessary to an orderly transition, which could include deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut-overs or other conversions." (TRRO ¶227)

AT&T asserts in its brief that the TRRO transitional rates are applicable throughout the entire 12-month transition period, even if the affected de-listed UNE arrangements are converted to alternative facilities or arrangements before the end of the period. (BR at 8-9) If higher rates can be imposed before the end of the transition period, AT&T argues that CLECs will be

⁴ It is unclear whether AT&T considers the provisioning of additional lines, moving an existing customer's current service from one location to another, and adding or removing features to existing UNE-P accounts as being required or prohibited throughout the transition period.

incented to submit all conversion orders at or near the end of the 12-month period. Verizon disagrees and argues in its brief that the TRRO does not require it to provide replacement services at transitional rates and neither can the Commission. (BR at 31, 36) Verizon argues that such an approach would frustrate the FCC's design for a gradual transitioning to alternative services or arrangements. (Verizon BR at 31)

Paragraph 199 of the TRRO appears to support Verizon's interpretation that transitional rates are only applicable until the CLEC submits a conversion request. Specifically, the paragraph establishes a 12-month transition period in which CLECs ". . . will continue to have access to UNE-P priced at TELRIC plus one dollar until the incumbent LEC successfully migrates those UNE-P customers to the competitive LECs' switches or to alternative access arrangements negotiated by the carriers." (TRRO ¶199) The rule, which AT&T believes supports its position, requires CLECs to migrate their embedded base of customers away from unbundled local circuit switching to an alternative arrangement by March 10, 2006. (TRRO Appendix B, p. 148) Notwithstanding this requirement, the rule states that, for a 12-month period beginning March 11, 2005, ILECs are required to provide CLECs with unbundled access to local circuit switching to serve their embedded base of customers, at transitional rates. (TRRO Appendix B, p. 148)

Staff believes that the language in the TRRO and the language in the rule can result in different interpretations. However, staff believes the Commission must look to the rule for guidance. If the parties believe the TRRO is not clear on this matter, they can and should seek clarification from the FCC. Therefore, for purposes of the amendment, staff believes that regardless of when CLECs submit their conversion orders during the transition period, the rule entitles them to receive the transitional rates for the full twelve months, March 11, 2005 – March 10, 2006. This will provide the orderly and smooth transition from de-listed UNEs to alternative arrangements as intended by the FCC in the TRRO by incenting CLECs to submit conversion requests over the twelve months rather than submitting them all at one time at the end. To do otherwise would incent CLECs to wait until March 10, 2006, to submit their conversion orders, and thus not provide the orderly and smooth transition the TRRO contemplates. Notwithstanding this, staff believes that access at transitional rates to local circuit switching ends March 10, 2006. Staff also believes that the TRRO is very clear that CLECs, not Verizon, are to submit the conversion orders, and is also very clear that conversions are required by March 10, 2006.

According to Verizon witness Ciamporcero, Verizon agrees to explicitly recognize in the amendment to the parties' ICAs its obligation to continue serving the embedded base of TRRO de-listed facilities during the transition periods, at the TRRO transitional rates. (Ciamporcero TR 240) However, regarding the actual transition procedures for conversion of the embedded base, Verizon witness Ciamporcero and AT&T witness Nurse assert that these are best addressed through individual, business-to-business operational negotiations. (Ciamporcero TR 243; Nurse TR 59)

The TRRO and its revised rules require that the CLECs have continued unbundled access to shared transport, signaling, and call-related databases for embedded local circuit switching arrangements during the 12-month transition period. (TRRO ¶227; TRRO fn 627; TRRO

Appendix B, p. 149) However, staff believes that transition procedures, such as CLECs having continued use of Verizon's systems to submit repair and maintenance orders for their embedded base of customers and specific conversion procedures, can and should be addressed through business-to-business negotiations and need not be spelled out in the amendment, as opined by Verizon and AT&T.

Meaning and Implementation of the TRRO's "No-New-Adds" Directive⁵

In the TRRO, the FCC concluded that the 12-month transition period applies to the embedded base of end-user customers and that CLECs may not obtain any new local switching (no-new-adds) as an unbundled network element, effective March 11, 2005. (TRRO ¶227) In the No-New-Adds Order, the Commission found that the TRRO is specific, as is the revised FCC rule, that CLECs are prohibited from adding new local switching as an UNE, effective March 11, 2005. (No-New-Adds Order, p. 6) As such, no amendment to existing ICAs is needed before ILECs can cease providing new unbundled local circuit switching. Staff therefore agrees with Verizon that the Commission has already addressed this specific matter and recommends a consistent finding here.

That said, staff believes the No-New-Adds Order did not explicitly address whether adding new lines, modifications, or rearrangements to serve the CLEC's embedded customer base is permitted or prohibited after March 11, 2005. While the Commission found that "further prolonging the availability of UNE-P and other de-listed UNEs could cause competitive carriers to further defer investment in their own facilities, a result that would be clearly contrary to the FCC's intent, as well as the Court's decision in USTA II," the order did not specify whether no-new-adds applies just to new customers or to the embedded customer base as well. (No-New-Adds Order, p. 7)

Verizon asserts that modifications or rearrangements, such as adding features or changing telephone numbers, is permitted during the 12-month transition period. (BR at 21; EXH 6, pp. 14-15) AT&T appears to agree. (Nurse TR 68-69; EXH 7 pp. 3-4) Verizon argues, however, that anything requiring a new UNE-P arrangement (such as a UNE-P customer move) is not permitted because the TRRO specifically stated that the transition period prohibits adding new UNE-P arrangements. (EXH 6, pp. 14-15) In response to staff discovery, Verizon explains that the purpose of the transition period is to migrate the CLECs' embedded base of unbundled local circuit switching to alternative service arrangements. (EXH 6, p. 15) Verizon goes on to state the embedded customer base is the customer base existing as of March 11, 2005; it is not a moving target, so that UNE-P lines may be added during the 12-month period just to be transitioned to replacement arrangements in one year. (EXH 6, p. 15) Verizon therefore concludes that the TRRO's no-new-adds provision for UNE-P applies to all new UNE-P arrangements, not just new customers. (EXH 6, p. 16)

In contrast, MCI and the CCG assert that continuing to serve the embedded customer base during the transition period includes line additions, modifications, or rearrangements to existing arrangements. (EXH 9, MCI's Responses to Staff's First Set of Interrogatories, Item

⁵ Staff notes that the same dispute arises in Issues 4 and 5. Therefore, the conclusions made with respect to "no-new-adds" for local circuit switching are equally applicable to high capacity loops and dedicated transport.

Nos. 13-14; CCG BR at 12; EXH 8, CCG's Responses to Staff's First Set of Interrogatories, Item Nos. 1, 6, and 7; CCG Panel TR 154-156) In other words, they contend the TRRO's no-new-adds directive applies only to new customers, not to changes for existing customers. (EXH 9, MCI's Responses to Staff's First Set of Interrogatories, Item No. 14; EXH 8, CCG's Responses to Staff's First Set of Interrogatories, Item Nos. 1, 6, and 7; CCG Panel TR 155-156; Nurse TR 66-67) Verizon's position, argues CCG, undermines the principal policy objective articulated by the FCC in establishing a detailed transition framework, including transition rates: to prevent service disruption and the disruption of CLEC business plans. (CCG BR at 13) Consistent with the TRRO and the FCC unbundling rules, as well as the policy objectives of the FCC, the CCG contends that the embedded customer base must include existing customers for which a CLEC is providing additional or modified services or facilities, or 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. (CCG BR at 14)

Staff observes that several paragraphs in the TRRO as well as the rules attached to it provide guidance in addressing this dispute. The TRRO specifically establishes a 12-month transition period for the CLEC to migrate its embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement. (TRRO ¶226) Additionally, the TRRO states that the 12-month transition period applies only to the CLEC embedded customer base and “. . . does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching. . .” (TRRO ¶5, ¶227) Staff also notes that footnote 625 in the TRRO states “[sic] transition period we adopt here thus applies to all unbundled local circuit switching arrangements used to serve customers at less than the DS1 capacity level as of the effective date of this Order.” (emphasis added) Referring to the rules attached to the TRRO, staff observes that they require ILECs to provide access to unbundled local circuit switching to serve a CLEC's embedded base of end-user customers during the 12-month transition period, while also prohibiting the addition of any new switching UNEs. (TRRO Appendix B, p. 148) Based on the above, staff believes the embedded customer base referred to in the TRRO means customers being served by unbundled local circuit switching arrangements on March 11, 2005. Staff also believes the TRRO prohibits CLECs from adding new UNE arrangements, not merely new UNE customers. For example, assume a CLEC customer receiving UNE-P service on March 11, 2005, requested an additional line in August. The customer would be considered part of the CLEC's embedded customer base because it was being served by UNE-P on March 11, 2005. By definition then, staff posits that a new UNE-P line -- an unbundled local circuit switching arrangement -- ordered in August was not serving the CLEC's embedded customer on March 11, 2005, and therefore is prohibited by the TRRO.

Therefore, while staff agrees that CLECs retain access to unbundled local circuit switching during the transition period for their embedded end-user customers, staff believes that access is limited to the arrangements existing on March 11, 2005. Staff agrees with Verizon that anything requiring a new UNE-P arrangement, such as a customer move to another location or an additional line, is not permitted under the TRRO.

CONCLUSION

Staff recommends that the amendment indicate that Verizon has no §251(c)(3) obligation under federal law to provide unbundled local circuit switching, including mass market and enterprise switching, and tandem switching to CLECs. However, the amendment should include Verizon's obligations to provide unbundled access to the embedded base of local circuit switching arrangements at the transitional rates established in the TRRO through the 12-month transition period, beginning March 11, 2005. The amendment should also indicate that (1) CLECs are entitled to receive the TRRO transitional rates for the full transition period, as this will provide for the orderly and smooth transition of the embedded base of local circuit switching arrangements to alternative arrangements as intended by the FCC in the TRRO; (2) transitional rates for local circuit switching end March 10, 2006; (3) CLECs, not Verizon, are to submit the conversion orders, and conversions are required by March 10, 2006; (4) CLEC unbundled access during the 12-month transition period is limited to the customer switching arrangements existing at March 11, 2005; (5) CLECs are prohibited from accessing on an unbundled basis anything requiring a new UNE-P arrangement; and (6) CLECs have continued unbundled access to shared transport, signaling, and call-related databases for embedded local circuit switching arrangements during the transition period. Transition procedures, such as CLECs having continued use of Verizon's systems to submit repair and maintenance orders for their embedded base of customers and specific conversion procedures, can and should be addressed through business-to-business negotiations and need not be spelled out in the amendment.

Additionally, the amendment should define the following terms in the exact manner in which they are defined in the TRO or TRRO:

- Local circuit switching
- Enterprise switching
- Mass market switching
- Tandem switching
- Signaling
- Call-related databases

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

Recommendation: Since Verizon has not claimed non-impairment in any wire center for DS1 and DS3 loops, Verizon is obligated to continue to provide such loops until the non-impairment requirements of the TRRO are met. Because Verizon has only a limited obligation to provide dark fiber loops during the transition period, Verizon should not be required to list the wire centers where such loops are currently available in the agreement. CLECs are not entitled to a transition period for any DS1 or DS3 loops after March 10, 2006, or for dark fiber loops after September 10, 2006, as set forth in the TRRO. The amendment should define business lines, and fiber-based collocators, consistent with Issue 5, as those terms are defined by the FCC. (**Marsh**)

Position of the Parties

Verizon: The Amendment must reflect Verizon's unbundling obligations under section 251(c)(3) and the FCC's implementing rules—that is, Verizon has no obligation to unbundle dark fiber loops and is entitled to unbundling relief for DS1 and DS3 under the circumstances specified in the *TRRO*.

AT&T: The amendment should include provisions for all loop types except:

- “Greenfield” fiber to the home (“FTTH”) loops
- “Brownfield” “FTTH” loops except where copper is not available
- Loops to Multiple Dwelling Units (MDUs) pursuant to FCC's MDU Reconsideration Order
- DS1 loops in wire centers containing both 60,000 or more business lines and 4 or more fiber based collocators
- DS3 loops in wire centers containing both 38,000 business lines and 4 or more fiber based collocators
- Dark fiber loops (but 18-month transition for the embedded base)
OC-n loops

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: The Commission should identify the wire centers where CLECs no longer have access to loops and dedicated transport. Assuming the stipulation is accepted, the Amendment should list unbundled local switching, unbundled high cap loops, and unbundled dedicated transport as “de-listed” UNEs as of the effective date of the Amendment, subject to the terms and conditions that are identical to those set forth in the *TRRO*.

Sprint: High Capacity loops, with the exception of Dark Fiber Loops, should remain available as UNEs, consistent with the terms and conditions of the Federal Unbundling Rules and the FCC TRRO Order. Existing Dark Fiber Loops should be transitioned to alternate arrangements consistent with the Federal Unbundling Rules and the FCC TRRO Order.

Staff Analysis: Under section 251(c)(3) of the Act, ILECs are required to provide nondiscriminatory access to unbundled network elements to any requesting carrier. However, the TRO and the TRRO modified certain requirements with regard to unbundled loops. The parties appear to be in agreement on the following points:

- Requesting telecommunications carriers may continue to obtain access to unbundled DS1 loops to any building not served by a wire center with at least 60,000 business lines and 4 or more fiber-based collocators. (TRRO Appendix B, p. 147)
- Requesting telecommunications carriers may continue to obtain access to unbundled DS3 loops to any building not served by a wire center with at least 38,000 business lines and 4 or more fiber-based collocators. (TRRO Appendix B, p. 147)
- Dark fiber loops are no longer subject to unbundling requirements. (TRRO Appendix B, p. 148)
- A requesting carrier may obtain a maximum of ten unbundled DS1 loops or one DS3 loop to any single building in which such loops are still subject to unbundling requirements. (TRRO Appendix B, p. 147)
- During the transition period in wire centers where impairment no longer exists, a rate of the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, applies for that loop element. (TRRO Appendix B, pp. 147-148)

The FCC also stated in the TRRO:

- A transition period was established for the embedded base of 12 months for DS1 and DS3 loops, where no longer required to be provided, and 18 months for dark fiber loops, *beginning with the effective date of the TRRO*. [emphasis added] (TRRO Appendix B, pp. 147-148)
- Requesting carriers may not obtain new loops during the transition period where such loops are no longer required to be unbundled. (TRRO Appendix B, pp. 147-148)

Verizon has not claimed that any of its wire centers qualify for relief from unbundling requirements for DS1 and DS3 loops. (TR 248) Thus, in contrast to issue 3, much of the testimony centers around procedures to follow when non-impairment criteria are met in the future, such as whether a transition period will apply.

PARTIES' ARGUMENTS

Future Transition Procedures

Verizon witness Ciamporcero asserts that the overarching legal issue in this case is “whether this Commission can re-impose unbundling obligations the FCC has eliminated.” (TR 226-227) He contends that Verizon’s proposed amendment is in accord with section 251(c)(3) of the Act and the FCC’s implementing rules. (TR 227) Witness Ciamporcero asserts that even though the CLECs recognize the TRRO’s restrictions on unbundling requirements, the CLECs nevertheless maintain that this Commission may extend the unbundling requirements beyond the obligations outlined by the FCC. (TR 227-229)

Verizon witness Ciamporcero advises that Verizon filed a list of its wire centers currently qualified for relief from loop and transport unbundling requirements with the FCC on February 18, 2005, as shown in EXH AFC-1. (TR 246-247; EXH 10) Witness Ciamporcero states that Verizon has not claimed relief for any wire centers in Florida for DS1 and DS3 loops. (TR 247)

Witness Ciamporcero argues that “unless the CLECs intend to challenge Verizon’s conclusion that no Florida wire centers currently meet the TRRO’s exemption criteria, it would be pointless to launch an inquiry into how Verizon reached that conclusion.” (TR 248) He states that the CCG’s proposal to allow for review and investigation of future non-impairment claims is “at odds with the process established by the FCC.” (TR 249) He explains that a CLEC must make an inquiry to determine whether it is entitled to unbundled access to a high-capacity loop. He continues that it is up to the ILEC to challenge the particular request and bring the matter before a state commission or other appropriate authority. (TR 249; TRRO ¶234) Witness Ciamporcero contends that, since Verizon has brought no such disputes to this Commission, there is no action to be taken at this time. (TR 249)

Witness Ciamporcero states that AT&T witness Nurse is incorrect in his argument that the designation of impairment for a particular wire center should apply for the entire term of a particular agreement. (TR 250) Witness Ciamporcero contends that the FCC made no such ruling, but only ruled that, once an unbundling obligation is removed, it cannot be re-imposed. (TR 250) He adds that witness Nurse is also wrong in his notion that a transition period will apply to wire centers that meet the FCC’s non-impairment criteria in the future. (TR 251) He argues that there is no basis in the TRRO for this belief. (TR 251)

AT&T witness Nurse states that the designation of wire centers “should apply for the term of the carriers’ agreements, avoiding market disruption and allowing for the certainty needed for business planning.” (TR 77) He argues that such an approach would be consistent with the FCC’s rationale behind establishing a permanent wire center classification. (TR 77)

AT&T witness Nurse contends that the FCC’s 12-month transition plan for the conversion of DS1 and DS3 loops and the 18-month transition for dark fiber loops should also apply to a CLEC’s embedded customer base when unbundling obligations change in the future. (TR 78; AT&T BR at 16-17) He states that “AT&T believes that the terms outlined by the FCC apply to any future reclassifications of wire-centers that require CLECs to seek alternate arrangements.” (TR 78)

AT&T witness Nurse agrees that this Commission does not need to take any further steps to verify Verizon's obligation to provide unbundled access to DS1 and DS3 loops at this time. (TR 75-76) However, he asserts that Verizon should provide this Commission, AT&T and other CLECs with wire center-specific information that it relies on in the future for non-impairment claims. (TR 76) He states that the information provided should include, for each wire center, the identity of each collocator, and the three relevant categories of lines: ARMIS business lines, business UNE-P lines, and UNE-L business lines. (TR 76)

AT&T argues in its brief that the amendment should include the specific findings of the TRRO. (AT&T BR at 13) AT&T also states that the interconnection agreement should include a provision for a transition period for wire center designations that change in the future. (AT&T BR at 16) AT&T proposes, in its amendment, that access at the transitional rates to DS1 and DS3 loops provided to AT&T as an UNE where AT&T has such loops as of March 11, 2005, should be continued to March 11, 2006. (EXH 13, p. 11)

The CCG Panel witnesses argue that the amendment to the parties' agreements must include the TRRO transition plan for high capacity (i.e., DS1 and DS3) and dark fiber loop facilities and state that Verizon remains obligated to provide to Florida carriers unbundled access to its high capacity loops, including DS3 and DS1 loops, under that transition plan. (TR 157; CCG BR at 14) The witnesses assert that the amendment must define business lines, fiber-based collocators, and embedded customer base, as those terms are defined under the TRRO. (TR 158, 160) The CCG Panel witnesses contend that the amendment must include a list of the wire centers that meet the threshold criteria for non-impairment. (TR 158; BR at 19) The witnesses argue that parties must be allowed to review and verify the data upon which Verizon's claim of non-impairment is based and establish a process for review and investigation of future claims by Verizon that a wire center meets the FCC's unbundling relief criteria. (TR 158) The CCG Panel witnesses assert that the agreement must allow either party to submit a dispute for resolution by the state Commission, and must establish a process for annual review of the list of wire centers in which Verizon is claiming that the non-impairment threshold has been met. (TR 159)

The CCG argues in its brief that the FCC transition framework remains in dispute. (CCG BR at 15) It further argues that the CLEC self-certification process should be incorporated into the agreement. (CCG BR at 16) The CCG asserts that the agreement should state that Verizon will provide to CLECs, on request, information about a specific wire center, including the number of business lines and fiber-based collocators. (CCG BR at 17) The CCG contends that the FCC's self-certification process is only a default process, and that parties are free to negotiate something else. (CCG BR at 19-20)

MCI witness Darnell states that MCI's agreement outlines a process to follow to modify the interconnection agreement in response to any change of law, such as the TRRO. (TR 216) MCI proposes in its amendment that Verizon be permitted to update its list of wire centers that meet the non-impairment threshold no more frequently than once per calendar quarter. (EXH 20, p. 10, section 9.3) MCI also includes a provision that Verizon, upon notification of any change, should provide the basis for its designation, including the names of any fiber-based collocators. (EXH 20, p. 11, section 9.3)

MCI states in its brief that the wire centers that meet the FCC's non-impairment criteria should be listed in an exhibit to the Amendment. (MCI BR at 6) MCI argues that its amendment language provides a process for updating the list, which provides for discovery and dispute resolution. (MCI BR at 6)

Sprint argues in its brief that Verizon's proposals for provision of access to high capacity UNE loops (DS1, DS3 and dark fiber) rely on general references rather than specific terms. (Sprint BR at 5) Sprint asserts that the agreement should contain explicit terms and conditions for access to the UNEs in question, including the key elements included in the FCC's process for transitioning the embedded base of discontinued UNEs. (Sprint BR at 5, 6) For those high capacity UNE loops that meet threshold non-impairment requirements after March 11, 2005, Sprint states that the current amendment should address them. (Sprint BR at 6) Sprint argues that such future changes are not a change of law, but the application of an existing rule. (Sprint BR at 6)

Meaning and Implementation of the TRRO's "No-New-Adds" Directive

Verizon argues in its brief that the CCG does not have the right to continue to add DS1 and DS3 UNE loops during the transition period for its embedded customers, that is, customers that were in existence as of the effective date of the TRRO. (Verizon BR at 31) Verizon contends that the transition period applies only to those UNE arrangements that were in place as of the effective date of the rules. (Verizon BR at 32) Verizon asserts that this Commission has already addressed the matter in its No-New-Adds Order. (Verizon BR at 32)

The CCG Panel witnesses argue that, for loop facilities that meet the non-impairment criteria, any loop added, moved or changed by a competitive carrier, at the request of a customer served by the competitive carrier's network on or before March 11, 2005 is within the competitive carrier's embedded customer base. (TR 160) The witnesses assert that carriers should be permitted to add new loops until the provisions of the TRRO are incorporated into the parties' agreements through change of law provisions. (TR 160-161) The CCG Panel witnesses contend that Verizon should be required to allow CLECs to order de-listed loops for "embedded" customers, and not be restricted to embedded loop facilities only. (CCG BR at 15)

ANALYSIS

Future Transition Procedures

It is important to note that, while criteria have been established in the TRRO to determine when a CLEC is no longer impaired without access to high capacity loops, Verizon has not claimed that the required threshold has been met for unbundling relief in any Verizon wire center for DS1 or DS3 loops. (TR 248) Thus, until the requirements are met, Verizon will continue to provide unbundled access to DS1 and DS3 loops. Notable sources of disagreement among the parties are the procedure to be used to establish whether impairment exists in the future, as well as the application of the transition plan in the future.

The CCG Panel witnesses assert that the agreement must allow either party to submit a dispute for resolution by the state Commission, and must establish a process for annual review of

the list of wire centers in which Verizon is claiming that the non-impairment threshold has been met. (TR 159) AT&T also asks that Verizon be required to provide CLECs with wire center-specific information that it relies on in the future for non-impairment claims. (TR 76) Verizon witness Ciamporcero counters that the parties' requests are at odds with the TRRO. Staff agrees. As previously discussed, the FCC outlined the CLEC self-certification process in ¶234 of the TRRO. This Commission has already addressed that procedure in the No-New-Adds Order, stating

As for high capacity loops and dedicated transport, we find that a requesting CLEC shall self-certify its order for high-capacity loops or dedicated transport. Thereafter, the ILEC shall provision the high capacity loops or dedicated transport pursuant to the CLEC's certification. The ILEC may subsequently dispute whether the CLEC is entitled to such loop or transport, pursuant to the parties' existing dispute resolution provisions. This process, as delineated in Paragraph 234 of the *TRRO*, shall remain in place pending any appeals by BellSouth or Verizon of the FCC's decision on this aspect of the *TRRO*. (No-New-Adds Order at 6)

Thus, it is the ILEC who may dispute a CLEC's entitlement to an unbundled loop.

AT&T witness Nurse states that the designation of wire centers "should apply for the term of the carriers' agreements, avoiding market disruption and allowing for the certainty needed for business planning." (TR 77) Verizon witness Ciamporcero argues that "[t]he FCC did not rule that a wire center that did not meet the FCC's non-impairment criteria when a contract was executed could not meet those criteria during the term of the contract." (TR 250) Staff agrees with witness Ciamporcero that such a requirement would have the effect that "unbundling obligations [could] persist for years after the FCC's non-impairment criteria are met." (Ciamporcero TR 250) Staff believes Verizon's view comports with the new FCC rules that require CLECs to migrate their embedded base of customers to an alternative arrangement instead of unbundled DS1 and DS3 UNE loops by March 10, 2006, and dark fiber loops by September 10, 2006. (TRRO Appendix B, p. 148)

The parties also argue that the wire centers that meet the FCC's non-impairment criteria should be listed in an exhibit to the Amendment. (MCI BR at 6) Staff notes that MCI advocates updating such a list no more than once per calendar quarter. (EXH 20, p. 10, section 9.3) As already discussed, the TRRO imposes no such requirement on ILECs. The procedures for delisting UNEs have been fully outlined in the TRRO. Staff believes that the inclusion of a list that will necessarily be a moving target will serve no purpose. Nevertheless, staff agrees with the CCG that the amendment should define "business lines," and "fiber-based collocators," consistent with Issue 5, as those terms are defined by the FCC.⁶ However, while the CCG argues that "embedded customer base" should also be defined, the TRRO does not define the term, nor do any of the parties.

⁶ These terms are defined in §51.5 of the FCC's rules.

Meaning and Implementation of the TRRO's "No-New-Adds" Directive

The CCG and Verizon differ as to how embedded customers are to be treated during the transition period. (CCG Panel TR 160-161; Verizon BR at 32) Staff notes that this matter has been discussed at length in Issue 3. Accordingly, it need not be addressed here. Staff recommends that the Commission's decision in Issue 3, regarding embedded customers, should also apply here.

CONCLUSION

Staff recommends that since Verizon has not claimed non-impairment in any wire center for DS1 and DS3 loops, Verizon is obligated to continue to provide such loops until the non-impairment requirements of the TRRO are met. Because Verizon has only a limited obligation to provide dark fiber loops during the transition period, Verizon should not be required to list the wire centers where such loops are currently available in the agreement. CLECs are not entitled to a transition period for any DS1 or DS3 loops after March 10, 2006, or for dark fiber loops after September 10, 2006, as set forth in the TRRO. The amendment should define business lines, and fiber-based collocators, consistent with Issue 5, as those terms are defined by the FCC.

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?

Recommendation: The amendment should address Verizon's obligations to continue providing dedicated transport, including dark fiber transport, under the limited circumstances outlined in the FCC's rules. The amendment need not list Verizon's wire center designations. The amendment should also include the FCC's definition of "business lines" and "fiber-based collocators." (King)

Position of the Parties

Verizon: The Amendment should reflect Verizon's unbundling obligations under section 251(c)(3) and the FCC's implementing rules—that is, Verizon is entitled to unbundling relief for DS1 and DS3 dedicated transport under the circumstances specified in the *TRRO*.

AT&T: The agreement should include the language consistent with the FCC rules on determining the availability of dedicated transport based on the characteristics of the wire centers forming a route and the capacity of the facility being sought. Wire centers identified by Verizon as Tier 1 or Tier 2, should be verified by the Commission and then language applicable to the availability of DS 1, DS3 and dark fiber transport consistent with the rules should be included.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: The Commission should identify the wire centers where CLECs no longer have access to loops and dedicated transport. Assuming the stipulation is accepted, the Amendment should list unbundled local switching, unbundled high cap loops, and unbundled dedicated transport as "de-listed" UNEs as of the effective date of the Amendment, subject to the terms and conditions that are identical to those set forth in the *TRRO*.

Sprint: Dedicated Transport and dark fiber transport should remain as UNEs, consistent with the terms and conditions of the Federal Unbundling Rules and the FCC *TRRO* Order.

Staff Analysis: Dedicated interoffice transmission facilities (dedicated transport or transport) are facilities dedicated to a particular competitive carrier that the carrier uses for transmission between and among ILEC central offices and tandem offices, and to connect its local network to the incumbent LEC's network. (*TRRO* ¶67; *TRRO* Appendix B, p. 150) Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services. (*TRRO* Appendix B, p. 148)

In its TRRO the FCC concluded:

- CLECs are impaired without access to DS1 transport except on routes connecting a pair of wire centers, where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines.
- CLECs are impaired without access to DS3 or dark fiber transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines.
- CLECs are not impaired without access to entrance facilities connecting an incumbent LEC's network with a competitive LEC's network in any instance. (TRRO ¶66)

In addition, a 12-month plan was adopted for CLECs to transition away from use of DS1 and DS3 dedicated transport where they are not impaired, and an 18-month plan was adopted to transition away from dark fiber transport. The FCC noted that these transition plans apply only to the embedded customer base, and do not permit competitive LECs to add new dedicated transport UNEs in the absence of impairment. (TRRO ¶142) Moreover, during the transition periods, CLECs will retain access to unbundled dedicated transport where non-impairment has been found at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of the TRRO. (TRRO ¶5, ¶145)

Staff believes that the TRRO clearly delineated some of Verizon's obligations regarding dedicated transport, dark fiber transport, and entrance facilities. In fact, based on the parties' testimonies and briefs, they appear to agree, in principle, on several points.⁷ Verizon witness Ciamporcero noted that the CCG and AT&T recognize that, under certain circumstances, Verizon no longer has any § 251 obligation to unbundle dedicated interoffice transport, including dark fiber transport. (TR 251-253) AT&T witness Nurse believes that the FCC articulated very clear "administrable and verifiable" criteria regarding unbundled transport. (TR 80) And, in its brief, the CCG stated, "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." (CCG BR at 21)

Specifically, the parties appear to agree that:

- Competing carriers are not impaired without access to entrance facilities.

⁷ While the parties may agree in principle, there are disagreements regarding some details and application of the obligations outlined in the TRRO. For example, the CCG and Verizon both agree that there is a cap on the number of DS1 circuits a CLEC may obtain; however, they disagree under what circumstances the cap applies. This disagreement is addressed later in staff's recommendation.

- Verizon must unbundle DS1 transport between any pair of wire centers except where both wire centers defining the route are Tier 1⁸ wire centers.
- Verizon must unbundle DS3 transport between any pair of centers except where both wire centers defining the route are either Tier 1 or Tier 2 wire centers.
- A CLEC may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis and a maximum of 12 unbundled DS3 dedicated transport circuits on each route where DS3 dedicated transport is available on an unbundled basis.
- Verizon must unbundle dark fiber transport between any pair of wire centers except where both wire centers defining the route are either Tier 1 or Tier 2 wire centers.
- Where a finding of non-impairment has been made, the transition period for both DS1 and DS3 transport UNEs is 12 months from the effective date of the TRRO. The transition period for dark fiber transport circuits is 18 months from the effective date of the TRRO.
- Where a finding of non-impairment has been made, as of the effective date of the TRRO, the rates for DS1 and DS3 dedicated transport and dark fiber transport, must be priced at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the TRRO.⁹ (Ciamporcero TR 251-253; Nurse TR 80-86; CCG Panel TR 162, 164-165; Sprint BR at 8-9; MCI BR at 5-6)

Although there is agreement on many aspects of this issue, there are three points on which the parties disagree.¹⁰ First, the meaning and implementation of the TRRO's "no-new-adds" directive remains in dispute. (CCG BR at 21) Second, the CCG and Verizon appear to disagree on the application of the DS1 cap. Last, the third area of dispute involves the classification of Verizon's wire centers and whether or not the wire centers should be specifically listed in the amendment.¹¹ Staff's summary of the parties' arguments will focus on these three points.

PARTIES' ARGUMENTS

Meaning and Implementation of the TRRO's "No-New-Adds" Directive

The CCG witnesses Falvey, Sanders and Cadieux (CCG Panel) argue that for dedicated interoffice transport facilities that Verizon no longer is obligated to provide under § 251, the amendment should clarify that any line added, moved or changed by a competitive carrier, at the

⁸ Tier 1 wire centers are those with four or more fiber-based collocators or 38,000 or more business lines. Tier 2 wire centers are those that are not Tier 1 wire centers and that have at least three fiber-based collocators or at least 24,000 business lines; and Tier 3 wire centers are those that are not either Tier 1 or Tier 2 wire centers. (Ciamporcero TR 252; Nurse TR 81; Sanders/Cadieux TR 162; TRRO ¶17, 112, 118, 123)

⁹ There appears to be agreement that there are transitional rates; however, there is disagreement as to the application of those transitional rates - - specifically, whether replacement services should be priced at transitional rates during the entire transitional period. (Verizon BR at 36) This dispute is addressed in Issue 3.

¹⁰ Staff observes that not all parties disagreed on the same points.

¹¹ The designation of a wire center as Tier 1, Tier 2, or Tier 3 controls the availability of the facility sought by the CLEC.

request of a customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. (TR 164-165; CCG BR at 21) The CCG contends in its brief that the Commission must decide that the transition framework for dark fiber transport and de-listed DS1 and DS3 dedicated transport includes any transport facilities used to serve an embedded CLEC customer, and must not be limited to embedded transport facilities, without regard to the customer's ongoing business needs. (CCG BR at 21) Verizon disagrees and argues that the "no-new-adds" issue has already been addressed by the FPSC in Order No. PSC-05-0492-FOF-TP.

DS1 Cap

The CCG Panel believe that to the extent that Verizon elects to implement the DS1 cap, the parties' amendment must state that the FCC's cap applies only if § 251(c) unbundling relief also has been granted for DS3 dedicated transport facilities on the same route. (CCG TR 165-166) On the other hand, Verizon argues that the CCG's proposal improperly limits the application of the FCC's cap and is contrary to the FCC's rule. (BR at 38) Verizon also believes that although the CCG may point to discussion in the text of the TRRO in an attempt to support its proposed limitation, the rule itself contains no limitation on the applicability of the cap. Therefore, argues Verizon, the FCC's rule must be applied as written, and the FPSC must reject the CCG's alternate formulation. (BR at 38)

Wire Center Dispute

AT&T, the CCG, and MCI argue that FPSC involvement is needed to review and verify Verizon's wire center classifications. (Nurse TR 85; CCG Panel TR 162; MCI BR at 6) Specifically, AT&T witness Nurse argues that "because of the nature of the wire center information, unless a specific verification process is adopted, it will be extremely difficult for AT&T or other CLECs to engage in a comprehensive and accurate verification of the data, and its application." (TR 84) The AT&T witness believes that, although the FCC called these data "administrable and verifiable," the ability to accurately verify the data is dependent on further regulatory action. He next argues that Verizon's letter identifying its Tier 1 and 2 wire centers provides no information regarding the basis of its classifications.¹² (TR 84) The AT&T witness further notes that in footnote 466 of the TRRO, once a wire center satisfies the standard for no unbundling, Verizon will not be required in the future to unbundle those elements in that wire center. Arguing the significance of such identification, the witness asserts that it is very important that AT&T, as well as other CLECs and the FPSC, be assured that the ILECs have properly applied the FCC's criteria. (Nurse TR 84) Witness Nurse suggests that the FPSC conduct a generic inquiry into Verizon's wire center designations as part of this proceeding. He believes that Verizon should be required to provide both the FPSC and participating CLECs the wire-center-specific information on which it relied in making its assertions. (TR 85)

The CCG Panel witnesses agree with witness Nurse and contend that Verizon's list of wire centers must be the result of a process whereby the parties have a reasonable opportunity to

¹² Verizon informed carriers by means of an industry letter that is published on its website, where Verizon has certified that a particular wire center meets the FCC's criteria for loop or transport unbundling relief. (Ciamporcero TR 257)

review and verify the data Verizon believes supports its initial identification of wire centers where non-impairment exists. (CCG Panel TR 162-163) They believe the FPSC should require that Verizon submit to Florida carriers all documentation and other information that “reasonably supports its claim of ‘no impairment’ for a specified wire center location within Florida.” (TR 163) In addition, the CCG witnesses argue that if the parties disagree as to whether any wire center satisfies the FCC’s criteria, or whether Verizon has presented documentation that reasonably supports its no impairment claim, the agreement should expressly permit either party to submit the dispute for resolution to the FPSC in accordance with the dispute resolution provisions set forth in the parties’ interconnection agreements. (CCG Panel TR 163) In addition, they believe the amendment should clearly define “business lines” and “fiber-based collocators.” (TR 162)

Several CLECs also argued that the list of wire center designations must be incorporated into all interconnection agreements, thereby making those designations both identifiable and no longer subject to dispute. (Nurse TR 85; CCG Panel TR 162; MCI BR at 6) AT&T witness Nurse contends that the designations should apply for the term of the carriers’ agreements, thereby avoiding market disruption and allowing for the certainty needed for business planning. The AT&T witness believes that this approach would be consistent with the FCC’s rationale behind establishing a permanent wire center classification. (TR 85) The CCG and MCI note in their briefs that the list could be amended periodically. (CCG Panel TR 163; MCI BR at 5-6) Specifically, the CCG Panel witnesses contend that the amendment must establish a process for review, on an annual basis, of the list of Verizon wire centers that satisfy the FCC’s criteria. (TR 163) There was a further suggestion that the amendment detail the self-certification and dispute resolution processes established by the FCC and contain guidelines for disclosure of information by Verizon. (CCG BR at 21)

In its brief, Verizon argues that FPSC Order No. PSC-05-0492-FOF-TP, issued May 5, 2005, at page 6, addresses the wire center classification issue. Verizon notes that in its order the FPSC concluded that carriers must comply with TRRO paragraph 234 for ordering and provisioning dedicated transport. Therefore, Verizon argues that “. . . to the extent CLECs have suggested different procedures, the Commission has already rejected them.” (Verizon BR at 36)

Verizon witness Ciamporcero also argues that the CLEC proposals are not acceptable because ¶ 234 of the TRRO set forth a specific process under which CLECs would certify their entitlement to particular facilities, and Verizon would provide those facilities subject to its right to then initiate dispute resolution proceedings before the appropriate authority. (Ciamporcero TR 255) Witness Ciamporcero contends that since Verizon has not yet initiated any such disputes, the FPSC “need not waste its time and resources trying to anticipate and address potential future disputes.” (TR 255-256)

Witness Ciamporcero next asserts that there is no basis for the CLECs’ suggestions that Commission intervention is needed for them to obtain the information underlying Verizon’s wire center classifications. He notes that Verizon notified the CLECs that, upon execution of a non-disclosure agreement (NDA), Verizon would provide back-up data for its wire center

designations.¹³ (TR 256-257) Also, witness Ciamporcero believes that the Commission should reject any CLEC proposals to freeze in place Verizon's existing wire center designations for the term of the agreements by including them in the amendment. The witness believes that the CLECs would seek to prohibit any changes in the list outside of a lengthy negotiation and arbitration process. Last, Verizon argued that if the Commission orders the parties to include Verizon's existing wire center list in their contracts, then it must also make clear that Verizon is not prevented from reclassifying wire centers on that list if and when they meet the FCC's criteria for unbundling relief. (BR at 37)

ANALYSIS

Meaning and Implementation of the TRRO's "No-New-Adds" Directive

As noted above, the CCG and Verizon disagree as to how embedded customers are to be treated during the transition period (as it relates to any line added, moved or changed by a CLEC, at the request of a customer served by the CLEC on or before March 11, 2005). (CCG Panel TR 165; Verizon BR at 36) Staff notes that this disagreement is specifically addressed in Issue 3. As such, staff will not address it here but recommends that the Commission's decision in Issue 3, regarding embedded customers, also apply here.

DS1 Cap

The CCG and Verizon both appear to agree that the FCC's TRRO places a cap on the number of DS1 circuits a CLEC may obtain on a given route. However, they disagree on how that cap should be applied. As argued by Verizon, the CCG looks to the text of the TRRO to support its argument that the DS1 cap is only applicable on a route in which there is impairment for DS1 transport and no impairment for DS3 transport. Paragraph 128 of the TRRO appears to support this interpretation. The paragraph specifically states: "On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits." However, the rule, which Verizon believes supports its interpretation of the cap application, states "A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis." (TRRO Appendix B, p. 150)

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

¹³ Based on documents produced in discovery, it appears that Verizon offered to provide CCG members back-up data for its wire center designations before they asked for it here in discovery. At least three of CCG's members (XO, The Ultimate Connection, and Covad) did, in fact, sign the necessary NDA for Verizon to make this confidential information available, and received the back-up data prior to CCG's request for back-up information in this arbitration. (EXH 8; Verizon BR at 37)

Wire Center Dispute

The most contentious dispute appears to focus on the classification of Verizon's wire centers. In the TRRO, the FCC established the criteria to be used to evaluate impairment in wire centers based on the number of fiber-based collocators and/or business lines. Using these criteria, Verizon was asked by the FCC to classify its wire centers accordingly. In its February 18, 2005 submission to the FCC, Verizon classified nine (9) of its wire centers in Florida as Tier 1 and four (4) as Tier 2. (Ciamporcero TR 254) Verizon witness Ciamporcero noted that as wire center designations change, Verizon will notify the FCC of these changes, as well as the CLECs. (EXH 5, p. 11) AT&T, the CCG, and MCI argue that FPSC involvement is needed to review and verify Verizon's wire center classifications, and the results of that review would produce a list of wire centers that should be included in the parties' amendment.

Staff understands the importance of appropriately classifying Verizon's wire centers. However, staff believes Commission intervention at this time is premature for several reasons. To begin, staff believes that the FCC has outlined specific criteria to be applied for classifying wire centers as Tier 1, 2, or 3. These criteria are based upon a record which was developed with input from many of the same parties participating in this proceeding. Moreover, the FCC states numerous times throughout its order that the data that is relied upon in making the designations (i.e., fiber-based collocators and/or business lines) is objective, available, and easily verified by ILECs and CLECs. Specifically, regarding fiber-based collocators, the FCC stated:¹⁴

Fiber-based collocation also stands out as one of the most objective indicia of competitive deployment available to us. Both incumbent LECs and competitive LECs agree that fiber-based collocation data are relatively simple to identify and collect. We are acutely aware of the need to base any test we adopt here on the most objective criteria possible in order to avoid complex and lengthy proceedings that are administratively wasteful but add only marginal value to our unbundling analysis. (TRRO ¶99)

Moreover, incumbent LEC counts of fiber-based collocations can be verified by competitive LECs, which will also be able to challenge the incumbent's estimates in the context of section 252 interconnection agreement disputes. (TRRO ¶100)

The TRRO is peppered with similar language throughout which leads staff to believe that the FCC, after evaluating comments from numerous parties, including parties participating in this proceeding, chose to use the number of fiber-based collocators and/or business line counts because that data is available and verifiable.

As noted previously, AT&T witness Nurse argues that "because of the nature of the wire center information, unless a specific verification process is adopted, it will be extremely difficult for AT&T or other CLECs to engage in a comprehensive and accurate verification of the data, and its application." Staff believes that this statement is unproven and appears to conflict with some statements in the TRRO. Based upon information in the TRRO, some CLECs supported

¹⁴ Similar statements we made regarding business lines counts. See TRRO ¶105.

using the very information that witness Nurse believes would be difficult to verify.¹⁵ It troubles staff that the AT&T witness did not provide any specific details as to why this verification would be difficult. Moreover, staff observes that no CLEC in this proceeding proffered any evidence which demonstrates Verizon has incorrectly classified any wire center, incorrectly applied the FCC's criteria, or that the information underlying its wire center classifications is insufficient.

Finally, and perhaps most important, staff believes Verizon is correct that the FPSC's conclusions in Order No. PSC-05-0492-FOF-TP (that carriers must comply with TRRO ¶234 for ordering and provisioning dedicated transport) address these disputes. Specifically, the FPSC stated:

As for high capacity loops and dedicated transport, we find that a requesting CLEC shall self-certify its order for high-capacity loops or dedicated transport. Thereafter, the ILEC shall provision the high capacity loops or dedicated transport pursuant to the CLEC's certification. The ILEC may subsequently dispute whether the CLEC is entitled to such loop or transport, pursuant to the parties' existing dispute resolution provisions. This process, as delineated in Paragraph 234 of the *TRRO*, shall remain in place pending any appeals by BellSouth or Verizon of the FCC's decision on this aspect of the *TRRO*. (PSC-05-0492-FOF-TP, p. 6)

Because of the self-certification provision outlined by the FCC in ¶234, staff believes that a wire center list (either one developed by Verizon or the CLEC) is unnecessary and could encumber the process. In that paragraph, it was specifically stated, ". . . the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority."¹⁶ Therefore, if a CLEC believes that, after a "reasonably diligent inquiry," it is entitled to unbundled dedicated transport or dark fiber transport between particular wire centers, the CLEC may access the element as a UNE until any dispute is resolved consistent with the directives in the TRRO. Accordingly, staff does not believe wire centers should be included in the amendment to the agreements because it is not necessary (nor mandated) and could be a moving target.¹⁷ As the FCC recognized in footnote 399 of the TRRO, some dedicated transport facilities not currently subject to the non-impairment thresholds established in the TRRO may meet those thresholds in the future; as such, carriers are expected to negotiate appropriate transition mechanisms for such facilities through the §252 process.

¹⁵ In footnote 289 of the TRRO, it was noted that MCI advocated the use of a two end-point fiber-based collocation test because "it is relatively easy to administer" and "because the ILECs have access to all of the data needed to determine where such fiber-based collocators exist without the need for any discovery and without the need to rely on data from state proceedings."

¹⁶ Footnote 660 to ¶234 notes "Of course, this 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. 47 U.S.C. § 252(a)(1)."

¹⁷ Staff also observes that if wire center designations were frozen in place for the length of the agreement, there could be situations where similarly situated CLECs in a wire center could be treated differently depending on when their amendment was implemented. Staff believes this would be inappropriate.

With that said, staff believes that the TRRO requires the CLEC to undertake a reasonable and diligent inquiry to determine whether or not a wire center is impaired prior to ordering dedicated transport services. Staff believes, based on the testimony of witness Ciamporcero, that Verizon has made available the data that underlie its wire center designations to any CLECs willing to sign a NDA. Therefore, contrary to the CLECs' request, staff does not believe the Commission needs to order Verizon to make information available that it is currently willing to provide. If, going forward, there are issues with information availability, the parties should follow the dispute resolution provisions in their agreements to resolve these issues.

In conclusion, regarding the wire center disputes, staff believes ¶234 of the FCC's TRRO, as well as several other paragraphs within that Order, make it clear that the data used to determine if a wire center is designated as Tier 1, Tier 2, or Tier 3 are meant to be evaluated by the CLECs under the self-certification process. Nowhere in the TRRO does it imply or express that state Commissions should conduct a proceeding to verify wire center designations until and unless a dispute is brought before them. Therefore, for the reasons noted above, staff believes: 1) Commission intervention is not appropriate at this time; 2) the amendment should not list Verizon wire centers; and 3) the Commission need not order Verizon to make its underlying wire center data available to CLECs since Verizon is willing to provide this data upon execution of an appropriate NDA. The amendment should also include the FCC's definition of "business line" and "fiber-based collocator."¹⁸

CONCLUSION

The amendment should address Verizon's obligations to continue providing dedicated transport, including dark fiber transport, under the limited circumstances outlined in the FCC's rules. The amendment need not list Verizon's wire center designations. The amendment should also include the FCC's definition of "business line" and "fiber-based collocator."

¹⁸ These terms are defined in § 51.5 of the FCC's rules.

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?

Recommendation: During the transition periods prescribed by the FCC, Verizon should be permitted to re-price existing arrangements in accordance with the TRO and the TRRO, for those elements that it is no longer obligated to provide. After the transition periods have ended, Verizon may re-price arrangements as proposed in Verizon's amendment, when CLECs have not ordered alternative arrangements. **(Marsh)**

Position of the Parties

Verizon: Once an element is no longer subject to unbundling under § 251(c)(3), Verizon is entitled to discontinue that element without offering any replacement arrangements. However, Verizon proposes to reprice de-listed elements at access, resale, or other analogous service rates, at Verizon's discretion, if the CLEC declines to enter a commercial agreement. Verizon's right to reprice UNEs is limited only by the FCC's transitional pricing rules; sections 251 and 252 do not apply to replacement arrangements.

AT&T: Verizon is not permitted to re-price existing arrangements except as specifically prescribed by the TRO, and only after such price changes have been incorporated into a Commission-approved ICA amendment.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: If Verizon seeks to re-price existing arrangements that will no longer be subject to unbundling requirements under federal law, Verizon is required to follow the existing change-of-law provisions in the parties' interconnection agreement. Nothing in the FCC's recent orders, specifically the TRO and TRRO, gives Verizon license to amend the change-of-law provisions of the current interconnection agreement.

Sprint: Re-pricing of de-listed UNEs should follow the terms and conditions pertaining to re-pricing and transition contained in the Federal Unbundling Rules and the FCC TRO and TRRO Orders.

Staff Analysis:

PARTIES' ARGUMENTS

Verizon

Verizon witness Ciamporcero notes that none of the CLEC witnesses directly address this issue. He agrees with the CCG that Verizon must re-price de-listed UNEs at the FCC-prescribed transitional rates. However, he contends that the transitional rates are only effective during the transitional period, after which the de-listed UNEs must either be eliminated or converted to other arrangements. (TR 258) He argues that Verizon may discontinue an UNE once the transition period has passed. (TR 258) He reiterates Verizon's willingness to allow the CLECs to enter into alternative commercial arrangements. (TR 258) He argues that such arrangements are not subject to negotiation nor do they require the filing of an interconnection agreement with the Commission. (TR 258)

AT&T

AT&T argues in its brief that the current rates prescribed in the interconnection agreement will remain in effect for de-listed UNEs until the interconnection agreements have been amended pursuant to the change-of-law provisions. AT&T asserts that, once the amendment becomes effective, a retroactive true-up to March 11, 2005 should occur. (AT&T BR at 24) AT&T further argues that "[a]ny other rate increases and new charges that Verizon may attempt to impose should be subject to Commission review in appropriate cost proceedings, and not be retroactive." (AT&T BR at 25)

CCG

The CCG Panel witnesses Sanders, Falvey, and Cadieux state that re-pricing of existing arrangements for network elements that Verizon is no longer obligated to provide must be in accordance with the incremental rate increases prescribed by the FCC, and must be set forth in the amendment. (TR 167) The CCG Panel argues that the unbundling obligations contained in the existing interconnection agreements will remain in effect until those agreements are amended to incorporate the changes of law and FCC-mandated transition plans, including transition rates, as established by the TRRO. (TR 167) The CCG Panel continues that "those transition plans include precise instructions to Verizon to convert and re-rate UNEs over a specified period of time, and in accordance with a specifying pricing scheme." (TR 345)

The CCG states in its brief that "[o]n 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." (CCG BR at 22) The CCG argues that such rates must be specified in the amendment, and assessed only on a prospective basis, from the date on which the amendment is executed by the parties. (CCG BR at 22) The CCG contends that a true-up of the transition rates may be made from the execution date of the agreement back to March 11,

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2005, to the extent expressly permitted by the FCC. (CCG BR at 22) [See TRRO ¶145 fn 408; ¶198 fn 524; ¶228 fn 630]

FDN

In its brief, FDN states that it agrees with the position taken by the CCG. (FDN BR at 3)

MCI

MCI witness Darnell argues that Verizon must follow change-of-law provisions in the parties' interconnection agreement to re-price existing arrangements that will no longer be subject to unbundling requirements. (TR 201) He opines that "[n]othing in the FCC's recent orders, specifically the TRO and TRRO, give Verizon license to amend the change-of-law provisions of the current ICAs." (TR 202)

MCI stated a position in its brief but provided no discussion. (MCI BR at 6)

Sprint

Sprint asserts in its brief that the agreement should contain explicit terms and conditions for access to the UNEs in question. (Sprint BR at 5) Sprint agrees that the ILECs can increase the price of existing UNE high-capacity loops by 115% during the transition periods. (Sprint BR at 6) Sprint states that the FCC allowed for rate increases during the transition period to mitigate rate shock, while providing some protection for the ILECs' interests. (Sprint BR at 7-8)

ANALYSIS

Considerable testimony centered around Verizon's proposed rate attachment. However, the proposed attachment was withdrawn prior to the hearing. The CCG expresses agreement in its brief that the rates should be those set forth in the TRRO for elements Verizon is no longer obligated to provide. (CCG BR at 22)

The FCC adopted a transitional rate for de-listed UNE loops and transport of the higher of 1) 115 percent of the rate the requesting carrier paid for the element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of this Order, for that element. (TRRO ¶¶145, 198; TRRO Appendix B, p. 147) The FCC also adopted a transitional rate for UNE-P of the higher of (1) the rate at which the requesting carrier leased UNE-P on June 15, 2004 plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of the TRRO, for UNE-P plus one dollar. (TRRO ¶228; TRRO Appendix B, p. 148)

Nowhere in the TRO or the TRRO has the FCC imposed restrictions for the re-pricing of de-listed UNEs beyond the price increases specified for the transition period. While the CLECs state that Verizon must incorporate the price changes into the ICA before the new prices may be charged, they offer no support for their conclusions. As discussed in Issue 3, the transitional rates are subject to true-up back to the effective date of the TRRO, March 11, 2005. (EXH 6,

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Verizon's Responses to Staff's First Set of Interrogatories, No. 4; CCG Panel TR 155; Nurse TR 65-67; EXH 20; Verizon BR at 21; Sprint BR at 4; EXH 9, p. 5) Staff believes the recommendation in Issue 3 addresses the manner in which such matters should be incorporated into the agreement. After the end of the transition period, should the CLEC choose to migrate to an alternative arrangement, the rates, terms and conditions need not be included in a §252 agreement, such as the instant agreement (unless the alternative arrangement is for resale of a service). Rather, those rates, terms, and conditions will be those that are included in a commercial agreement, tariff, or other such instrument.

Staff notes that Verizon's proposal allows the CLEC to continue service without interruption, in situations where Verizon has no obligation to provide such service. Staff believes that is beneficial to the CLECs who, for whatever reason, have not made alternative arrangements for de-listed services.

CONCLUSION

Staff recommends that, during the transition periods prescribed by the FCC, Verizon should be permitted to re-price existing arrangements in accordance with the TRO and the TRRO, for those elements that it is no longer obligated to provide. After the transition periods have ended, Verizon may re-price arrangements as proposed in Verizon's amendment, when CLECs have not ordered alternative arrangements.

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

Recommendation: Yes. (Barrett)

Position of the Parties

Verizon: Yes. An order de-listing a UNE is binding on its effective date, so Verizon should be able to discontinue service on that date. Verizon will give the CLECs 90 days notice of discontinuation, and the CLECs will typically know months before that the FCC de-listed a UNE. The TRO Amendment will be executed two years after the TRO elements were de-listed, so the Commission should confirm Verizon's right to discontinue them as soon as the Amendment is approved.

AT&T: Yes, as long as the effective date of any discontinuance is after the effective date set forth for such discontinuance in the order allowing for the discontinuance, including any transitions periods provided by the order. The effective date of any discontinuance should not be before the issuance of the relevant order to be sure all parties have a chance to see the FCC's language.

CCG: 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 doing so, Verizon is bound by the "change of law" processes set forth in its current agreements.

FDN: Agree with Competitive Carrier Group.

MCI: The effective date of removal of unbundling requirements should be the effective date of the amendment to the parties' interconnection agreement that is produced at the conclusion of the change of law process mandated by the interconnection agreements as discussed in Issue 2.

Sprint: Notice and implementation timeframes should be consistent with the requirements of the FCC TRRO Order.

Staff Analysis: As worded, this issue considers whether Verizon should be permitted to prospectively issue notices to interconnecting carriers concerning any future removal of unbundling requirements. Staff notes, however, that the scope of the parties' arguments is wider than the wording of this issue might suggest.

PARTIES' ARGUMENTS

Verizon

Verizon witness Ciamporcero states that Verizon has pursued this case because its contracts with certain carriers "might be *misconstrued* to call for an amendment to permit Verizon to discontinue the UNEs delisted in the TRO." (emphasis in original)(TR 39, 44; EXH

6, p. 35) According to the witness, the noticing aspect of the instant issue comes to the forefront as a means to accommodate future changes in unbundling obligations, since Verizon has already provided notice regarding the TRO to all affected carriers on May 18, 2004. (TR 39, 43, 259) That notice provided an action date of August 22, 2004, and invited CLECs to negotiate replacement arrangements. (Ciamporcero TR 43) For some carriers, but not those subject to this proceeding, Verizon, in fact, discontinued certain UNEs in favor of alternative arrangements, and did so without an amendment. (Ciamporcero TR 43-44) Regarding Verizon's proposed amendment and prospective application, witness Ciamporcero states:

The amendment establishes clearly that Verizon's unbundling obligations under its interconnection agreements are the same as its obligations under section 251(c)(3) and the FCC's implementing rules. (See Amendment 1, §§ 2, 3.1, 4.7.3, 4.7.6) Under the Amendment, Verizon may cease providing unbundled access to "Disconnected Facilities," meaning facilities that Verizon no longer has any obligation to provide under Section 251(c)(3) of the Act and the FCC's implementing rules. By tying Verizon's obligations under its agreements to the obligations imposed under federal law, Verizon's Amendment provides for automatic implementation of any subsequent reductions in unbundling obligations without the wasteful and prolonged procedure that has been underway here for a year. (TR 40)

In addition, the witness claims Sections 3.1 and 3.2 of Verizon's proposed amendment address the notice obligations Verizon agrees to. Specifically, the witness asserts:

[In Section 3.1] Verizon would give a CLEC 90 days' written notice before discontinuing a UNE that is no longer subject to a section 251 unbundling obligation;

[In Section 3.2] If the CLEC has not requested disconnection or negotiated an agreement for replacement arrangements before the end of the 90-day notice period, then Verizon would reprice the service by applying a new rate equivalent to resale, access, or other analogous arrangements that Verizon will identify in a written notice to the CLEC. (Ciamporcero TR 42-43)

The witness states that Verizon has already provided notice to all affected carriers. (Ciamporcero TR 44, 259) For the carriers that are subject to this proceeding, witness Ciamporcero states that a second notice and 90-day transition period will not be given, since these carriers have been receiving de-listed services for such a long period of time during the pendency of this matter. (TR 44, 260)

Regarding the TRRO, the witness asserts, "the FCC has given CLECs a year from the March 11, 2005 . . . [deadline] to finish converting their embedded base of de-listed facilities to alternative, commercial arrangements, or disconnecting them." (Ciamporcero TR 260) Witness Ciamporcero notes:

- 1) in the case of dark fiber facilities, the transition period is 18 months, not 12;

- 2) in its Notice dated February 10, 2005,¹⁹ Verizon encouraged CLECs to meet with account managers no later than May 15, 2005 to work out any and all operational issues. Meeting in a timely manner will ensure that all conversions are completed within the 12 or 18 month timeframe; and
- 3) the CLECs should not be allowed to extend the transition period for any reason, since it is mandated by the FCC. (Ciamporcero TR 260)

In its brief, Verizon states that its language makes clear that Verizon cannot implement a rule before its effective date, nor can it implement a rule that has been stayed by the FCC or a court of competent jurisdiction. (Verizon BR at 41)

AT&T

AT&T states that the transition provisions in both the TRO and the TRRO “specifically require the parties to follow the Section 252 process to implement the TRO changes.” (TR 60) Witness Nurse asserts that Verizon errs by proposing language to automatically implement future unbundling obligations without negotiation or discussion concerning the implementation of such changes. (TR 60; BR at 25) Witness Nurse claims Verizon is attempting to “place itself in the position of unilaterally interpreting and then implementing any further regulatory decisions concerning AT&T’s access to unbundled network elements . . .” (TR 59)

CCG

The Competitive Carrier Group panel witnesses Sanders, Cadeaux, and Falvey (CCG Panel) testify that Verizon is attempting to use the noticing mechanism to circumvent the change of law provisions of its interconnection agreements. (TR 169) The panel believes the FCC’s unbundling determinations in the TRO and the TRRO are not “self effectuating,” and that conventional change-of-law provisions should be followed by Verizon. (CCG Panel TR 168; BR at 23-24)

FDN

FDN did not file testimony in this proceeding, although its brief notes that FDN concurs with the position proffered by the CCG for this issue. (FDN BR at 3-4)

MCI

MCI witness Darnell states that Verizon’s 90-day notice is sufficient for the discontinued elements that are not subject to further appeals or remand proceedings. (TR 203) However, the witness takes issue with the prospective nature of Verizon’s language. He states that it is not necessary for Verizon to address UNEs that might be removed from the federal unbundling rules. (Darnell TR 203-204) Doing so at this time “gut[s] the change of law provisions” of MCI’s interconnection agreement with Verizon, according to witness Darnell. (TR 203)

¹⁹ The testimony of witness Ciamporcero erroneously states this Notice was dated February 10, 2004. (TR 260) The errata that Verizon filed in Exhibit 6 did not make note of this error.

Sprint

Sprint did not file testimony in this proceeding, although its brief states that the notice and implementation timeframes should be consistent with the requirements of the *TRRO* Order. Additionally, Sprint “strenuously objects” to any attempt at an amendment that examines possible future impacts. (Sprint BR at 9-10)

ANALYSIS

Staff notes that Verizon appears to argue two main points: 1) that it has issued the appropriate carrier notices for the purposes of the TRO and the TRRO; and 2) that it should be permitted to prospectively issue notices to interconnecting carriers when unbundling requirements are removed, and implement such changes thereafter without amending the respective interconnection agreements. (Ciamporcero TR 43-44, 259) Staff will address each of Verizon’s main points separately, but notes that the automatic implementation arguments were addressed in Issue 2 and will not be repeated here.

Issuance of TRO and TRRO Notices

No party rebuts the assertions from Verizon that it has, in fact, issued the appropriate carrier notices for the purposes of the TRO and the TRRO. Verizon’s witness expresses concern about whether a second notice will be required after an amendment is executed, and although no CLEC party specifically argued for a second notice, Verizon argues against it. Witness Ciamporcero contends that the carriers who have been receiving de-listed services during the pendency of this matter do not need a second notice and 90-day transition period. (TR 44, 260) On this point, staff agrees with Verizon. No party advocates a need for a second notice, and the TRO and the TRRO do not offer guidance on this. Thus, staff believes Verizon should not be obligated to issue a second notice. Staff notes that more substantial argument was devoted to Verizon’s initiative to advance prospective noticing and automatic implementation.

Prospective Noticing and Automatic Implementation

Staff believes the scope of this issue is limited to the issuance of prospective notices, and is concerned that Verizon’s arguments seem to go beyond the stated issue. Staff believes this issue does not encompass the implementation topics that Verizon proffers in conjunction with its noticing argument. Staff believes noticing and implementation are vastly different topics and, as noted earlier, arguments regarding automatic implementation were addressed in Issue 2, and will not be repeated here.

Staff believes Verizon’s pursuit of prospective noticing in conjunction with automatic implementation is an attempt to unilaterally interpret and implement the provisions of a future regulatory decision. In short, staff agrees with AT&T witness Nurse that Verizon’s attempt to combine noticing and implementation is not appropriate. Staff believes this is an over-reaching attempt on Verizon’s part, and could conflict with a future regulatory decision.

In summary, staff believes the scope of Issue 7 is much narrower than Verizon argues. Staff believes the scope of this issue is limited to the topic of issuing prospective notices. Staff

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believes nothing precludes Verizon from providing notice of discontinuance in advance of the effective date of removal of unbundling requirements.

CONCLUSION

Verizon should be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements.

Issue 8: Should Verizon be permitted to assess non-recurring charges for the disconnection of a UNE arrangement or the reconnection of service under an alternative arrangement? If so, what charges apply?

Recommendation: Verizon should be permitted to assess non-recurring charges. Except as agreed to by the parties, Verizon may:

- apply the appropriate non-recurring charges for disconnecting UNE arrangements as set forth in Appendix B-1 of the Verizon UNE Order;
- negotiate the appropriate non-recurring charges, if any, for the reconnection of service under a commercially negotiated alternative arrangement, since such charges may not be subject to the Commission's oversight. (**Barrett**)

Position of the Parties

Verizon: Verizon is entitled to recover any costs incurred in establishing alternative arrangements. Where the Commission has already set rates covering disconnection, Verizon may charge them. Verizon is not proposing any new rates in this arbitration, but the parties' stipulation deleting the rate issue recognizes Verizon's right to start a cost proceeding later. Nothing in the Amendment should foreclose Verizon from seeking new rates in the future. Moreover, the Commission cannot constrain parties from negotiating prices for commercial agreements.

AT&T: No. The transition from UNEs to alternative arrangements should be governed by the same principles articulated by the FCC in rule 51.316(b) and (c) for the conversion of wholesale services to UNEs. Verizon should not be able to impose any termination charges, disconnect fees, reconnect fees, or charges associated with establishing a service for the first time in connection with the conversion between existing arrangements and new arrangements.

CCG: No. The transitional 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 discontinuation and reconnection of service to CLECs.

FDN: Agree with Competitive Carrier Group.

MCI: Verizon should not be permitted to assess its existing loop disconnect nonrecurring charges on loops that are not disconnected or on loops that are disconnected as part of a group or batch request.

Sprint: Yes, to the extent Verizon has any actual and necessary charges that are justified. Other changes that would require actual physical arrangement work should be charged according to the Verizon tariff.

Staff Analysis: Pursuant to the TRO and the TRRO, certain UNEs that CLECs currently purchase from Verizon to provision services are de-listed; on a practical basis, this requires that Verizon and the CLEC replace such arrangements with alternative ones. Issue 8 concerns whether, and what, NRCs should be applicable to effect the conversions from (de-listed) UNE arrangements to alternative arrangements.

PARTIES' ARGUMENTS

Verizon

Witness Ciamporcero states that NRCs are necessary for the purposes of cost recovery, "and as long as any Commission-approved rates apply to the activity Verizon is performing, Verizon is entitled to recover them." (TR 262)

Witness Ciamporcero notes that the Commission cannot impose restrictions on Verizon's ability to negotiate non-recurring charges in the context of commercial agreements that are not subject to section 251 oversight. (TR 261) According to the witness, such commercial agreements would not be subject to the negotiation and arbitration requirements of section 252. (Id.) These points are repeated in the Verizon brief. (Verizon BR at 44-45) In addition, Verizon asserts that it reserves the right to initiate a cost study at any time; such a study would allow CLECs the opportunity to challenge Verizon's costs. (Verizon BR at 46-47)

AT&T

AT&T witness Nurse contends that Verizon should not be permitted to impose NRCs on CLECs for conversions, since the action to disconnect the UNE was precipitated by Verizon. (TR 88) The witness elaborates:

This [loss of access to the UNE] is not a situation in which AT&T has imposed any non-recurring costs on Verizon. If anything, this is a situation in which Verizon is the cost-causer . . . It is certainly not AT&T's decision to disconnect the UNE. To the contrary, AT&T would still utilize the UNE arrangements if Verizon agreed to make it available. (Nurse TR 88)

Witness Nurse believes the work effort Verizon will undertake for such conversions will not involve any field or technical work; instead, the work will be administrative in nature, nothing more than a simple change in billing. (TR 88-89) He contends the costs for conversions may have already been recovered through NRCs previously paid to Verizon to establish the UNE arrangement. (Nurse TR 88) AT&T repeats these points in its brief, and states that the transition from UNEs to alternative arrangements should be governed in the same manner as conversions from wholesale services to UNEs, as set forth in 47 CFR §§ 51.316(b) and (c). (AT&T BR at 25-27)

CCG

The Competitive Carrier Group panel witnesses Sanders, Cadeaux, and Falvey (CCG Panel) testify that Verizon is not permitted to assess NRCs for the disconnection of a de-listed

UNE or the reconnection of an alternative arrangement. (TR 170) The CCG states that the TRRO does not provide a framework for allocating costs Verizon would incur to re-price service arrangements that are not subject to the unbundling obligation. (CCG BR at 26) The CCG Panel contends that the disconnection of the UNE arrangement and the establishment of alternative arrangements is the result of Verizon's decision to forego unbundling. (TR 170) Because conversion to alternative arrangements is not an activity the CCG members sought out, the costs involved for these activities should be borne by the "cost-causer," which the CCG Panel contends is Verizon. (TR 170; CCG BR at 25-28) The CCG Panel believes the costs incurred by Verizon are already reflected in Verizon's existing Commission-approved TELRIC rates. (TR 348) The CCG Panel believes Verizon should engage in a cost study to justify any new rates. (Id.)

FDN

FDN did not file testimony in this proceeding, although its brief notes that FDN concurs with the position proffered by the CCG for this issue. (FDN BR at 4)

MCI

MCI witness Darnell asserts that Verizon should not be permitted to assess its existing loop disconnect NRCs, contending that those rates were designed to capture normal, random, and market driven customer churn, not the (expected) high-volume mass migrations that will occur with UNE conversions. (TR 204) According to witness Darnell, the current Commission-approved loop disconnect NRCs do not recover costs associated with mass disconnects or conversions to alternative arrangements. He believes CLECs would be inappropriately charged if current NRCs were assessed for conversions that do not require the physical activity to disconnect a loop. (TR 204) Since the conversion is performed without loop activity, disconnect or reconnect NRCs should not apply. (MCI BR at 7) He contends that the Commission should determine new and lower "batch" hot cut rates that ensure the scope and scale economies of one-time, mass migration of loops are captured by any rates assessed on such hot cuts. (Darnell TR 204; MCI BR at 7)

Sprint

Sprint did not file testimony in this proceeding, although its brief states that Verizon should be permitted to assess such charges, to the extent actual and necessary charges are justified. Other changes that require physical arrangement work should be charged according to the Verizon tariff. (Sprint BR at 10)

ANALYSIS

Staff believes that in order to answer this issue, the Commission should consider the context of the disconnection in order to examine the assessment of NRCs. For the purposes of this issue, staff believes the following factors should be considered in looking at the context:

- 1) current Verizon UNE rates and NRCs were set by this Commission in the Verizon UNE Order;

- 2) certain UNEs that CLECs purchase will not be offered prospectively;
- 3) the TRO is not instructive on the assessment of NRCs in the limited circumstance of UNE-to-alternative arrangement conversions.

Staff notes that Appendix B-1 of the Verizon UNE Order contains the Commission-established recurring and non-recurring UNE rates. In setting these rates, the Commission considered §§ 252 (d)(1)(A) and (B) of the Act. These sections state that network element rates shall be cost-based, nondiscriminatory, and may include a reasonable profit. (Verizon UNE Order, pp. 13-14) Importantly, the rate structure the Commission approved in the Verizon UNE Order set forth distinct NRCs for the connection and disconnection of certain UNEs. Staff observes that no party to this proceeding has challenged the rate levels in the Verizon UNE Order, only the applicability of such rates. Although MCI witness Darnell specifically asserts that these rates may not be applicable for bulk migrations, MCI did not propose rates for the Commission to consider. (TR 204)

AT&T expresses similar sentiments, although it believes the Commission should look to 47 CFR §§ 51.316(b) and (c), which state:

Sec. 51.316 Conversion of unbundled network elements and services.

(b) An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

(c) Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.[68 FR 52294, Sept. 2, 2003]

Staff believes this rule applies to wholesale-to-UNE conversions, whereas the conversions at issue here are the reverse. Because the conversions differ, it is not clear whether Rule 47 CFR § 51.316 is instructive for purposes of the instant case.

Staff notes that the rate structure the Commission approved in the Verizon UNE Order set forth distinct NRCs for the disconnection of UNEs – rates that, in effect, came about because the Commission lowered the up-front (installation) costs to spur competition. (Verizon UNE Order, p. 14) Staff believes the Commission's actions were deliberate, in considering that cost recovery was appropriate at the point in time that UNEs were disconnected. The Commission did not set forth any exceptions for when such charges might not apply. Instead, the order simply permits the assessment of disconnect NRCs when UNEs are disconnected. (Id.) Although present-day UNE arrangements will be disconnected and reconfigured based on the FCC's directive, staff believes the absence of any exceptions to limit the application of such charges permits Verizon to apply the appropriate non-recurring charges as set forth in Appendix B-1 of the Verizon UNE Order. Staff does not believe the Verizon UNE Order addresses "reconnection of service under an

alternative arrangement.” As noted previously, Verizon proposed rates for the Commission’s consideration at one time, but later withdrew its pricing attachment that included rates. No other party proposed rates.

AT&T’s witness states that UNE conversions would only involve a minimal work effort for Verizon. (Nurse TR 88) Although Verizon witness Ciamporcero discusses cost recovery, he does not conclusively state what charges Verizon believes are appropriate, nor does he state what work is involved. However, Verizon believes the “reconnection of service under an alternative arrangement” will take place in the context of commercially negotiated agreements. Staff believes the parties should negotiate the appropriate non-recurring charges, if any, for the reconnection of service under a commercially negotiated alternative arrangement. Staff believes the parties - not the Commission - must determine what those charges should be.

CONCLUSION

Verizon should be permitted to assess non-recurring charges. Except as agreed to by the parties, Verizon may:

- apply the appropriate non-recurring charges for disconnecting UNE arrangements as set forth in Appendix B-1 of the Verizon UNE Order;
- negotiate the appropriate non-recurring charges, if any, for the reconnection of service under a commercially negotiated alternative arrangement, since such charges may not be subject to the Commission’s oversight.

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Issue 9: What terms should be included in the Amendments' Definition Section and how should those terms be defined?

Recommendation: The Amendment's Definition Section should contain all of the terms and definitions proposed by Verizon and staff, as shown in Tables 9-1 and 9-3. (**Barrett**)

Position of the Parties:

Verizon: The Amendment should include definitions necessary to faithfully reflect the changes in unbundling rules made in the *TRO* and *TRRO*. The Commission should reject CLEC efforts to expand Verizon's unbundling obligations through definitions that do not accurately (sic) Verizon's obligations under section 251(c)(3) and the FCC's implementing Rules.

AT&T All specified terms that are used in the Amendment should be included in the definitions section and those terms should be defined, where possible, to reflect the FCC's definitions and/or industry practice. These terms are identified in AT&T's proposed TRRO Amendment.

CCG: The Amendment must define all terms necessary to properly implement the TRO and the 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, under 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI has proposed that the Amendment to the parties' interconnection agreement include definitions for a number of terms to ensure that they track federal law and to supply definitions for other terms which were omitted by Verizon. MCI's proposed definitions are found in Section 12.7 of Exhibit 4, Deposition Exhibit 1.

Sprint: The definitions in both Amendments should be consistent and defined pursuant to the Federal Unbundling rules and the FCC TRO and TRRO Orders.

Staff Analysis: This issue seeks to determine what terms and their definitions should be included in the Amendment. In addition to the lists that the parties developed, staff notes that several key terms are defined in individual issues throughout this recommendation.

PARTIES' ARGUMENTS

Verizon

Verizon asserts in its brief that the terms included in the Amendment's Definition Section should be consistent with the TRO and the TRRO. (Verizon BR at 47) Verizon's brief contains two groups of terms and definitions; the first group of fourteen (14) terms and their definitions are those which Verizon believes should be included in the TRO and TRRO Amendment, and the second group of ten (10) are those that the CLECs proposed. (Verizon BR at 47-72) Verizon

believes the latter group of terms is unnecessary. (Verizon BR at 66-72) Staff summarizes each group of terms below in Tables 9-1 and 9-2.

Table 9-1: Verizon's Proposed Terms and Definitions to be Included in TRO and TRRO Amendments	
TERM	VERIZON'S SUMMARY OF DEFINITION
Dark Fiber Loop	Inactivated strand(s) of Verizon-owned fiber-optic cable. (BR at 48)
Dark Fiber Transport	An inactivated intraLATA optical transmission facility between Verizon switches or wire centers. (BR at 49)
Dedicated Transport	An intraLATA DS-1 or DS-3 transmission facility between Verizon-owned switches or wire centers that is dedicated to a specific carrier or customer. (BR at 51)
Discontinued Facility	A UNE that is no longer subject to a federal unbundling requirement, pursuant to section 251(c)(3) and 47 C.F.R. Part 51 rules. (BR at 51)
DS-1 and DS-3 Loops	DS-1 and DS-3 Loops are digital transmission channels between a Verizon frame and an end user's demarcation point. The DS-1 Loop is suitable for a digital transport rate of 1.544Mbps; the DS-3 Loop is suitable for a digital transport rate of 44.736 Mbps. Both Loop types require electronics to provide the requisite transmission rates. (BR at 52-53)
Enterprise Switching	Local or Tandem Switching that a CLEC would use in serving customers at DS-1 and higher loop capacities. (BR at 55)
Entrance Facility	A lit or unlit transmission facility or service provided between the Verizon switches or wire centers and those of a CLEC or a third-party. (BR at 55)
FTTP Loop	An all-fiber loop that extends from a wire center to either: an end-user's demarcation point, or to an interface where the fiber cable meets copper cable within 500 feet of the end-user's demarcation point. (BR at 57)
Hybrid Loop	A local loop composed of both fiber and copper. (BR at 60)
Local Switching	The facilities associated with a line-side port on a circuit switch, plus the features, functions, and capabilities of the switch. (BR at 60-61)
Mass Market Switching	Local or Tandem switching used for the purpose of serving CLEC end user customers at a voice-grade (DS-0) level. (BR at 61)
Packet Switched	Routing or forwarding of packets, frames, cells, or other data units based on address or routing information contained therein. (BR at 62)
Sub-loop for Multiunit Premises Access	Any portion of a loop, other than a FTTP loop, that is accessible via a terminal at or near a multiunit premises. (BR at 64)
Federal Unbundling Rules	Federal requirements imposed upon Verizon pursuant to the Act (Section 251(c)(3), and Part 51 of the Code of Federal Regulations. (BR at 65)

Source: Verizon BR at 47-66

Table 9-2: CLEC Proposed Terms and Definitions to be Included in TRO and TRRO Amendments	
TERM	SUMMARY OF VERIZON'S OPPOSITION
Business Line	The FCC has defined the term in 47 C.F.R. Part 51.5, and CLECs have attempted to modify this definition in their Amendments; Verizon believes this definition is not relevant to the TRO Amendment. (BR at 66)
Combination	The FCC has defined the term in 47 C.F.R. Part 51, and CLECs have attempted to modify this definition in their Amendments; Verizon believes this term is not relevant to the TRO and TRRO Amendment. (BR at 66-67)
Fiber-based Collocator	The FCC has already defined the term; the CLECs included this term to advance their position. (BR at 67)
Hot Cut	Verizon believes this term is not relevant to the TRO Amendment. (BR at 69)
Line Conditioning	Verizon believes this term is not relevant to the TRO Amendment. (BR at 70)
Line Splitting	Verizon believes this term is not relevant to the TRO Amendment. (BR at 70)
Routine Network Modifications	Verizon believes the CLEC definition attempts to expand Verizon's obligation beyond that set forth in the TRO. (BR at 70)
UNE-P	Verizon believes no new definition is needed, because the TRO and TRRO did not change the definition. (BR at 71)
Tiers 1-3 Wire Centers	Verizon believes the CLECs included these terms to advance their position. (BR at 71-72)
Wire Center	Verizon believes the CLECs included this term to advance their position. (BR at 72)

Source: Verizon BR at 66-72

Verizon believes the terms and definitions it proposed reflect the governing federal law, whereas those the CLECs proposed do not. (Verizon BR at 47)

AT&T

Section 2 of AT&T's proposed Amendment contains 40 terms and definitions, although witness Nurse did not address the terms or definitions in testimony. (EXH 13, pp. 4-10) In its brief, AT&T states that its list of terms and definitions includes three new terms that Verizon's list omitted: "business switched access lines," "fiber-based collocator," and "wire center." (AT&T BR at 28) AT&T believes its terms and definitions are more complete and comprehensive than Verizon's. (Id.)

CCG

The Competitive Carrier Group panel witnesses Sanders, Cadeaux, and Falvey (CCG Panel) testify that "the Amendment's Definition Section should include all terms necessary to properly implement changes to the FCC's unbundling rules under the Triennial Review Order and Triennial Review Remand Order, including new terms defined in those Orders, and required modifications to the definitions of existing terms under the parties' interconnection agreements." (TR 171) In a discovery response, the CCG states that 25 terms are "new," and four are currently defined in its agreements with Verizon, but need to be changed. (EXH 8, CCG's Responses to Staff's 1st Set of Interrogatories, Item Nos. 37a-b) The CCG's proposed Amendment contains 40 terms and definitions. (EXH 16, pp. 5-12)

FDN

FDN did not file testimony in this proceeding, although its brief notes that FDN concurs with the position proffered by the CCG for this issue. (FDN BR at 4)

MCI

MCI witness Darnell states that its proposed list of terms was developed as a red-line version of Verizon's original list. (TR 205; EXH 19, pp. 14-18) MCI's draft Agreement adds four new terms and definitions, drops four, modifies seven, and makes no changes whatsoever to four of Verizon's terms and definitions. (EXH 19, pp. 14-18) The witness testifies that MCI's proposed revisions "track federal law in all respects." (Darnell TR 205, 217)

Sprint

Sprint did not file testimony in this proceeding, although its brief provides five suggested edits to Verizon's terms and definitions. (Sprint BR at 11-15) The five terms are: Discontinued Facilities; Distribution Sub-Loop Facility; FTTP Loop; Mass Market Switching; and Sub-Loop for Multi-Unit Premises. (Id.) Sprint asserts in its brief that "the changes proposed by Sprint merely bring the terms into conformance with the FCC's rules." (Sprint BR at 15)

ANALYSIS

In its brief, Verizon contends the new terms the CLECs proposed and the modifications that CLECs made to Verizon's list were self-serving, and should be rejected on the basis of not having relevance.²⁰ (Verizon BR at 47, 66-72) Although staff agrees with Verizon's logic that only terms and definitions relevant to the TRO and TRRO should be included in the amendment, staff believes the question of relevance should consider three things: first, whether the terms in the amendment are consistent with the TRO and the TRRO; second, whether the TRO and the TRRO introduce terms not previously defined; and last, whether the TRO and the TRRO alter the definitions of existing terms.

By and large, all parties to this proceeding agree that the terms and definitions that are included in the amendment should comport with the directives set forth in the TRO and the TRRO. (Verizon BR at 47; AT&T BR at 27-28; CCG BR at 28; FDN BR at 4; MCI BR at 8; Sprint BR at 10) Staff notes that it appears the CLECs generally used Verizon's list of terms and definitions as a starting point. In discovery responses, Verizon acknowledges that the parties have agreed to certain terms and definitions, and are very close to doing so for others. (EXH 6, pp. 161-174) However, the parties have widely divergent views on other terms and definitions. (Id.; EXH 8, CCG's Responses to Staff's 1st Set of Interrogatories, Item Nos. 37a-b)

Staff believes the emphasis of this issue is skewed in the direction of interpreting the proposed definitions, rather than simply identifying what the terms should be. To illustrate, staff offers a Verizon-proposed term ("dedicated transport") as an example of how two parties to this

²⁰ As noted in Table 9-2, Verizon claims that certain of the CLEC-proposed terms and definitions have been previously defined.

proceeding have defined it in two very different ways. The FCC refined its definition of the term “dedicated transport” in the TRO at ¶365 to recognize that its previous definition was “overly broad.” (TRO ¶365) The refined definition emphasizes that this term should apply to intraLATA transmission facilities owned by the incumbent. (Id.) The definition contained in the TRRO’s Appendix B captures the modification as well. (TRRO Appendix B, p.150) Although AT&T included this term in Section 2 of its proposed Amendment, their proposed definition did not capture the FCC’s revised definition, whereas Verizon’s did. AT&T’s proposed definition was otherwise very similar to Verizon’s, although staff believes Verizon’s proposed definition properly recognizes the intraLATA limitations pursuant to ¶365 of the TRO. Staff believes this is significant for two reasons. First, it lends credence to the allegations Verizon made that the CLECs’ definitions do not accurately track the Orders. Second, staff found this and other instances where Verizon’s definitions appear to track with the Orders, particularly with the other transport and switching terms, which staff believes are the focal points in the TRO and the TRRO. Although staff believes a number of terms and definitions proposed by CLEC parties are not necessarily incorrect, staff believes Verizon’s list appears to be most consistent with the Orders, and should be included in the Amendments' Definition Section.

In addition to the lists that the parties developed, staff notes that several key terms are defined in individual issues throughout this recommendation. In Table 9-3, staff has assembled those terms and definitions from throughout this document. Table 9-3 includes other terms and definitions staff believes should be included in the Amendments' Definition Section, along with a cross-reference to the individual issue that substantively discusses each:

Table 9-3: Staff’s Proposed Terms and Definitions to be Included in TRO and TRRO Amendments		
<u>TERM</u>	<u>DEFINITION (SOURCE)</u>	<u>ISSUE REFERENCE</u>
Business Line	An incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. (<u>TRRO</u> Appendix B, p. 145)	Issue 5
Call-related databases	Databases, other than operation support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. (<u>TRO</u> Appendix B, p. 25; <u>TRRO</u> Appendix B, p. 149)	Issue 3
Commingling	The connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. (<u>TRO</u> ¶579)	Issue 12
Fiber-based Collocator	Any carrier unaffiliated with the incumbent LEC that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. (<u>TRRO</u> Appendix B, p. 145)	Issue 5

Table 9-3: Staff's Proposed Terms and Definitions to be Included in TRO and TRRO Amendments		
<u>TERM</u>	<u>DEFINITION (SOURCE)</u>	<u>ISSUE REFERENCE</u>
Line Conditioning	The removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver xDSL capability, to ensure that the copper loop or copper subloop is suitable for providing xDSL services and provided the same for all telecommunications carriers requesting access to that network and at least equal in quality to that which the incumbent provides to itself. (47 CFR § 51.311) (47 CFR § 51.319)	Issue 14
Nondiscriminatory Access	Nondiscriminatory access is defined as: (a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network. (b) To the extent technically feasible, the quality of an unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent provides to itself. (47 CFR § 51.311)	Issue 14
Routine Network Modifications	A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier. (TRO Appendix B, pp. 16-17)	Issue 22
Signaling	Signaling includes, but is not limited to, signaling links and signaling transfer points. There is no dispute on the definition of this term. (EXH 6, p. 167)	Issue 3
Tandem Switching	The trunk-connect facilities on a Verizon circuit switch that functions as a tandem switch, plus the functions that are centralized in that switch, including the basic switching function of connecting trunks to trunks, unbundled from and not contiguous with loops and transmission facilities. Tandem Switching creates a temporary transmission path between interoffice trunks that are interconnected at a Verizon tandem switch for the purpose of routing a call. A tandem switch does not provide basic functions such as dial tone service. There is no dispute on the definition of this term. (EXH 6, p. 167)	Issue 3
Wire Center	The location of an incumbent LEC local switching facility containing one or more central offices, as defined in the Appendix to part 36 of this chapter. (TRRO Appendix B, p. 145)	Issue 5

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Staff observes that Table 9-3 is comprised of many of the same terms the CLECs proposed in Table 9-2, but notes that its recommended definitions differ from the CLEC-proposed definitions for the same terms. Staff includes the direct source it consulted in developing the above-noted definitions, many of which are rooted in sections of 47 CFR or the TRRO's Appendix B. Because these sources are fully consistent with the Orders, staff believes the terms and definitions in Table 9-3 are appropriate for inclusion in the Amendments' Definition Section.

CONCLUSION

The Amendments' Definition Section should contain all of the terms and definitions proposed by Verizon and staff, as shown in Tables 9-1 and 9-3.

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 provisioning of UNEs?

Recommendation: Staff recommends that in order for Verizon to discontinue the provisioning of UNEs, including those UNEs de-listed by either the TRO or TRRO, it should be required to follow any change-of-law and/or dispute resolution provisions in existing interconnection agreements. Both the TRO and TRRO specifically direct that the mandated transition periods are to be used to implement any change-of-law provisions contained in interconnection agreements via the process established in 47 USC §252, and neither the TRO nor TRRO nullify existing change-of-law provisions. However, consistent with the No-New-Adds Order, staff believes Verizon should not be required to follow any change-of-law and/or dispute resolution provisions in existing interconnection agreements with respect to new adds of local UNE switching. (L. Fordham)

Position of the Parties

Verizon: This question is moot as to the TRO and TRRO de-listings. Implementation of the FCC's mandatory transition plan did not depend on change of law or dispute resolution provisions in existing contracts. With respect to the TRO de-listings, this is the dispute resolution proceeding to amend the few ICAs that may appear to require amendment before Verizon discontinues these items. Any future de-listings should be implemented without the need for ICA amendments, as most ICAs already permit.

AT&T: Yes. The FCC in the TRRO refers to the process for negotiation and arbitration established by Sec. 252 expressly including the change of law requirement to amend ICAs such as AT&T's to reflect changes occasioned by the FCC's Order. Verizon's contractual obligation to provision a particular unbundled network element continues under the contract until the contract or agreement is properly amended. The TRO contains similar language.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: Yes. Verizon should be required to follow the change of law provisions in the existing interconnection agreements if it seeks to discontinue provisioning UNEs.

Sprint: Yes, change of law and dispute resolution should be carried out under the existing interconnection agreement

Staff Analysis:

PARTIES' ARGUMENTS

Verizon

Verizon asserts that this issue is moot with respect to the discontinuation of de-listed UNEs as set forth in the TRO and TRRO. In rejecting the CLEC's petitions to stay the FCC's "no new adds" mandate, Verizon argues that the Commission has already ruled that the implementation of the FCC's mandatory transition plan in the TRRO did not depend on any particular contract language, including any change-of-law or dispute resolution provisions in existing agreements. Verizon maintains that pursuant to the FCC's explicit directive, the transition plan for the UNEs at issue in the TRRO took effect as of March 5, 2005, even though change-of-law processes with respect to the CLEC's embedded base of de-listed UNEs could take up to 12 months (18 months for dark fiber facilities) under the FCC's plan. (Verizon BR at 72-73) Verizon argues that if the FCC had meant for the change-of-law process to take precedence over its currently effective binding federal regulations, it would have held that the relevant transition plans would take effect after negotiations, rather than on a certain date (March 11, 2005). (Verizon BR at 74)

Furthermore, Verizon asserts that with regard to the discontinuation of UNEs de-listed in the TRO, which are UNEs other than mass market switching, high capacity loops, and transport, the FCC "expect[ed] that the parties would begin their change-of-law process promptly," "negotiations and any timeframe for resolving the dispute would commence immediately," and "a state commission should be able to resolve a dispute over contract language at least within the nine-month timeframe envisioned for new contract arbitrations under §252." (TRO ¶704) Verizon contends that it initiated negotiations over 20 months ago, and filed for arbitration more than a year ago to modify its agreements, where necessary, to implement the TRO rulings. Because of the CLECs' procedural wrangling and delaying tactics, the timeframe for conclusion of a TRO amendment expired without any substantive progress toward an arbitrated amendment, even with respect to the TRO rulings that have been final and non-appealable for over a year. Therefore, Verizon asserts that "CLECs cannot argue that their requirements necessitate another negotiation period or other procedures before the Board [sic] may resolve the issues in this arbitration." (Verizon BR at 74-75)

Finally, Verizon argues that MCI is engaging in procedural gamesmanship to avoid the implementation of federal law by participating in this arbitration and sponsoring an amendment proposal specifically addressing TRRO issues, despite MCI witness Darnell claiming that the time for negotiations under the change of law provisions in the contract would end 90 days from the effective date of the TRRO (Verizon BR at 75). Verizon argues that MCI is attempting to participate fully in this arbitration, yet keep its options open to initiate some form of dispute resolution proceeding later if it does not like the results in this case. (Verizon BR at 75-76)

According to Verizon witness Ciamporcero, as he understands, Verizon has and will continue to follow its existing contracts to implement changes in unbundling obligations, unless they are inconsistent with FCC mandates or the process the FCC established to change agreements, where necessary. In particular, witness Ciamporcero argues, no new amendments are necessary to implement the FCC's mandatory transition plan. Witness Ciamporcero further

states that Verizon has initiated the §252 arbitrations the FCC advised carriers to use in both the TRO and TRRO (as to the embedded base of UNEs discontinued under the TRRO.) Finally, witness Ciampocero states that if any CLEC believes they can rely on their change-of-law provisions or anything else in their contracts to override the FCC's deadline for transition of their embedded base of de-listed UNEs to replacement arrangements, they are wrong. (Ciampocero TR 47)

AT&T

AT&T argues that in the TRRO, the FCC repeatedly referred to the process for negotiation and arbitration established by §252 of the 1996 Act, including the requirement to amend interconnection agreements to reflect changes occasioned by the FCC's Order itself. (AT&T BR at 30) AT&T maintains that if Verizon has a contractual obligation to provide a particular UNE, then it should be required to adhere to the provisions of that contract; however, to the extent the FCC relieves Verizon of its obligation under federal law to provide a particular UNE, Verizon should invoke the change-of-law provisions of the contract and notify the other party that it seeks to negotiate an amendment to the contract to change its obligations. AT&T states that where the parties cannot reach an agreement as to either the effect of the change-of-law or contract language to implement this change-of-law, the parties should be required to follow the dispute resolution provisions contained in the contract. (AT&T BR at 30)

Moreover, AT&T maintains that under Verizon's proposed amendment language, Verizon would have the right to unilaterally interpret the law and take customer-affecting action to implement that interpretation. AT&T argues that the change-of-law process helps ensure seamless and uninterrupted customer service as carriers alter their agreements and systems over time, and thus, the Commission should not allow Verizon's impatience to alter its UNE obligations and to disrupt an orderly and fair process. (AT&T BR at 31)

CCG

The CCG argues that the TRO and TRRO each require Verizon to implement changes under the FCC's unbundling rules as directed by §252 of the 1996 Act, and in accordance with the "change-of-law" processes as set forth in the interconnection agreements. Specifically, the CCG contends that Verizon must arbitrate modifications to its existing interconnection agreements. (CCG BR at 29) According to the CCG panel witnesses Sanders, Falvey, and Cadieux (CCG Panel), Verizon is bound by the unbundling obligations set forth in its existing interconnection agreements with Florida carriers until such time as those agreements are properly amended to incorporate the changes of law and FCC-mandated transition plans established under the TRRO. (CCG Panel TR 172). The CCG argues that Verizon's proposal to replace, in this arbitration, the existing change-of-law processes is inconsistent with §252 of the 1996 Act, the FCC's orders, and the FCC's modified unbundling rules. (CCG BR at 29)

MCI

MCI argues that if Verizon seeks to discontinue the provisioning of UNEs, Verizon should be required to comply with the change-of-law provisions in its interconnection agreements. Specifically, MCI contends that nothing in the TRO, USTA II, or the TRRO

invalidates change-of-law provisions in interconnection agreements, and that the FCC acknowledged in both the TRO and TRRO the applicability of change-of-law provisions. (MCI BR at 8-9; TRO ¶¶700-701; TRRO ¶233)

Sprint

Sprint argues that the amendment that is incorporated into the parties' agreement as a result of this proceeding should be limited to incorporating changes resulting from the TRO and TRRO. Furthermore, Sprint maintains that any subsequent changes resulting from FCC orders or other legal action should be incorporated via the change-of-law and/or dispute resolution provisions of the existing interconnection agreement. (Sprint BR at 21)

ANALYSIS

The CLECs in this proceeding argue that Verizon must implement changes resulting from the TRO and TRRO by complying with any change-of-law provisions in the existing interconnection agreements. In contrast, Verizon argues that the implementation of the FCC's transition plan for discontinuing de-listed UNEs set forth in the TRRO does not depend on any particular contract language, including any change-of-law or dispute resolution provisions in existing agreements.²¹ (Verizon BR at 72) However, with respect to this issue, staff believes that the language of both the TRO and TRRO is clear, which directs that any existing interconnection agreements are to be modified during the established transition periods, *including* the completion of any change-of-law processes, and that any changes are to be implemented via the §252 process.(emphasis added)(TRO ¶¶700-704; TRRO ¶143, ¶196, ¶233, and ¶227).

Specifically, the FCC in the TRO expressed that the entire Order is not self-executing, and also recognized that modification of existing agreements to reflect these new rules would not be automatic. Moreover, the FCC declined the request of several of the Bell Operating Companies to preempt the §252 negotiation and arbitration process by unilaterally changing all existing interconnection agreements, and instead, in acknowledging the existence of change-of-law provisions in many existing interconnection agreements, the FCC allowed for negotiation of the new agreement language.(TRO ¶700) Likewise, in the TRRO, the FCC ordered that certain rule changes will be effectuated via the negotiation process as directed by §252. (TRRO ¶233) The FCC instructed that the transition period should be used to modify interconnection agreements, including any change-of-law processes. (TRRO ¶143, ¶196, and ¶227) However, the FCC excepted the de-listing of new adds of mass market switching, which was self-effectuating as of March 11, 2005, and therefore, not subject to the requirement of change-of-law

²¹ Additionally, Verizon claims that CLECs have obstructed the arbitration of a TRO amendment by seeking dismissal of Verizon's arbitration petition on a number of grounds, including the allegation that the arbitration was premature. (EXH 6, p. 152) Dismissal was granted July 12, 2004. Verizon also asserts that pursuant to the Section 252 process mandated by the TRO, state commissions should be able to arbitrate disputes regarding contract language within a 9-month period, which Verizon argues has already passed. (Verizon BR at 74-75) Staff does not believe these arguments are on point to this issue; rather, staff believes the language of the TRO and TRRO, and the existence of change of law provisions in the interconnection agreements are the only relevant issues as to the determination of whether the change of law provisions in existing interconnection agreements must be followed if Verizon seeks to discontinue the provisioning of de-listed UNEs.

negotiations.²²(TRRO ¶227) Additionally, CLECs argue that through issuance of the TRO, USTA II, or TRRO, the FCC did not invalidate the change-of-law provisions in existing interconnection agreements. (MCI BR at 8-9) Staff agrees, with the noted exception.

With respect to any future de-listings, Verizon asserts that changes in law should be implemented without the need for amendments, as most of Verizon's interconnection agreements already permit. (Verizon BR at 72) As discussed more fully in Issue 2, neither the TRO or TRRO require revisions of the change-of-law provisions in the existing interconnection agreements. Staff therefore believes that Verizon's proposal to modify any change-of-law provisions in existing interconnection agreements should be rejected.

CONCLUSION

In conclusion, staff recommends that in order for Verizon to discontinue the provisioning of UNEs, including those UNEs de-listed by either the TRO or TRRO, it should be required to follow any change-of-law and/or dispute resolution provisions in existing interconnection agreements. Both the TRO and TRRO specifically direct that the mandated transition periods are to be used to implement any change-of-law provisions contained in interconnection agreements via the process established in 47 USC §252, and neither the TRO nor TRRO nullify existing change-of-law provisions. However, pursuant to the No-New-Adds Order, staff believes that in discontinuing the provisioning of UNEs, Verizon should not be required to follow any change-of-law and/or dispute resolution provisions in existing interconnection agreements with respect to new adds of local UNE switching.

²² De-listed high capacity loops and transport were also self-effectuating. However, CLECs may continue to order high-capacity loops and dedicated transport by self-certifying eligibility, as set forth in TRRO ¶234.

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

Recommendation: Rate increases and new charges established by the FCC in its final unbundling rules or elsewhere should be implemented in accordance with the TRRO, as detailed in Issue 3 through 5. (Barrett)

Position of the Parties:

Verizon: In general, rate increases and new charges should be implemented through Verizon's issuance of a rate schedule to take effect no earlier than the date the FCC establishes. Verizon will, of course, comply with the *TRRO*'s transitional rate provisions; its Amendment specifically recognizes Verizon's right to use the true-up the *TRRO* specified for application of rate increases for de-listed elements.

AT&T: The *TRRO* provides that the allowable transition rates shall apply starting the effective date of the Order but not be billed until the ICA is amended. A true-up back to the effective date shall apply for the new rates for UNEs no longer subject to unbundling upon the execution of amendments to the relevant interconnection agreements.

CCG: 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 the *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*.

FDN: Agree with Competitive Carrier Group.

MCI: The interconnection agreement between Verizon and MCI provides both parties with a specific process to follow if either wants to modify the agreement in response to any change of law. The rates Verizon charges MCI should not change until an amendment or new agreement changing the rates becomes effective.

Sprint: Rate increases and new charges should be implemented in accordance with the FCC *TRRO* Order.

Staff Analysis:

PARTIES' ARGUMENTS

Verizon

In its brief, Verizon asserts that many of its interconnection agreements with CLECs "give automatic effect to any FCC-ordered rate increases." (Verizon BR at 77) According to Verizon witness Ciamporcero, the question of implementing new rates and charges in the instant proceeding is straightforward. (TR 45) He cites to Section 3.5 of Verizon's proposed Amendment 1, which he summarizes as follows:

Verizon may implement any rate increases or new charges established by the FCC for UNEs or related services by issuing a schedule of such rate changes. The rate increases or new charges would take effect on the date indicated in the schedule, unless the FCC specified a different date. The Amendment recognizes that such rate increases or new charges would be in addition to any approved by this Commission or that Verizon otherwise has the right to implement. (TR 45; Verizon BR at 77)

Witness Ciamporcero states that Verizon has structured its proposed amendments to take effect on the same terms that the FCC may require. (TR 267) The witness asserts that the rate increases prescribed in the FCC's new unbundling rules, including the 12 and 18 month transitional periods for de-listed UNEs, are set forth clearly in the TRRO. (Ciamporcero TR 267) In its brief, Verizon points to three specific citations in the TRRO that entitle Verizon to a true-up to March 11, 2005, the effective date of the TRRO. (BR at 77) He concludes by asserting, "the effective date of the FCC's transition rates and the rates themselves are not negotiable, but are part of the FCC's mandatory transition plan that does not depend on any particular contract language for implementation." (Ciamporcero TR 268)

AT&T

AT&T witness Nurse states that "the FCC repeatedly referred to the process for negotiation and arbitration established by Section 252 [of the Act], including the requirement to amend ICAs to reflect changes occasioned by the FCC's Order." (TR 89) Witness Nurse argues that the TRRO is clear in noting that transitional pricing is applicable for the purposes of this proceeding. (TR 90; AT&T BR at 31-32) Specifically, the witness states:

- 1) Verizon may increase the price for UNE-P by \$1.00 over the UNE-P rate as of June 16, 2004 (the effective date of the TRO), or by \$1.00 over a rate set by the state commission between June 16, 2004 and March 11, 2005 (the effective date of the TRRO);²³
- 2) Verizon may increase the rates for dedicated transport UNEs that it is no longer required to unbundle by either a) 115% of the rate for the element as of June 15, 2004; or b) 115% of a rate set by the state commission between June 16, 2004 and March 11, 2005;
- 3) Verizon may increase the rates for high-capacity loop UNEs that it is no longer required to unbundle by either a) 115% of the rate for the element as of June 15, 2004; or b) 115% of the rate set by a state commission between June 16, 2004 and March 11, 2005. (Nurse TR 90-91)

The witness cites to footnote 630 of the TRRO as evidence that the FCC requires that transitional rates should be trued-up when relevant interconnection agreements are amended. (Nurse TR 91)

²³The Florida Public Service Commission did not set any rates between June 16, 2004 and March 11, 2005. However, the Verizon UNE Order, issued November 15, 2002, did set rates.

CCG

The Competitive Carrier Group panel witnesses Sanders, Cadeaux, and Falvey (CCG Panel) testify that Verizon is attempting to circumvent the “change of law” provisions of its current interconnection agreements. (TR 173) The panel believes the FCC’s unbundling determinations in the TRO and the TRRO are not “self effectuating.” (TR 168, 173) The CCG Panel contends:

Verizon and Florida carriers may implement changes of law arising under the Triennial Review Order and the Triennial Review Remand Order, including without limitation, changes in the rates and new changes, only “as directed by section 252 of the Act,” and consistent with the change of law processes set forth in the carriers’ individual interconnection agreements with Verizon. (TR 173)

The current rates and unbundling obligations should remain unchanged, until such time that the underlying agreements are amended. (CCG Panel TR 173-174) In its brief, the CCG assert that the TRRO’s transitional rates should be implemented, and the Commission should prohibit the imposition of nonrecurring charges for conversions to alternative arrangements. (CCG BR at 29-30)

FDN

FDN did not file testimony in this proceeding, although its brief notes that FDN concurs with the position proffered by the CCG for this issue. (FDN BR at 4)

MCI

MCI’s current agreement with Verizon contains change-of-law provisions that should be followed to address the implementation of the TRRO. (Darnell TR 218; MCI BR at 9-10) Witness Darnell contends Verizon’s proposal to simply implement new rates and charges by issuing a new rate schedule is inappropriate for two reasons: 1) this proposal bypasses the “change of law” provision of the underlying agreement; and 2) the charges on a new rate schedule would be based solely on Verizon’s interpretation of how such charges should be applied. (Darnell TR 206) The witness states that rate changes and new charges should be implemented via negotiation, with arbitration as a fall-back option if negotiations are not productive. (Darnell TR 206; MCI BR at 9) Witness Darnell states that new rates should not be implemented prior to the date a new amendment becomes effective. (TR 206)

Sprint

Sprint did not file testimony in this proceeding, although its brief states that rate increases and new charges should be implemented in accordance with the TRRO. (BR at 16)

ANALYSIS

In its brief, Verizon acknowledges that it will comply with the TRRO's transitional rates and true-up provisions. Staff believes, however, that Verizon's proposal to simply issue a schedule of new rates is misplaced, since ¶233 of the TRRO states:

We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act . . . Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes . . . (TRRO ¶233, footnotes omitted)

The CLECs also unanimously disagree with Verizon's proposal for implementing rate changes. (Darnell TR 218; CCG Panel TR 173; Nurse TR 89) As MCI witness Darnell observed, Verizon's approach appears to be based solely on Verizon's own interpretation of how implementation should unfold. (TR 206)

Staff believes the only rate increases and new charges established by the FCC in its final unbundling rules are the transitional rates for unbundled local switching, dedicated transport UNEs, and high capacity loop UNEs. Staff notes that no party challenges this. The FCC set forth transitional rates for each:

- a) The rate for unbundled local switching should increase by \$1.00 over the existing Commission-approved rate as of June 16, 2004, or by \$1.00 over a Commission-approved rate set between that date and March 11, 2005 (the effective date of the TRRO);
- b) The rate for dedicated transport that is no longer required to be unbundled should increase by 115% over the existing Commission-approved rate as of June 16, 2004, or by the same percentage if a Commission-approved rate was set between that date and March 11, 2005 (the effective date of the TRRO);
- c) The rate increase for high capacity loops that are no longer required to be unbundled should mirror that for dedicated transport. (TRRO ¶¶145, 198, 228)

Staff believes the transitional period is one year, beginning on March 11, 2005, the effective date of the TRRO, and ending on March 10, 2006. In addition, staff believes these rates are subject to true-up back to the March 11, 2005 effective date. Issue 3 through 5 of this recommendation discuss the transition periods, and that analysis will not be repeated here.

CONCLUSION

Rate increases and new charges established by the FCC in its final unbundling rules or elsewhere should be implemented in accordance with the TRRO, as detailed in Issue 3 through 5.

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?

Recommendation: Yes. The TRO changed Verizon's commingling obligations, and therefore staff recommends the interconnection agreements be amended to reflect those changes. The amendment should include the requirement to allow the CLEC to commingle UNEs and UNE combinations with all wholesale services, including switched access, special access and resale services. (K. Kennedy)

Position of the Parties

Verizon: The Amendment should permit commingling to the extent it is required under the FCC's Rules.

AT&T: Yes, the agreements should be amended to affirmatively allow AT&T to commingle UNEs and combinations of UNEs with other services (e.g. switched access and [sic] special access) and to require Verizon to perform the necessary functions to effectuate such commingling upon request. AT&T's proposed amendment has proposed language consistent with the FCC requirements on commingling.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's position on this issue is set forth in detail in Section 4 of Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. Commingling of UNEs and UNE combinations should be provided by Verizon to the extent required by the Federal Unbundling Rules and the FCC TRO Order. Wholesale services available for commingling should include resale services.

Staff Analysis: This issue has significant overlap with issues 13 and 21. Issue 13 relates to the conversions of circuits between wholesale services and UNEs/UNE combinations, including commingled circuits. Issue 21 considers how these different circuits are to be handled in relation to the EEL service eligibility criteria including permitted audits. The Commission's decisions on these other issues could significantly affect how the CLECs are able to use commingled EELs in their business models. The FCC defined commingling as

the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at

wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. (TRO ¶579)

PARTIES' ARGUMENTS

The parties agree that the TRO eliminated the previous restriction on commingling; however, disputes arise over the exact implementation of the rule change. In its brief Verizon agrees that it "will not prohibit commingling of UNEs with wholesale services," but adds the caveat, "to the extent it is required under federal law to permit commingling." (Verizon BR at 78)

The CLECs believe that Verizon is required by the TRO to effectuate commingling with wholesale services. (Nurse TR 92; CCG Panel TR 174; MCI BR at 10) AT&T witness Nurse testifies that it "helps level the playing field for CLECs to compete with Verizon in the local exchange market." (TR 92) The CCG Panel witnesses confirm the TRO's requirements, stating the FCC "affirmatively found that competitive carriers may 'connect, combine or other[wise] attach UNEs and UNE combinations to wholesale services,' including switched or special access services offered under the rates, terms and conditions of an effective tariff." (TR 174; TRO ¶579)

The CCG argues in its brief that "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." (CCG BR at 31) The CCG agrees that the TRRO permits Verizon to discontinue providing certain network elements as §251(c)(3) UNEs at the end of the transition periods, but "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." (CCG BR at 31)

The CCG also shows concern with Verizon's use of the phrase "Qualifying Wholesale Services." They contend that Verizon appears to limit its commingling obligations to "only tariffed access services and non-section 251 services provided by Verizon under a commercial agreement." (CCG BR at 32) The CCG maintains that "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." (CCG BR at 32) Sprint agrees, stating, "Verizon deliberately leaves out resold services in its definition of qualifying wholesale services in direct contravention with the FCC's determination in the TRO." (Sprint BR at 17, referencing TRO ¶584)

Finally, the CCG asserts that the Commission should restrict Verizon from making changes to its SGATs²⁴ and tariffs that would restrict commingling. They assert that Verizon "implies that [it] 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." (CCG BR at 32) The CCG suggests that Verizon should be required to renegotiate the agreement if Verizon's obligations with respect to

²⁴ SGATs only apply to BOCs, and thus are not applicable to Verizon FL.

commingling change due to a change in its tariffs. In its brief FDN states that it agrees with the CCG's position on this issue. (FDN BR at 4)

AT&T witness Nurse raises four additional points of contention; however, only one is applicable here. Witness Nurse maintains that "AT&T's proposed amendment makes clear that . . . as of October 2, 2003, Verizon is required to provide commingling and conversions unencumbered by additional processes or requirements . . . not specified in TRO." (TR 93) The remaining three disputes will be addressed in Issue 21. MCI, in its brief, also addresses this point: "Verizon must permit commingling and conversion *upon the TRO's effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria." (emphasis in original) (MCI BR at 11)

Sprint raises two additional concerns. First, Sprint objects to the EEL eligibility criteria being applied to UNEs that are not EELs or commingled EELs. (Sprint BR at 18) In particular, Sprint argues that "EEL use restrictions only apply to those combinations or commingled arrangements that were ordered in a combined form and does not include combinations or commingled arrangements where Sprint does the actual combining or commingling." (Sprint BR at 18) Sprint is concerned that in cases where the CLEC is collocated at an ILEC serving wire center, uses an UNE loop to serve a customer in that wire center and then self-combines that loop with unbundled or special access transport, the CLEC should not be required to satisfy the EEL eligibility criteria. Sprint argues that this does not represent an EEL or a commingled EEL. (Sprint BR at 19) Second, "Sprint proposes to eliminate the terms . . . that give [Verizon] the right to replace any non-compliant EEL with any service that it chooses." (Sprint BR at 20) Sprint argues that Verizon's proposed amendment does not offer the CLEC the opportunity to convert an EEL circuit found to be non-compliant to a comparable special access circuit, but instead allows "Verizon to select any arrangement, even one not yet developed." (Sprint BR at 20)

Verizon argues, in its post-hearing brief, that the CCG's amendment allows de-listed elements to be commingled with wholesale services, even outside of the transition period. (Verizon BR at 67)

CCG's amendment includes language explicitly requiring Verizon to allow the CLEC to "commingle a Network Element or Combination of *Declassified Network Elements* with wholesale services obtained from Verizon." (CCG Am., §3.7.1.) Verizon has no obligation to provide "declassified" (*i.e.*, de-listed) elements as UNEs (except in accordance with the *TRRO*'s transition plan), so it certainly has no obligation to allow CLECs to commingl[e] or combin[e] [them] with other services. (Verizon BR at 67)

In contrast, as stated above, the CCG argues that Verizon's amendment does not appear to allow commingling at all, even within the transition period. (CCG BR at 31)

Verizon seeks to rebut the CCG's argument regarding changes to its tariffs, arguing that the CLECs' proposed "provision would effectively give the CLECs a veto over every tariff change that might in some way affect any commingled arrangement, no matter how immaterial." (Verizon BR at 80) Verizon believes such a requirement would be anticompetitive and is not

required by the FCC. “If the CLECs believe Verizon is violating the FCC’s commingling requirements as embodied in the parties’ interconnection agreement, then they can seek dispute resolution under the contract.” (Verizon BR at 80)

Verizon witness Ciamporcero addresses the concern AT&T witness Nurse raises regarding the effective date of the TRO and how that might impact the effective date of conversions. Witness Ciamporcero testifies that since commingling was one of the new requirements in the TRO, it should only be implemented through a change-of-law process, such as is taking place here. The witness states, “By blocking implementation of the UNE delistings in the TRO for the past year and a half, the CLECs have also blocked implementation of the elimination of commingling restrictions.” (TR 269) In its brief Verizon explains that the CLECs’ approach could possibly allow retroactive pricing for commingling back to October 2, 2003, the effective date of the TRO. (Verizon BR at 81) Verizon recalls that Issue 21(b)(4), regarding the retroactive pricing of conversions, was withdrawn by the CLECs; “Verizon assumes they will not urge retroactive pricing for commingling, either.” (Verizon BR at 81)

ANALYSIS

In the UNE Remand Order, the FCC required ILECs to provide unbundled access to enhanced extended links (EELs), combinations of “unbundled loop, multiplexing/concentrating equipment, and dedicated transport.” (¶476, ¶480) In the Supplemental Order, the FCC required CLECs to “provide a significant amount of local exchange service . . . to a particular customer” in order to be allowed access to an EEL. (¶9) The FCC added the safe harbor requirements in the Supplemental Order Clarification to define the phrase “a significant amount of local exchange service,” in order to limit the availability of EELs and ensure CLECs are using an EEL for its intended purpose. (¶22) The FCC also clarified that commingling UNEs with special access services was prohibited. (Supplemental Order Clarification ¶28)

In the TRO, the FCC now allows CLECs to convert to EELs, existing loop/transport combinations purchased originally as special access. (TRO ¶586) The TRO also allows commingling. (TRO ¶584) Both EELs and commingled EELs must satisfy the revised EEL eligibility criteria contained in the TRO, which include 911/E911 capability, termination into a collocation arrangement and local number assignment. (TRO ¶593, ¶597)

Staff believes the arguments center around whether or not Verizon is obligated to commingle resold services with UNEs and UNE combinations. The TRO clearly states, “we require that incumbent LECs permit commingling of UNEs and UNE combinations with other wholesale facilities and services, including any services offered for resale pursuant to section 251(c)(4) of the Act.” (TRO ¶584²⁵) Additionally, the TRO clearly requires ILECs to allow CLECs to “connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services (e.g., switched and special access services offered pursuant to tariff).” (TRO ¶579) Verizon witness Ciamporcero agrees that commingling is appropriate with other wholesale

²⁵ Prior to the errata, this sentence stated, “including any network elements unbundled pursuant to section 271 and any services offered for resale pursuant to section 251(c)(4) of the Act.” The portion regarding §271 services was stricken by the FCC in the errata. Staff does not believe this is relevant in this proceeding, since Verizon FL is not a BOC, and therefore not bound by §271.

services, but he does not speak to whether it should or should not be obligated to commingle with services offered for resale. (TR 268) Staff believes the TRO clearly requires commingling with resold services, as well as switched and special access services, and Verizon should be required to comply. Staff emphasizes that the TRO provides examples of wholesale services, but in the definition of commingling, the FCC clearly requires ILECs to “attach UNEs and combinations of UNEs to wholesale services.” (TRO ¶579) This definition provides no modifiers to the kind of wholesale services; therefore, staff affirmatively believes Verizon should be required to commingle all wholesale services with §251 UNEs.

Staff believes there may have been a miscommunication between the CCG and Verizon with regard to the transition period. Staff believes that the TRO and TRRO clearly require commingling of UNEs and UNE combinations with wholesale services. If a network element is currently required to be unbundled, staff believes the FCC intended for it to be allowed to be commingled with a wholesale service, until or unless it is not required to be unbundled. Staff notes the FCC defined commingling in ¶579 of the TRO, referring to the wholesale arrangement, “from an incumbent LEC pursuant to *any method other than unbundling . . .*” (emphasis added) (TRO ¶579) In the TRRO, the FCC notes, “To the extent that a particular dedicated transport facility [or high-capacity loop] no longer subject to unbundling pursuant to section 251(c)(3) has been used as part of an EEL, our existing rules governing conversions and commingling apply.” (TRRO fn 398, fn 517) Consequently, staff believes the rules clearly require Verizon to commingle an UNE with a wholesale arrangement for as long as the former is still an UNE, within the transition period as applicable. If the UNE is de-listed, it should be converted to special access. The CCG and Verizon do not appear to dispute those specific terms, but seem to read the language proposed by each other to mean something different than the FCC intended.

Regarding the provisions proposed by the CCG regarding changes to Verizon’s tariffs, staff agrees with Verizon that “there is no legal basis for imposing” such a requirement. (Verizon BR at 80) The CCG does not suggest one, and staff finds nothing in the TRO or any other order or rule that requires Verizon to renegotiate its current agreements based on changes to its tariffs. Staff believes that any current procedures, including objections to tariff filings and dispute resolution procedures included in the agreement, should be the prevailing methods for handling such concerns. Staff is unsure the impact of including or not including such a provision; however, staff is unable to find any such requirement and therefore is unable to recommend one.

The CCG Panel witnesses testify that Verizon’s obligations regarding commingling were “clarified by the FCC under the *Triennial Review Order*.” (TR 174) AT&T contends that

According to the *TRO*, Verizon must permit commingling and conversion *upon the TRO’s effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria. In light of this new rule, AT&T’s proposed amendment at section 3.7, makes clear that . . . as of October 2, 2003, Verizon is required to provide commingling and conversions unencumbered by additional processes or requirements . . . not specified in the *TRO*. (emphasis in original) (AT&T BR at 34)

AT&T seems to imply that Verizon should retroactively true-up any differences in charges back to the effective date of the TRO. The CCG seems to agree that the change was only a

clarification, not a change in the rules, thereby making a true-up appropriate. However, in its brief the CCG uses the phrase “the FCC’s modified unbundling rules.” (CCG BR at 30) AT&T witness Nurse also refers to the FCC’s “modified” rules. (TR 92) Staff notes that AT&T withdrew two issues, 21(b)(3) and 21(b)(4), that were related to the TRO effective date. (Prehearing Order, pp. 47-48; Prehearing transcript pp.6-8) In particular, Issue 21(b)(4) asked, “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)?” (Prehearing Order p. 48) Staff believes this portion of the issue is not in dispute. To the extent that the parties are not in agreement on this issue, staff refers to the TRO ¶701, which states, “to the extent our decision in this Order changes carriers’ obligations under section 251, we decline . . . [to] override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions.” (TRO ¶701) Thus, staff submits that all commingling should be effective with the effective date of an amendment.

In its brief Sprint contends that the EEL eligibility criteria apply only to EELs and commingled EELs. (Sprint BR at 18) Staff notes that Sprint’s argument first appears in its post-hearing brief, and Verizon does not address this point. To the extent that Verizon disputes Sprint’s contention of applicability of the service eligibility criteria, staff provides this assessment. The FCC stated in ¶592 of the TRO that “[we] do not, however, impose these additional requirements on access to UNEs other than high-capacity EELs. The record does not indicate concern over misuse of voice-grade UNE loops, high-capacity loops, or other UNEs.” (TRO ¶592) The FCC continued in ¶593 that

the service eligibility criteria must be satisfied (1) to convert a special access circuit to a high-capacity EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination (commingled EEL). (TRO ¶593)

Moreover, in footnote 644 of the TRRO, the FCC clearly states, “We also decline to extend our EEL eligibility criteria to stand-alone high-capacity loops, as Verizon and SBC requested.” Staff believes the FCC had no intention of including UNE loops in the requirements for the eligibility criteria, hence the name: “Service Eligibility Criteria for *High-Capacity EELs*.” (emphasis added) (TRO ¶595)

Sprint also asserts that Verizon should not be permitted to convert circuits without the CLEC’s permission, if the circuit is found to be noncompliant with the eligibility criteria. (Sprint BR at 20) Sprint maintains that the language in Verizon’s proposed amendment allows Verizon to unilaterally convert nonconforming circuits to “any service that it chooses.” (Sprint BR at 20) Again, as this claim from Sprint first appears in its post-hearing brief, Verizon does not provide a counter-argument. Staff notes that the only reference in the TRO to such matters is in ¶628, where the FCC mentions, “We further expect . . . the audit process (and importantly, the resolution of any issues arising out of any audits) occurs in a self-executing manner with minimal regulatory involvement.” (TRO ¶628) Whereas the previous dispute was clearly outlined and explained in the TRO, this point is not. Since the TRO and TRRO are silent and the record does not include evidence one way or the other, staff believes this alleged dispute is not ripe for a recommendation.

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CONCLUSION

The TRO changed Verizon's commingling obligations, and therefore staff recommends the interconnection agreements be amended to reflect those changes. The amendment should include the requirement to allow the CLEC to commingle UNEs and UNE combinations with all wholesale services, including switched access, special access and resale services.

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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?

Recommendation: Yes. The interconnection agreements should be amended to reflect that conversions of wholesale services to UNEs/UNE combinations are permissible under the TRO, as of the effective date of the amendment. (K. Kennedy)

Position of the Parties

Verizon: The Amendment should accurately reflect the TRO's provisions relating to conversions, including the requirement to certify compliance with the FCC's service eligibility criteria for new and existing EELs on a circuit-by-circuit basis.

AT&T: Yes. The agreement should be amended to allow AT&T to convert special access and wholesale services to UNEs unless precluded by service eligibility criteria established by the FCC. Conversions should be done as requested by AT&T in the future as well as retroactively as allowed by the TRO. Rates for services converted to UNEs should be effective with the next month's billing following the request.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's position is set forth in detail in Section 5 of its redlined edits to Verizon's proposed interconnection agreement amendment found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes.

Staff Analysis: This issue addresses changes in the requirements for conversions, particularly for EELs, resulting from the TRO. Staff notes that the arguments presented herein are interrelated with those presented by the parties with regard to Issue 12 (commingling) and Issue 21 (EEL service eligibility criteria); thus, discussion of these issues overlap.

PARTIES' ARGUMENTS

The parties generally agree that the TRO requires conversions of circuits; they do not agree on the charges (Issue 21(b)(2)), the self-certification process (Issue 21(a)), or the audit process (Issue 21(c)). These other disputes will be discussed in their respective issues.

The CCG Panel witnesses testify that the "parties' interconnection agreements should be amended to reflect that competitive carriers may convert tariffed services provided by Verizon to UNEs or UNE combinations, provided that the service eligibility criteria established by the FCC . . . are satisfied." (TR 175) AT&T witness Nurse also states

With the FCC's reaffirmation of the elimination of commingling restrictions and the elimination of qualifying services criteria in the *TRRO*, AT&T needs to have Verizon convert high-priced special access and wholesale services to UNEs, unless precluded by service eligibility criteria, so that AT&T can be cost competitive with Verizon. (TR 97)

Witness Nurse continues, "Since conversions are essentially a mere billing change, Verizon should make the conversions to UNEs and UNE rates effective with the next month's billing." (TR 97) AT&T also argues that Verizon has been required to provide such conversions "as of October 2, 2003." (AT&T BR at 38) Similarly, MCI argues, "Verizon must permit commingling and conversion *upon the TRO's effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria." (emphasis in original) (MCI BR at 11)

In its brief FDN states that it agrees with the CCG's position on this issue. (FDN BR at 4)

Verizon witness Ciamporcero "does not object to reflecting the FCC's new conversions requirements in its contracts, and it has done so in its Amendment 2." (TR 271) Verizon notes that the "CLECs have withdrawn the retroactive pricing issue as to conversions." (Verizon BR at 81).

ANALYSIS

Staff notes that Issue 12 includes discussion regarding retroactive pricing and recommends that retroactive pricing back to the effective date of the TRO is not appropriate. Staff agrees with Verizon that since Issue 21(b)(4), regarding retroactive pricing, was withdrawn by the parties, it need not be discussed here. (Verizon BR at 81) To the extent that the parties are not in agreement on this issue, staff refers to the TRO ¶701, which states, "to the extent our decision in this Order changes carriers' obligations under section 251, we decline . . . [to] override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions." (TRO ¶701) Thus, staff submits that all conversions should be effective with the effective date of an amendment.

Staff notes that other disputes regarding conversions are discussed in Issue 21.

CONCLUSION

The interconnection agreements should be amended to reflect that conversions of wholesale services to UNEs/UNE combinations are permissible under the TRO, as of the effective date of the amendment.

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

a) Line splitting;

Recommendation: No. The ICAs should not be amended with respect to line splitting, since line splitting obligations remain as they were prior to the TRO and TRRO. (Moss)

Position of the Parties

Verizon: The amendment should address only changes in unbundling obligations related to the TRO and TRRO (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Yes. The AT&T amendment provisions regarding should [sic] be adopted by the Commission to require Verizon to use a splitter collocated at the central office.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis: Line splitting is a term used "to describe the scenario where one competitive LEC provides narrowband voice service over the low frequency of a loop and a second competitive LEC provides xDSL service over the high frequency portion of that same loop." (TRO ¶251) FCC rules existing prior to issuance of the TRO permitted CLECs to engage in line splitting where one CLEC purchases the whole loop and provides its own splitter collocated in the central office. (TRO ¶251) Under those rules, ILECs were required to modify their OSS to facilitate line splitting. (TRO ¶252) In addition, ILECs were required "to provide access to physical loop test access points on a nondiscriminatory basis for the purpose of loop testing, maintenance, and repair activities, and allowing incumbent LECs to maintain control over the loop and splitter equipment and functions in certain circumstances." (TRO ¶252) The TRO reaffirmed the existing requirements, and the TRRO did not address this issue. (TRO ¶251)

PARTIES' ARGUMENTS

Verizon states that the Commission should not entertain CLEC proposals that relate to unbundling obligations that predate the TRO and believes that this would include line splitting, among others. (Verizon BR at 84) Verizon maintains that existing agreements address non-TRO items. (Verizon BR at 84) They further state that CLEC proposals do not address the operational provisions, including recurring and nonrecurring charges, which have already been negotiated or arbitrated under existing agreements. (Verizon BR at 85) Verizon infers that to replace those sections with the proposed amendments could delete such terms and be a cause for further arbitrations. (Verizon BR at 85) Verizon presents that "the scope of this proceeding is limited to modification of the ICAs in order to effectuate changes in unbundling obligations brought about by the *TRO* and the *TRRO*." (Verizon BR at 85) Therefore, Verizon objects to adding an amendment to address line splitting, noting that the FCC did not impose any new obligations applicable to this issue. (Ciamporcero TR 271; Verizon BR at 85)

Where AT&T seeks access to a copper loop suitable for providing digital subscriber line services (xDSL), AT&T believes that the FCC rules obligate Verizon to condition a copper loop at no cost to AT&T. (AT&T BR at 39) Line conditioning is addressed in Issue 14(G). Additionally, AT&T states that the amendment must include a procedure for Verizon's maintenance, repair and testing in connection with line splitting. (AT&T BR at 39-40)

The CCG notes that the FCC adopted new rules "for purposes of clarity and ensuring regulatory certainty" which the CCG believes constitutes a change-of-law and therefore provides a legitimate basis for changes to the amendment. (CCG BR at 36; see TRO ¶251) The CCG's position is that Verizon must engage in line splitting arrangements where the requesting carrier purchases the entire loop and uses its splitter collocated in Verizon's central office. (CCG BR at 34; AT&T BR at 39) Additionally, the CCG states that Verizon must make all necessary network modifications, including nondiscriminatory access to OSS, for pre-ordering, ordering, provisioning, maintenance and repair, and billing, for loops used in line splitting arrangements. (CCG BR at 34)

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

MCI's proposal allows for line splitting using a Verizon local circuit switch. (EXH 20, p. 6)

In its brief Sprint states that the ICAs should be amended to address each requirement or discontinuation of requirements, but made no specific comment regarding line splitting. (Sprint BR at 21)

Verizon counters by stating that if any specific CLEC's ICA needs to address specific procedures which were not affected by changes in the TRO or TRRO, then Verizon has offered to negotiate appropriate provisions with them. (Verizon BR at 85) Verizon witness Ciamporcero, however, alleges that Verizon's underlying contracts address line splitting. (Ciamporcero TR 271; Verizon BR at 85) Furthermore, Verizon has a standard line splitting

amendment available for any CLEC wishing to add this provision to their existing contract. (Ciamporcero TR 271; Verizon BR at 86)

ANALYSIS

In the UNE Remand Order, the FCC required ILECs to allow CLECs to engage in line splitting and required the ILECs to facilitate such arrangements. In FCC rules existing prior to the issuance of the TRO, CLECs were permitted to engage in line splitting where one CLEC purchases the whole loop and provides its own splitter collocated in the central office. (TRO ¶251) Staff submits that the only change regarding line splitting in the TRO was the clarification the FCC made that extended line splitting to CLECs that were using UNE local switching. In the TRO, the FCC determined that the ILEC's obligations apply regardless of whether the voice service carrier provides its own switching or obtains local switching as an UNE. (47 CFR 51.319(a)(1)(ii)(A)) However, in the TRRO, the FCC discontinued local switching as an UNE. (TRRO ¶199, ¶204) The TRO did allow those CLECs using UNE local switching to engage in line splitting; however, as local switching is no longer an UNE, staff believes that Verizon has no new obligations with respect to line splitting due to the TRO and TRRO.

The claims made by the CCG regarding Verizon's obligations are not new and do not arise from the TRO or the TRRO. Staff notes that these obligations were in place prior to the TRO and should already be addressed in the current interconnection agreements. (CCG BR at 34; TRO ¶251)

AT&T claims that Verizon is obligated to condition a copper loop at no cost to AT&T, in order to provide xDSL services as part of a line splitting arrangement. However, staff observes that AT&T provides no substantive support to these claims. Furthermore, staff notes that line conditioning obligations are addressed in Issue 14(G). However, to the extent that such obligations could be relative to line splitting, staff notes that the FCC determined in ¶¶640-641 of the TRO, that the ILEC is entitled to recover its costs for modifications to its network made at the request of a CLEC. The FCC further stated in its line conditioning rules that if the ILEC seeks compensation for line conditioning from the CLEC, the requesting CLEC has the option to refuse in whole or in part to have the line conditioned. (47 CFR 51.319(a)(1)(iii)) Staff believes this statement recognizes that the ILEC is entitled to compensation for line conditioning.

Concerning AT&T's second point addressing maintenance, repair and testing in connection with a line splitting arrangement, staff notes that Verizon is required to provide maintenance, repair and testing of the whole loop purchased by a CLEC under its 47 USC 201 obligations and those rates, terms and conditions did not change as a result of issuance of the TRO, TRRO or any subsequent related FCC order. Further, the second competitive LEC providing xDSL service over the high frequency portion of that same loop has entered into a business arrangement with Verizon's existing CLEC customer and has no business relationship with Verizon. Staff believes that any further maintenance, repair and testing procedures in connection with the high frequency portion of that same loop in a line splitting arrangement would need to be worked out between the CLEC carriers who are parties to that line splitting arrangement. The FCC requires the ILEC to provide "a requesting telecommunications carrier *that obtains an unbundled copper loop from the incumbent LEC* with the ability to engage in line splitting arrangements." (emphasis added) (47 CFR 51.319(a)(1)(ii)) Staff believes that the

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ILEC is obligated only to the telecommunications carrier that has obtained the unbundled loop from the ILEC, which is the CLEC that has a business relationship with the ILEC.

Staff agrees with Verizon that its obligations with respect to line splitting are unaffected by the TRO and TRRO. (Ciamporcero TR 271; Verizon BR at 85) Moreover, any CLEC wishing to add a line splitting provision to their existing contract may adopt Verizon's standard line splitting amendment. (Ciamporcero TR 271; Verizon BR at 86)

CONCLUSION

Therefore, staff recommends that the ICAs should not be amended with respect to line splitting, since line splitting obligations remain as they were prior to the TRO and TRRO.

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

b) Newly built FTTP loops;

Recommendation: Yes. Staff recommends that the ICAs be amended to place the terms with respect to newly built FTTP loops in a separate section and to reflect that in no event is Verizon obligated to offer unbundled access to FTTP loops (or any segment or functionality thereof) which terminate at an end user's customer premises that previously has not been served by any Verizon loop facility. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the TRO and TRRO (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Yes, the agreement should be amended to address changes arising from the TRO for newly built and overbuilt fiber-to-the-home loops. The Commission should adopt AT&T's contract amendment language contained in Exhibit 13 (ECN-R1) at Paragraphs 3.2.2 through 3.2.2.6 which properly implement the FCC rules regarding Verizon's obligation to provide access to narrowband transmission path in newly built FTTH and certain overbuilt FTTH situations. The acronym FTTH proposed by AT&T is consistent with FCC's use of the terms in its Rule 51.319(a)(3).

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis: Staff notes that "fiber-to-the-premises (FTTP)"²⁶ is a term known in the industry as a loop consisting entirely of fiber optic cable serving an end user's customer premises (i.e.,

²⁶ "FTTP" is defined as a fiber optic system which connects from the carrier network to the user premises. (Newton, Harry, Newton's Telecom Dictionary Updated 15th Expanded Edition. (New York: Miller Freeman, Inc, 1999) (Telecom Dictionary) p. 343)

house or building), while “fiber-to-the-home (FTTH)”²⁷ is a term which is understood in the industry as a loop consisting entirely of fiber optic cable serving a residential end user’s customer premises (i.e., house). “FTTH” is defined by the FCC as “a transmission path consisting entirely of fiber optic cable and associated equipment between the customer’s premises and the central office.” (TRO ¶219) The FCC found that ILECs do not have to offer unbundled access to newly built fiber loops. (TRO ¶273) Newly built fiber loops refers to FTTH loops which terminate at an “end user’s customer premises that previously has not been served by any loop facility.” (47 CFR 51.319(a)(3)(i))

PARTIES’ ARGUMENTS

Verizon’s proposed amendment states that “in no event shall [the CLEC] be entitled to obtain access to an FTTP loop (or any segment or functionality thereof) on an unbundled basis’ where the FTTP loop is newly built to serve a new customer.” (Verizon Amendment 2, p. 3, §3.1; Verizon BR at 86-87) Verizon finds no substantive disagreement with any party concerning its release from unbundling obligations in newly built FTTP scenarios. (Ciamporcero TR at 53-54; Verizon BR at 87; EXH 13, p. 13; EXH 16, pp. 18-19; EXH 19, p. 8)

AT&T states in its brief that Verizon is obligated to provide access to a narrowband transmission path in newly built FTTP situations. (AT&T BR at 40) However, AT&T along with the other CLECs acknowledge that the ICAs must be changed to reflect that the FCC rules specify that Verizon is not obligated to provide CLECs nondiscriminatory access on an unbundled basis to an end user’s customer premises that was previously not served by any Verizon loop, but is now served by a fiber loop. (AT&T BR at 40-41; CCG BR at 34; EXH 13, p. 13; EXH 16, pp. 18-19; EXH 19, p. 8)

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

MCI recommends slight modifications to Verizon’s proposal. Notably, it deletes the reference to Verizon not providing “any . . . functionality” of the newly built FTTP loop, and replaces Verizon’s phrase of “not served by any Verizon loop” with “not served by any Verizon loop other than a FTTP loop.” (EXH 4, p. 48)

In its brief Sprint objects to Verizon’s inclusion of the terms for newly built FTTP loops in the same section of the agreement dealing with overbuilds. (Sprint BR at 21) Since the FCC has separate and distinct rules governing each, Sprint requests that the two be addressed in separate sections. (Sprint BR at 21) However, Sprint also notes that it has no objection to Verizon’s language with respect to this issue. (Sprint BR at 21)

AT&T and the CCG’s disagreement in this issue is with respect to the terminology set forth in Verizon’s proposed amendment. (Ciamporcero TR 272-273) The CCG argues that the acronym “FTTP” is not used by the FCC and cannot be referenced to any order or rule. (CCG BR at 34) AT&T witness Nurse proposes the use of the acronym “FTTH” consistent with the FCC’s use of the term in 47 CFR 51.319(a)(3). (EXH 2, pp. 45-46; TR 98; AT&T BR at 40) AT&T seeks to restrict Verizon’s release from unbundling obligations to new housing developments. (Nurse TR 99) AT&T believes that Verizon’s use of the term “FTTP” will limit Verizon’s unbundling obligations. (Nurse TR 99)

²⁷ “FTTH” is defined as FTTP with a residential application. (Telecom Dictionary p. 343)

Verizon views use of the term “FTTH” by AT&T and the CCG as an attempt to restrict Verizon’s release from unbundling obligations to only those situations where the newly built fiber terminates in a home or residential unit. (Ciamporcero TR 273) Verizon witness Ciamporcero believes that this is an attempt to preserve ILEC unbundling obligations where newly built fiber loops terminate in business units, whereas the rule provides no restriction based on customer classification. (Ciamporcero TR 273)

ANALYSIS

In the TRO, the FCC used the term “FTTH” in its discussion of a loop consisting entirely of fiber optic cable serving an end user’s customer *premises*.” (emphasis added) (TRO ¶211) The FCC then summarized the order in the rules provided in Appendix B to the TRO. On page 13 of Appendix B, “FTTH” was defined as a loop consisting entirely of fiber optic cable serving a *residential* end user’s customer premises and the FCC released the ILEC from unbundling obligations for newly built FTTH loops serving a *residential unit* that previously has not been served by any loop facility. (TRO Appendix B, p. 13) However, in the TRO Errata, the term “residential” was deleted from the definition of “FTTH,” leaving only “end user’s customer premises,” resulting in the term “FTTH,” as used by the FCC, carrying the same meaning as the term “FTTP” as used in the industry. (TRO Errata ¶37) The FCC further replaced “residential unit” with “end user’s customer premises,” thereby firmly establishing that the boundaries of the ILEC’s release from unbundling obligations for newly built FTTH loops extend beyond residential units to an end user’s customer premises, which could be residential or business in nature. (TRO Errata ¶38) Although the Commission is not making a ruling on language at this juncture, in order to provide clarity, staff believes that the use of the term “FTTP” in the ICAs would be more appropriate. “FTTP” is more widely known and understood within the industry as the term used to describe the scenario the FCC describes. If “FTTP” is used, then for ease in cross-referencing, the definition of “FTTP” in the ICAs should denote that it is referred to as “FTTH” in the FCC orders.

Regardless of the terminology used, the FCC released Verizon from all obligations to provide unbundled access to “a transmission path consisting entirely of fiber optic cable and associated equipment between the customer’s premises and the central office” that terminates at an “end user’s customer premises that previously has not been served by any loop facility.” (TRO ¶219; 47 CFR 51.319(a)(3) and (a)(3)(i)) Although AT&T states in its brief that Verizon is obligated to provide access to a narrowband transmission path in newly built FTTP situations, it subsequently admitted that Verizon is released from all unbundling obligations in newly built FTTP. (47 CFR 51.319(a)(3)(i); AT&T BR at 40)

Staff agrees with Sprint that the FCC rules for new builds and overbuilds are separate and distinct. (Sprint BR at 21) Staff notes that new builds are addressed under 47 CFR 51.319(a)(3)(i), while overbuilds are expressed under 47 CFR 51.319(a)(3)(ii), including subsections. Although the Commission is not making a ruling on language at this juncture, staff notes that MCI’s use of the phrase “not served by any Verizon loop other than a FTTP loop,” could be interpreted to mean that the customer premises had to have been previously served with FTTP in order to be defined as a newly built FTTP and eliminated from unbundling obligations. (EXH 4, p. 48) Sprint argues that its proposal “extracts the terms for new builds, and

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incorporates them in a separate section with essentially no change in Verizon's language." (Sprint BR at 21) Staff agrees that the language proposed by Verizon with respect to this issue, which states, "in no event shall [the] CLEC be entitled to obtain access to an FTTP Loop (or any segment or functionality thereof) on an unbundled basis, where the FTTP loop is newly built to serve a new customer," closely tracks the rule on this issue. (Verizon Amendment 2, p. 3, §3.1; Verizon BR at 86-87)

CONCLUSION

In conclusion, staff recommends that the ICAs be amended to place the terms with respect to newly built FTTP loops in a separate section and to reflect that in no event is Verizon obligated to offer unbundled access to FTTP loops (or any segment or functionality thereof) which terminate at an end user's customer premises that previously has not been served by any Verizon loop facility.

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

- c) Overbuilt FTTP loops;

Recommendation: Yes. The ICAs should be amended to address changes arising from the TRO with respect to overbuilt FTTP loops. In particular, the ICAs should incorporate the provisions specifically outlined in 47 CFR 51.319(a)(3)(ii) and 51.319(a)(3)(iii). (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the TRO and TRRO (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Yes, the agreement should be amended to address changes arising from the TRO for newly built and overbuilt fiber-to-the-home loops. The Commission should adopt AT&T's contract amendment language contained in Exhibit 13 (ECN-R1) at Paragraphs 3.2.2 through 3.2.2.6 which properly implement the FCC's rules regarding Verizon's obligation to provide access to narrowband transmission path in newly built FTTH and certain overbuilt FTTH situations. The acronym FTTH proposed by AT&T is consistent with FCC use of the terms in its Rule 51.319(a)(3).

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis: "Fiber-to-the home (FTTH)" is defined by the FCC as "a transmission path consisting entirely of fiber optic cable and associated equipment between the customer's premises and the central office." (TRO ¶219) As discussed in the previous issue, this term is synonymous with "fiber-to-the-premises (FTTP)." (EXH 9, Ex.1, p.11) The FCC found that ILECs do not have to offer unbundled access to newly built FTTP loops.²⁸ (TRO ¶273)

²⁸ Newly built FTTP loops refers to FTTP loops which terminate at an "end user's customer premise that previously has not been served by any loop facility." (47 CFR 51.319(a)(3)(i))

Overbuilt FTTP refers to the scenario in which an ILEC constructs fiber transmission facilities parallel to or in replacement of its existing copper plant. (TRO ¶276)

The FCC's rules on overbuilds specifically state:

(ii) Overbuilds. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

(A) The incumbent LEC must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loop pursuant to paragraph (a)(3)(iii) of this section.

(B) An incumbent LEC that maintains the existing copper loop pursuant to paragraph (a)(3)(ii)(A) of this section need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case the incumbent LEC shall restore the copper loop to serviceable condition upon request.

(C) An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iii) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop on an unbundled basis.

(iii) Retirement of copper loops or copper subloops. Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop, an incumbent LEC must comply with:

(A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and

(B) Any applicable state requirements. (47 CFR 51.319(a)(3)(ii)-(iii))

It appears that the disagreements on this issue are limited.²⁹ (CCG BR at 37; AT&T BR 41; Verizon TR 272-273) Specifically, Sprint raised two concerns in its brief. First, Sprint believes Verizon's proposed language may limit its use of copper or hybrid facilities to voice grade or DS0 services. Second, Sprint believes Verizon, contrary to the FCC's rule, is also trying to limit the amount of bandwidth Sprint would receive in an overbuild situation. (Sprint BR at 21-22)

²⁹ In its brief AT&T notes that the primary disagreement between AT&T's proposed language and Verizon's proposed language is that AT&T uses the acronym "FTTH," while Verizon uses the acronym "FTTP." This disagreement is addressed in Issue 14(b). The CCG states in its brief that "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." (CCG Panel TR 272-73)

PARTIES' ARGUMENTS

In its brief Verizon acknowledges that the FCC eliminated unbundling obligations for new FTTP loops, and held that ILECs must offer unbundled access to FTTP loops for narrowband services only in overbuild situations. In addition, if the ILEC keeps the existing copper loop connected to a particular customer, it does not have to unbundle the narrowband portion of the FTTP loop. (Verizon BR at 87)

The language in Verizon's proposed amendment provides that "if Verizon deploys a FTTP loop to replace a copper loop used for a particular end-user customer, and if Verizon retires that copper loop such that there are no other copper loops available to serve that customer, then Verizon will provide 'nondiscriminatory access on an unbundled basis to a transmission path capable of providing DS0 voice grade service to that end user's customer premises.'" (Verizon BR at 87; Verizon Amendment 2, § 3.1.) Verizon believes its language is consistent with the FCC's determinations and should be adopted. (Verizon BR at 87)

In its brief Sprint argues that the provisions offered by Verizon with respect to overbuilt FTTP loops include two significant errors. First, Sprint contends that Verizon's proposed language appears to limit Sprint's use of copper or hybrid facilities to voice grade or DS0 services. Sprint contends that the FCC's rules on FTTP overbuilds do not include this limitation. (Sprint BR at 21-22)

Second, Sprint argues that "Verizon also refuses to agree with the FCC's unambiguous designation included in the rules that the DS0 voice grade path provided over FTTP overbuild facilities will provide 64 kbps (kilobits per second) of bandwidth."³⁰ (Sprint BR at 23) Sprint contends that Verizon seeks to restrict the amount of bandwidth that Sprint would receive in such situations.

ANALYSIS

Sprint's concerns regarding this issue were first raised in its brief; therefore, this did not allow staff or other parties the opportunity to conduct discovery. As a result, it is not clear to staff specifically what troubles Sprint. Sprint contends that it "is concerned with any implication that its use of copper or hybrid facilities is limited to voice grade or DS0 services and therefore objects to Verizon's language." (Sprint BR at 22) However, this issue does not address hybrid loops. Staff believes Sprint's concerns may be related to copper facilities; if so, staff notes the FCC's overbuild rules provide no restrictions governing the services a CLEC may provide over an unbundled copper loop.

Staff believes the only language in the rule which addresses services in an overbuild situation relates to the provisioning of narrowband services.³¹ Specifically, the TRO states that where the ILEC elects to retire existing copper loops and replace them with FTTH loops, it is required to make available unbundled access to a 64 kbps transmission path over that FTTH loop

³⁰ AT&T and MCI also note that for overbuilds where copper facilities are retired, Verizon is obligated to provide a 64 kbps transmission path capable of voice grade service. (AT&T BR at 41; EXH 4, p. 48)

³¹ Narrowband services include traditional voice, fax, and dial-up modem applications over voice-grade loops. (TRO fn 849)

so that a competitor may provide narrowband service to that end-user customer. (TRO fn 626) In addition, the FCC stated “. . . this is a very limited requirement intended only to ensure continued access to a local loop suitable for providing narrowband services to the mass market in situations where an incumbent LEC has deployed overbuild FTTH and elected to retire the pre-existing copper loops.” (TRO ¶277) Therefore, staff believes that the limit established is “for narrowband services only” in the specific scenario addressed by the FCC in its TRO. (TRO ¶273) Verizon has acknowledged in its brief that ILECs must offer unbundled access to FTTP loops for narrowband services in overbuild situations. Verizon’s proposed amendment and the portion of its brief addressing overbuilds were silent regarding any service limitation on copper loops. Verizon’s proposed amendment language appears to track the FCC’s rules.

Sprint next argued in its brief that Verizon refuses to agree that the DS0 voice grade path provided over FTTP overbuild facilities will provide 64 kbps (kilobits per second) of bandwidth.³² (Sprint BR at 23) Sprint contends that Verizon seeks to restrict the amount of bandwidth that Sprint would receive in such situations. Because details were lacking in Sprint’s brief, staff is unaware of any such refusal by Verizon. Staff believes the FCC’s rule is very clear on this point. The rule states “. . . An incumbent LEC that retires the copper loop . . . shall provide nondiscriminatory access to a 64 kilobits per second transmission path” Accordingly, staff believes this obligation is clear and any refusal to provide a 64 kbps transmission path, as contemplated in the rule, would be a violation of the FCC’s directive. Staff notes that the FCC ruled on the bandwidth capacity of the transmission path and not the bandwidth of the services provided over the path.³³

Staff observes that the TRO changed the ILECs’ obligations governing unbundling in overbuilt FTTP scenarios. Therefore, staff recommends that the ICAs be amended to reflect these changes.

CONCLUSION

The ICAs should be amended to address changes arising from the TRO with respect to overbuilt FTTP loops. In particular, the ICAs should incorporate the provisions specifically outlined in 47 CFR 51.319(a)(3)(ii) and 51.319(a)(3)(iii).

³² AT&T and MCI also note that for overbuilds where copper facilities are retired, Verizon is obligated to provide a 64 kbps transmission path capable of voice grade service. (AT&T BR at 41; EXH 4, p. 48)

³³ Staff believes that although the path may have a transmission capacity of 64kbps, the services provided over the path may have an effective transmission speed less than 64kbps due to overhead, such as signaling, if required; however, there is no record evidence on this point.

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

- d) Access to hybrid loops for the provision of broadband services;

Recommendation: Yes. The ICAs should be amended to reflect that, where DS1 or DS3 impairment has been found to exist, Verizon will provide access to DS1 or DS3 hybrid loops for the provision of broadband services, on an unbundled basis, over existing non-packetized time division multiplexing (TDM) features, functions and capabilities, where available. The TRRO impairment criteria apply equally to hybrid loops. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the *TRO* and *TRRO* (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Yes. CLECs are entitled to unbundled loops regardless of the architecture used to provide loop functionality. AT&T's proposed amendment language will ensure that CLECs will have access to TDM features and capabilities that serve TDM loops.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis:

PARTIES' ARGUMENTS

Verizon acknowledges that it is obligated to provide "unbundled access to the features, functions and capabilities of hybrid loops that are not used to transmit packetized information."³⁴ (Verizon BR at 88; TRO ¶289) Verizon notes that its language

³⁴ Hybrid loops refer to all loops consisting of fiber optic and copper cable, including DLC systems that are fed by fiber optic cable. (TRO ¶221 fn 811) DLC systems digitally encode and aggregate, i.e. "multiplex," the traffic from

provides that, if a CLEC requests a hybrid loop for broadband services, Verizon will provide “the existing time division multiplexing features, functions, and capabilities of that Hybrid Loop (but no features, functions or capabilities used to transmit packetized information) to establish a complete time division multiplexing transmission path between the main distribution frame (or equivalent) in a Verizon wire center servi[ng] an end user to the demarcation point at the end user’s customer premises.”³⁵ (Verizon Amendment 2, pp. 3-4, §3.2.2; Verizon BR at 89)

Verizon further notes that based upon TRO ¶294 only certain DS1³⁶ and DS3³⁷ services are required to be unbundled for access, those which “are [both] non-packetized . . . [and] provided over the circuit switch networks of the incumbent LECs . . . us[ing] . . . a transmission path provided by means of the TDM form of multiplexing over their digital networks.” (Verizon BR at 88)

AT&T presents five points of argument in its brief:

- A CLEC is entitled to an entire hybrid loop. (AT&T BR at 41)
- Access to the hybrid loop is not restricted by the service that a carrier wishes to provide. (AT&T BR at 41)
- Verizon’s unbundling obligations are not eliminated by use of packetized functionality. (AT&T BR at 41-42)
- Architecture does not play a role in unbundling requirements; specifically, Verizon’s unbundling requirements are not eliminated by use of Next-Generation Digital Loop Carrier (NGDLC) architecture. (AT&T BR at 41)
- Electronics should be a part of the loop, “[s]pecifically, the line cards with DSLAM functionality and Optical Concentration Devices (OCDs) perform transmission-oriented functions when placed in next-generation loop architecture.”³⁸ (AT&T BR at 42)

The CCG argues that the amendment must reflect Verizon’s obligation to provide the CLECs nondiscriminatory access to the non-packetized TDM features, functions and capabilities of the hybrid loop. (EXH 16, p. 20; CCG BR at 35) According to the CCG, such access should

subscriber’s loops into DS1 signals or higher for more efficient transmission or extended range beyond that traditionally permitted by copper loops. The analog signals are carried from the customer premises to a remote terminal (RT) where they are converted to digital signals, multiplexed with other signals, and carried, generally over fiber, to the LEC central office. (Line Sharing Order ¶88 fn 202) Packetizing is the function of routing individual data message units based on address or other routing information contained in data units. (UNE Remand Order p. 12)

³⁵ Multiplexing is the process of encoding two or more digital signals or channels onto one through timesharing the media (wire, air, fiber, etc.). The group of signals are then sampled at a rate of speed faster than the combined speed of all of the channels being grouped (multiplexed). (Clayton, Jade, McGraw-Hill Illustrated Telecom Dictionary Fourth Edition. (New York: McGraw-Hill, 2001) pp. 583-584).

³⁶ A DS1 is 1.544 Mbps. (TRO ¶202 fn 634)

³⁷ A DS3 is the equivalent of 28 DS1s. (TRO ¶202 fn 633)

³⁸ A Digital Subscriber Line Access Multiplexer (DSLAM) concentrates traffic through TDM at the central office or remote. (Telecom Dictionary p. 264) A packet switch is usually referred to as a an “optical concentration device” (OCD). (TRO ¶218) An OCD demultiplexes data transmissions from the feeder and distributes the signal to its next destination. (TRO fn 674)

be granted for the provision of broadband services, where impairment has been found to exist. (EXH 16, p. 20; CCG BR at 35) The CCG opined that access is to be made available for DS1 and DS3 capacity. (CCG BR at 35).

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

In its brief Sprint states that Verizon is obligated to provide access to hybrid loops for provision of DS1 and DS3 over TDM facilities, and notes that any elimination of DS1 and DS3 loop unbundling obligations established by the TRRO apply equally to hybrid loops. (Sprint BR at 23)

Verizon counters by pointing out that in the TRO, the FCC declined to require ILECs to unbundle the next-generation network or the packetized capabilities of their hybrid loops. (Verizon BR at 88; TRO ¶288) Furthermore, Verizon added that the FCC does not require ILECs to provide “unbundled access to any electronics or equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities.” (Verizon BR at 88; TRO ¶288) Verizon points out that the CLEC proposals are not consistent with federal law in that they omit the FCC’s limitation that “Verizon is required to unbundle only *existing* TDM features.” (emphasis in original) (Verizon BR at 89) Verizon bases its position on the FTTC Recon Order ¶¶19-20, where the FCC “clarified that incumbent LECs are not required to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability.” (Verizon BR at 89)

ANALYSIS

Staff notes that the FCC’s rule for the provision of broadband services over a hybrid loop states:

When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of broadband services, an incumbent LEC shall provide the requesting carrier with nondiscriminatory access to the TDM features, functions, and capabilities of the hybrid loop, including DS1 or DS3 capacity (where impairment has been found to exist) . . . This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information. (47 CFR 51.319(a)(2)(ii))

Although AT&T believes that it is entitled to an entire hybrid loop, staff notes that the rule limits access to the TDM features, functions, and capabilities of the hybrid loop. (AT&T BR at 41; 47 CFR 51.319(a)(2)(ii)) Staff also notes that the phrase “entire hybrid loop” was used in the rule regarding narrowband service and is further addressed in Issue 14(E).

AT&T also believes that access to the hybrid loop is not restricted by the service that a carrier wishes to provide. (AT&T BR at 41) However, staff notes that the rule grants access to the hybrid loop “when a requesting telecommunications carrier seeks access to a hybrid loop for

the provision of broadband services.” (47 CFR 51.319(a)(2)(ii)) Broadband³⁹ services are those greater than narrowband. Staff believes that the rule limits access by the service that the CLEC seeks to provide. The FCC supports this conclusion in the TRO, where it declared that ILECs “must continue to provide unbundled access to the TDM features, functions, and capabilities of their hybrid loops,” thereby allowing CLECs to provide “high capacity services like DS1 and DS3.” (TRO ¶200 fn 627)

AT&T discusses Issue 14(D) and 14(E) together in its brief; therefore, staff addresses AT&T’s remaining points of argument entirely in Issue 14(E) because the analysis would apply equally to narrowband and broadband applications. Staff will address the remaining points presented by the CCG and Sprint.

The language proposed by the CCG and Sprint appears to track the language of the rule. Thus, staff agrees with Sprint’s position that Verizon is obligated to provide access to hybrid loops for provision of DS1 and DS3 over TDM facilities, with any elimination of DS1 and DS3 loop unbundling obligations established by the TRRO applying equally to hybrid loops. (Sprint BR at 23) Verizon does not dispute this but adds that those TDM facilities must be both existing and nonpacketized, which staff notes also concurs with the rule. (Verizon BR at 88-89; 47 CFR 51.319(a)(2)(ii); FTTC Recon Order ¶¶19-20; TRRO ¶18 fn 49)

The CCG, Sprint and Verizon acknowledge there is limited access to DS1 and DS3 loops for the provision of broadband services due to impairment restrictions. In particular, the FCC does not require Verizon to unbundle high-capacity loops, in this case DS1s and DS3s, based on: exclusive use, geographic market, quantity and type. (Nurse TR 73; See Staff Analysis Issue 4) Notably, this would exclude the following from unbundling obligations:

- Exclusive use. Where used exclusively for the provision of mobile wireless services or interexchange services. (47 CFR 51.309(b); Nurse TR 73)
- Geographic Market. DS1 loops in wire centers containing 60,000 or more business lines and 4 or more fiber-based collocators and DS3 loops in wire centers containing both 38,000 business lines and 4 or more fiber-based collocators. (TRRO ¶146, ¶174; Nurse TR 72)
- Quantity and type. More than one DS3 and 10 DS1s per CLEC per building. (TRRO ¶177, ¶179, ¶181; Nurse TR 73)

CONCLUSION

The ICAs should be amended to reflect that, where DS1 or DS3 impairment has been found to exist, Verizon will provide access to DS1 or DS3 hybrid loops for the provision of broadband services, on an unbundled basis, over existing non-packetized time division multiplexing (TDM) features, functions and capabilities, where available. The TRRO impairment criteria apply equally to hybrid loops.

³⁹ Broadband is a term used to distinguish from narrowband. Broadband consists of a bandwidth exceeding that of a DS0. (Telecomterms.com: A glossary of Telecom terms and Acronyms for the Telecom Industry, viewed 25 July 2005, < <http://myrtle.forest.net/igigroup/fmpro>>)

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

- e) Access to hybrid loops for the provision of narrowband services;

Recommendation: Yes. The ICAs should be amended to reflect that when a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services, Verizon may either:

- (A) Provide nondiscriminatory access, on an unbundled basis, to a voice-grade (DS0 capacity) transmission path from the central office to the customer's premises over the hybrid loop, using existing non-packetized time division multiplexing technology; or
- (B) Provide nondiscriminatory access, on an unbundled basis, to a spare homerun copper loop serving an end user's premises. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the TRO and TRRO (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Yes. CLECs are entitled to unbundled loops regardless of the architecture used to provide loop functionality. AT&T's proposed amendment language will ensure that CLECs will have access to TDM features and capabilities that serve TDM Loops.

CCG: 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 homerun 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis:

PARTIES' ARGUMENTS

In its brief Verizon notes that "the FCC limited the ILECs' unbundling obligations to 'features, functions and capabilities of hybrid loops that are *not* used to transmit packetized information.'" (emphasis in brief) (Verizon BR at 89; TRO ¶289) In addition, Verizon points

out that it has two options when requesting carriers seek access to hybrid loops for the provision of narrowband services. The first is to provide the service over the hybrid loop using non-packetized time division multiplexing (TDM). The second is to provide a homerun copper loop. (Verizon BR at 90; TRO ¶296)

As noted in the previous issue, AT&T presents five points of argument in its brief:

- A CLEC is entitled to an entire hybrid loop. (AT&T BR at 41)
- Access to the hybrid loop is not restricted by the service that a carrier wishes to provide. (AT&T BR at 41)
- Verizon's unbundling obligations are not eliminated by use of packetized functionality. (AT&T BR at 41-42)
- Architecture does not play a role in unbundling requirements; specifically, Verizon's unbundling requirements are not eliminated by use of Next-Generation Digital Loop Carrier (NGDLC) architecture. (AT&T BR at 41)
- Electronics should be a part of the loop, "[s]pecifically, the line cards with DSLAM functionality and Optical Concentration Devices (OCDs) perform transmission-oriented functions when placed in next-generation loop architecture."⁴⁰ (AT&T BR at 42)

The CCG states in its brief that upon request by a CLEC, for provisioning narrowband services, Verizon "must" provide nondiscriminatory access to the hybrid loop using TDM technology or to a spare copper loop on an unbundled basis. (CCG BR at 35) MCI agrees. (EXH 4, pp. 48-49) Both AT&T and the CCG state that Verizon must perform routine network modifications necessary to make a facility available. (EXH 13, pp. 13-14; EXH 16, pp. 20-21; CCG BR at 35) The CCG also states that it expressly incorporates §1.319(a)(2) of the FCC rules as proposed language. (CCG BR at 37)

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

In its brief Sprint states that the ICAs should be amended to address each requirement or discontinuation of requirements. Sprint acknowledged no disagreement with Verizon with respect to this issue, 14(E). (Sprint BR at 21) In its brief in discussion of Issue 14(C), Sprint contends that it "is concerned with any implication that its use of copper or hybrid facilities is limited to voice grade or DS0 services and therefore objects to Verizon's language." (Sprint BR at 22)

Verizon counters stating that "the CLECs' language would *require* Verizon to provide a copper loop at the CLECs' discretion." (emphasis in original) (Verizon BR at 90; EXH 13, pp. 13-14; EXH 16, pp. 20-21) Verizon emphasizes that the TRO places that discretion squarely

⁴⁰ A Digital Subscriber Line Access Multiplexer (DSLAM) concentrates traffic through TDM at the central office or remote. (Telecom Dictionary p. 264) Optical Concentration Devices (OCDs) perform routing and aggregation of packetized data. (Order No. FCC DA 01-1326 issued May 31, 2001, CC Docket No. 98-184 GTE CORPORATION, And BELL ATLANTIC CORPORATION, For Consent to Transfer Control of Domestic And International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License, ¶ 2.)

with the ILEC. (Verizon BR at 90) Verizon also notes that AT&T's and the CCG's use of the phrase "entire hybrid loop capable of voice grade service" in their proposals is misleading because the CLEC is only entitled to a voice-grade transmission path, not the "entire" loop. (Verizon BR at 90)

ANALYSIS

The FCC states that the ILECs "must continue to provide unbundled access to the TDM features, functions, and capabilities of their hybrid loops," thereby allowing CLECs to provide "both traditional narrowband services (e.g., voice, fax, dial-up Internet access) and high-capacity services like DS1 and DS3 circuits." (TRO ¶200 fn 627) The provision of high-capacity services is discussed in Issue 4 and high-capacity service over hybrid loops is further discussed in Issue 14(D). This issue is limited to the provision of narrowband services⁴¹ over hybrid loops.⁴²

The FCC rules for unbundling hybrid loops for narrowband services state:

(iii) *Narrowband services.* When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services, the incumbent LEC may either:

- (A) Provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology; or
- (B) Provide nondiscriminatory access to a spare home-run copper loop serving that customer on an unbundled basis. (47 CFR 51.319(a)(2)(iii))

AT&T proposes that a CLEC is entitled to an entire hybrid loop. (AT&T BR at 41) Staff understands AT&T's interpretation of the phrase "access, on an unbundled basis, to an entire hybrid loop" as affording the CLEC access to the entire functionality of the loop. This becomes the basis for AT&T's further conclusions that the CLEC should be afforded access to the packetized functions of the hybrid loop. However, staff believes that the FCC limits access to the functionality of the loop to that portion "capable of voice-grade service (i.e., equivalent to DS0 capability), using time division multiplexing technology." (47 CFR 51.319(a)(2)(iii)(A)) The FCC further states in ¶296 of the TRO:

With respect to providing unbundled access to hybrid loops for a requesting carrier to provide narrowband service, we require incumbent LECs to provide an entire non-packetized transmission path capable of voice-grade service (i.e., a

⁴¹ "Narrowband services include traditional voice, fax, and dial-up modem applications over voice-grade loops." (TRO ¶296 fn 849)

⁴² Hybrid loops refer to all loops consisting of fiber optic and copper cable, including DLC systems that are fed by fiber optic cable. (TRO ¶221 fn 811) DLC systems digitally encode and aggregate, i.e. "multiplex," the traffic from subscriber's loops into DS1 signals or higher for more efficient transmission or extended range beyond that traditionally permitted by copper loops. The analog signals are carried from the customer premises to a remote terminal (RT) where they are converted to digital signals, multiplexed with other signals, and carried, generally over fiber, to the LEC central office. (Line Sharing Order ¶88 fn 202)

circuit equivalent to a DS0 circuit) between the central office and customer's premises. (TRO ¶296)

Staff believes that based on paragraph 296 of the TRO, the phrase "entire hybrid loop" does not refer to the actual physical copper and fiber components of the hybrid loop, nor does it refer to unbundling all of the functionalities that the fiber/copper loop can provide (e.g., broadband and narrowband). Instead, staff believes this phrase implies enabling a signal to transverse the entire distance between the central office and the customer's premises. Therefore, staff believes that the FCC intended the phrase "entire hybrid loop" to mean "the entire distance of the hybrid loop." In conclusion, staff believes the rule refers to a non-packetized TDM-based narrowband (DS0) path from the central office to the customer premises.

Staff also believes that AT&T's position that CLECs are entitled to an unbundled loop regardless of the telecommunications service that a carrier wishes to provide is in direct opposition to the TRO. (AT&T BR at 41) Whereas in general there are no limits to the services a CLEC may provide over a UNE, staff believes the FCC took a different position when dealing with FTTP or hybrid loops. The phrase "[w]hen a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services . . ." in 47 CFR 51.319(a)(2)(iii), indicates a limitation for which the requesting carrier is afforded access, that limitation being "for the provision of narrowband services." The FCC has authority to restrict the availability of UNEs to particular services, even where there is a showing that denial of the requested UNE would impair the competitor's ability to provide the service. (TRO ¶34) In making its unbundling determination for hybrid loops, the FCC considered both impairment and, through its §251(d)(2) "at a minimum" authority, additional factors. (TRO ¶286) In promotion of its §706 goals, the FCC established unbundling rules for hybrid loops that "vary depending upon whether a competitive LEC seeks access for the provision of broadband or narrowband services." (TRO ¶287) Therefore, staff believes that the unbundling rules for hybrid loops are service-specific, and the telecommunications service that a carrier wishes to provide is a factor influencing available unbundling.

Regarding AT&T's issues with packetization, architecture, and electronics, staff believes this may be opposition to the TRO. The FCC drew a bright line "between legacy technology and newer technology," clearly delineating between the "technical characteristics of packet-switched equipment versus TDM-based equipment" and rendering packet-based equipment free from unbundling requirements. (TRO ¶293; See also TRO ¶7, ¶213, ¶288) The FCC noted that "we limit the unbundling obligations for narrowband services to the TDM-based features, functions, and capabilities of these hybrid loops." (TRO ¶296) Moreover, the FCC "clarified that incumbent LECs are not required to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability." (FTTC Recon Order ¶¶19-20; TRRO ¶18 fn 49)

Staff notes that unbundling the TDM network is architecture-specific (i.e., elimination of next-generation network capabilities of their hybrid loops). (TRO ¶200, ¶272, ¶286, ¶288, ¶¶290-291) The FCC clearly stated that it "relieve[d] incumbent LECs of unbundling requirements for the next-generation network capabilities of their hybrid loops." (TRO ¶286) In addition, regarding electronics, the FCC stated that:

the rules we adopt herein do not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities to the mass market. (TRO ¶288)

Therefore, staff believes that the ILEC is not obligated to unbundle any portion of their packetized network, including next-generation architecture or associated electronics or line cards.

Staff notes that the FCC rules state that the “incumbent LEC may . . . provide nondiscriminatory access to a spare home-run copper loop serving that customer on an unbundled basis.” (47 CFR 51.319(a)(2)(iii)(B)) Furthermore, in the TRO the FCC expressed that the “[i]ncumbent LEC may elect, instead, to provide a homerun copper loop rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC has not removed such loop facilities.” (TRO ¶296) Staff believes that the use of the word “may” gives the option of using a homerun copper loop to the ILEC. (47 CFR 51.319(a)(2)(iii)(B); TRO ¶296) The CCG takes the position that 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. Staff reiterates that the option of whether to provide a copper facility or a TDM-based facility belongs to the ILEC. Staff points out that the rule states that the ILEC has the option to provide “a *spare* home-run copper loop.” (emphasis added) (47 CFR 51.319(a)(2)(iii)(B)) Therefore, in making its determination of which facility to use, staff believes that the ILEC would need to consider the economics of performing possible routine modifications in order to create a spare copper facility versus providing the service via a TDM-based facility.

Sprint expresses that hybrid facilities are not limited to voice grade or DS0 services and therefore objected to Verizon’s language. (Sprint BR at 22) Staff disagrees, noting that the rule states that the ILEC may provide nondiscriminatory access, on an unbundled basis, to a hybrid loop “when a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services.” (47 CFR 51.319(a)(2)(iii), (iii)(A)) The FCC declared that ILECs “must continue to provide unbundled access to the TDM features, functions, and capabilities of their hybrid loops,” thereby allowing CLECs to provide “traditional narrowband services (e.g., voice, fax, dial-up Internet access).” (TRO ¶200 fn 627) The FCC defines narrowband services as DS0 voice-grade services. (TRO ¶197)

CONCLUSION

Staff recommends the ICAs be amended to address changes arising from the TRO with respect to access to hybrid loops for the provision of narrowband services. The ICAs should be amended to reflect that when a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services, Verizon may either:

(A) Provide nondiscriminatory access, on an unbundled basis, to a voice-grade (DS0 capacity) transmission path from the central office to the customer’s premises over the hybrid loop, using existing non-packetized time division multiplexing technology; or

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(B) Provide nondiscriminatory access, on an unbundled basis, to a spare homerun copper loop serving an end user's premises.

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

- f) Retirement of copper loops;

Recommendation: No. Staff recommends that the ICAs not be amended with respect to the retirement of copper loops. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the TRO and TRRO (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Yes. The TRO requires Verizon to follow network modification and notification requirements to insure that copper loops are otherwise available for CLECs to serve customers. AT&T's amendment appropriately addresses these issues and should be adopted by the Commission.

CCG: 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 copper loop facilities are retired.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis: The parties appear to agree that when a copper loop is retired and replaced with a fiber-to-the-premises (FTTP) loop, the ILEC must disclose this retirement consistent with the provisions of §251(c)(5) of the Act, 47 CFR 51.325 - 51.335, and any state requirements. (Verizon BR at 91; EXH 13, p. 12; EXH 16, p. 19; EXH 20, p. 7) Verizon agrees that the FCC allows parties to file objections to the ILEC's notice of retirement. (Verizon BR at 90; TRO ¶282) The parties disagree on whether additional terms beyond those expressed in the existing ICAs are necessary to implement the FCC's loop retirement rules.

PARTIES' ARGUMENTS

Verizon notes that the FCC's requirements are already reflected in its existing ICAs which provide:

Notice of Network Changes

If a Party makes a change in the information necessary for the transmission and routing of services using that Party's facilities or network, or any other change in its facilities or network that will materially affect the interoperability of its facilities or network with the other Party's facilities or network, the Party making the change shall publish notice of change at least ninety (90) days in advance of such change, and shall use reasonable efforts, as commercially practicable, to publish such notice at least one hundred eighty (180) days in advance of the change; provided, however, that if an earlier publication of notice of a change is required by Applicable Law (including, but not limited to, 47 CFR 51.325 through 51.335) notice shall be given at the time required by Applicable Law. (EXH 6, p. 120; Verizon BR at 91)

Verizon argues that the proposals of AT&T and the CCG require Verizon to provide 180 days notice before retiring facilities. (Verizon BR at 91; See EXH 13, p. 13, §3.2.2.7; EXH 16, p. 19, §3.3.4.6) Verizon maintains that the FCC does not mandate this time period. (Verizon BR at 91) Instead, the FCC obligates an ILEC to provide notice to the affected CLEC and file a certificate with the FCC. (Verizon BR at 91; 47 CFR 51.333 (a)(1) and (a)(2)) The FCC will then issue a public notice, to which objections may be filed within 10 days. (Verizon BR at 91; 47 CFR 51.333 (b)(1)) On the 90th day after the release of the FCC's public notice, the notice is deemed approved. (Verizon BR at 91; See 47 CFR 51.333 (b)(ii) & (f)) Verizon claims that "such objections are likewise deemed denied if they have not been ruled upon within the 90-day period." (Verizon BR at 91)

Furthermore, Verizon states that AT&T and the CCG's proposals "contain additional onerous and unreasonable requirements that are not in the FCC's regulations or that would affirmatively violate the FCC's regulations, and that would prevent Verizon from managing its own network." (Verizon BR at 92) The following are examples of the CLECs' proposals.

- States are to conduct a review of all proposed copper loop retirements and no modifications may be made until the state review is completed. (EXH 13, p. 12)
- Copper loop retirements are prohibited during a Commission review of retirement rules. (EXH 13, pp. 12-13; EXH 16, p. 19)
- Any changes to the loop without a notice of intent are prohibited. (EXH 13, p. 13)
- Any changes in the loop without Verizon demonstrating in writing that the proposed change will not reduce transmission capability are prohibited. (EXH 13, p. 13; EXH 16, p. 19)
- Migrating loops to another architecture without CLEC approval is prohibited. (EXH 13, p. 13; EXH 16, p. 20)
- CLEC is to approve retirement of a copper loop. (Verizon BR at 91; EXH 16, p. 20, EXH 6, pp. 121-123, EXH 7, pp. 143-144)
- The price of any loops used by the CLEC are not to be increased. (EXH 13, p. 13)
- Retirement of a loop is prohibited unless an alternative with equivalent bandwidth and compatible protocol can be provided at no greater charge than had the service remained on the copper loop. (EXH 16, p. 20)

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Verizon argues that FCC regulations bar such requirements. (TRO ¶281; Verizon BR at 91) Further, Verizon contends that both AT&T and the CCG include “copper feeder facilities” in their retirement provisions. (Verizon BR at 91; See EXH 16, p. 19, §3.3.4.6; EXH 13, p. 13, §3.2.2.6) Verizon notes that the FCC specifically held that its regulations do not apply to “copper feeder plant.” (Verizon BR at 91; See TRO ¶283 fn 829)

In its brief AT&T states that while the TRO permits the retirement of copper facilities in overbuild situations, there are certain network modification disclosure requirements. (AT&T BR at 43; See TRO ¶271, ¶¶281-284) AT&T believes that Verizon’s proposal is inadequate and proposes requirements above and beyond those stipulated in 47 CFR 51.325 - 51.335, such as, but not limited to, a 180-day advance notice of proposed changes, in addition to state review and CLEC approval prior to proceeding with network modifications. (AT&T BR at 43; EXH 7, pp. 143-144) AT&T argues that the FCC does not preempt state authority. (TRO ¶284) Therefore, AT&T concludes that the state may authorize more extensive network modification disclosure conditions. (EXH 7, p. 143)

The CCG agrees with AT&T that the amendment must include additional network disclosure requirements for the retirement of copper loop facilities. (CCG BR at 35) AT&T and the CCG also request that Verizon provide nondiscriminatory access to a 64 Kbps transmission path over fiber-to-the-home (FTTH) loops on an unbundled basis, where copper loop facilities are retired. (CCG BR at 35; EXH 13, p. 12; EXH 16, p. 19)

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

MCI states that Verizon shall comply with the network modification disclosure requirements set forth in §251(c)(5) of the Act and 47 CFR 51.325- 51.335 of the FCC’s rules. (EXH 20, p. 7)

In its brief Sprint states that the ICAs should be amended to address each requirement or discontinuation of requirements, yet made no specific comment regarding the retirement of copper loops. (Sprint BR at 21)

ANALYSIS

Staff notes that although the parties discuss this issue extensively, the focus remains on what obligations Verizon has regarding disclosure of retirement of copper loops. The only change to the rules regarding disclosure requirements resulting from the TRO was with regard to application. Specifically, the change addressed the scenario when action taken by the ILEC “will result in the retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops . . .” (47 CFR 51.325(a)(4)) Staff interprets this to mean that when the ILEC places overbuild FTTH (or FTTP) and retires the copper loops or subloops, then the existing disclosure requirements would apply. Staff understands that this rule does not require the provision of disclosure requirements for the retirement of copper loops or subloops in general.

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The FCC declined to impose a blanket prohibition on the ILEC's ability to retire any copper loops or subloops they have replaced with FTTH (or FTTP) loops. (TRO ¶281) The FCC also found it unnecessary to require affirmative regulatory approval prior to the retirement of any copper loop facilities, stating that the FCC's existing rules provided adequate safeguards. (TRO ¶281)

Staff notes that the AT&T and the CCG proposals are not requirements established by the FCC. As such, staff believes that they should not be included in the agreement. Although the state commission is not preempted from establishing additional requirements, staff believes that it would be premature to do so at this time.

Staff notes that Verizon's existing interconnection agreements require network modification disclosure requirements when there are "any other change in its facilities or network that will materially affect the interoperability;" this would include the retirement of copper loops replaced by FTTP. (EXH 6, p. 120; Verizon BR at 91) As such, staff believes that Verizon's existing ICAs reflect the FCC's requirements, and no party has presented any evidence indicating otherwise.

CONCLUSION

Staff recommends that the ICAs not be amended with respect to the retirement of copper loops.

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

g) Line conditioning;

Recommendation: Yes. Staff recommends that the ICAs be amended to reflect Verizon's obligation to perform line conditioning to ensure xDSL delivery at least equal in quality to that which Verizon provides to itself. However, staff also recommends that the line conditioning rates included in the existing ICAs need not be amended. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the TRO and TRRO (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Under federal law, Verizon may not impose a specific charge for line conditioning in addition to the TELRIC charges that CLECs pay for an xDSL loop. The Commission should adopt AT&T's amendment to require Verizon to provide line conditioning at no additional cost.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis: In the UNE Remand Order, the FCC concluded ILECs must provide access on an unbundled basis, to xDSL-capable⁴³ stand-alone copper loops because CLECs are impaired without such loops. (UNE Remand Order ¶162; TRO ¶642; Nurse TR 100) Such access may require ILECs to condition the local loop. Line conditioning involves removing any device, such

⁴³ "xDSL" service refers to advanced services that use digital subscriber line technology to send signals over copper wires to packet switches. xDSL services include ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), UDSL (universal digital subscriber line), VDSL (very-high speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line). The small "x" before the letters "DSL" signifies a reference to DSL as a generic transmission technology, as opposed to a specific DSL "flavor." (Line Sharing Order ¶4)

as, but not limited to, bridged taps⁴⁴ and load coils,⁴⁵ that could diminish the capability of the loop or subloop to deliver xDSL services. (47 CFR 51.319(a)(1)(iii)(A); Nurse TR 100) The parties do not appear to dispute that line conditioning involves removing devices from the loop, but appear to disagree on under what rates, terms and conditions the ILEC must provide line conditioning. (Nurse TR 100)

PARTIES' ARGUMENTS

Verizon witness Ciamporcero states that there are no new obligations concerning line conditioning. (TR 277-278) He testifies that the contracts already address current line conditioning requirements; therefore, new language is unnecessary. (Ciamporcero TR 277-278; Verizon BR at 97-98) Verizon recommends that this Commission should not entertain CLEC proposals that relate to unbundling obligations that predate the TRO and argues that this would include line conditioning, among others. (Verizon BR at 84) Furthermore, Verizon states that existing agreements already address non-TRO items, and that language needs to be preserved. (Verizon BR at 84) Additionally, Verizon emphasizes that CLEC proposals do not address the operational provisions, including recurring and nonrecurring charges, which have already been negotiated or arbitrated under existing agreements. (Verizon BR at 85) In its brief Verizon argues that the scope of this proceeding is "limited to modification of the ICAs in order to effectuate changes in unbundling obligations brought about by the *TRO* and the *TRRO*." (Verizon BR at 85)

Verizon states that line conditioning is not a new obligation; moreover, the CLECs do not identify any changes made in the TRO that impact Verizon's line conditioning obligations. (Verizon BR at 92) Verizon charges rates already approved by the Commission in its November 2002 UNE Rate-setting Order, and Verizon is not requesting any changes to those rates. (EXH 5, pp. 55-56; EXH 6, pp. 105-14; Verizon BR at 92-93)

AT&T's proposed language requires that line conditioning be performed at no additional cost. (EXH 13, p. 15, §3.2.11; AT&T BR at 43) AT&T believes that Verizon may not impose a charge for line conditioning above the TELRIC-based nonrecurring and recurring charges that CLECs pay for an xDSL-capable unbundled loop, citing 47 CFR 51.319(a)(1)(iii)(B), which states that an ILEC is required to:

recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in §51.507(e). (Nurse TR 101; AT&T BR at 43 and 45)

⁴⁴ Bridged tap is an offshoot of a cable pair that allows the flexibility of the loop to terminate in more than one location. Bridged taps are acceptable with slower speed digital circuits but not with high-speed digital circuits, e.g. DS1. (Newton, Harry, Newton's Telecom Dictionary Updated 15th Expanded Edition. (New York: Miller Freeman, Inc, 1999) (Telecom Dictionary) p. 113, p. 463)

⁴⁵ A load coil is a device that "modif[ies] the loss versus the frequency response of the pair so it is nearly constant across the voice band . . . However, loss above the voice band due to load coils increases rapidly. ISDN and other digital circuits operate above the voice band." (Telecom Dictionary p. 463)

The CCG believes that it is appropriate to change contract language concerning line conditioning obligations for clarification within the context of the TRO. (CCG BR at 38) The CCG states that Verizon must perform line conditioning to ensure that a copper loop or subloop is suitable for providing xDSL services to a requesting carrier's end user. (CCG BR at 35) Further, to the extent technically feasible, Verizon is required to test and report troubles for all features, functions and capabilities of conditioned copper lines. (CCG BR at 35) The CCG insists that the amendment must include the processes to address any claims by Verizon that line conditioning will significantly degrade the voiceband that it currently provides. (CCG BR at 35)

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

MCI proposes that Verizon should condition "a copper loop, including, without limitation, the high frequency portion of a copper loop" (HFPL).⁴⁶ (EXH 4, p. 7)

Verizon understood the phrase "without limitation" as used by MCI to mean that MCI may obtain unconditional unbundled access to the HFPL. (EXH 6, p. 22) Verizon counters that this provision is unlawful because the TRO eliminated unbundling of the HFPL. (EXH 6, p. 22)

In its brief Sprint states that the ICAs should be amended to address each requirement or discontinuation of requirements, yet made no specific comment regarding line conditioning. (Sprint BR at 21)

ANALYSIS

AT&T cites to a paragraph within the line conditioning section of the FCC's rule for a definition of line conditioning.

Line conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders. (47 CFR 51.319(a)(1)(iii)(A); Nurse TR 100)

Staff believes that this definition is incomplete. Staff observes that the parties do not dispute that line conditioning involves the removal of disruptive devices; therefore, the removal of devices can certainly be included in the definition. They disagree on whether the TRO imposes limiting standards on line conditioning. (Nurse TR 101; EXH 7, pp. 95-116; EXH 8, pp. 6-46) Staff observes that the definition of line conditioning has evolved with the issuance of each FCC order.

The following is an excerpt from 47 CFR 51.319, which incorporates the changes from the TRO:

⁴⁶ "HFPL" is defined as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions. (TRO ¶268; see also Line Sharing Order ¶¶83-87)

Sec. 51.319 Specific unbundling requirements.

(a) *Local loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section.

(1) *Copper loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis.

(iii) *Line conditioning.* The incumbent LEC shall condition a copper loop at the request of the carrier seeking access to a copper loop under paragraph (a)(1) of this section, the high frequency portion of a copper loop under paragraph (a)(1)(i) of this section, or a copper subloop under paragraph (b) of this section to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop.

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

Staff notes that the first paragraph of 47 CFR 51.319(a)(1)(iii) refers to conditions “under paragraph (a)(1) of this section,” that further clarifies the conditions under which the ILEC must condition a line. Paragraph (a)(1) begins, “An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis.” Staff observes that the encompassing paragraph (a), states, “An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis.” Each inclusive paragraph to the one selected by AT&T witness Nurse as a defining paragraph for line conditioning includes a nondiscriminatory access restriction or obligation.

The FCC established the line conditioning rule under its §251 authority provided by the Act. (TRO ¶643) Section 251(c)(2)(C) requires ILECs to provide interconnection “that is at least equal in quality to that provided by the local exchange carrier to itself. . .” (47 USC 251(c)(2)(C)) Section 251(c)(3) requires ILECs to provide requesting telecommunications carriers with “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with . . . the requirements of this section and section 252.” (47

USC 251(c)(3)) Nondiscriminatory access has been the standard for accessing the loop since the issuance of §251(c)(3). “In the *UNE Remand Order*, the Commission broadened the definition of the loop to include all features, functions, and capabilities of these transmission facilities.” (TRO ¶203) The definition of the loop included line conditioning. (TRO ¶203 fn 638) As expressed in the line conditioning rules, the same nondiscriminatory access standard that applies to the loop also applies to line conditioning, which is an element of the loop.

In the Local Competition Order and carried forward to the UNE Remand Order prior to the issuance of the TRO, the definition of nondiscriminatory access included that

to the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that the incumbent LEC provides to a requesting telecommunications carrier shall, upon request, be superior in quality to that which the incumbent LEC provides to itself. (47 CFR 51.311 (c))⁴⁷

Such language was found by the Eighth Circuit to violate the plain terms of the Act, so with the issuance of the TRO, this definition was revised, eliminating the “superior in quality” access standard. (8th Circuit 2000, p. 22) Nondiscriminatory access is now defined as

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network.

(b) To the extent technically feasible, the quality of an unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent provides to itself. (47 CFR 51.311)

The Eighth Circuit concluded that the phrase “at least equal in quality” leaves open the possibility for the parties to negotiate agreements to provide superior quality access, with the ILECs being compensated for the additional cost involved in providing such superior quality; however, the ILECs are not mandated to meet such a standard. (8th Circuit 1997, pp. 812-813) With the “superior in quality” access standard now null and void, staff believes parity alone reigns as the qualifying standard, thereby becoming a limiting factor for line conditioning.

With the FCC redefining nondiscriminatory access as parity, staff believes that the ILEC is now obligated to provide access to the loop and its elements, which includes line conditioning, “at least equal in quality to that which the incumbent provides to itself.” (47 CFR 51.311) By AT&T limiting its focus to the language contained in 47 CFR 51.319(a)(1)(iii)(A) and foregoing any encompassing paragraphs, its definition of line conditioning omits the parity standard, leaving staff to conclude that the definition is incomplete.

⁴⁷ 47 CFR 51.311(c) (10-1-00 Edition)

AT&T argues that line conditioning and other routine network modifications are similar to the modifications that Verizon makes to its network to serve its own customers and do not provide CLECs with “superior quality access.” (TR 101; AT&T BR at 43) However, staff notes that the FCC “require[d] an incumbent LEC to modify an existing transmission facility in the same manner it does . . . for its own customers.” (TRO ¶639) Further, the FCC stated that “the incumbent LECs must make routine adjustments . . . at parity with how incumbent LECs provision such facilities for themselves.” (TRO ¶643) An ILEC shall provide interconnection with the ILEC’s network “[t]hat is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires the incumbent LEC to meet the same technical criteria and service standards that are used within the incumbent LEC’s network.” (47 CFR 51.305(a)(3))

Staff notes that in addition to parity, the rule also limits line conditioning to a standard of being “suitable for providing digital subscriber line services.” (47 CFR 51.319(a)(1)(iii)) This is clarified in the TRO, which states, “line conditioning is properly seen as a routine network modification that incumbent LECs regularly perform in order to provide xDSL services to their own customers.” (TRO ¶643) The FCC restates throughout the TRO that line conditioning is for provisioning xDSL services.⁴⁸ DS0 loops are typically used to deploy xDSL services to customers associated with the mass market.⁴⁹ (TRO ¶197 fn 624) The enterprise market is typically served using high-capacity loops such as DS1. (TRO ¶209) The FCC noted that the economic considerations in provisioning DS1 loops vary from provisioning DS0, and adopted loop unbundling rules specific to each loop type. (TRO ¶210) Staff believes that in evaluating whether Verizon is meeting its nondiscriminatory obligation to provide line conditioning suitable for xDSL services, focus must be given to the conditions under which Verizon’s own customers obtain line conditioning for xDSL services. However, the record does not contain any details regarding how Verizon accommodates its own customers.

Verizon acknowledges that the Commission has set rates for line conditioning and finds those rates acceptable. (EXH 5, pp. 55-56; EXH 6, pp. 105-114; Verizon UNE Order p. 347) However, AT&T objects to the use of those rates or the imposition of any new rates. (Nurse TR 101) In fact, AT&T’s proposed language requires that line conditioning be performed at no additional cost. (See EXH 13, p. 15, §3.2.11; AT&T BR at 43) AT&T believes that Verizon may not impose a charge for line conditioning above the TELRIC-based nonrecurring and recurring charges that CLECs pay for an xDSL-capable unbundled loop, citing 47 CFR 51.319(a)(1)(iii)(B). (Nurse TR 101; AT&T BR at 43 and 45) AT&T implicitly assumes that the nonrecurring and recurring charges the FPSC set for xDSL-capable loops include the costs of performing any required conditioning, but it has offered no evidence in support of this contention. No party has presented any evidence that the rates set by the FPSC have been superseded by subsequent rule changes or that those rates are not in compliance with the FCC’s rules governing cost recovery. As such, staff believes that the FPSC’s existing line conditioning rates included in the existing ICAs do not require amendment.

⁴⁸ TRO ¶7, ¶23, ¶26, fn 465, fn 624, ¶211, ¶215, fn 661, ¶¶249-250, fn 746, fn 747, ¶255, ¶344, ¶347, ¶350, ¶¶662-644.

⁴⁹ Staff believes that Verizon may use a variety of methods to provide DSL to its customers, including but not limited to the use of remote terminals, Digital Subscriber Line Access Multiplexers (DSLAMs), and fiber technology; however, there is no record evidence on this point.

The CCG expressed interest in amending the ICAs to include, to the extent technically feasible, that Verizon test and report troubles for all features, functions and capabilities of conditioned copper lines. (CCG Brief at 35) Staff notes that this requirement pre-existed⁵⁰ and was not altered by the TRO or any subsequent orders.

CONCLUSION

Staff recommends that the ICAs be amended to reflect Verizon's obligation to perform line conditioning to ensure xDSL delivery at least equal in quality to that which Verizon provides to itself. However, staff also recommends that the line conditioning rates included in the existing ICAs need not be amended.

⁵⁰ Prior to the issuance of the TRO, the FCC's line conditioning rule included that "in so far as it is technically feasible, the incumbent LEC shall test and report trouble for all the features, functions, and capabilities of conditioned lines, and may not restrict testing to voice-transmission only." (47 CFR 51.319(a)(3)(iv)(10-1-02 Edition)

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

h) Packet switching;

Recommendation: No. The current ICAs reflect that Verizon is not obligated to unbundle packet switching, which is consistent with the TRO and TRRO. Therefore, staff recommends that the ICAs should not be amended. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the TRO and TRRO (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: The ICA should reflect that, notwithstanding the discontinuance of Packet Switching as a UNE, Circuit switching performed on a packet switch that is capable of circuit switching is not discontinued under the TRO. Packet Switching used to provide mass market switching remains available as a UNE to the embedded base through March 11, 2006.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI takes no position regarding Issues 14(h-i).

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis:

PARTIES' ARGUMENTS

Verizon notes in its brief that federal law states that packet switches are not identified as network elements to be unbundled. (Verizon BR at 94) In the UNE Remand Order, the FCC reaffirmed that it would "not order unbundling of the packet switching functionality." (§306, §313; Verizon BR at 94) Verizon affirms that its current ICAs do not obligate Verizon to unbundle packet switching. (Verizon BR at 94) The TRO confirmed the declassification of packet switches. (TRO §537, §539; Verizon BR at 94)

The parties do not dispute that, under the terms of the TRO, Verizon is no longer obligated to provide packet switching functionality⁵¹ as an unbundled network element. (EXH 2, p. 49; AT&T BR at 45; Verizon BR at 93) However, AT&T and the CCG believe that where Verizon performs local circuit switching through the use of a packet switch, then Verizon is obligated to provide that local switching pursuant to the transition rates, terms and conditions in the TRRO. (Nurse TR 102; CCG BR at 35-36; AT&T BR at 45) AT&T and the CCG propose terms that would grant them access to packet switching where those switches provide circuit switched services. (EXH 2, p. 50; Verizon BR at 93) In AT&T's proposal, "local circuit switching" is defined to include packet switches. (EXH 13, p. 5) In §3.5.4 of its proposal, AT&T claims that "[l]ocal [c]ircuit [s]witching, even if performed by a [p]acket [s]witch, is a network element that Verizon is obligated to provide" on an UNE basis. (EXH 13, p. 20) The CCG agrees. (EXH 16, pp. 6, 10)

Verizon disagrees and notes that the FCC found that CLECs are "not impaired without access to packet switching, including routers and DSLAMs." (TRO ¶537; Verizon BR at 93) Verizon clarifies that, even in the case of hybrid loops, CLECs are not able to obtain access to the packet switched features, functions, or capabilities of any hybrid loop on an unbundled basis.⁵² (Verizon Amendment 2, p. 3, §3.2.1; Verizon BR at 93) Verizon notes that the FCC rejected claims that packet switching should be unbundled if used to provide circuit switching functionality, and the FCC explicitly stated that "the replacement of a circuit switch with a packet switch eliminates any unbundling requirement – even if the *sole purpose* of such deployment is to avoid having to continue to provide unbundled switching." (emphasis in original) (Verizon BR at 96) The FCC stated,

[T]o the extent that there are significant disincentives caused by unbundling of circuit switching, incumbents can avoid them by deploying more advanced packet switching. This would suggest that incumbents have every incentive to deploy these more advanced networks, which is precisely the kind of facilities deployment we wish to encourage. (TRO ¶447 fn 1365)

Verizon points out that "where the FCC has expressly found that competitors are not impaired without UNE access to a network element, state commissions have no authority to require unbundling of that element; any state law purporting to require unbundling would be preempted." (EXH 6, pp. 96-97, 149-52; Verizon BR at 95)

AT&T next argues that where Verizon replaces a circuit switch with a packet switch, Verizon should provide a 12-month advance notice and continue to provide circuit switching capability for a 12-month transition period, until the end of the TRRO transition period when Verizon is no longer required to provide UNE-P. (EXH 2, p. 49; Verizon BR at 94) However, Verizon notes that it has not replaced, or announced that it will replace, any circuit switches with packet switches in Florida any time soon. Therefore, the Verizon witness argues that there is no need for this Commission to consider AT&T's proposal to impose packet switching obligations on Verizon due to a purely hypothetical dispute. (Ciamporcero TR 57; Verizon BR at 96) Verizon points out in its brief that by the time the amendment is arbitrated, less than six months

⁵¹ The FCC has defined packet switching functionality in ¶535 of the TRO.

⁵² See Issue 14 (e) for discussion of obligations involving hybrid loops.

of the transition period would remain and a 12-month advance notice would be impossible. (Verizon BR at 96)

In its brief FDN notes that it concurs with the position proffered by the CCG for this issue. (FDN BR at 4)

In its brief Sprint makes a general statement that the ICAs should be amended to address each requirement or discontinuation of requirements, yet made no specific comment regarding packet switching. (Sprint BR at 21)

ANALYSIS

The FCC decisively concluded that CLECs were not impaired without access to packet switches. (TRO ¶¶537-539) According to the FCC, this provides the ILEC incentive to upgrade its switches and the CLECs incentive to build comparable facilities. (TRO ¶448, ¶539, fn 1365; TRRO fn 598) Notably, with the issuance of the UNE Remand Order, prior to the TRO, ILECs were not required to unbundle packet switches except in limited circumstances.⁵³ (UNE Remand Order ¶313) However, with the release of the TRO, even those limited circumstances were eliminated. (TRO ¶7, ¶537, ¶538, fn 1649)

AT&T's principal concern involves the situation where its UNE-P customers are served via a Verizon packet switch that has circuit switching capability. (Nurse TR 102) The record does not reflect whether this situation exists in Florida or the extent to which it may exist. Considering that the current ICAs do not obligate Verizon to unbundle packet switching, staff presumes that this situation would be rare. The FCC did not provide a transition plan to move loops from packet switches; therefore, should such a condition exist, staff believes that the parties should negotiate a transitional plan for this arrangement. Following such negotiations, any unresolved disputes could be forwarded to this Commission for arbitration.

Staff agrees with Verizon, that in the TRO, the FCC permits the use of packetized switches to avoid the unbundling obligations of local switching. (TRO ¶446 fn 1365) Therefore, staff believes that Verizon has no obligation to unbundle its packet switches, and there is no condition where Verizon would be obligated to do so.

CONCLUSION

The current ICAs reflect that Verizon is not obligated to unbundle packet switching, which is consistent with the TRO and TRRO. Therefore, staff recommends that the ICAs should not be amended.

⁵³ In the UNE Remand Order, the FCC provided that an ILEC was required to provide access to unbundled packet switching only where the ILEC had deployed DLC or fiber optic facilities in the distribution part of the loop; had no spare copper pairs capable of providing the xDSL service the requesting CLEC sought to offer; had not permitted the requesting CLEC to collocate its own DSLAM at an appropriate subloop point; and had deployed packet switching for its own use. (¶313)

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

- i) Network Interface Devices (NIDs);

Recommendation: No. The FCC's TRO did not change the unbundling requirements for NIDs. Therefore, staff recommends that the ICAs should not be amended. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the *TRO* and *TRRO* (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: The agreement should contain a provision reflecting Verizon's obligation, affirmed by the TRO, to provide access to Network Interface Devices (NIDs) and to provide the NID functionality with unbundled local loops ordered by AT&T. AT&T's proposed amendment contains language consistent with this requirement at Paragraph 3.2.6 and 3.4.9.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI takes no position regarding Issues 14(h-i).

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's TRO and TRRO Orders specify procedures involved with discontinuation of requirements.

Staff Analysis: A network interface device (NID) is "a cross connect device used to connect loop facilities to inside wiring." (Local Competition Order ¶392 fn 852) The FCC stated in its Local Competition Order that a CLEC's ability to self-deploy loops would be impaired without access to the ILEC's NID. (¶393) This was also the FCC's conclusion in its UNE Remand Order. (¶237) In the TRO, the FCC reaffirmed its position. (TRO ¶7, ¶356; Verizon BR at 97) No party disputes that the NID is an UNE.

PARTIES' ARGUMENTS

Verizon witness Ciamporcero believes that there are no new obligations concerning NIDs. (TR 277-278; Verizon BR at 97-98) He states that the contracts already address current NID requirements, including a stand-alone NID obligation with related operational terms and

applicable rates;⁵⁴ therefore, there is no reason to include any new language. (Id.) In its brief Verizon recommends that the Commission not entertain CLEC proposals that relate to unbundling obligations that predate the TRO, with the understanding that this would include NIDs. (Verizon BR at 84) Furthermore, Verizon contends that existing agreements already address non-TRO items, which need to be preserved, yet which could risk being eliminated through unnecessary amendments, resulting in continued disputes and arbitrations. (Id.) In support of this, Verizon emphasizes that CLEC proposals do not address the operational provisions, including recurring and nonrecurring charges, which have already been negotiated or arbitrated under existing agreements. (Verizon BR at 85) In its brief Verizon argues that the scope of this proceeding should be “limited to modification of the ICAs in order to effectuate changes in unbundling obligations brought about by the *TRO* and the *TRRO*.” (Id.)

AT&T witness Nurse makes a general statement that the parties’ ICAs should be amended to reflect any changes to the FCC’s unbundling rules arising under the TRO that were not vacated by the D.C. Circuit in USTA II, and/or modified by the FCC’s TRRO. (Nurse TR 16) However, AT&T failed to note any such changes with regards to NIDs. AT&T witness Nurse states that Verizon’s proposed amendments do not address access to the NID. (Nurse TR 104; AT&T BR at 47) He requests that this issue be addressed to clarify Verizon’s obligations. (Id.) However, AT&T witness Nurse did not provide any details regarding problems with the existing ICA language. (EXH 2, p. 51; Verizon BR at 97) Moreover, the AT&T witness stated that he is unaware of any disagreement with Verizon regarding access to the NID and the inclusion of NID functionality with unbundled local loops. (Nurse TR 104)

Both AT&T and the CCG believe that Verizon must provide nondiscriminatory access to the NID on an unbundled basis. (CCG BR at 36; AT&T BR at 47) They further believe that Verizon should permit a CLEC to connect its own loop facilities to on-premises wiring through Verizon’s NID, or at any other technically feasible point. (CCG BR at 36; AT&T BR at 47)

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

In its brief Sprint makes a general statement that the ICAs should be amended to address each requirement or discontinuation of requirements, yet made no specific comment regarding any new, pre-existing or discontinued obligation concerning NIDs. (Sprint BR at 21)

ANALYSIS

In the Local Competition Order, the FCC named the NID as an UNE, concluding that “the unavailability of access to incumbent LECs’ NIDs would impair the ability of carriers deploying their own loops to provide service.” (Local Competition Order ¶392) In the TRO, the FCC reaffirmed this position.

We conclude that the NID should remain available as an UNE as the means to enable a competitive LEC to connect its loop to customer premises inside wiring.

⁵⁴ Verizon’s existing Amendment includes rates approved by the Commission in its 2002 UNE rate-setting proceeding, for both stand-alone NIDs and for loops including NIDs. (Verizon UNE Order pp. 306-307)

. . . [T]he NID is the gateway to the consumer and thus the key to local competition. (TRO ¶356)

Staff notes that the CCG agrees that “the FCC did not establish new rules applicable to Verizon’s obligation to provide nondiscriminatory access to the NID, on a stand-alone basis.” (CCG BR at 39) Staff also notes that none of the parties raised specific concerns regarding the existing interconnection agreements. (CCG BR at 39; AT&T BR at 47)

Staff believes that Verizon’s obligations to provide the NID as a stand-alone UNE or as part of a subloop, have not changed with the issuance of the TRO. To the extent parties might dispute this fact, staff points to the TRO in ¶356 which states,

We agree that unbundled access to the NID remains a crucial catalyst to facilities-based competition. The record demonstrates that competitive carriers face numerous situations where access to the unbundled NID is crucial to the ability to access the LEC’s inside wire subloop or other customer premises inside wiring beyond the demarcation point in order to reach the end-user customer. (TRO ¶356, ¶352 fn 1064, ¶356 fn 1083)

Therefore, staff recommends that the agreement not be amended, since the TRO did not change Verizon’s obligations to provide NIDs.

CONCLUSION

The FCC’s TRO did not change the unbundling requirements for NIDs. Therefore, staff recommends that the ICAs not be amended.

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

j) Line Sharing?

Recommendation: Yes. The ICAs should be amended to reflect that line sharing is a discontinued facility, which will be transitioned in accordance with the FCC's transition plan delineated in 47 CFR 51.319(a)(1)(i), including all subsections. (Moss)

Position of the Parties

Verizon: The Amendment should address only changes in unbundling obligations related to the *TRO* and *TRRO* (items b-e). The Commission should not consider proposals relating to pre-existing unbundling obligations (items a, f, g, i, and j) or to obligations that never existed (item h).

AT&T: Line Shar[ing] is still available for existing customer[s] being served prior to October 2, 2003. AT&T's proposed amendment properly reflects this requirement and should be adopted.

CCG: 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*.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's positions on Issues 14 (a-g, j) are found in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes. The amendment should explicitly address each requirement and, if there are no obligations, the item should still be addressed if the Federal Unbundling Rules and the FCC's *TRO* and *TRRO* Orders specify procedures involved with discontinuation of requirements.

Staff Analysis: Line Sharing is defined as a situation where a "competing carrier provides xDSL^[55] service over the same line that the incumbent LEC uses to provide voice service to a particular end user, with the incumbent LEC using the low frequency portion of the loop and the competing carrier using the [high frequency portion of the loop] HFPL."^[56] (TRO ¶255) In the *TRO*, the FCC eliminated the ILEC's obligation to provide access to line sharing as an UNE. (TRO ¶255) The FCC established a transition plan to govern existing line sharing arrangements

⁵⁵ "xDSL" service refers to advanced services that use digital subscriber line technology to send signals over copper wires to packet switches. xDSL services include ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), UDSL (universal digital subscriber line), VDSL (very-high speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line). The small "x" before the letters "DSL" signifies that a reference to DSL as a generic transmission technology, as opposed to a specific DSL "flavor." (Line Sharing Order ¶4)

⁵⁶ "HFPL" is defined as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions. (TRO ¶268; see also Line Sharing Order ¶¶83-87)

and CLECs' rights to new line sharing arrangements during the transition period. (TRO ¶¶264-265) This transition plan was incorporated into the FCC's rules and delineated in 47 CFR 51.319(a)(1)(i), including all subsections.

PARTIES' ARGUMENTS

Verizon identified line sharing as a "Discontinued Facility" in §4.7.5 of its amendment and believes that this suffices to bring the agreements into compliance with federal unbundling rules. (Verizon BR at 98) Verizon states that it must comply with the FCC's transition plan without amendment, and regardless of any change-of-law provisions in its existing agreements. Therefore, Verizon views any negotiations to amend the ICAs to include the FCC's transition plan as a cause for delay and a waste of time and effort. (Verizon BR at 99) Verizon further argues that the FCC adopted the line sharing transition plan pursuant to 47 USC 201, whereas interconnection agreements implement the requirements of 47 USC 251; therefore, this arbitration is not the appropriate vehicle to address this issue. (Verizon BR at 99)

Both the CCG and AT&T contend that the amendment must address grandfathering of line sharing arrangements existing prior to October 2, 2003, according to 47 CFR 51.319(a)(1)(i)(A). (AT&T BR at 48; CCG BR at 36) The CCG further advocates that the amendment must include a framework for existing and new line sharing arrangements, including the transition period. (CCG BR at 36; TRO ¶¶264-269) Additionally, the CCG requests that the amendment reference the transitional rates, terms and conditions for new line sharing arrangements as set forth in the TRO. (CCG BR at 36)

In its brief FDN notes concurrence with the position proffered by the CCG for this issue. (FDN BR at 4)

In its brief Sprint states that the ICAs should be amended to address each requirement or discontinuation of requirements, yet made no specific comment regarding line sharing. (Sprint BR at 21)

Verizon objects to the language proposed by AT&T and the CCG, stating that it is "intentionally ambiguous and misleading, if not directly contrary to federal law." (Verizon BR at 99) Verizon rejects references to 47 USC 251(c)(3) made by both AT&T and the CCG, that imply that Verizon has a §251 obligation to provision line sharing when it does not. (EXH 13, p. 15; EXH 16, p. 22; Verizon BR at 99)

STAFF ANALYSIS

Staff notes that the parties agree that Verizon is no longer required to provide line sharing. (AT&T BR at 48; CCG BR at 39; EXH 4, p. 61, §12.7.5; Verizon BR at 99) Staff believes that simply noting the facility as a "Discontinued Facility" as proposed by Verizon is insufficient. Staff agrees with Sprint that the agreement should address procedures for discontinuance of requirements. (Sprint BR at 21) The FCC has provided a detailed transition plan which includes a framework for existing and new line sharing arrangements, grandfathering arrangements and transitional rates, terms and conditions. (TRO ¶¶264-265) That transitional plan is incorporated in its rules, delineated in 47 CFR 51.319(a)(1)(i), including all subsections.

In summary, beginning on the effective date of the TRO, the high frequency portion of a copper loop is no longer required to be provided as an UNE, subject to transitional line sharing conditions. Existing line sharing customers as of the effective date of the TRO were grandfathered at the same rate. Line sharing customers which are provisioned during the one year period following the effective date of the TRO would be maintained for three years at an escalating rate. The first year that rate would begin at 25 percent of the state-approved monthly recurring loop rate, or 25 percent of the monthly recurring loop rate set forth in the ICAs. The second year the rate would increase to 50 percent, and the third year to 75 percent. Beginning three years after the effective date of the TRO, the ILEC is no longer required to provide a CLEC with the ability to engage in line sharing for this end-user customer or any new end-user customer.

Staff believes that the FCC rules address the concerns expressed by the parties. Staff also believes that a simple one line statement that expresses that line sharing is a "Discontinued Facility," which shall be transitioned according to the FCC's transition plan delineated in 47 CFR 51.319(a)(1)(i), including all subsections, would suffice to meet all concerns of all parties without causing any undue burden on any party and without giving any party more or less than what was envisioned by the FCC rules.

CONCLUSION

Staff recommends that the ICAs should be amended to reflect that line sharing is a discontinued facility, which will be transitioned in accordance with the FCC's transition plan delineated in 47 CFR 51.319(a)(1)(i), including all subsections.

Docket No. 040156-TP
Date: September 22, 2005

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

Recommendation: The effective date of the amendment to the parties' agreements should be the date the Commission issues its final order approving the signed amendment. If the Commission does not act to approve or reject an agreement arrived at through arbitration within 30 days after submission by the parties, the agreement is deemed approved pursuant to Section 252 (e)(4) of the Act. (**Barrett**)

Position of the Parties:

Verizon: Verizon believes all parties agree that the Amendment should take effect when it is approved.

AT&T: The effective date of the parties' amendment to the interconnection agreement should be on the date the amendment is executed by the parties unless another date is specified in the amendment.

CCG: The effective date of the Amendment should be the date of the last signature executing the Amendment.

FDN: Agree with AT&T.

MCI: The effective date of the Amendment to the parties' agreements should be the date the Commission issues a final order approving the signed amendments.

Sprint: The effective date should be the date that the amendment is signed by the two parties or the date that is ordered by the Commission.

Staff Analysis:

PARTIES' ARGUMENTS

Verizon

Verizon witness Ciamporcero asserts that the effective date of an amendment should be the date of execution of an amendment that conforms to the Commission's rulings, yet he claims two of the CLEC parties "try to carve out exceptions to the effective date that are unacceptable." (TR 279) He states that AT&T's witness Nurse and the Competitive Carrier Group panel witnesses Sanders, Cadeaux, and Falvey (CCG Panel) argue that retroactive pricing for certain items is appropriate, a notion he rejects. (Ciamporcero TR 279) In its brief, Verizon states all parties seem to agree in principle that the effective date should be the date of Commission approval. (Verizon BR at 100)

AT&T

AT&T witness Nurse states that the effective date of the parties' amendment should be the date the amendment is executed by the parties and filed with the Commission. (TR 105; AT&T BR at 48) The witness believes the parties should promptly develop the document to be

filed with the Commission, and alerts the Commission to be aware of provisions therein that may not conform to the Commission's order. (Nurse TR 105; AT&T BR at 49)

CCG

The CCG Panel states that there are multiple effective dates for the various components this arbitration addresses. (TR 177) Overall, the CCG Panel asserts that the effective date should be the date of the last signature, except for the following:

- For de-listed UNEs, the TRRO sets forth transitional rates that expire at a time certain;
- For rates, terms, and conditions applicable for commingling and conversions, the effective date should be the effective date of the TRO, October, 2, 2003. (TR 177)

The CCG Panel contend that "to the extent that any provision of the Amendment should be given retroactive effect, as required by the FCC, the Amendment must state the effective date of the specified provision of the Amendment and the controlling FCC rule and/or Order." (TR 177) In its brief, the CCG states the effective date of the Amendment should be the date of the last signature executing the Amendment. (CCG BR at 40)

FDN

FDN did not file testimony in this proceeding, although its brief notes that FDN concurs with the position proffered by AT&T for this issue. (FDN BR at 5)

MCI

MCI witness Darnell asserts that the Commission's general practice has been to issue an order setting forth its decision, and require the parties to submit a signed interconnection agreement or amendment within 30 days of the date the order was issued. (TR 209) In its brief, MCI states "the effective date of the agreement should be the date the Commission issues its final order approving the signed amendments." (MCI BR at 12-13)

Sprint

Sprint did not file testimony in this proceeding, although its brief set forth that the effective date should be the date that the amendment is signed by the two parties, or the date that is ordered by the Commission. (Sprint BR at 23)

ANALYSIS

In prior arbitration cases,⁵⁷ the Commission's common practice has been to issue a final order to incorporate the Commission's arbitrated decisions. Generally, a signed amendment or agreement is filed thereafter, and the Commission issues a subsequent order to approve the signed amendment or agreement. Staff notes, however, that the agreement is deemed approved pursuant to Section 252 (e)(4) of the Act if the Commission does not take action to approve or reject it within 30 days of filing. Staff believes the issuance of this final order consummates the

⁵⁷ See Docket Nos. 000649-TP and 000731-TP.

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Commission's proceeding, and sets forth what the effective date of signed amendment or agreement is.

For purposes of the instant proceeding, staff believes the Commission should continue to follow this practice. Although the parties put forth positions in briefs that varied widely, none advocate that the Commission depart from its common practice for arbitration cases. Thus, staff believes the effective date of the amendment to the parties' agreements should be the date the Commission issues its final order approving the signed amendment.

CONCLUSION

The effective date of the amendment to the parties' agreements should be the date the Commission issues its final order approving the signed amendment. If the Commission does not act to approve or reject an agreement arrived at through arbitration within 30 days after submission by the parties, the agreement is deemed approved pursuant to Section 252 (e)(4) of the Act.

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?

Recommendation: A CLEC's request for unbundled access for narrowband service where the end-user is served via Integrated Digital Loop Carrier (IDLC) should be implemented either through spare copper facilities or through the availability of Universal Digital Loop Carrier (UDLC) systems. Where neither option is available, Verizon must present to the CLEC a technically feasible method of unbundled access that is not solely restricted to new construction of copper facilities and UDLC systems. (**Vickery**)

Position of the Parties

Verizon: In accordance with the TRO, where a CLEC seeks access to an IDLC-fed loop, Verizon will provide a loop capable of voice-grade service to the end user. Verizon will use existing copper or UDLC facilities if available; if they are not, then the CLEC may request and pay for construction of new copper or UDLC facilities. The CLEC has no right to dictate the means Verizon uses to comply with the FCC requirement.

AT&T: The Commission should reject Verizon's current proposal and direct Verizon to provide a solution involving the rearrangement of existing equipment just as Verizon has told the FCC it could do and as other ILECs already do on a routine basis. AT&T's proposed amendment outlines such FCC-mandated obligations and appropriate remedies.

CCG: 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.

FDN: By spare copper or UDLC where available. If neither is available, the Commission should direct Verizon to provide a solution involving the rearrangement of existing equipment. Verizon's proposal to construct new facilities and bill the entire cost to the CLEC is neither practical nor authorized by the FCC.

MCI: MCI's position is set forth in Section 7.2 of Exhibit 4, Deposition Exhibit 1. MCI believes this language is necessary to precisely track the language of the FCC's rules.

Sprint: Following the current Rules, language should be added to reflect that Verizon should provide a DS0 voice-grade transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises, using time division multiplexing technology.

Staff Analysis:

The FCC recognized that providing unbundled access to hybrid loops being served by IDLC systems may require Verizon to implement changes to its policies, practices and procedures. (TRO ¶297) IDLC systems are defined as the integration of the integrated digital terminal (IDT) and remote digital terminal (RDT). The IDT is part of the local digital switch (LDS) and it functions as a concentrator in order to put more channels on a digital communications line. Typically, an IDLC system moves some of the switching services from the local switches into RDTs to increase the efficiency of communication lines between customers and the central office. BellCore's (now Telcordia Technologies) GR-303 specification defines the interconnection of the LDS and RDT.⁵⁸

PARTIES' ARGUMENTS

Verizon

Verizon witness Richter states that under the TRO, Verizon has an obligation to provide CLECs unbundled access to hybrid (copper/fiber) loops where the customer is being served by an IDLC system. (TR 300) He notes the FCC recognized the technical issues ILECs would have to overcome in meeting CLEC requests that are being served by IDLC. (TR 300) The witness cites to the TRO ¶297 in explaining the lack of a "one-for-one transmission path" in IDLC systems because of the integration of the facility directly into the switch. (TR 301) He asserts that the FCC thought most situations involving customer access requests being served via IDLC could be satisfied through a spare copper facility or a UDLC. However, if neither of those options existed, the FCC indicated that the ILEC must "present requesting carriers a technically feasible method of unbundled access." (TR 301; TRO ¶297)

Witness Richter argues that Verizon's proposal to construct new loop facilities does not violate the FCC's rules and would only be offered in those situations where spare copper facilities or access to a UDLC system was unavailable. (TR 301) He states that nothing in the FCC rules "gives the CLEC the discretion to decide how Verizon will provide access to IDLC-fed loops." (TR 302) He contends AT&T's argument regarding engineered solutions is unsupported and indicates that Verizon's network engineers prefer new construction rather than network reconfiguration because it is less expensive. (TR 303) He argues that the proposed engineering solution of "hair pinning"⁵⁹ is not currently supported by Verizon's ordering, provisioning or maintenance systems and would require "millions of dollars" in development and trials to provide that approach. Also, the engineered solutions "would likely be substantially more expensive than providing parallel copper or constructing a new loop." (TR 303)

⁵⁸ See IDLC definition at http://www.voipdictionary.com/aw_definitions_main.asp

⁵⁹ Hair pinning is discussed by the FCC in footnote 855 of the TRO and specifically identified in an Ex Parte letter from Qwest. Qwest's proposal involving a "hairpin" solution is described as a semi-permanent path through a switching module (SM) between two (2) ports on the same peripheral equipment, such as an IDLC. The SM time slot interchange (TSI) is bypassed and not used. Normal switch call processing functions are not used. Qwest notes that hair pinning is a last resort solution to provision unbundled access over IDLC systems and indicated only 1.4% of its 17 million network access lines are served by IDLC.

Witness Richter also argues that the hair pinning solution is an inefficient use of capital resources by requiring double the amount of “line side ports” on the line side of the integrated digital line unit. (TR 304) He explains that each ILEC DS0 has to be mapped to a corresponding CLEC DS0 within an individual integrated port and then handed off to the CLEC at an aggregated DS1 level consuming another DS1 port on the integrated digital line unit. (TR 304) He states it is a complicated engineering solution that requires monitoring of both the ILEC and CLEC service demands at “any given remote terminal (RT)” and the consumption of the ILEC’s line side ports on the integrated switch will be twice as great when compared to an ILEC-only RT. (TR 304)

Witness Richter argues that the cost of constructing a new copper loop is not discriminatory because the Act gives Verizon the right to recover, from the cost causer, the costs of providing UNE access. (TR 305) He notes that the FCC determined that “technical feasibility – not discrimination – is the reason why other options must be pursued in IDLC situations.” (TR 305) He concludes that AT&T would have the option of offering service via Verizon’s network, foregoing the construction of a new copper loop by opting “for a resale arrangement, a commercially negotiated agreement, or it may build analogous facilities or lease them from an alternative network provider (e.g., wireless or cable).” (TR 305) In any case, witness Richter asserts, Verizon does not have to use AT&T’s dictated solution or pay for “AT&T’s network or provisioning choices.” (TR 305)

AT&T

AT&T witness Nurse describes an IDLC system as a “loop concentration system” that carriers deploy in order to obtain the most efficient use of outside plant and switching systems. Typically, IDLC systems utilize an integrated digital terminal (IDT) and a remote digital terminal (RDT). The IDT is directly integrated into the digital switch. This means there is no direct copper connection to the end user at all times or in other words, there is not a “one-for-one transmission path or appearance in the central office for each line.” (TR 105) Witness Nurse argues that Verizon has an obligation to provide unbundled access to customers being served by an IDLC. (TR 106)

He states that the FCC in ¶297 of the TRO found that ILECs have an obligation to provide CLECs with access to unbundled loops in those situations where the customer is served by an IDLC. (TR 106) He argues that the FCC recognized that incumbents may be required to “implement policies, practices, and procedures different from those used to provide access to loops served by Universal DLC systems.” (TR 106). Witness Nurse states the FCC went on to indicate that “in most cases this will be either through a spare copper facility or through the availability of Universal DLC systems. *Nonetheless even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access.*” (emphasis by witness) (TR 106)

Witness Nurse states that AT&T believes Verizon is offering a more expensive, time-consuming and discriminatory solution. (TR 106) He argues that when no spare copper loop or UDLC is available, the alternative that Verizon offers of constructing a new loop or a new UDLC is contrary to the FCC’s policy of not requiring the ILEC to construct new facilities to satisfy CLEC’s requests. (TR 107) When Verizon indicates that there is no spare copper plant or

UDLC available to meet the CLEC's request, witness Nurse states there is a "whopping special construction NRC for the unbundled loop" and that Verizon proposes to charge AT&T an additional charge whenever a line and station transfer is performed. (TR 107) He states, there is "an engineering query charge of \$189.99 for the preparation of a price quote, an engineering work order charge of \$94.40, plus all construction charges set forth in the price quote." (TR 107) In other words, it all adds up to make the unbundled access request extremely costly, not to mention the additional time required to construct the new copper loop or UDLC. (Nurse TR 109)

Witness Nurse continues by arguing that the FCC, in footnote 855 to ¶297 of the TRO, noted that ILECs "can provide unbundled access to hybrid loops served by integrated DLC systems by configuring existing equipment, adding new equipment or both." He states that the FCC noted that ILECs employ cross-connect equipment ". . . to assist in managing their DLC systems." (TR 109) In addition, he contends that BellSouth has no problem in reconfiguring its equipment to meet a CLEC's request where the end user is being served by IDLC. Moreover, BellSouth indicated that it would perform several things to meet a CLEC's request for unbundled access to a loop being served by IDLC, including rolling circuits from the IDLC to an existing UDLC and other engineering solutions. The BellSouth engineering solutions all depend on whether capacity exists and could include porting through a Digital Access Cross Connect System (DACS) provided the IDLC routed through a DACS prior to integration in the switch. Also, "side-door" porting within the IDLC itself was mentioned as another engineering alternative. (Nurse TR 110)

CCG

Witness Falvey argues that Verizon's amendment should comport with section 51.319(a) (iii) of the FCC's rules. He states that when a requesting carrier seeks access to a hybrid loop for the provision of narrowband services, Verizon should meet or provision CLEC requests by either one of two methods. He explains Verizon could provide a voice-grade circuit equivalent to a DS0 using time division multiplexing or Verizon could use a spare "home-run copper loop serving that particular customer on an unbundled basis." (TR 178) He concludes that when a CLEC requests access to an unbundled copper loop Verizon should meet that request utilizing "Routine Network Modifications as necessary" unless facilities cannot be made available. (TR 178)

FDN

FDN's argument is contained in its brief and is predicated on the ILEC's responsibilities in relation to IDLC systems in TRO ¶¶296-297 and the accompanying footnotes. (FDN BR at 5) FDN noted specifically, that the FCC stated:

We recognize that providing unbundled access to hybrid loops served by a particular type of DLC system, *e.g.*, Integrated DLC systems, may require incumbent LECs to implement policies, practices, and procedures different from those used to provide access to loops served by Universal DLC systems. . . . [W]e require incumbent LECs to provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems. We recognize that in most cases this will be either through a spare copper facility or through the

availability of Universal DLC systems. Nonetheless even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access. (FDN BR at 6; TRO ¶297 footnotes omitted)

FDN explains the TRO requires that when a CLEC requests an unbundled loop that is being served by an IDLC, Verizon must provide service “either through a spare copper facility or through the availability of Universal DLC systems.” If neither is available, it must provide a “technically feasible method of unbundled access.” (FDN BR at 6) According to FDN, the FCC did not even discuss that the construction of new loop facilities would suffice as a technically feasible method when no UDLC or spare copper loops are available. (FDN BR at 7) FDN believes Verizon’s offer to construct new loops may allow it to “effectively escape its unbundling obligation for IDLC-fed loops” because the special construction charges that would be borne by the CLEC will price the loop beyond all economic considerations. (FDN BR at 7) FDN also argues that the FCC had the “distinct impression that Verizon had already implemented a method of meeting its IDLC obligations” and that it did not include the requirement of new loop construction. (FDN BR at 7)

Last, FDN argues that the Verizon panel witnesses’ complaint that it does not have the back office systems to implement any other method and that the costs to implement the changes are prohibitive, is contrary to the FCC’s directive within the TRO. FDN states the FCC was very specific when it stated that the ILEC may have to “implement different policies, practices and procedures to provide unbundled access to IDLC-fed loops.” (FDN BR at 7)

MCI

MCI believes that its language contained in Section 7.2 of Exhibit 4, Deposition Exhibit 1 is “necessary to precisely track the language of the FCC’s rules.” (MCI BR at 13; Darnell TR 209) MCI’s section 7.2 is titled Hybrid Loop-Narrowband Services and section 7.2.2 deals with IDLC Hybrid Loops. (EXH 4, p. 49) MCI’s argument is based on the adoption of its entire section 7.2.2 and subsection 7.2.2.1, believing that they best comport with the FCC’s requirements regarding ILEC narrowband responsibilities. The relevant sections are:

Section 7.2.2. IDLC Hybrid Loops. If ***CLEC Acronym TXT*** requests, in order to provide narrowband services, unbundling of a 2 wire analog or a 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop) Verizon shall provide ***CLEC Acronym TXT*** unbundled access to a Loop capable of voice-grade service (i.e., equivalent to a DS0 capacity) to the end user customer served by the Hybrid Loop.

Subsection 7.2.2.1. Verizon will provide ***CLEC Acronym TXT*** at ***CLEC Acronym TXT***’s option with (i) an existing copper Loop; (ii) a loop served by existing Universal Digital Loop Carrier (UDLC) where available or (iii) an unbundled 64 Kbps TDM channel on the Hybrid Loop. Standard recurring and non-recurring Loop charges will apply. In addition, a non-

recurring charge will apply whenever a line and station transfer is performed. (EXH 4, p. 49)

Sprint

Sprint's argument is contained in its brief. It explains "[a]n IDLC loop is a form of hybrid loop that is integrated directly into the switches of incumbent LECs (either directly or through another type of network equipment known as a 'cross-connect')." (Sprint BR at 24; TRO ¶297) Sprint notes that the FCC provided a number of ways for the unbundling of IDLC loops in the TRO. The unbundling options included "spare copper facilities, UDLC facilities, reconfiguring equipment and providing access to cross-connect equipment." (Sprint BR at 24) According to Sprint, the FCC codified two alternatives for providing narrowband services on hybrid loops: a spare copper loop or access to time division multiplexing (TDM) technology. Sprint suggests that Verizon's language be modified to include the specific reference to the FCC's time division multiplexing language found in 47 CFR 51.319(a)(2). Sprint also argues that if Verizon is not required to provision TDM access on IDLC hybrid loops, it might use the same argument to "refuse access to broadband UNE loops over the same facilities." (Sprint BR at 25)

ANALYSIS

In discussing narrowband services within ¶296 of the TRO, the FCC stated that "we require incumbent LECs to provide an entire non-packetized transmission path capable of voice-grade service (*i.e.*, a circuit equivalent to a DS0 circuit) between the central office and customer's premises." (TRO ¶296) The FCC limited the ILEC unbundling obligation for narrowband services "to the TDM-based features, functions, and capabilities of these hybrid loops." The ILECs were given the option of providing narrowband access via home-run copper loops provided the "incumbent LEC has not removed such loop facilities." (TRO ¶296)

In ¶297 of the TRO, the FCC identified the inherent problems ILECs would encounter when responding to requests for access to loops served by IDLC systems in order to provide narrowband services. Specifically, the FCC stated that ILECs typically concentrate traffic in engineering their networks, making a "one-for-one transmission path" from the subscriber to the ILEC not available at all times. This characteristic is representative of an IDLC system and an ILEC, in meeting a CLEC request, will usually provide unbundled access either through a spare copper facility or via a UDLC. (TRO ¶297) The FCC also directly stated "[n]evertheless even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access." (TRO ¶297)

In addition, the FCC recognized that it is technically feasible to provide unbundled access to IDLC systems even though either carrier, the CLEC or ILEC, could find it undesirable. (TRO fn 855) The FCC noted several technically feasible methods including "a hairpin option," that was recommended by Qwest in its Nov. 13, 2002, *Ex Parte* Letter, as a "semi-permanent path" that included disabling certain switch functions in order to meet unbundled access requests. (TRO fn 855) The FCC also cited *Telecordia, Inc.*, NOTES ON THE NETWORK, SR-2275, Issue 4, 12.13.2.1 (October 2000) as describing ways for ILECs to provide unbundled loops to competitors over IDLC systems. (TRO fn 855) Of note is the statement that "[f]requently

unbundled access to Integrated DLC-fed hybrid loops can be provided through use of cross-connect equipment, which is equipment incumbent LECs typically use to assist in managing their DLC systems.” Concluding its comments on IDLC, the FCC cited an *Ex Parte* Letter dated December 18, 2000, from McLeodUSA that explained either switch manufacturers already accounted for incumbent’s regulatory obligations or were planning to do so. (TRO fn 855)

Staff notes that Verizon revised its policy of only offering new construction in those situations where no spare copper loop or UDLC is available. It now provides other alternatives, such as a resale arrangement or commercially negotiated agreement. (TR 305) However, these alternatives do not appear in the proposed amendment. Moreover, staff is unable to comment on the alternatives because no party provided testimony in the record that addressed these proposed alternatives.

After reviewing the TRO, staff agrees with AT&T, CCG, FDN, MCI and Sprint that Verizon has an obligation to satisfy unbundled access requests where the end user is being served by an IDLC system either through spare copper loops or UDLC systems. The difficulty arises when neither of those two alternatives is available. Verizon is offering two remedies, both of which involve constructing new facilities. Staff believes, as does FDN, that construction of a new loop was not enumerated as an alternative by the FCC. The FCC specifically said that ILECs could elect to provide narrowband access via home-run copper loops provided the “incumbent LEC has not removed such loop facilities.” Based upon that FCC statement, staff finds it difficult to construe new construction of a copper loop as a method of meeting a narrowband access obligation. Moreover, staff believes that Verizon’s argument that “hair pinning” would cost “millions of dollars” is unsupported because it failed to provide relevant studies of the cost to implement this method in its ordering, provisioning and maintenance systems. (TR 303)

Last, engineering solutions involving cross-connect devices were also identified as a technically feasible method by the FCC. Staff notes that Verizon provided comments to the FCC in an *Ex Parte* Letter dated July 19, 2002, wherein there was acknowledgement that it typically uses central office termination and cross-connects. (TRO fn 855) In this instant proceeding, Verizon is resistant to employ such techniques saying its engineers prefer to utilize new construction to satisfy unbundled access requests instead of engineered solutions. (TR 303) Also, Verizon did not provide any comparisons illustrating the cost benefits of new construction versus this engineered solution. However, staff believes that the cost of constructing a new copper loop or UDLC could, in all likelihood, surpass the cost of making a digital cross-connect within a DACS. Staff admits this may be an over-simplification, but in some cases a simple cross-connect may be all that is needed to satisfy the unbundled access request. Therefore, staff believes Verizon’s options to meet requests for unbundled access to loops served by IDLC should be expanded to include other technically feasible methods.

CONCLUSION

A CLEC’s unbundled access request for narrowband service where the end-user is served via Integrated Digital Loop Carrier (IDLC) should be implemented either through spare copper facilities or through the availability of Universal DLC systems. Where neither option is

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available, Verizon must present to the CLEC a technically feasible method of unbundled access that is not solely restricted to new construction of copper facilities and UDLC systems.

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 modification are required;

Recommendation: No. This docket is not the appropriate forum for resolution of this issue. The application of performance measurements for new activities required in the TRO could be addressed according to the provision of Verizon's Performance Measurement Plan adopted by the Commission in Docket No. 000121C-TP. Furthermore, this is not a change necessitated by the TRO itself. (**Hallenstein**)

Position of the Parties

Verizon: There are no existing provisioning intervals, performance measures, or remedy payments with respect to the new obligations imposed in the TRO, and it would be inappropriate to impose standards or measures developed for other activities to the new activities required in the TRO. In any event, carriers have stipulated to a specific process for raising performance plan issues, and that stipulation does not permit litigation of those issues in this arbitration.

AT&T: Yes. Contractual performance measurements and remedies are the only practical means of ensuring non-discriminatory access to UNEs. Verizon should be required to meet the standard provisioning intervals and performance measurements that are contained in the current plan adopted and approved by this Commission. Verizon should be subject to potential remedy payments for failure to meet those requirements that are contained in the current plan adopted and approved by this Commission.

CCG: Yes. For the items set forth in the Commission's Order 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI takes no position on this issue.

Sprint: Yes, if such intervals or performance measures currently are applicable.

Staff Analysis:

BACKGROUND

In Docket No. 000121C-TP, by Order No. PSC-03-761-PAA-TP, the Commission approved a stipulation on a Performance Measurement Plan (The Plan) for Verizon Florida. Docket No. 000121C-TP is an ongoing docket which established Verizon's performance measurements for the purpose of monitoring and evaluating Verizon's operating support systems. Verizon's Performance Measurement Plan applies uniformly for all CLECs that provide service in Verizon Florida's territory. The stipulation approving the Plan includes a provision that adopts the performance metrics set forth and ordered by the California Public Utilities Commission for Verizon. However, the stipulation further states:

For issues that have neither been raised nor resolved in the California process, any Stipulating Party can request, in writing, negotiation. If no resolution is reached within thirty calendar days, the Stipulating Parties can: (1) agree to extension of the negotiation period or (2) any Stipulating Party may petition the FPSC for review and resolution. (Order No. PSC-03-0761-PAA-TP, issued June 25, 2003, Docket No. 000121C-TP, In Re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (Verizon Florida Track), Attachment A, p. 5)

Verizon's current plan does not contain performance measurements for the activities identified in this issue. Furthermore, Verizon is not currently required to make remedy payments for failure to meet the standards in the current plan.

PARTIES' ARGUMENTS

Verizon witness Ciamporcero asserts that current performance measurements for Verizon were developed before imposition of the new TRQ requirements. The witness contends the performance measurements adopted by Order No. PSC-03-0761-PAA-TP in Docket No. 000121C-TP were not designed to account for activities post TRQ. Therefore, he maintains the Commission should not consider any performance measurement proposals in this arbitration. Such proposals should instead, be addressed according to the provisions of the Stipulation on Verizon Florida's Performance Measurement Plan adopted in Docket No. 000121C-TP according to Verizon. (TR 49-50)

Verizon further notes, in response to a staff interrogatory, that there is no language in any of Verizon's interconnection agreements that imposes performance measures for the new items required in the TRQ (such as provisioning of commingled arrangements). (EXH 6, pp. 37-38) Additionally, as asserted by witness Ciamporcero, nothing in the TRQ requires implementation of performance plans, and performance plan issues should be considered in a generic forum in which all CLECs can participate, rather than in this arbitration with particular CLECs. (TR 51)

In response to staff interrogatories, AT&T contends that establishing performance measures and remedies is within the Commission's jurisdiction in enforcing an interconnection agreement. The consequence of not referencing performance metrics within the interconnection

agreement, according to AT&T, is that Verizon may seek to delay implementing performance measures related to the TRO until after the transition period expires, denying CLECs the protection afforded by the metrics. (EXH 7, p. 170) AT&T is further concerned that Docket No. 000121C-TP is currently inactive, and there is a real potential that Verizon will be able to avoid meeting its obligations by relying on procedural “whipsawing” between this docket and Docket No. 000121C-TP. (EXH 7, p. 67)

AT&T witness Nurse contends that Verizon should be required to meet the standard provisioning intervals or performance measurements that are contained in the current plan adopted and approved by the Commission. Furthermore, witness Nurse asserts that Verizon should be subject to potential remedy payments for failure to meet those requirements that are contained in the current plan. (TR 111) In a footnote to his testimony, witness Nurse recognizes that the Commission’s metrics and remedies program would be an administrative nightmare if different standards were applicable to some CLECs relative to others, based on their currently effective Interconnection Agreements. (TR 112)

The Competitive Carrier Group panel, witnesses Sanders, Cadieux, and Falvey, (CCG Panel) testified that Verizon should be subject to performance measurements and potential remedy payments in the parties’ underlying agreement or elsewhere for the facilities and services identified in the TRO. (TR 179) The CCG members agree that Docket No. 000121C-TP is the appropriate proceeding to address specific performance measures, potential remedy payments, and dispute resolution processes for matters related to performance metrics. However, the CCG members further contend that Verizon’s interconnection agreements should incorporate references to those performance measures for network elements provided by Verizon, as required by Section 251 of the Act. (EXH 8, CCG’s Responses to Staff’s First Set of Interrogatories, Item No. 39) In its brief, FDN notes that it adopts the position of the CCG. (FDN BR at 8)

Although Sprint did not file testimony, in its brief, Sprint contends that each of the new obligations imposed in the TRO (items (a) through (d) above) should be maintained in any performance measurement the Commission may have established for Verizon in the past. To the extent these TRO obligations have been addressed in current performance measures, Sprint asserts that Verizon should not be allowed, by this Commission, to omit them. (Sprint BR at 42)

ANALYSIS

Staff believes that performance measurements relating to any new services or activities associated with the TRO or TRRO should be addressed in FPSC Docket No. 000121C-TP. By Order No. PSC-05-0221-PCO-TP, issued in Docket No. 040156-TP, the Commission removed the CLECs’ request for performance measurements related to hot cuts (Issue 17(e)) because the issue was specifically being addressed in a pending proceeding in California. The Prehearing Officer noted in the Order that he is “surprised” that no party discussed Docket No. 000121C-TP, which addresses specific performance metrics for Verizon and the process for resolving issues relating to performance metrics. (Order No. PSC-05-0221-PCO-TP, issued February 24, 2005, Docket No. 040156-TP, In Re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.)

While staff understands the CLECs' concerns that performance measures related to the TRO should exist, no party in this docket, when asked, offered any specific changes to existing performance measures or provided newly constructed performance measures (i.e., revised business rules, disaggregation, or standards). (EXH 6, pp. 36-38; EXH 7, p. 168; EXH 8, CCG's Responses to Staff's First Set of Interrogatories, Item Nos. 39 and 43) Verizon witness Ciamporcero points out that the application of existing performance standards to these new activities would be unreasonable since standards have yet to be developed for these new activities. (TR 49) Witness Ciamporcero further stressed that the development of performance metrics and remedies is an extremely complex, fact-intensive, technical undertaking that does not lend itself to litigation. As such, these metrics are typically developed in industry collaboratives, rather than through adversarial processes. (TR 52)

AT&T witness Nurse respectfully acknowledged that it would be "an administrative nightmare" to apply different standards to different CLECs, and that "any modifications or exceptions to the Commission's metrics and remedies program should be addressed in the docket established for that purpose, after notice to all carriers." (TR 112) Likewise, the CCG members agreed that specific performance measures may be decided in Docket No. 000121C-TP. (EXH 8, CCG's Responses to Staff's First Set of Interrogatories, Item No. 39)

Staff supports both witness Ciamporcero's and witness Nurse's position that the process for implementing performance measurements for activities and services associated with the TRO would be complex and resource-intensive. Therefore, staff believes this issue could be more appropriately addressed generically through Docket No. 000121C-TP, separate from this time-sensitive arbitration between Verizon and particular carriers." Staff would further note that the TRO does not include any requirements to examine or implement performance plans.

CONCLUSION

This docket is not the appropriate forum for resolution of this issue. The application of performance measurements for new activities required in the TRO could be addressed according to the provision of Verizon's Performance Measurement Plan adopted by the Commission in Docket No. 000121C-TP. Furthermore, this is not a change necessitated by the TRO itself.

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

Recommendation: Verizon should provide, to a requesting telecommunications carrier, access to subloops for multiunit premises wiring at any portion of the loop that it is technically feasible to access in the ILEC's outside plant at or near a multiunit premises. This includes inside wire, which is defined in this proceeding as all loop plant owned or controlled by the ILEC at a multiunit customer premises between the minimum point of entry and the point of demarcation at the customer's premises. (Vickery)

Position of the Parties

Verizon: Subloop access must be provided in accordance with the FCC's unbundling Rules. Among other things, the Amendment must make clear that Verizon has no obligation to unbundle feeder on a stand-alone basis; that it is not technically feasible to access a subloop if a splice case must be removed; and that CLEC technicians are not permitted to attach to Verizon equipment or do their own installation work on Verizon's network.

AT&T: AT&T seeks and is entitled to non-discriminatory access to subloop elements consistent with the findings of the TRO requiring Verizon to provide AT&T with unbundled access to Verizon's copper subloops elements including Verizon's network interface devices. AT&T is also entitled to unbundled subloops used to access customers in multiunit premises which includes access to any technically feasible access point located near a Verizon remote terminal for these subloop facilities.

CCG: 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

FDN: Agree with Competitive Carrier Group.

MCI: MCI takes no position on this issue.

Sprint: Access should be provided by Verizon to the extent required by the Federal Unbundling Rules and the FCC's TRRO Order.

Staff Analysis: The FCC originally defined subloops in the UNE Remand Order as any portion of the loop that is technically feasible to access at terminals in the ILEC's outside plant, including inside wire.⁶⁰ The FCC included specific language in the TRO regarding subloop impairment and the necessity for continued unbundled access to subloops for CLECs. Access includes that portion of the distribution feeder plant at remote terminals, minimum point of

⁶⁰ UNE Remand Order, 15 Rcd at 3801, para 234; see also 47 CFR 51.319(a) (2).

Entry (MPOE)⁶¹ in multitenant dwellings, NIDs and customer premises wiring owned by the ILEC. (TRO ¶343) The parties in this proceeding appear to focus on subloops in the context of MPOE in a multiunit environment, customer premises wiring (house and riser cable) owned/controlled by the ILEC, copper subloops and Single Point of Interconnection (SPOI).

PARTIES' ARGUMENTS

Verizon

Verizon witness Richter states that Verizon does indeed define subloops. (TR 305) He explains that Section 4.7.24 of Verizon's Amendment 2 includes a definition of "Sub-loop for Multiunit Premises Access," which was the TRO's focus. (TR 305) He states that Verizon will include in the Amendment an "appropriate definition." Witness Richter expresses that the following definition was provided to the CLECs during negotiations: a subloop is "the copper portion of a Loop in Verizon's network that is between the minimum point of entry (MPOE) at an end user customer premises and Verizon's feeder/distribution interface." (TR 306)

Witness Richter asserts that AT&T "is ignoring the underlying interconnection agreement which also addresses subloops in the Network Elements Attachment, Section 6." He states the proposed amendment and the existing agreement definitions are "consistent" with the FCC's Orders. (TR 306) He argues that Verizon's subloop definition language does indeed include "at or near the customer's premises" as evidenced by Amendment 2, §4.7.24 that states "[a]ny portion of a Loop, other than an FTTP, that is technically feasible to access at a terminal in Verizon's outside plant *at or near a multiunit premises.*" (emphasis by witness) (Richter TR 306)

Witness Richter believes that Verizon's restrictions concerning installation work and attaching to its network are reasonable. (TR 308) He states Verizon must have the ability to control access to its network and equipment in order to prevent harm, inadvertent mistakes or deliberate sabotage. He argues that CLECs having "free run" of Verizon's network is a very dangerous standard that does not appear in any rule or law that he is aware of. He states that this Commission ruled, in the subloop context, that "CLECs should not be allowed access to Verizon's network where there are network security and reliability concerns." (TR 309) He maintains that the concerns are not just theoretical since there are actual cases of unauthorized, and unpaid, use of Verizon facilities by CLECs, and that allowing Verizon technicians to do the actual connections "minimizes the chances of such incidents." (TR 309)

AT&T

Witness Nurse argues that the TRO requires Verizon to provide AT&T "unbundled access to Verizon's copper subloops and Verizon's network interface devices (NIDs)." He states that the FCC found AT&T and other CLECs are impaired on a nationwide basis "without access

⁶¹ The MPOE is defined to be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building. (See 47 CFR 68.105(b)) In multiunit premises where the demarcation point is not located at the MPOE, the incumbent LEC's network extends into the premises resulting in an inside wire subloop. (See TRO footnote 1012)

to unbundled subloops used to access customers in multiunit premises.” (TRO ¶348; TR 112) The TRO requires Verizon to provide AT&T access to any technically feasible access point located near a Verizon remote terminal for subloop facilities, argues witness Nurse. (TRO ¶343; TR 112) Also, he argues it is important for CLECs to have access to subloops as an unbundled element because of the significant barriers to entry involving the multitenant environment. He believes this is due to the exclusive access to the premises that ILECs have previously enjoyed. (TR 113)

AT&T witness Nurse states that Verizon’s proposal does not comply with the TRO’s requirement to provide access “at or near the customer’s premises.” (TR 114) He concludes that the language limits the access to any technically feasible point located near a Verizon remote terminal. He argues that the language differences may appear to be minor, but experience has shown that it can result in “not-so-minor” disputes. (TR 114) He contends AT&T simply wants the language of the ICA to track the language of the FCC’s order so that disputes can be avoided. (TR 114)

Witness Nurse argues that Verizon seeks to impose a variety of restrictions to inside wire subloops. He explains that paragraph 3.3.1.1.1.3 of Verizon’s Amendment says AT&T facilities cannot be “attached, otherwise affixed or adjacent to Verizon’s facilities or equipment, cannot pass through or otherwise penetrate Verizon’s facilities or equipment and cannot be installed so that AT&T’s facilities or equipment are located in a space where Verizon plans to locate its facilities or equipment.” (TR 115) Also, Verizon requires that cut-over of facilities involving house and riser cable be performed solely by Verizon technicians. Witness Nurse argues that the TRO does not allow Verizon to restrict AT&T to only using Verizon technicians. He states this restriction results in unnecessary delays and increased cost in providing service to customers. (TR 116)

Regarding the single point of interconnection, witness Nurse argues that Verizon’s proposed language would require the parties to negotiate yet another ICA at some future date. (TR 117) He contends that there is no reason to wait for some indeterminate date; the commission should resolve the issue by adopting AT&T’s proposal in paragraph 3.4.5 of its proposed Amendment. (TR 117)

CCG

Witness Falvey argues Verizon is obligated to provide access to its subloops and NIDs in accordance with section 51.319(b) of the FCC’s rules and the TRO. (TR 179) He states that under the TRO it must provide access at any technically feasible access point located near a Verizon remote terminal for the requested subloop facilities. (TR 180) He argues the amendment to the parties’ interconnection agreement should include (a) detailed definitions of subloops and access terminals, and (b) detailed procedures for the connection of subloop elements to any technically feasible point in respect to distribution subloop facilities and subloops in multitenant environments. (TR 180) He concludes that the Amendment should also include the TRO requirements applicable to inside wire subloops and Verizon’s provision of a single point of interconnection (SPOI) suitable for use by multiple carriers. (TR 180)

FDN

In its brief, FDN noted that it agrees with the CCG. (FDN BR at 8)

Sprint

Using strictly its brief, Sprint argues that the terms and conditions Verizon proposes are inconsistent with the TRO. (Sprint BR at 27) Sprint states that the FCC created two types of subloops in the TRO: copper subloops and subloops for access to multiunit premises wiring. (Sprint BR at 27) Sprint provides the following FCC definition: “[a] copper subloop is a portion of a copper loop or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technical feasible access in an incumbent LEC’s outside plant, including inside wire owned or controlled by the incumbent LEC, and the end-user customer premises.” (47 CFR 51.319(b)(1); Sprint BR at 27) Sprint continues that the FCC further defined a “point of technically feasible access as any point in the incumbent LEC’s outside plant where a technician can access the copper wire within a cable without removing a splice case. Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. An incumbent LEC shall upon a site-specific request provide access to a copper subloop at a splice near a remote terminal.” (47 CFR 51.319(b)(1)(i); Sprint BR at 27)

Sprint states that the terms Verizon proposes for subloop access within the multiunit premises are limited to House and Riser Cable. Sprint contends that these limitations will exclude fiber facilities and only extend between the MPOE and the point of demarcation. Sprint states the MPOE “is the closest point to where the wiring crosses the property line or the closest practical point where the wiring enters the multiunit building.” (Sprint BR at 28) Sprint argues that Verizon’s terms exclude facilities between the MPOE and another point of access near the multiunit premises. (Sprint BR at 28) In conclusion, Sprint’s “recommended additions to the terms proposed by Verizon make it consistent with the FCC’s rules, adding references to Sub-Loop for Multiunit Premises and Inside Wire along with House and Riser Cable.” (Sprint BR at 29)

ANALYSIS

The FCC within the TRO conducted a limited analysis of “those subloops with access to premises wiring at or near a multiunit customer premises” and it required subloop unbundling to “reach all customers residing in multiunit premises.” (TRO ¶347) The FCC also stated that the use of unbundled subloops to access customers in multiunit premises is not limited by the “type or capacity of the loop the requesting carrier will provide.” (TRO ¶343) Staff believes the parties are focusing on Verizon’s Amendment 2, Section 3.3, Sub-loop, and its subordinate sections. Staff is concerned with Verizon’s assertion that AT&T “is ignoring the underlying interconnection agreement which also addresses subloops in the Network Elements Attachment, Section 6.” (TR 306) In reviewing Section 3.3.1 of Verizon’s Amendment 2 it states “. . . access to Inside Wire, House and Riser or House and Riser Cable are hereby deleted and replaced with this Section 3.3.1, which shall supersede any other provision in the Agreement or in any Verizon tariff or SGAT in effect prior to the Amendment Effective Date. . . .” (Verizon Amendment 2,

Section 3.3.1) Staff believes that the plain language of Section 3.3.1 negates or “supersedes” the language in the ICA that addressed subloops; therefore, the underlying interconnection agreement Network Elements Attachment, Section 6, would no longer be applicable, contrary to Verizon’s assertions.

Subloops—Multiunit Environment

Staff believes, as does Sprint, that the FCC focused on two major themes concerning subloops. (47 CFR 51.319(b); Sprint BR at 27) The first was copper subloops and the second was subloops in a multiunit environment. Again, staff notes that Verizon, AT&T, and the CCG have directed their arguments toward subloops and the multiunit premises. The FCC regulation governing subloops in multiunit premises is provided:

§ 51.319(b) (2) Subloops for access to multiunit premises wiring. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the subloop for access to multiunit premises wiring on an unbundled basis regardless of the capacity level or type of loop that the requesting telecommunications carrier seeks to provision for its customer. The subloop for access to multiunit premises wiring is defined as any portion of the loop that it is technically feasible to access at a terminal in the incumbent LEC’s outside plant at or near a multiunit premises. One category of this subloop is inside wire which is defined for purposes of this section as all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in Sec. 68.105 of this chapter and the point of demarcation of the incumbent LEC’s network as defined in Sec. 68.3 of this chapter.

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

Staff recommends that the parties incorporate the FCC’s definition of a subloop for access to multiunit premises wiring in their agreements. Staff notes that AT&T’s argument that Verizon’s language did not include the “at or near the customer’s premises” would be resolved by incorporating the FCC definition for subloop access in multiunit premises.

Subloops—House and Riser Cable

Staff notes that Section 3.3 of Verizon’s proposed amendment and its subsections contain the terms and conditions the CLEC must satisfy regarding House and Riser Cable. Staff notes AT&T’s argument above highlighting certain restrictions Verizon places on the CLEC regarding available space such that Verizon reserves the space for its own future plans. AT&T states that it will “accept this limitation if and only if Verizon is expressly willing to contract to abide by the

same limitation.” (TR 115) Staff believes that Amendment 2, Section 3.3.1.1.1.3 may be too restrictive. In particular, the phrase “. . . and cannot be installed so that **CLEC Acronym TXT**’s facilities or equipment are located in a space where Verizon plans to locate. . .” appears to be left open to interpretation as to some indeterminate date. Staff believes that Verizon is creating an exclusive use situation in that it has sole discretion in deciding when and how to utilize space based on some future plan. Of significant note, the record is silent on whether the parties have experienced a situation where Verizon has denied subloop access to house and riser cable.

In reviewing Amendment 2, Section 3.3.1.1.1.6, concerning house and riser cable cutovers being conducted by Verizon technicians, staff believes it is appropriate for Verizon technicians to perform these cutovers. Verizon’s argument regarding protection of its network from inadvertent mistakes, acts of sabotage and misuse is noted. Staff finds no support in the record to weigh AT&T’s statement concerning unnecessary delays and increased cost in providing service to its customers. Therefore, staff believes it is appropriate for Verizon to perform house and riser cable cutovers as found in Amendment 2, Section 3.3.1.1.1.6.

Subloops—Copper

Staff notes Sprint’s argument above concerning the FCC’s creation of two types of subloops: a copper subloop and a subloop in a multiunit environment; this matter was only briefed by Sprint and not all parties addressed copper subloops. In that regard, the FCC stated “[a]n incumbent LEC shall, upon a site-specific request provide access to a copper subloop at a splice near a remote terminal. The incumbent LEC shall be compensated for providing this access in accordance with Sec. 51.501 through 51.515.” (47 CFR 51.319(b)(1)(i)) Staff believes it is important to note that this same caveat was not included in the paragraph detailing technical feasibility in a multiunit situation. In other words, in a multiunit environment the ILEC does not have to provide access at a splice case. Verizon captures this distinction in Section 3.3.1.1 of the Amendment.

Staff notes that Verizon did not include a copper subloop in its section regarding subloops. Staff is unsure as to why or if it was covered elsewhere in the existing ICA. Reiterating, Sprint’s comments concerning copper subloops cannot be gleaned from Verizon’s Amendment Section 3.3, and no other party provided testimony regarding its omission. In addition, Verizon appears to exclude the opening of a splice in its subloop section of the Amendment.

SPOI

Last, the section of Verizon’s Amendment 2 detailing a SPOI is identified as 3.3.1.2. In response to discovery Verizon stated that it has never had a SPOI requested by a CLEC in Florida. (EXH 6, p. 116) The FCC provided the following concerning a SPOI:

- (11) Single point of interconnection. Upon notification by a requesting telecommunications carrier that it requests interconnection at a multiunit premises where the incumbent LEC owns, controls, or leases wiring, the incumbent LEC shall provide a single point of interconnection that is suitable for use by multiple

carriers. This obligation is in addition to the incumbent LEC's obligations, under paragraph (b) (2) of this section, to provide nondiscriminatory access to a subloop for access to multiunit premises wiring, including any inside wire, at any technically feasible point. If the parties are unable to negotiate rates, terms, and conditions under which the incumbent LEC will provide this single point of interconnection, then any issues in dispute regarding this obligation shall be resolved in state proceedings under section 252 of the Act.⁶²

Staff believes that including language for a SPOI is not necessary at this time since no CLEC in Florida has requested one. The plain language of the rule leaves it up to the parties to negotiate a SPOI and, if they are unable to do so, to then come to the Commission for resolution. In this instant proceeding, staff is unable to determine whether or not a SPOI may be a complex undertaking and to try to cover the uniqueness of each SPOI with a broad brush is, in staff's belief, not appropriate. In that regard, staff believes it is premature for the Commission to consider because a SPOI has never been requested, and the record is silent as to its complexity and or uniqueness.

CONCLUSION

Verizon should provide, to a requesting telecommunications carrier, access to subloops for multiunit premises wiring at any portion of the loop that it is technically feasible to access in the ILEC's outside plant at or near a multiunit premises. This includes inside wire, which is defined in this proceeding as all loop plant owned or controlled by the ILEC at a multiunit customer premises between the minimum point of entry and the point of demarcation at the customer's premises.

⁶² See 47 CFR 51.319 (b)(2)(ii).

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 an unbundled transport? If so, what revisions to the amendment are needed?

Recommendation: Verizon does not reverse collocate local switching equipment in any CLEC facility/premises in Florida. Therefore, reverse collocation need not be addressed in the amendment. (Vickery)

Position of the Parties

Verizon: Verizon does not collocate its switching equipment in any CLEC premises and does not plan to do so. Therefore, there is no reason for amendment language to address hypothetical disputes about reverse collocation.

AT&T: Yes. The TRO requires that the facility between Verizon's local circuit switching equipment located in AT&T facilities and the Verizon serving wire center should be treated as unbundled transport. ILECs may reverse collocate by collocating equipment at a competing carrier's premises or may place equipment in a common location for purposes of interconnection. The transmission path from this point back to the ILEC wire center shall be unbundled as transport between ILEC switches or wire centers. AT&T's proposed amendment reflects the FCC's findings.

CCG: 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.

FDN: Agree with ATT.

MCI: MCI takes no position on this issue.

Sprint: No position.

Staff Analysis: This issue addresses treatment of a possible scenario where Verizon collocates switching equipment in a CLEC's facility. The FCC stated in footnote 1126 of the TRO that incumbents "may reverse collocate in some instances by collocating equipment at a competing carrier's premises. . . ." (TRO ¶369 fn 1126)

PARTIES' ARGUMENTS

Verizon

Witness Ciamporcero states that he does not think there is any dispute about reverse collocation requirements. (TR 282) He says AT&T witness Nurse correctly noted the FCC footnote that if an ILEC "has local switching equipment . . . 'reverse collocated' in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport." (TR 283) He states Verizon will comply with the FCC's

requirement, “but this issue is moot, because to the best of Verizon’s knowledge, the situation does not exist in Florida. He further states, “nor does Verizon intend to establish any such arrangement in Florida.” (Ciamporzero TR 283) Therefore, he argues, it is unnecessary for the Commission to consider language that addresses a “hypothetical issue.” (TR 283)

AT&T

AT&T witness Nurse argues that the transmission path between Verizon’s local switching equipment located in AT&T’s facilities and the Verizon serving wire center should be treated as unbundled transport. (TR 117) He cites to the FCC’s TRO paragraph 369 and its key footnote 1126. He states the FCC recognized that ILECs may “reverse collocate” in a competitor’s facility/premises or that the ILEC may place equipment in a common location for the purpose of interconnection; “. . . to the extent that an incumbent LEC has local switching equipment defined by the Commission’s rules ‘reverse collocated’ in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled transport between the incumbent LEC switches or wire center. . .” (TR 118) He argues that Verizon is obligated to provide such unbundled dedicated transport under the terms set forth in the TRRO. (TR 118)

CCG

The Competitive Carrier Group adopted the testimony of AT&T witness Nurse. (TR 180)

FDN

In its brief, FDN states that it agrees with AT&T. (FDN BR at 8)

ANALYSIS

The parties appear to be in agreement that the FCC concluded in the TRO that if an ILEC were to “reverse collocate” in a competitor’s facility, the transmission path between the reverse collocation and the ILEC serving wire center would be treated as unbundled transport. (TRO ¶369 fn 1126; Ciamporzero TR 283; Nurse TR 118) Responding to a staff interrogatory, the CCG stated that “Verizon hasn’t decided to change the way they’re set up, SBC did recently decide in Oklahoma.” (EXH 10, p. 37) It also stated that Verizon’s current business plan is not to reverse collocate, but that “business plans change over time.” (EXH 10, p. 37)

In reviewing ¶369 and footnote 1126 of the TRO, staff believes the FCC was setting the stage for its impairment analysis of dedicated transport. Footnote 1126 contained a scenario of an ILEC’s reverse collocation in a competitor’s facility and how the associated transport facilities were to be treated. The FCC concluded that the “. . . transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport between incumbent LEC switches or wire centers to the extent specified in this Part.” (TRO fn 1126)

Staff believes Verizon recognizes the requirements as identified within the TRO ¶369 and footnote 1126, and would comply if it were ever to decide to reverse collocate in a competitor’s facility. However, Verizon has stated, categorically, that it will not “establish any such

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arrangement in Florida.” (Ciamporcero TR 283) All the parties appear to recognize that the transmission path from a hypothetical “reverse collocation” to the ILEC’s wire center should be treated as unbundled. However, to include language in the amendment is at the very least premature because as Verizon stated, it has no reverse collocations or plans in Florida for such arrangements.

CONCLUSION

Verizon does not reverse collocate local switching equipment in any CLEC facility in Florida. Therefore, reverse collocation need not be addressed in the amendment.

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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?

Recommendation: No. The FCC's rules regarding interconnection facilities and an ILEC's obligations under §251(c)(2) did not change. As such, there is no need to address this issue in this proceeding. (Vickery)

Position of the Parties

Verizon: Neither the TRO nor TRRO established any new interconnection requirements under §251(c)(2), so there is no need for any amendment language in this regard. Existing ICAs already contain complex, inter-related interconnection terms, and changing an isolated aspect of those terms would be inappropriate. The Commission should also reject CLEC arguments that they are entitled to exactly the same facilities under §251(c)(2) as they were under §251(c)(3). Accepting this argument would completely moot the FCC's de-listing of entrance facilities.

AT&T: Yes. Section 251(c)(2) of the federal Act specifically provides that Verizon has an obligation to interconnect with the CLEC's network via interconnection trunks for the transmission and routing of telephone exchange service and exchange access. (251(c)(2)(A) and (D)). The TELRIC standard is prescribed in Section 252(d)(1). The rates, terms and conditions should be in accordance with Section 252.

CCG: 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.

FDN: Agree with ATT.

MCI: MCI takes no position on this issue.

Sprint: Interconnection facilities included in the Amendment should be provided at cost-based rates pursuant to the Federal Unbundling Rules and paragraph 140 of the FCC TRRO.

Staff Analysis: The parties appear to be in agreement that an ILEC's responsibilities regarding interconnection facilities and §251(c)(2) of the Act did not change. (Ciamporcero TR 284; Nurse TR 119; Sprint BR at 29) The disagreement appears to involve entrance facilities, which are now de-listed UNEs, and whether this change in status would necessitate renegotiation of existing ICAs. The TRRO contained an analysis of entrance facilities which had previously been classified as a transport network element subject to unbundling. In the analysis, the FCC concluded that CLECs were no longer impaired and removed entrance facilities from the definition of dedicated transport. (TRRO ¶138)

PARTIES' ARGUMENTS

Verizon

Witness Ciamporcero states that the FCC excluded entrance facilities from the definition of dedicated transport in the TRO. He explains the FCC stated that the exclusion of entrance facilities did not change the obligations incumbent LECs had to provide interconnection trunks at TELRIC prices pursuant to section 251(c)(2). Moreover, the Verizon witness indicated that the TRRO made clear that the FCC's finding of non-impairment for entrance facilities "does not alter" a CLEC's right to obtain interconnection facilities pursuant to §251(c)(2) at TELRIC rates. (TR 284)

Witness Ciamporcero states that neither the TRO nor the TRRO "modified any pre-existing rights or obligations relating to the use of interconnection facilities under §251(c)(2)" and ". . . is unclear why the CLECs think that it would be proper to litigate it in this proceeding to address changes in unbundling rules." (TR 284) Witness Ciamporcero argues that the parties' existing interconnection agreements already contain terms regarding interconnection and that there has been no change in an ILEC's unbundling obligations that justifies renegotiation or arbitration of the existing interconnection agreement. (TR 284) He also argues CLECs should not be allowed to seek new contract language on "one aspect of interconnection—where no rules have changed—without regard to how their new (and unnecessary) language might affect architecture provisions in their underlying agreements." (TR 285) He concludes his argument stating "there would be no reason—and indeed, it would be wholly inappropriate—for the Commission to undertake such complex issues here." (TR 285)

AT&T

Witness Nurse argues that interconnection trunks between a Verizon wire center and a CLEC wire center must be provided at TELRIC pricing. (TR 119) He states §251(c)(2) of the Act establishes that Verizon has an obligation to interconnect with the CLEC's network via interconnection trunks "for the transmission and routing of telephone exchange service and exchange access on rates, terms and conditions. . . in accordance with. . . Section 252." (See §251(c)(2)(A) and (D)) (emphasis by witness) (TR 119) He argues §252(d)(1) contains the TELRIC standard. (TR 119) Witness Nurse states that although the FCC in the TRO revised the definition of dedicated transport to exclude entrance facilities, finding they exist outside of the ILEC's network, the FCC was very clear that this conclusion did not alter the obligation of Verizon to continue to provide interconnection trunks pursuant to §251(c)(2) at TELRIC pricing. (TR 119)

In the TRRO, witness Nurse argues the FCC "did not retreat from its finding regarding the availability of interconnection facilities at TELRIC prices." (TR 120) Instead, the FCC found that ILECs were not obligated to provide access to entrance facilities as UNEs, but, CLECs would continue to have access to these facilities at "cost-based rates" (TR 120)

He concludes by stating that "it is clear that interconnection trunks between a Verizon wire center and a CLEC wire center established for the transmission and routing of telephone

exchange service and exchange access, and for the purpose of 'backhauling' traffic are interconnection facilities under section 251(c)(2) that must be provided at TELRIC." (TR 121)

CCG

For this issue, the CCG adopted the testimony of AT&T witness Nurse. (TR 181)

Sprint

Sprint, using its brief, states that "CLECs are concerned that ILECs will attempt to take the FCC's decision regarding UNE entrance facilities to deny access to cost based interconnection facilities." (Sprint BR at 30) Sprint expresses that the CLECs are requesting that Verizon "acknowledge that fact when the TRRO terms are negotiated." (Sprint BR at 30)

ANALYSIS

Section 251(c)(2) of the Act states "incumbent LECs have a duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network. . . for the transmission and routing of telephone exchange service and exchange access. . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of section 252." Staff notes that all parties cite §251(c)(2) of the Act and that Verizon says that its obligation to provide interconnection facilities under the terms and conditions as specified with §251(c)(2) of the Act did not change. (Ciamporcero TR 284)

Within the TRO the FCC stated "to the extent that requesting carriers need facilities in order to 'interconnect with the incumbent LEC's network,' §251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation." (TRO ¶366) Prior to making this statement the FCC removed "entrance facilities as UNEs" and in staff's opinion may have left the impression that interconnection facilities under §251(c)(2) would have to be renegotiated.

Staff believes this was not the intent; the FCC de-listed entrance facilities as UNEs, but did not alter the ILEC's obligations found within §251(c)(2) as expressly stated within ¶366 of the TRO.⁶³ Therefore, staff believes it is not necessary to address the issue in this proceeding. Staff notes that Verizon is obligated to honor its existing ICA since Verizon stated "[p]arties' existing interconnection agreements contain negotiated (or arbitrated) terms regarding such interconnection architecture issues, and there has been no change in law that would justify renegotiation (or arbitration) of such issues. . . ." (Verizon BR at 113)

CONCLUSION

The FCC rules regarding interconnection facilities and an ILEC's obligations under §251(c)(2) did not change. As such, there is no need to address this issue in this proceeding.

⁶³ See also TRO fn. 1116.

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. Sec. 51.318) of the TRO Order to (1) convert existing circuits/services to EELs or (2) order new EELs?

Recommendation: Staff believes that the TRO does not require a CLEC to provide detailed, verifiable information showing compliance with the service eligibility criteria prior to the circuit being provisioned. Staff recommends that the CLEC be required to submit a letter, either manually or electronically, identifying and certifying that all currently provisioned circuits conform to the TRO service eligibility criteria, within 60 days of the effective date of the order from this recommendation. For each conversion request, staff recommends that the CLEC be required to submit a letter, either manually or electronically, identifying and certifying that each and every circuit conforms to the TRO service eligibility criteria. For each new order, staff recommends that the CLEC be required to submit a letter, either manually or electronically, identifying and certifying that each and every circuit will conform to the TRO service eligibility criteria. (K. Kennedy)

Position of the Parties

Verizon: The CLEC should provide information sufficient to certify that new and existing EELs arrangements comply with all the FCC's certification criteria in the *TRO*.

AT&T: The FCC allows CLECs to self certify when ordering new EELs or converting existing circuits to EELs. Rule 51.318 requires that the CLEC be certificated by the state and provide self certification that each DS1 circuit and each DS1-equivalent circuit on a DS3 EEL meet specific criteria. The FCC does not require any additional information other than the self certification letter from the CLEC certifying that the specific requirements have been satisfied. Any other proposed requirements should be rejected.

CCG: 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.

FDN: Agree with ATT [sic].

MCI: MCI's position is set forth in detail in Sections 4, 5, 8, and 9 of Exhibit 4, Deposition Exhibit 1. MCI's proposal is necessary to make the Amendment precisely conform to the language of the FCC's rules.

Sprint: All obligations and associated process contained in the Federal Unbundling Rules and the FCC TRO should be included in the Amendment.

Staff Analysis: The parties have recognized that Issue 21 and Issue 25 address similar issues but differ in their application. (Nurse TR 141; CCG Panel TR 188; Ciamporcero TR 285) While both pertain to the TRO's EEL service eligibility criteria, Issue 21 relates to UNE EELs,⁶⁴ and Issue 25 pertains to combining and commingling, in particular commingled EELs.⁶⁵ As the parties have discussed these issues together, staff will as well. The parties do not dispute that Verizon is obligated to provide access to EELs,⁶⁶ as required by the TRO. (§593) They dispute how that obligation should be implemented. This issue addresses the self-certification aspect of the service eligibility criteria.

PARTIES' ARGUMENTS

The parties agree that the service eligibility criteria should be satisfied for a CLEC to be entitled to access an EEL. (Nurse TR 123; CCG Panel TR 182; Ciamporcero TR 268, 271) The parties also agree that the TRO identifies the criteria that must be satisfied, but does not specify the form and detail of the self-certification. (CCG BR at 47; Ciamporcero TR 289) The CCG Panel witnesses explain the criteria in detail:

Specifically, to obtain a new or converted EEL under the *Triennial Review Order* and section 51.318 of the FCC's rules, the Amendment should require that a competitive carrier supply self-certification to Verizon of the following information:

- (1) state certification to provide local voice service, or proof of registration, tariff and compliance filings;
- (2) that at least one number is assigned to each DS1 circuit prior to provision of service over that circuit;
- (3) that each circuit has 911/E911 capability prior to the provision of service over that circuit;
- (4) that the circuit terminates to a collocation or reverse collocation;
- (5) that each circuit is served by an interconnection trunk in the same LATA over which calling party number ("CPN") will be transmitted;
- (6) that one DS1 interconnection trunk (over which CPN will be passed) is maintained for every 24 DS1 EELs; and
- (7) that the circuit is served by a Class 5 switch or other switch capable of providing local voice traffic. (TR 182-183)

Verizon's proposal regarding self-certification is set forth in §3.4.2.3 of its proposed amendment with a caveat in §3.4.2.1 that the CLEC must re-certify its existing circuits "within

⁶⁴ An UNE EEL is unbundled loop and transport combination.

⁶⁵ A commingled EEL is loop and transport, where one is an UNE and the other is special access.

⁶⁶ EELs generally will refer to both UNE EELs and commingled EELs.

thirty (30) days after the Amendment Effective Date.” (Verizon Amendment 2, pp. 9-10, §3.4.2.1)

Section 3.4.2.3 states:

Each written certification to be provided by [the CLEC] pursuant to Section 3.4.2.1 above must contain the following information for each DS1 circuit or DS1 equivalent:

- (a) the local number assigned to each DS1 circuit or DS1 equivalent;
- (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it);
- (c) the date each circuit was established in the 911/E911 database;
- (d) the collocation termination connecting facility assignment for each circuit, showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6), and not under a federal collocation tariff;
- (e) the interconnection trunk circuit identification number that serves each DS1 circuit. There must be one such identification number per every 24 DS1 circuits; and
- (f) the local switch that serves each DS1 circuit. When submitting an ASR for a circuit, this information must be contained in the Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information. (Verizon’s Amendment 2, pp. 10-11, §3.4.2.3)

MCI’s proposed amendment appears to agree with Verizon’s proposal, but is contradicted by MCI’s Post-Hearing Brief. The paragraph above appears in MCI’s proposed amendment in §4.2.2 with the caveat in §4.2.1 that the CLEC must re-certify its existing circuits “within sixty (60) days after the Amendment Effective Date.” (EXH 4, p. 46) However, in its brief MCI states that it agrees with AT&T witness Nurse, who asserts that Verizon’s proposal for what information should be included in the self-certification “is discriminatory and should be rejected.” (TR 125) AT&T witness Nurse and MCI explain how Verizon’s proposal for self-certification is “onerous.”

Paragraph 3.4.2.3 of the Verizon proposal would require [the CLEC] to provide

- the specific local telephone number assigned to each DS1 circuit or DS1-equivalent;
- the date each circuit was established in the 911/E911 database;
- the specific collocation termination facility assignment for each circuit and a “showing” that the particular collocation arrangement was established pursuant to the provisions of the federal Act dealing with local collocation and
- the interconnection trunk circuit identification number that serves each DS1 circuit. (emphasis by witness) (Nurse TR 125-126; MCI BR at 15)

The CCG claims that “if the FCC intended a process that would permit Verizon to verify CLECs’ compliance with the service eligibility criteria . . . prior to provisioning a high capacity EEL, the self-certification requirements demanded by Verizon would have been included in the *Triennial Review Order*.” (CCG BR at 48) AT&T witness Nurse appears to agree, claiming that in ¶577 of the TRO the “FCC rejected the proposals of the incumbent LECs such as Verizon that had sought to require other onerous conditions on the CLECs as a pre-condition to order an EEL or convert existing circuits to EELs, such as pre-audits and other requirements.” (TR 124) AT&T witness Nurse reiterates that “the information requested in Verizon’s proposal amounts to an impermissible ‘pre-audit’ and continuous audit requirement that was rejected by the FCC as being a discriminatory ‘gating mechanism,’ and should be rejected.” (TR 127) In its brief FDN states that it agrees with AT&T’s position on this issue. (FDN BR at 9)

The CLECs also request that the batch certification, proposed by the CLECs and rejected by Verizon, should be permitted for efficiency and practicality. AT&T asserts that the batch certification should be permitted for all prior and future conversions, rather than circuit-by-circuit. (AT&T BR at 35-36) The CCG notes that Verizon witness Ciamporcero admitted that the batch method “would not create an obstacle to Verizon’s processing.” (CCG BR at 49; EXH 5, p. 21) AT&T witness Nurse testifies that “AT&T’s eligibility has already been established, and forcing AT&T – or any other CLEC – to go through this process will unnecessarily increase costs. The Commission thus should permit competitors to re-certify all prior conversions in one batch.” (TR 94)

Finally, the CLECs request that they be allowed to make the self-certification electronically or manually (in a written request). (Nurse TR 93; CCG Panel TR 181) The CCG claims that Verizon should not require only electronic notification since the FCC concluded “that any ‘practical’ method, including a letter, is acceptable.” (CCG BR at 49; TRO ¶¶620, 624)

Verizon witness Ciamporcero testifies that the TRO EEL service eligibility criteria require information on a DS1 or DS1-equivalent basis; therefore, the CLEC should be required “to provide information that is specific to each DS1 or DS-1 equivalent circuit.” (TR 285-286) Verizon asserts that since the FCC in ¶599 of the TRO applied the criteria on a circuit-specific basis, the self-certification should also be circuit-specific. Moreover, since the CLECs need to maintain appropriate documentation to support certification, the witness believes that the CLEC should be expected to provide that information to Verizon prior to the circuit being provisioned. (Ciamporcero TR 289; TRO ¶629) Witness Ciamporcero explains that “[d]oing so at the outset will minimize the need for the parties to later undertake the time-consuming, burdensome, and expensive process for auditing of EELs, and will help prevent disputes about EEL eligibility.” (TR 289) Verizon contends the “FCC clearly did not suggest that a CLEC’s self-certification could consist of a completely unsubstantiated single sentence (e.g., ‘[The CLEC] hereby certifies that it meets the criteria.’)” (Verizon BR at 116) Finally, in its brief Verizon rebuts AT&T’s assertion: “Verizon’s proposal is not tantamount to a ‘pre-audit,’ but merely an expectation that a certification letter should contain the information specified by the FCC.” (Verizon BR at 116, fn 62)

Verizon objects to MCI’s proposed 60-day re-certification period, as well. Verizon argues that since the TRO has been in effect for a year and a half, 30 days should be sufficient

time to certify compliance. (Verizon BR at 83) “A long period would harm Verizon, because it would deprive Verizon of access revenue for circuits that do not meet the new criteria.” (Verizon BR at 83)

Verizon witness Ciamporcero also refutes the CLECs’ request for a “batch” certification, claiming that it is at odds with the circuit-specific requirements. (TR 285) Verizon contends that the “CLECs have not explained how a batch certification could accommodate providing specific local phone numbers for each circuit.” (Verizon BR at 82)

Likewise, witness Ciamporcero calls attention to AT&T’s contention that “AT&T’s eligibility for these circuits has already been established.” (Nurse TR 94) Verizon emphasizes that “neither AT&T nor any other CLEC has certified to the *TRO* EEL service eligibility criteria for its prior conversions. Rather pre-*TRO* EELs were certified under very different criteria.” (Verizon BR at 83) Witness Ciamporcero concludes that existing EELs that qualified prior to the *TRO* may not qualify under the *TRO* criteria and must be recertified. (TR 286) Verizon claims that in section 4.2.1 of MCI’s Amendment “MCI recognizes that a CLEC must re-certify existing EELs, . . . but proposes to take up to 60 days to recertify after the Amendment is executed.” (Verizon BR at 83; EXH 4, p. 46) On the other hand, “AT&T and the CCG do not address re-certification at all in their amendments.” (Verizon BR at 83, fn 54)

Last, the method for certification is not addressed in witness Ciamporcero’s testimony, but in response to discovery, Verizon objects to a manual request or manual self-certification and states that a “manual self-certification process would be very cumbersome and impose unnecessary expense.” (EXH 6, p. 28.) Currently, CLECs order EELs via electronic request; therefore, “the most efficient way for a CLEC to self-certify is right on its order for service.” (Id.)

ANALYSIS

In the *TRO*, the FCC requires ILECs to allow CLECs to convert to UNE EELs, existing loop/transport combinations purchased originally as special access. (*TRO* ¶586) Both UNE EELs and commingled EELs, referred to here generally as EELs, must satisfy the revised EEL eligibility criteria contained in the *TRO*, which include 911/E911 capability, termination into a collocation arrangement, and local number assignment. (*TRO* ¶593, ¶597)

Staff believes most of the disagreements largely reduce to whether or not the CLEC must provide detailed, verifiable information as to how a circuit satisfies each of the *TRO* EEL service eligibility criteria prior to Verizon provisioning the circuit. Staff perceives that Verizon witness Ciamporcero is misunderstanding the opposing viewpoint regarding the batch process. During Verizon witness Ciamporcero’s deposition, he admitted that a spreadsheet would provide for a batch request certifying all circuits with the detailed information that Verizon has requested. (EXH 5, pp. 20-21) Staff believes that the dispute is not whether a batch process would or would not be viable, but instead whether each circuit listed in the batch should include the information Verizon believes is necessary in order to self-certify.

Similarly, staff questions whether AT&T is unwilling to recertify its existing EEL circuits with the TRO criteria. Verizon seemed to infer from AT&T's statement that the eligibility of its current circuits has already been established, and that it is unwilling to certify that those circuits satisfy the new TRO criteria. (TR 286; TR 94; Verizon BR at 83) However, in the next sentence, AT&T witness Nurse states, "The Commission thus should permit competitors to re-certify all prior conversions in one batch." (TR 94)

Staff will therefore focus on whether the CLEC should be required to verify compliance with the EEL eligibility criteria prior to the circuit being converted. To the extent that a batch process is still in dispute, staff makes clear that such a process does not appear to be an impediment and should be allowed, since circuit-specific information could be provided in a batch, if necessary. Staff also clarifies that all circuits must be recertified, as explained in ¶589, ¶614 and footnote 1875 of the TRO.

Verizon witness Ciamporcero rebuts AT&T witness Nurse's claim that Verizon's proposal is a discriminatory "gating mechanism" and an "impermissible audit." AT&T witness Nurse alleges that "AT&T should only have to send a letter 'self-certifying' that the [circuit complies]." (TR 126) Verizon witness Ciamporcero contends, "that is beside the point." (TR 290; TR 127) However, staff submits that is exactly the point. In ¶624 of the TRO, the FCC chose "not to specify the form for such a self-certification, but . . . [found] that a letter sent to the incumbent LEC by a requesting carrier is a practical method." The Verizon witness continues, "Verizon is entitled to some meaningful certification at the outset, not just remedial measures after the fact, and nothing in the TRO says otherwise." (TR 290) Significantly, staff believes the TRO does say otherwise. In ¶623 of the TRO, the FCC conclusively states, "[due] to the logistical issues inherent to provisioning new circuits, the ability of requesting carriers to begin ordering without delay is essential" and clarifies in footnote 1900:

If a requesting carrier certifies that it will provide qualifying services over high-capacity EELs in accordance with the Commission's rules, an incumbent LEC that wishes to challenge the certification *may not engage in self-help by withholding the facility in question*. The success of facilities-based competition depends on the ability of competitors to obtain the unbundled facilities for which they are eligible *in a timely fashion*. Thus, an incumbent LEC that *questions the competitor's certification* may do so by initiating the audit procedures set forth below. (emphasis added) (TRO ¶623, fn 1900)

Staff believes that the audit procedures set forth in the TRO are explicit and should be strictly adhered to, in order to ensure a balance is maintained between the self-certification process and the audit process. The audit process is discussed more fully in Issue 21(c). Staff notes that the FCC placed reimbursement requirements for the cost of audits on the CLECs, if the audit finds material noncompliance, and expected that this should "provide an incentive for competitive LECs to request FFIs only to the extent permitted by the rules we adopt herein." (TRO ¶627)

Staff notes that Verizon objects to the CLECs using a manual (or written) process for certification. However, the TRO uses phrases that imply the ILECs should accommodate the

CLECs, including “entitling requesting carriers unimpeded UNE access based upon self-certification,” “preventing the imposition of any undue gating mechanisms that could delay . . . the ordering or conversion process,” and enabling “requesting carriers to begin ordering without delay.” (TRO ¶622, ¶623) Therefore, staff believes the FCC did not expect the ILECs to require the CLECs to submit its self-certification in any particular manner, but expected the parties to find a mutually agreeable method. Staff understands the need and desire for mechanization of processes; nevertheless, staff believes prudence would call for Verizon to allow CLECs to certify manually, as well as electronically. Staff recognizes that manual processes may be more labor-intensive and may require more time than an electronic process, but to disallow one or the other would be discriminatory. Some CLECs may not have access to an electronic process. Thus, staff recommends that both methods be permitted.

Finally, staff believes that sixty days is appropriate for the CLEC to verify and document that its current EELs comply with the TRO eligibility criteria. Verizon argues that since the TRO has been in effect for a year and a half, that 30 days should be sufficient time to certify compliance. (Verizon BR at 83) Staff disputes this claim, as USTA II and the TRRO were both major changes of law that could have affected a CLEC’s ability to ensure compliance. Staff admits that neither of those changes of law directly affected the EEL eligibility criteria, but they could have changed which circuits would be unbundled. Furthermore, staff disagrees with Verizon’s claim that an extra 30 days is unreasonably long. Staff believes that sixty days from the effective date of this order is reasonable, but not excessive.

CONCLUSION

Staff believes that the TRO does not require a CLEC to provide detailed, verifiable information showing compliance with the service eligibility criteria prior to the circuit being provisioned. Staff recommends that the CLEC be required to submit a letter, either manually or electronically, identifying and certifying that all currently provisioned circuits conform to the TRO service eligibility criteria, within 60 days of the effective date of the order from this recommendation. For each conversion request, staff recommends that the CLEC be required to submit a letter, either manually or electronically, identifying and certifying that each and every circuit conforms to the TRO service eligibility criteria. For each new order, staff recommends that the CLEC be required to submit a letter, either manually or electronically, identifying and certifying that each and every circuit will conform to the TRO service eligibility criteria.

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

b) Conversion of existing circuits/services to EELs:

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

Recommendation: Staff recommends that neither Verizon nor the CLECs should be forbidden from physically disconnecting, separating or altering the existing circuit/service to an EEL during a conversion. However, to the extent technically possible, all conversions should be as seamless as possible to avoid adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer. (K. Kennedy)

Position of the Parties

Verizon: Verizon has not proposed to disconnect, separate, change, or physically alter existing facilities when a CLEC requests conversion to an EEL, so there is no need to include amendment language addressing this hypothetical dispute.

AT&T: Yes. Verizon should be prohibited from physically disconnecting or physically altering the existing facilities when AT&T requests that an existing circuit be converted to an EEL. Section 51.316(b) provides that: "An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer."

CCG: 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.

FDN: Agree with ATT [sic].

MCI: MCI's position is set forth in detail in Sections 4, 5, 8, and 9 of Exhibit 4, Deposition Exhibit 1. MCI's proposal is necessary to make the Amendment precisely conform to the language of the FCC's rules.

Sprint: No position.

Staff Analysis: As discussed in Issue 21(a), the parties have recognized that Issue 21 and Issue 25 address similar issues but differ in their application. (Nurse TR 141; CCG Panel TR 188; Ciamporcero TR 285) Issue 21 relates to UNE EELs,⁶⁷ and Issue 25 pertains to combining and commingling, in particular, commingled EELs.⁶⁸ As the parties have discussed these issues together, staff will as well. The parties do not dispute that the TRO requires Verizon to allow

⁶⁷ An UNE EEL is unbundled loop and transport.

⁶⁸ A commingled EEL is loop and transport, where one is an UNE and the other is special access.

CLECs to convert to EELs,⁶⁹ existing loop/transport combinations purchased originally as special access. (¶593, ¶586; Nurse TR 128; CCG Panel TR 183; Ciamporcero TR 271) They dispute how that obligation should be implemented: The issue here is whether the amendment should specifically foreclose Verizon from physically disconnecting, separating, altering or changing facilities when a circuit is converted from special access to UNE or vice versa. The TRO refers to such a change as “largely a billing function.” (TRO ¶588)

PARTIES’ ARGUMENTS

Verizon witness Ciamporcero claims that “Verizon does not propose to physically disconnect or otherwise alter existing facilities when they are converted to EELs.” (TR 291) He continues by suggesting that a CLEC should not be able to request such alteration either. “Nothing in the TRO gives the CLEC that right.” (Ciamporcero TR 291) Furthermore, Verizon contends in its brief that “while Verizon would not expect a standard conversion to require any physical alteration, . . . an inflexible, uniform prohibition on all alterations might preclude those that Verizon might find necessary.” (Verizon BR at 117) It maintains that such a blanket prohibition “would likely just delay requested conversions.” (Verizon BR at 117) Moreover, allowing the CLEC to make such a request, while barring Verizon that same flexibility, would be “simply one-sided and unfair” according to Verizon. (Verizon BR at 117) Finally, any changes that the CLEC may require, Verizon argues, should be managed prior to the request for conversion. (Verizon BR at 117)

AT&T witness Nurse asserts that the FCC rules “do not permit Verizon to physically disconnect, separate or physically alter the existing facilities when AT&T requests the conversion of existing access circuits to an EEL unless AT&T specifically requests that such work be performed.” (TR 128) Witness Nurse notes that in ¶586 and ¶588 of the TRO, the FCC concluded that such conversions “‘should be a *seamless* process that does not alter the customers [sic] perception of service quality’ . . . and is ‘largely a billing function.’” (emphasis added by witness) (TR 128) The CCG Panel witnesses agree, testifying that “Verizon shall not physically disconnect, separate, alter or change in any fashion equipment and facilities employed to provide the wholesale service, except at the request of the competitive carrier.” (TR 183) Also, in its brief FDN states that it agrees with AT&T’s position on this issue. (FDN BR at 9)

ANALYSIS

In the TRO, the FCC requires ILECs to allow CLECs to convert to UNE EELs, existing loop/transport combinations purchased originally as special access. (TRO ¶586) Both UNE EELs and commingled EELs, referred to here generally as EELs, must satisfy the revised EEL eligibility criteria contained in the TRO. (TRO ¶593, ¶597) Paragraphs 585–589 discuss the requirements for conversions. In particular, ¶586 and ¶588 are specifically relevant to concerns regarding disconnections.

We conclude that carriers may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets the eligibility criteria that

⁶⁹ EELs generally will refer to UNE EELs or commingled EELs.

may be applicable. . . . Converting between wholesale services and UNEs or UNE combinations should be a seamless process that does not affect the customer's perception of service quality. *We recognize that conversions may increase the risk of service disruptions to competitive LEC customers because they often require a competitive LEC to groom interexchange traffic off circuits and equipment that are already in use in order to comply with the eligibility criteria. Thus, requesting carriers should establish and abide by any necessary operational procedures to ensure customer service quality is not affected by conversions.*

We conclude that conversions should be performed in an expeditious manner in order to minimize the risk of incorrect payments. We expect carriers to establish any necessary timeframes to perform conversions in their interconnection agreements or other contracts. . . . We recognize, however, that converting between wholesale services and UNEs (or UNE combinations) is *largely a billing function.* (emphasis added) (TRO ¶586, ¶588)

Staff infers that the FCC expected carriers to be able to work out the details of these conversions and did not intend for service disruptions to be typical, but not specifically forbidden either. Staff believes that the FCC expected that any service disruptions that *might* occur would be truly accidental and unavoidable, but hoped that they would be minimized so that the customer rarely knew such a disruption was occurring.

AT&T seems to suggest that accidents do not occur, but are purposeful on the part of Verizon. Witness Nurse persists that "Verizon should face liability and sanctions so as to prevent and mitigate such 'accidents.'" (EXH 7, p. 59) Staff is unable to verify this supposition, but believes that accidents do occur on occasion, and Verizon should not be held accountable for every possible contingency.

AT&T seems to agree that the customer's perception is to be a consideration. AT&T witness Nurse responded to discovery by referring to Section 51.316(b), where the FCC explains that conversions should occur, "without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-use customer." (EXH 7, p. 58) In fact, witness Nurse continues in his response, asserting "the Commission should be highly skeptical of any requirement for disconnection or rearrangement of facilities." (EXH 7, p. 58) Staff agrees.

Staff agrees that while a standard conversion should not typically require any physical alteration, "an inflexible, uniform prohibition on all alterations might preclude those that Verizon might find necessary." (Verizon BR at 117) Staff believes that banning any physical disconnection in the interconnection agreement could result in future disputes and disagreements.

Witness Nurse admits that "some of these disruptions are unavoidable due to the nature of the work being performed." (EXH 7, p. 66) He states that the "disconnection, separation, or alteration should be a *bona fide* necessity, . . . minimized in frequency and duration, . . . [and] mitigated in service impact." (emphasis in original) (EXH 7, p. 66) Staff agrees, but questions how this could be monitored and guaranteed through the interconnection agreement. Certainly,

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AT&T's suggestion of barring any such physical disconnection does not accomplish this mission.

CONCLUSION

Staff recommends that neither Verizon nor the CLECs should be forbidden from physically disconnecting, separating or altering the existing circuit/service to an EEL during a conversion. However, to the extent technically possible, all conversions should be as seamless as possible to avoid adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

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

b) Conversion of existing circuits/services to EELs:

- (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?

Recommendation: Verizon is presently precluded from assessing any charges for performing the conversions that are the subject of this issue. (K. Kennedy)

Position of the Parties

Verizon: Verizon is entitled to assess charges sufficient to recover its costs of performing conversions. Although Verizon is not seeking any new rates in this case, the Amendment should not foreclose Verizon's ability to do so in the future.

AT&T: Verizon is not authorized to impose any nonrecurring charges on AT&T or any other CLEC when access facilities are being converted to EELs. FCC Rule 51.316(c) specifically prohibits such charges.

CCG: Consistent with the FCC's rules, the Amendment must expressly state that 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.

FDN: Agree with ATT [sic].

MCI: MCI's position is set forth in detail in Sections 4, 5, 8, and 9 of Exhibit 4, Deposition Exhibit 1. MCI's proposal is necessary to make the Amendment precisely conform to the language of the FCC's rules.

Sprint: No position.

Staff Analysis: Although this issue is framed as "In the absence of a CLEC request for conversion, what types of charges, if any, can Verizon impose?" the parties have not addressed it in that manner. Instead, the parties discuss the charges imposed due to a conversion being requested, not in the absence of one.

As discussed in Issue 21(a), the parties have recognized that Issue 21 and Issue 25 address similar issues but differ in their application. (Nurse TR 141; CCG Panel TR 188; Ciamporcero TR 285) Issue 21 relates to UNE EELs,⁷⁰ and Issue 25 pertains to combining and commingling, in particular commingled EELs.⁷¹ As the parties have discussed these issues together, staff will as well

⁷⁰ UNE EEL is unbundled loop and transport.

⁷¹ Commingled EEL is loop and transport, where one is an UNE and the other is special access.

The parties do not dispute that Verizon is obligated to convert EEL⁷² circuits from special access to UNEs, as required by the TRO. (§593, §586; Nurse TR 128; CCG Panel TR 183; Ciamporcero TR 271) They dispute how that obligation should be implemented and, in particular for this issue, what charges, if any, should apply.

PARTIES' ARGUMENTS

Verizon witness Ciamporcero contends that the proposed charges are necessary and certainly not discriminatory. He claims that charges are “strictly for activities related to processing the conversion request itself.” (TR 287) In order to complete the conversion, he explains, Verizon must process the orders, change the circuit identification, complete the billing change and update the design and inventory records. (TR 287-288) “None of these activities are associated with disconnecting a circuit, reconnecting a circuit, or establishing a circuit for the first time. . . . Verizon’s proposed charges are strictly for the recovery of actual costs Verizon incurs in processing the conversion,” according to the witness. (TR 288) Verizon describes the “retag fee” as a legitimate expense that covers the

cost of physically retagging a circuit that a CLEC requests to convert from special access to UNEs. The retagging work is necessary because the converted UNE circuit has a different circuit ID from the special access circuit. Tagging the circuit with the correct circuit ID facilitates future maintenance and ordering activities. (Verizon BR at 118)

Verizon also proposes a nonrecurring charge “intended to offset Verizon’s costs of implementing and managing commingled arrangements.” (Verizon BR at 118)

AT&T witness Nurse asserts that the FCC rules “specifically prohibit” non-recurring charges on a circuit-by-circuit basis, “including, but not limited to, termination charges, [and] disconnect and reconnect fees.” (TR 128-129) The witness quotes §587 of the TRO, where the FCC explains its rule.

[O]nce a competitive LEC starts serving [sic] customer, there exists a risk of *wasteful and unnecessary* charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could *unjustly enrich* an incumbent LEC [as a result of converting an UNE or UNE combination to a wholesale service]. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges 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. (emphasis added by witness) (TR 129⁷³)

⁷² EELs generally will refer to UNE EELs and/or commingled EELs.

⁷³ The witness misquoted the TRO slightly.

The CCG Panel witnesses agree and further maintain, “In the absence of a CLEC request for conversion, . . . the amendment should expressly preclude Verizon from imposing additional charges on any competitive carrier.” (TR 184) In its brief FDN states that it also agrees with the AT&T’s position on this issue. (FDN BR at 9)

ANALYSIS

In the TRO, the FCC requires ILECs to allow CLECs to convert to UNE EELs, existing loop/transport combinations purchased originally as special access. (¶586) Both UNE EELs and commingled EELs, referred to here generally as EELs, must satisfy the revised EEL eligibility criteria contained in the TRO. (TRO ¶593, ¶597) In ¶587, the FCC describes inappropriate charges that it forbids the ILECs from charging for conversions. Specifically, the FCC states, “there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time.” (TRO ¶587) The FCC explains further that, “[b]ecause incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC’s duty to provide nondiscriminatory access . . .” (TRO ¶587)

Staff submits that neither Verizon nor the CLECs make convincing arguments regarding Verizon’s ability to assess charges associated with performing conversions. Staff notes that Issue 26, including the pricing attachment, was withdrawn by Verizon. (Prehearing Order p. 53) Verizon states in its brief, “Although Verizon is no longer proposing new rates for conversions at this stage, it has reserved its right to do so later, and the Commission should make no ruling foreclosing Verizon from doing so.” (Verizon BR at 119) Since Verizon is not proposing to assess any charges for performing conversions in this proceeding, a decision on this issue is neither timely nor possible. Therefore, staff submits that this issue is not ripe for a recommendation.

CONCLUSION

Verizon is presently precluded from assessing any charges for performing the conversions that are the subject of this issue.

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

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

Recommendation: Staff recommends that the language strictly correspond with the TRO with respect to materiality. A third party, independent auditor obtained and paid for by Verizon must conduct the audit in accordance with the American Institute of Certified Public Accountants (AICPA) standards, which will typically include sampling. If the auditor finds the CLEC has materially complied with the service eligibility criteria, Verizon must reimburse the CLEC for the costs that the CLEC incurred in complying with the audit. If the auditor finds the CLEC failed to materially comply with the service eligibility criteria, the CLEC must reimburse Verizon for the cost of the audit. Verizon should provide written notice to the CLEC 30 days prior to the date that it seeks to commence the audit. Verizon need not identify the specific circuits that are to be audited or provide additional detailed documentation. If Verizon or a CLEC has concern with any portion of the audit, it may dispute the audit under the dispute resolution procedures contained in the interconnection agreement. **(K. Kennedy)**

Position of the Parties

Verizon: Under the *TRO*, Verizon is entitled to an annual EEL eligibility audit. No showing of cause is required. Instead, the FCC specifically found that the potential for unjustified audits would be eliminated by the FCC's requirement for the ILEC to reimburse the CLEC for an audit that finds no violations. This Commission cannot override the FCC's judgment and add a cause requirement that would eliminate Verizon's audit rights granted by the FCC.

AT&T: AT&T does not object to reasonable audit rights. However, Verizon's extra-regulatory audit burdens sought by Verizon should be rejected. Verizon should be allowed to audit CLEC compliance with service eligibility criteria for EELs on an annual basis. The audit should be conducted by an independent auditor and paid for by Verizon.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's position is set forth in detail in Sections 4, 5, 8, and 9 of Exhibit 4, Deposition Exhibit 1. MCI's proposal is necessary to make the Amendment precisely conform to the language of the FCC's rules.

Sprint: No position.

Staff Analysis: As discussed in Issue 21(a), the parties have recognized that Issue 21 and Issue 25 address similar issues but differ in their application. (Nurse TR 141; CCG Panel TR 188; Ciamporcero TR 285) Issue 21 relates to UNE EELs,⁷⁴ and Issue 25 pertains to combining and commingling, in particular commingled EELs.⁷⁵ As the parties have discussed these issues together, staff will as well.

In the UNE Remand Order, the FCC required ILECs to provide unbundled access to enhanced extended links (UNE EELs), combinations of “unbundled loop, multiplexing/concentrating equipment, and dedicated transport.” (§476, §480) In the Supplemental Order, the FCC required CLECs to “provide a significant amount of local exchange service . . . to a particular customer” in order to be allowed access to an UNE EEL. (§9) The FCC added safe harbor requirements in the Supplemental Order Clarification to define the phrase “a significant amount of local exchange service,” in order to limit the availability and ensure CLECs are using the EEL for its intended purpose. (§22) The FCC also allowed the ILECs “to conduct limited audits.” (Supplemental Order Clarification §29)

In the TRO, the FCC allows CLECs to convert to UNE EELs, existing loop/transport combinations purchased originally as special access. (§586) The TRO also allows commingling. (§584) Both UNE EELs and commingled EELs, referred to here generally as EELs, must satisfy the revised EEL eligibility criteria contained in the TRO, which includes 911/E911 capability, termination at a collocation arrangement, and local number assignment. (TRO §593, §597) The FCC continued its allowance to the ILECs for limited audits, setting “forth basic principles regarding carriers’ rights to undertake and defend against audits.” (TRO §625)

The parties do not dispute that Verizon is obligated to convert EELs⁷⁶ from special access to UNEs, as required by the TRO. (§593, §586; Nurse TR 128; CCG Panel TR 183; Ciamporcero TR 271) They dispute how that obligation should be implemented and, in particular for this issue, how the permitted audit should be implemented.

PARTIES’ ARGUMENTS

Verizon contends that its “language mirrors the FCC’s requirements” regarding EEL audits. (Verizon BR at 120) AT&T witness Nurse asserts that “AT&T does not object to the audit rights granted by the FCC; AT&T does object to the extra-regulatory audit burdens sought by Verizon.” (TR 130) The CCG Panel witnesses also agree that Verizon is permitted to audit the service eligibility criteria for EELs “provided that Verizon demonstrates cause . . . and obtains and pays for an AICPA-compliant independent auditor to conduct such audit.” (TR 185) In its brief FDN states that it agrees with the CCG’s position on this issue. (FDN BR at 10) The parties appear to disagree in two main areas: finding materiality and showing cause.

⁷⁴ An UNE EEL is unbundled loop and transport.

⁷⁵ A commingled EEL is loop and transport, where one is an UNE and the other is special access.

⁷⁶ EELs generally will refer to UNE EELs or commingled EELs.

Materiality

Verizon acknowledges in its brief that the TRO in ¶626 requires the audit be performed according to the standards established by the AICPA. (Verizon BR at 120) Verizon continues, quoting relevant portions of ¶627 and ¶628 of the TRO:

The auditor “must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants,” and the audit may “include an examination of a sample selected in accordance with the independent auditor’s judgment.” If the auditor “concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis.” In addition, if the auditor “concludes that the competitive LEC failed to comply in all material respects with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor.” Similarly, if the auditor “concludes that the requesting carrier complied in all material respects with the eligibility criteria, the incumbent LEC must reimburse the audited carrier for its costs associated with the audit.” (Verizon BR at 120, references removed)

Verizon contends that its “language mirrors the FCC’s requirements.” Verizon witness Ciamporcero asserts that Verizon’s proposal is reasonable because “it requires the CLEC to reimburse Verizon for the cost of an audit in the same manner as the *TRO* does, when the independent auditor’s report concludes that the CLEC failed to comply with the service eligibility criteria.” (TR 286) He explains that in order for the CLEC to be in material compliance, “the CLEC must comply with the service eligibility criteria for any DS1 or DS1-equivalent circuit.” (TR 287)

AT&T witness Nurse objects to Verizon’s proposed language, contending that “Verizon has no basis for its unlimited auditing proposal.” (TR 131) He claims that the “FCC’s requirement clearly functions as a counterbalance to Verizon’s invoking baseless, harassing audits on CLECs.” (TR 131) The CCG Panel witnesses testify that the carrier must reimburse Verizon for the costs associated with the audit only when the “auditor’s report concludes that the competitive carrier failed to materially comply with the service eligibility criteria in all respects.” (TR 185) AT&T also maintains that “Verizon should be required to pay for the audit unless the auditor finds that the CLEC failed to comply in all material respects with the service eligibility criteria.” (TR 131; AT&T BR at 73) Furthermore, the CCG emphasizes that the TRO did not grant the “ILECs an ‘unconditional’ right to audit CLECs’ compliance” and, therefore, “the Commission must dismiss Verizon’s baseless assertion” to the contrary. (CCG BR at 50)

Cause

The CCG Panel witnesses contend that Verizon is required to demonstrate “cause with respect to the particular circuits it seeks to audit.” (TR 185) In its brief the CCG asserts that “the Amendment . . . must explicitly state that such annual audit will be initiated by Verizon only to the extent reasonably necessary, . . . and only upon the identification of a basis for Verizon’s

suspicion that certain CLEC circuits are noncompliant.” (CCG BR at 50-51) The CCG defends its position, using the Supplemental Order Clarification and the TRO.

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.**” (emphasis in brief) (CCG BR at 51)

The CCG quotes the Supplemental Order Clarification and the TRO in its brief, concluding that the FCC clearly limits the audit rights of ILECs and “the audit right provided under the *Triennial Review Order* is not ‘unconditional,’ as Verizon would lead the Commission to believe.” (CCG BR at 51)

Verizon suggests that the Commission should reject the CCG’s proposal. (Verizon BR at 122) Verizon alleges that its annual audit right is “not conditioned upon any requirement for Verizon to show cause for the audit, let alone a specific, documented basis for ‘suspecting noncompliance’ as to particular circuits.” (Verizon BR at 122) Verizon claims that providing circuit-specific documentation “would only allow CLECs to correct any non-compliance before any audit occurred and avoid paying Verizon retroactive access charges on any non-compliant circuits.” (Verizon BR at 124) Verizon emphasizes that the Commission has no authority to “potentially eliminate the annual audit right the FCC granted to Verizon” with the conditions suggested by the CCG. (Verizon BR at 124) Verizon rejects the CCG’s arguments in reference to the Supplemental Order Clarification and any requirements to show cause. Verizon refers to the TRO in ¶626, where “the FCC made the explicit finding that ‘an annual audit right strikes the appropriate balance between the incumbent LECs’ need for usage information and risk of illegitimate audits that impose cost on qualifying carriers.’”(Verizon BR at 123)

ANALYSIS

Materiality

Staff provides the full text version of ¶627 and ¶628 of the TRO with emphasis added for reference.

To the extent the independent auditor’s report concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis. In addition, we retain the requirement adopted in the *Supplemental Order Clarification* concerning payment of the audit costs in the event the independent auditor concludes the competitive LEC failed to comply with the service eligibility criteria. Thus, to the extent the independent auditor’s report concludes that the competitive LEC failed to comply *in all material respects* with the service eligibility criteria, the *competitive LEC must reimburse* the incumbent LEC for the cost of the independent auditor. We expect that this requirement *should*

provide an incentive for competitive LECs to request EELs only to the extent permitted by the rules we adopt herein.

Similarly, to the extent the independent auditor's report concludes that the requesting carrier complied *in all material respects* with the eligibility criteria, the *incumbent LEC must reimburse* the audited carrier for its costs associated with the audit. We expect that this reimbursement requirement *will eliminate the potential for abusive or unfounded audits*, so that incumbent LEC[s] will only rely on the audit mechanism in appropriate circumstances. We further expect that these reimbursement requirements will ensure the audit process (and importantly, the resolution of any issues arising out of any audits) occurs in a self-executing manner with minimal regulatory involvement. (emphasis added) (TRO ¶627, ¶628)

Staff believes the FCC expected CLECs to correct all mistakes, misrepresentations or noncompliant circuits and true-up all differences in payments whether or not the auditor found material compliance, as stated in the first sentence above. (TRO 627) Furthermore, staff submits that the FCC was clear in its explanation of materiality and how materiality affects reimbursements. Any deviation from the syntax in the language written above can significantly change the meaning of the paragraphs. Verizon, for instance, puts the first and third sentences together to state,

If the "report concludes that [the CLEC] failed to comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, then [the CLEC] must convert all noncompliant circuits to the appropriate service, true-up any difference in payments, make the correct payments on a going-forward basis, reimburse Verizon for the entire cost of the audit within thirty (30) days after receiving a statement of such costs from Verizon." (Verizon BR at 120, 121; Verizon Amendment 2, p. 11, §3.4.2.7)

Significantly, Verizon requires the CLEC to reimburse it for the entire cost of the audit where the auditor finds *any* noncompliance, not just *material* noncompliance. Verizon responds in discovery that it would consider "any failure to comply with any of the FCC's criteria to be material," implying anything else would be arbitrage. (EXH 6, p. 30) Staff does not agree. Staff believes that the FCC was not as demanding as Verizon infers, only requiring material noncompliance in order to assess the cost of the audit to the CLEC.

The FCC requires the CLEC to reimburse the ILEC for the cost of the audit, if the auditor finds material noncompliance. "We expect that this requirement should provide an incentive for competitive LECs to request EELs only to the extent permitted by the rules we adopt herein." (TRO ¶627) If a CLEC is able to delay that process, staff believes the scale is tipped toward the CLEC. On the other hand, the FCC requires the ILEC to reimburse the CLEC for the CLEC's costs to comply with the audit, if the auditor finds material compliance. Again, the FCC was attempting to "eliminate the potential for abusive or unfounded audits." (TRO ¶628) If an ILEC were allowed to audit any CLEC at any time with no repercussions, then the scale is tipped toward the ILEC. Staff believes the FCC's rules set out in the TRO achieve a reasonable balance, and that adding additional conditions is not appropriate and may upset this balance.

Cause

The CCG Panel witnesses suggest that the Commission should require Verizon to identify the specific circuits that are to be audited and provide documentation to support Verizon's assertion that an audit is warranted. (TR 185; CCG BR at 51) However, staff agrees with Verizon that requiring it to identify specific circuits and to provide documentation to support its belief of noncompliance is not required by the TRO. (Verizon BR at 122) Moreover, staff believes that such a proposal could unnecessarily delay the start of the audit. If the CLEC did not believe that Verizon provided adequate documentation or that the documentation did not support an audit, the CLEC could object to the audit, possibly requiring Commission involvement to settle the dispute. After Verizon performed the audit and found those specified circuits out of compliance, the CLEC could object to auditing the rest of the circuits. Finally, AT&T witness Nurse agrees that pre-identification of the circuits is improper, since "that wouldn't satisfy the sampling criteria, your result wouldn't be statistically valid." (EXH 2, p. 14) He also mentions that "you are looking for a random selection." (EXH 2, p. 14) Because AT&T witness Nurse' testimony agrees with Verizon's position regarding circuit identification, staff finds this argument compelling.

CONCLUSION

Staff recommends that the language of the TRO be strictly adhered to with respect to materiality. A third-party, independent auditor obtained and paid for by Verizon must conduct the audit in accordance with the AICPA standards, which will typically include sampling. If the auditor finds the CLEC has materially complied with the service eligibility criteria, Verizon must reimburse the CLEC for the costs that the CLEC incurred in complying with the audit. If the auditor finds the CLEC failed to materially comply with the service eligibility criteria, the CLEC must reimburse Verizon for the cost of the auditor. Verizon should provide written notice to the CLEC 30 days prior to the date that it seeks to commence the audit. Verizon need not identify the specific circuits that are to be audited or provide additional detailed documentation. If Verizon or a CLEC has concern with any portion of the audit, it may dispute the audit under the dispute resolution procedures contained in the interconnection agreement.

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 CFR part 51?

Recommendation: Staff recommends that the ICAs be amended to reflect Verizon's obligation to perform routine network modifications (RNMs) on a nondiscriminatory basis. RNMs are those activities that Verizon regularly undertakes for its own customers, excluding the installation of a new loop. (P. Lee)

Position of the Parties

Verizon: The Amendment must accurately reflect the routine network modification obligation imposed in the TRO, including the ruling that this obligation does not require new construction. Although Verizon is not seeking any new rates in this arbitration, the Commission should not foreclose Verizon's right to do so later. The Commission cannot accept the CLECs' speculation that routine network modification costs are already included in Verizon's rates.

AT&T: The TRO requires ILECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed. Verizon's obligation to perform routine network modifications pre-dates the TRO. The TRO simply clarifies the obligation and rejects Verizon's "no build" policy as anticompetitive and discriminatory. No change in law has taken place to necessitate amending the existing agreement. AT&T has however proposed language that correctly reflects the FCC rules and Verizon's obligations.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: Routine network modifications should be defined in the Amendment in the same manner as the FCC did in the TRO. See 47 CFR §51.319(a)(8), (e)(8).

Sprint: No position.

Staff Analysis: The concept of routine network modifications (RNMs) was first addressed by the FCC in its 1996 Local Competition Order. In the TRO, the FCC provides clarification and specificity on the RNM obligation. Staff observes that the parties do not dispute that routine network modifications involve activities that Verizon regularly undertakes for its own customers. (Verizon BR at 125; Nurse TR 132-133; AT&T BR at 74; CCG Panel TR 186-187; MCI BR at 15) They disagree, however, on whether the TRO imposes limitations on RNMs, such as parity.

On April 26, 2005, the parties filed an agreement in the instant docket in which:

- Verizon withdrew from this arbitration its request for the Commission to adopt the new rates proposed in Verizon's Pricing Attachment.
- Verizon reserves its right to initiate a separate proceeding seeking rates for any or all of the items in the Pricing Attachment.
- The amendment reached from this arbitration does not foreclose Verizon from advocating new rates in a future proceeding.
- This stipulation does not affect Verizon's right to continue to apply any rates the Commission has established, including those adopted in the Verizon UNE Order, or where such order has not established a particular rate, the rates set forth in particular ICAs.
- Verizon agrees that, upon the effective date of the amendment, it will provide the services, elements, and arrangements that are not already covered by rates the Commission has established or rates set forth in particular ICAs (including routine network modifications), to the extent required by federal law and the Commission's determinations in this arbitration, even though this arbitration will not establish rates for the new services, elements, or arrangements.
- AT&T, the CCG, FDN, MCI, and Sprint maintain their right to assert in any subsequent proceeding that Verizon is not entitled to impose its proposed, new charges in Verizon's Pricing Attachment, that the charges proposed are not reasonable, and/or that an ICA amendment is not required to implement any obligation Verizon may have to provide the service, elements and arrangements covered by Verizon's proposed Pricing Attachment including network modifications.
- CLECs withdrew Issue 1. Any CLEC arguments regarding unbundling obligations, independent of sections 251 and 252, including under state law or the Bell Atlantic/GTE merger conditions, are deferred to a proceeding that may be initiated outside of this arbitration.

The agreement was codified in the Prehearing Order.

Based on the parties' agreement, staff believes that the Commission does not need to address the dispute whether the TRO RNM obligation is a new requirement or clarification of a pre-existing obligation, or whether costs for RNMs are included in existing UNE rates since the parties maintain their rights to address these matters in subsequent proceedings. The specific dispute addressed in this issue is the scope of Verizon's obligation to perform RNMs under federal law.

PARTIES' ARGUMENTS

Verizon opines in its brief that its definition of RNMs tracks the FCC's rulings on the issue and is therefore appropriate. (BR at 70) Verizon argues that the definition needs to recognize the TRO's "no-new-construction" limitation. (BR at 70-71) The Verizon Panel assert that Verizon's limitation of RNMs to "in-place" cable is appropriate because the FCC explicitly found that ILECs are not required to trench or place new cables for a CLEC. (TR 310; BR at 126) Further, the witnesses argue that the FCC did not require creation of a new splice point.

(TR 310) The witnesses posit that, due to lack of sufficient slack in existing cable, in many cases Verizon would have to place new cable to create a new splice point, and a new cable is beyond Verizon's required obligation. (TR 310)

The AT&T, the CCG, and MCI witnesses believe the TRO simply clarified a pre-existing obligation. (Nurse TR 133; CCG Panel TR 186-187; CCG BR at 53; Darnell TR 210; EXH 9, MCI's Responses to Staff's First Set of Interrogatories, Item No. 5) Nevertheless, AT&T and the CCG suggest an amendment is needed to avoid doubt and to clarify the scope of Verizon's RNM obligation. (AT&T Nurse TR 132-133; CCG Panel TR 186)

AT&T witness Nurse asserts that Verizon's RNM proposal is deficient in that it does not describe all of the activities specified in FCC Rule 47 CFR 51.319(a)(8) and (e)(5) and the TRO, and it weakens Verizon's obligation in certain areas. (TR 134) Specifically, AT&T explains that Verizon's limitation to modifications on "in-place" cable at "existing splice points," ignores the fact that the FCC list was expressly designed to be illustrative, not exhaustive. (EXH 7, p. 19; Nurse TR 133) Witness Nurse asserts that nothing in the TRO or the FCC rules requires this limitation, and such modifications could involve new cable or old cable spliced in a new arrangement. (Nurse TR 135; BR at 77)

AT&T asserts that the TRO requires ILECs to make routine adjustments to unbundled loops, as necessary to deliver services at parity with how ILECs provision such facilities for themselves. (TR 100-101) AT&T and the CCG posit that the ICA amendment should describe RNMs in the same manner and in the same detail as they are described in the FCC's rules and the TRO as those "prospective or reactive activities" that Verizon regularly undertakes for its own customers. (Nurse TR 133; CCG Panel TR 186-187; CCG BR at 53) AT&T and the CCG opine that the TRO established a standard by which a requested modification is determined to be routine based on the tasks associated with the modification, and not on the end-user service that the modification is intended to enable. (EXH 7, p. 19; Nurse TR 133-143; CCG Panel TR 186-187; CCG BR at 53)

FDN only addressed this issue in its brief, in which it stated its agreement with the position of the CCG. (BR at 10)

ANALYSIS

The TRO set forth revised unbundling rules including those regarding routine network modifications. Specifically, 47 CFR 51.319(a)(8) states:

- (i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

- (ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routing network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

FCC rule 47 CFR 51.319(e)(5) governs RNMs for dedicated transport facilities. The rule is parallel to that for loops. Staff observes that both rules include a nondiscrimination obligation.

Section 251(c)(2) of the Act requires that the interconnection provided by an ILEC be “at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.” (47 USC §251(c)(2)(C)) Section 251(c)(3) imposes a duty on ILECs to provide CLECs with “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with . . . the requirements of this section and section 252.” (47 USC §251(c)(3)) Nondiscriminatory access has been the standard for accessing loops since enactment of §251(c)(3).

In the TRO, the FCC redefined nondiscriminatory access as parity and conformed its regulations by requiring ILECs to make RNMs to unbundled transmission facilities (both loops and transport) used by CLECs where the requested transmission facility has already been constructed. (TRO ¶632) As expressed in the RNM rules, the same nondiscriminatory access standard that applies to the loop also applies to a RNM, which is an element of the loop. Specifically, the FCC concluded in the TRO that:

- Routine Network Modifications are actions ILECs regularly undertake to make their existing loop facilities available to their own customers. (TRO ¶¶632-633)
- The local loop definition includes routine modifications and requires ILECs to add types of electronics that ILECs ordinarily attach to a loop for a customer requiring a DS1 loop, even if the electronics are not attached to a particular loop. (Id. ¶637)
- Routine modifications to existing dark fiber facilities include the work done on dark fiber to provision lit capacity to end-users. (Id. ¶638)
- Routine modifications include, but are not limited to, rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer. (Id. ¶7, ¶¶634-637)

- ILECs are not required to trench, install, or place new cable so that CLECs can access them as UNEs at cost-based rates. (Id. ¶¶632, ¶636)
- Activities such as accessing manholes, splicing into existing cable, deploying bucket trucks to reach aerial cable, and installing equipment casings comprise routine day-to-day work of managing in ILEC's network. (Id. ¶637)
- An ILEC's unbundling obligation includes all deployed transmission facilities in their networks, unless specifically deemed unimpaired. (Id. ¶7, ¶632, ¶636, ¶638, ¶647)
- Line conditioning is a routine network modification that ILECs regularly perform to provide xDSL services to their own customers. (Id. ¶643)
- ILECs are not required to construct new transmission facilities so that CLECs can access them as UNEs at cost-based rates. (Id. ¶645)
- ILECs may recover the cost of routine network modifications, as allowed under existing pricing rules. (Id. ¶640)
- Tariffed termination liabilities for special construction apply to the conversion of special access circuits built to customer specification. (Id. ¶648)

With nondiscriminatory access redefined as parity, staff believes that ILECs are now obligated to provide access to the loop and its elements, which includes RNMs, "at least equal in quality to that which the incumbent provides to itself." (47 CFR 51.311; TRO ¶637) Staff observes that Verizon omits the parity standard in its proposed amendment; therefore, staff believes that Verizon's language is insufficient. By the same token, AT&T and the CCG incorporate "prospective or reactive activities" with parity, but provide no accompanying explanation. Without a clear understanding of what is meant by the AT&T and the CCG language, staff believes this language may expand Verizon's obligation beyond that required by the TRO, and is therefore inappropriate.

Staff notes that the FCC "required [sic] an incumbent LEC to modify an existing transmission facility in the same manner it does . . . for its own customers," with the exception of constructing a new local loop. (TRO ¶639) The FCC made clear that the requirement for ILECs to modify their networks on a nondiscriminatory basis is not limited only to copper loops, but applies to all transmission facilities, including dark fiber facilities. (TRO ¶638) Further, the FCC stated that "the incumbent LEC must make routine adjustments . . . at parity with how incumbent LECs provision such facilities for themselves." (TRO ¶643) This is "at a level of quality that is equal to that which the incumbent LEC provides itself, an affiliate, or any other party. At a minimum, this requires the incumbent LEC to . . . meet the same technical criteria and service standards that are used within the incumbent LEC's network." (47 CFR 51.305(a)(3))

Staff believes that the TRO rules obligate Verizon to provide parity in the quality of access to the unbundled network element – in this case, RNMs. Staff notes that there is no evidence that refutes Verizon's reasons for limiting its RNM splicing obligation to in-place cable. Staff observes that rearrangement or splicing of cable is one of the activities the FCC describes as a RNM. (TRO ¶634; 47 CFR 51.319(a)(8)(ii)) Paragraph 632 of the TRO and 47 CFR 51.319(a)(8)(i) limit the provision of RNMs to unbundled transmission facilities where the "requested transmission facility has already been constructed." Furthermore, both the TRO text and 47 CFR 51.319(a)(8)(ii) exclude the construction of a new loop, or the installation of new cable as a RNM. Therefore, staff believes that Verizon's limitation on splicing to "in-place"

cable is appropriate. Notwithstanding this, staff notes that once a new loop or transmission facility is constructed or new cable is placed, these facilities would become "in-place" cables subject to splicing as a RNM.

The TRO rules require that RNMs be performed in a nondiscriminatory fashion, or at parity. Because the governing standard is parity, staff believes that if Verizon splices cable in the normal day-to-day work of managing the network for its own customers, then it is obligated to splice cable as a RNM for CLECs. However, staff is unsure of whether, and under what conditions, Verizon splices cable for its own customers. Staff is therefore unable to determine whether Verizon is meeting its nondiscriminatory obligation. If Verizon does not splice cable for its own customers, staff believes the activity is then non-routine, extraordinary, and non-standard. In such cases, staff believes that Verizon should not be required to provide the activity to a CLEC at TELRIC pricing and this limitation is appropriate.

The AT&T and the CCG witnesses believe that the determination of whether a modification is "routine" should be based on the tasks associated with the modification, not the end-user service that the modification is intended to enable. The witnesses assert that this is consistent with the FCC's approach to RNMs. (Nurse TR 134; CCG Panel TR 186-187) Verizon states in its brief that the AT&T and the CCG proposal is unnecessary and confusing. (BR at 126) Verizon asserts that nothing in its proposed language limits RNMs to any particular services, provided that the modifications meet the FCC's governing standard. (BR at 126) Staff believes that the CLEC proposal is confusing, and that Verizon is not limiting RNMs to particular services. Furthermore, staff believes that the FCC's governing standard is parity, and RNMs should be linked to that standard.

CONCLUSION

Staff recommends that the ICAs be amended to reflect Verizon's obligation to perform routine network modifications (RNMs) on a nondiscriminatory basis. RNMs are those activities that Verizon regularly undertakes for its own customers, excluding the installation of a new loop.

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Issue 23: Should the parties retain their pre-Amendment rights arising under the Agreement, tariffs, and SGATS?

Recommendation: Yes. The TRO, USTA II, FCC's Interim Order, and TRRO did not require changes in the parties' pre-amendment rights arising under their agreements, tariffs, and SGATs, except to the extent delineated earlier in this recommendation. Accordingly, those pre-amendment rights should be retained. Future changes should not be subject to automatic or unilateral interpretation and change by either party. **(L. Fordham)**

Position of the Parties

Verizon: The Amendment should not affect Verizon's existing contract rights to disconnect particular de-listed UNEs without an amendment. The Amendment will necessarily affect any existing contract provisions that might be construed to require Verizon to continue providing de-listed UNEs. To the extent any CLEC's contract contains any such provisions, the very purpose of this proceeding is to alter them.

AT&T: Yes, except to the extent modified by the TRO and TRRO.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: The interconnection agreement, as changed by the proposed Amendment, will be the exclusive source of the parties' contract rights.

Sprint: No position.

Staff Analysis:

PARTIES' ARGUMENTS

Verizon

Verizon urges in its brief that it filed its arbitration petition to eliminate any doubt regarding its right to cease providing unbundled access to facilities that are no longer required to be unbundled under §251 of the Act. Accordingly, argues Verizon, its proposed amendment makes clear that the limitations on Verizon's unbundling obligations established in the core provisions of the Amendment are "[n]otwithstanding any other provision of this Agreement, this Amendment, or any Verizon tariff or SGAT." (BR at 128) However, according to Verizon, to the extent that the Amendment does not affect pre-existing terms of agreements or tariffs – including the independent rights to discontinue provision of particular network elements that exist in many contracts – those terms retain their binding force. (BR at 129)

Verizon witness Ciamporcero asserts that it makes no sense to say the CLECs retain their pre-amendment rights as to UNEs that the FCC has eliminated. Indeed, according to witness

Ciamporcero, the central purpose of this proceeding is to implement discontinuation of those UNEs. Accordingly, argues witness Ciamporcero, the amendment makes clear that the limitations on Verizon's unbundling obligations reflected in the Amendment are "[n]otwithstanding any other provision of this Agreement, this Amendment, or any Verizon tariff." (Ciamporcero TR 73)

Though some CLECS claim that Verizon's proposed language is vague and ambiguous, Verizon argues that its language removes any ambiguity that might arise in the absence of terms that make clear that federal law defines the parties' obligations with regard to provision of UNEs, notwithstanding any other provisions in other regulatory instruments. (BR at 129) Verizon claims that if terms in the existing agreements purport to require Verizon to continue providing de-listed UNEs until completion of an amendment, then the very purpose of this proceeding is to change the CLECs' purported rights under those provisions. (BR at 129)

AT&T

AT&T argues that the parties should retain their pre-amendment rights arising under the agreement, tariffs, and SGATs, except to the extent modified by the TRO and TRRO. AT&T rejects Verizon's position that the interconnection agreements should be amended to specifically reserve rights to discontinue UNEs that it claims exist in documents outside of the ICA, such as its tariffs. To the extent that a CLEC is ordering UNEs, facilities or services out of its ICA with Verizon, AT&T argues that the provisions of the ICA regarding the discontinuance of facilities should govern. According to AT&T, the inclusion of Verizon's vague and ambiguous language in the ICA can only cause confusion as to the parties' rights and obligations, and such language should not be included in the agreements. (BR at 80)

CCG

The CCG argues that 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 TRRO, as set forth in the amendment. Indeed, claims the CCG, 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 §252 interconnection agreement amendment process. (BR at 54)

MCI

MCI argues that the interconnection agreement, as changed by the proposed amendment, will be the exclusive source of the parties' contract rights. Further, claims MCI, Verizon's proposed §3.4 provides that §3 of the amendment is subordinate to any pre-existing and independent rights that Verizon may have under the original agreement, a Verizon tariff or SGAT, or otherwise to discontinue providing discontinued elements. Accordingly, states MCI, Verizon's proposal is inappropriate. In all other aspects, argues MCI, the proposed amendment supersedes inconsistent provisions in the original agreement. MCI believes that if it purchases UNEs out of the agreement, Verizon tariffs and SGATS are irrelevant. (Darnell TR 211)

ANALYSIS

As discussed in earlier issues in this recommendation, there appears to be little disagreement among the CLECs and Verizon as to the mandates of the TRO and TRRO regarding the elimination of the unbundling requirements for the enumerated network elements. However, there is considerable disagreement in the manner and timing of those changes. As stated earlier, staff believes the only scenario wherein the FCC mandates are automatic and in disregard of any other contract provisions are in the case of new-adds. Staff believes those provisions to be self-effectuating as of March 11, 2005. It is clear that the very reason the TRO and TRRO established transition periods is for the existing agreements to be modified pursuant to the change-of-law provisions and in accordance with the §252 process. Verizon would extrapolate further, however, that present ICAs should also be amended to make similar future FCC changes essentially automatic and unilateral for Verizon. (Ciamporcero TR 223, 233, 236) Under its proposal, Verizon would need only publish notice of its interpretation of FCC changes or requirements in order to unilaterally effect its desired changes.

Staff does not believe that extrapolation should be approved. As argued by the CLECs, the TRO, USTA II, FCC's Interim Order, and TRRO did not require changes in the manner in which future changes in law would be addressed. Indeed, pre-amendment rights arising under the agreement, tariffs, and SGATs were not impacted by those decisions, except to the extent delineated earlier in this Recommendation. Local switching UNEs may be withheld from new-adds, disregarding any other provisions, effective March 11, 2005. For existing agreements, the transition period was established for modification pursuant to existing change-of-law provisions. Verizon has cited no specific authority to the contrary.

CONCLUSION

The TRO, USTA II, FCC's Interim Order, and TRRO did not require changes in the parties' pre-amendment rights arising under their agreements, tariffs, and SGATs, except to the extent delineated earlier in this recommendation. Accordingly, those pre-amendment rights should be retained. Future changes should not be subject to automatic or unilateral interpretation and change by Verizon.

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

Recommendation: No. Except to the extent that TRO or TRRO provisions are included in certain areas of the agreement, no specific provision should be made to address the potential effect on a CLEC's customers' services. (Marsh)

Position of the Parties

Verizon: No. It would be unlawful to condition Verizon's right to discontinue de-listed UNEs upon any considerations of potential effects on CLECs' customers' services. These effects are within the CLECs' control; Verizon cannot be held liable for any CLEC's failure to protect their own customers' interests. The *TRRO* gave the CLECs plenty of time to work out the details of the transition of their embedded base of de-listed UNEs, so as to avoid service disruptions for their customers.

AT&T: Yes. The amendment should specify the details of the transition period, prohibit any termination charges, disconnect fees, reconnect fees, or charges associated with establishing a new service in conjunction with conversions between existing arrangements and new arrangements. The transition from UNEs to alternative arrangements should be governed by the principles articulated in Rule 51.316(b) and (d) for the conversion to UNEs. Verizon's obligations to perform the conversions without adversely affecting the service quality for CLEC's [sic] end-users should be made clear in the amendment.

CCG: 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*.

FDN: Agree with Competitive Carrier Group.

MCI: MCI has proposed several contract provisions to implement the detailed requirements set forth in the FCC's new unbundling rules to govern the transition from UNE arrangements to replacement arrangements. These provisions are set forth in Exhibit 4, Deposition Exhibit 1.

Sprint: Yes, there should be a clear transition plan in the Amendment for de-listed UNEs that protects the CLEC's customers' service.

Staff Analysis:

PARTIES' ARGUMENTS

Verizon

Verizon witness Ciamporcero asserts that Verizon's proposed amendment sets out a clear and fair transition process that provides for at least ninety days' notice that a given UNE has

been discontinued. (TR 295-296) He explains that section 3.2 of the amendment allows a CLEC to make an alternative arrangement through a commercial agreement, an applicable Verizon special access tariff, or resale. (TR 296) He avers that if a CLEC does not make alternative arrangements for discontinued UNEs, Verizon will not disconnect the CLEC's service, but will re-price it to the appropriate special access or resale rate. (TR 296)

Witness Ciamporcero rebuts in turn each of the CLECs' positions discussed below. He argues that the FCC does not require that the transition from UNEs to non-UNE replacements be governed by the same rules that apply to conversion of non-UNE wholesale services to UNEs, as proposed by AT&T witness Nurse. (TR 293) Witness Ciamporcero contends that since the FCC did not impose this condition, this Commission cannot do so either. (TR 293)

He also disputes MCI's proposal for an additional transition process. He explains that "this Commission cannot override the FCC's mandatory plan for transitioning the embedded base of de-listed UNEs. Nor can it condition unbundling relief upon implementation of hot cut processes or anything else." (Ciamporcero TR 294)

In response to the CCG's proposal, witness Ciamporcero contends that the TRRO does not condition unbundling relief on assurances that no CLEC's customer will lose service, so this Commission cannot add that condition. (TR 294) He argues that the best way for the CLECs to ensure a smooth transition for their customers is to work with Verizon on transitional procedures. (TR 295) He notes that Verizon asked the CLECs to provide their transition plans by May 15, 2005. (TR 295)

Verizon argues in its brief that "[n]either the TRO or the TRRO conditions unbundling relief on assurances that no CLEC's customer will lose service." (Verizon BR at 131) Verizon contends that the CLECs are responsible, through their own actions, for their customers. (Verizon BR at 131) Verizon points out that certain UNEs were de-listed more than two years ago in the TRO, which allowed sufficient time for the transition. (Verizon BR at 131) Verizon adds that the transition of UNE-P and de-listed high-capacity facilities must be completed within the next year as required by the TRRO. (Verizon BR at 131)

AT&T

AT&T witness Nurse states that the TRRO established specific time frames and rates associated with the provision of UNEs during the FCC-determined transition plan. (TR 140) He opines that "the transition from UNEs to alternative arrangements should be governed by the same principles articulated by the FCC in Rule 51.316(b) and (d) for the conversion to UNEs." (TR 140; AT&T BR at 82) He argues that the conversions should not adversely affect the service quality of the CLECs' end users. (TR 140; AT&T BR at 82) He continues that Verizon should not be permitted to apply any additional charges associated with the conversion between existing arrangements and new arrangements, such as termination charges, disconnect fees, reconnect fees, or fees to establish a service for the first time. (TR 140-141; AT&T BR at 82)

Witness Nurse asserts that the transition processes established by the FCC are important to AT&T for several reasons:

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- Service stability for its existing customers;
- Protection against maintenance issues and service rearrangements; and
- Stability of prices/costs so that AT&T can properly analyze business decisions. (TR 139; AT&T BR at 81)

Witness Nurse argues that the transition plans “provided CLECs with the tools to control to the greatest degree both its customer’s experience and the firm’s business needs.” (TR 139; AT&T BR at 81) He states that changes to either the time frames or the rates established by the FCC “would make an already difficult transition unworkable, and would be inconsistent with the FCC rules.” (TR 139; AT&T BR at 81) He notes that the FCC compensated the ILECs with a 15% increase above the current loop and transport rates, and a one-dollar per line increase above the current UNE-P rates. (TR 139; AT&T BR at 81)

Witness Nurse continues that the interconnection agreement should contain sufficient detail to avoid misunderstandings or disputes. (TR 139; AT&T BR at 81) He states that the primary goal of the transition language proposed by AT&T is to ensure that AT&T’s customers do not lose service as a result of the transition. (TR 140; AT&T BR at 81) He opines that “. . . the FCC is also sensitive to these issues, and as a result adopted specific parameters for the transition.” (TR 140; AT&T BR at 82)

CCG

The CCG Panel witnesses argue that a process must be identified in the amendment to ensure that a CLEC’s customers do not experience a loss of service when Verizon’s discontinues a §251(c) UNE. (TR 188) The CCG Panel witnesses’ proposed amendment includes language from the TRRO that spells out the transition period and pricing. (EXH 16, pp. 13-15)

The CCG argues in its brief that the “FCC concluded that the transition of de-listed §251(c)(3) network elements to alternative arrangements must be completed in manner [sic] that is least disruptive to CLEC businesses, and more importantly, to CLECs’ end user customers.” (CCG BR at 54-55) The CCG asserts that, to be consistent with the policy objectives stated by the FCC in the TRO, the transition process must be incorporated into the amendment. (CCG BR at 55)

FDN

In its brief, FDN states that it agrees with the position taken by the CCG. (FDN BR at 10)

MCI

MCI witness Darnell states that MCI’s proposed contract language addresses the impact on MCI’s customers that would result from the discontinuance of UNEs. (TR 211) He explains that MCI’s proposed transition arrangements are default arrangements that would apply in the absence of a transition process established by the FCC or the Commission. (TR 211, 219) He concludes that the parties should further negotiate in accordance with existing change-of-law provisions. (TR 212, 219)

Witness Darnell's exhibit GJD-4 includes MCI's proposed transition language that specifies that MCI must designate an alternative arrangement for de-listed UNEs no later than thirty days prior to the end of the applicable transition period. The agreement also states that, after the thirty-day period, Verizon may convert transition elements to an analogous service. (EXH 4, pp. 57-59; EXH 20, pp. 15-17)

MCI states in its brief that it proposed several contract provisions to implement the transition from UNEs to replacement arrangements. (MCI BR at 16)

Sprint

In its brief, Sprint states that "there should be a clear transition plan in the Amendment for de-listed UNEs that protects the CLEC's customers' service." (Sprint BR at 32) No discussion was provided.

ANALYSIS

The FCC provided that the time periods specified in the TRRO, as discussed in other issues in this recommendation, allow both CLECs and ILECS "to perform the tasks necessary to an orderly transition, including decisions concerning where to deploy, purchase, or lease facilities." (TRRO ¶196; see also ¶¶143, 144) For example, in the TRRO the FCC noted 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." (TRRO ¶226) The FCC explained that the adoption of a twelve-month transition period ". . . provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, which could include deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut overs or other conversions." (TRRO ¶227) In adopting a transitional rate, the FCC expressed its desire to mitigate rate shock for CLECs while, at the same time, providing some protection for ILEC interests via the moderate rate increases and short duration of the transition period. (TRRO ¶228) The FCC remarked that the transition plan was a default process that in no way prevented the carriers from negotiating alternative arrangements that supersede the FCC's transition plan. (TRRO ¶228)

Although the CCG Panel witnesses and Sprint argued that a specific process should be identified in the amendment to ensure that a CLEC customer does not lose service while de-listed UNEs are being transitioned, no such process was outlined. (CCG Panel TR 188; Sprint BR at 32)

Staff agrees that the parties' agreements should include a transition plan. Verizon has already included a provision in its proposed agreement that allows for a transition with no loss of service. Verizon has made assurances that service will not be disconnected, even when a CLEC fails to make alternative arrangements; rather, the service will be re-priced. Staff believes that the proposed language, along with the FCC's rules and orders, adequately address the impact on CLECs' customers. While staff believes Verizon must act in a responsible manner to ensure a smooth transition, the CLECs' customers are their own responsibility, not Verizon's. Staff agrees with Verizon that the CLECs should work with Verizon to ensure a smooth transition by

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placing orders in a timely manner. Staff notes that, contrary to MCI witness Darnell's assertion that the proposed interconnection language should serve as a default arrangement, it is the FCC's transition plan that is the default. (Darnell TR 219; TRRO ¶228)

CONCLUSION

Staff recommends that, except to the extent that TRO or TRRO provisions are included in certain areas of the agreement, no specific provision should be made to address the potential effect on a CLEC's customers' services.

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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?

Recommendation: See Issue 21. (K. Kennedy)

Position of the Parties

Verizon: This Issue was addressed in the context of Issue 21, and Verizon refers the Commission to that discussion.

AT&T: See AT&T's position in Issues 12 and 21.

CCG: 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.

FDN: Agree with Competitive Carrier Group.

MCI: MCI's position is set forth in detail in Section 4 of Exhibit 4, Deposition Exhibit 1.

Sprint: Pursuant to the rule, the service eligibility criteria for EELs only apply when one of the components is a network element.

Staff Analysis: The parties' arguments and staff analysis are provided in detail as part of Issue 21. The difference between Issues 21 and 25 is in the applicability. Staff believes Issue 21 relates only to EELs, and Issue 25 relates only to commingled EELs. Nonetheless, the parties have discussed both of these types of circuits in Issue 21 and have diverted all discussion of commingled EELs to that issue. Please refer to Issue 21 for all parties' arguments, staff analyses and recommendations as they relate to commingled EELs and the applicable service eligibility criteria.

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Issue 26: Should this docket be closed?

Recommendation: No, the parties should be required to submit signed agreements that comply with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreements in accordance with Section 252 of the Telecommunications Act of 1996. **(Fordham)**

Staff Analysis: The parties should be required to submit signed agreements that comply with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreements in accordance with Section 252 of the Telecommunications Act of 1996.