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October 4, 2004

BY HAND DELIVERY

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

Re: Docket No. 040156-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., Metropolitan Fiber Systems of florida, Inc. and Intermedia Communications, Inc. (collectively, "MCI") are an original and fifteen copies of MCI's Response to Verizon's Petition for Arbitration in the above referenced docket.

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

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER · DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of Amendment to)	Docket No. 040156-TP
Interconnections Agreements with Certain)	
Competitive Local Exchange Carriers and)	Filed: October 4, 2004
Commercial Mobile Radio Service Providers in)	
<u>Florida by Verizon Florida Inc.)</u>	

MCI's RESPONSE TO VERIZON'S PETITION FOR ARBITRATION

Pursuant to section 252(b)(3) of the Telecommunications Act of 1996 ("the Act"), MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc, Metropolitan Fiber Systems of Florida, Inc., and Intermedia Communications, Inc. (collectively, "MCI") hereby file this response to the Petition for Arbitration of Verizon Florida Inc. ("Verizon"), dated September 9, 2004. Verizon's latest filing responds to the Commission's July 12, 2004 Order¹ in this docket dismissing Verizon's petition, and sets forth Verizon's latest proposed amendment to its interconnection agreements, purportedly to implement changes in obligations resulting from the FCC's *Triennial Review Order* ("*TRO*"). Although negotiations with Verizon over its proposed amendment and MCI's proposed revisions are ongoing, MCI files this response to set forth the issues presently in dispute, and reserves its right to modify the issues as appropriate. MCI has provided to Verizon a red-lined version of the latest Verizon amendment to identify MCI's objections to Verizon's latest contract proposal. (MCI's proposal is attached hereto as Exhibit 1.)

¹ Order Granting Sprint Communications Company Limited Partnership's Motion to Dismiss, Order No. PSC-04-0910-PCO-TP, issued July 12, 2004.

BACKGROUND

On February 20, 2004, Verizon petitioned the Florida Public Service Commission (“Commission”) to arbitrate amendments to its interconnection agreements with MCI (and all other CLECs) proposed by Verizon on October 2, 2003 to implement changes in Verizon’s obligations resulting from rules adopted by the Federal Communications Commission (“FCC”) in the “TRO.” On March 19, 2004, Verizon filed an Update to its Petition and a Revised TRO Amendment to reflect the decision of the United States Court of Appeals for the D.C. Circuit in *United States Telecom Association v. F.C.C.* (“*USTA IP*”). Thereafter, on April 13, 2004, MCI filed its response to the Petition and its Update, along with a red-lined version of the Verizon TRO Amendment setting forth MCI’s proposed changes. Two months later, on June 16, 2004, the *USTA II* Court’s mandate was issued. On July 12th, the Commission dismissed Verizon’s Petition without prejudice, finding that Verizon had not complied with the filing requirements of section 252(b)(2) of the Act. Verizon was given 60 days to re-file its petition.²

In the intervening two months, the FCC has issued its *Order and Notice of Proposed Rulemaking* (“*Interim Order*”) in the *USTA II* remand proceeding, setting forth interim requirements for the provisioning of mass market switching, high capacity loops and dedicated transport. The FCC also indicated that new, permanent unbundling rules will be released “as soon as possible.”³

² *Id.*, pp. 6-7.

³ *Interim Order*, ¶17.

PRELIMINARY MATTERS

Before proceeding to a discussion of the issues currently in dispute between MCI and Verizon on Verizon's latest (and fourth) proposed *TRO* Amendment, a number of preliminary points on Verizon's latest petition are warranted.

1. The "Change of Law" Provisions in Verizon's Agreements Still Apply

Verizon's latest arbitration petition, unlike its original filing, seeks arbitration only with those carriers whose interconnection agreements do not appear, in Verizon's view, to allow it to discontinue the provisioning of unbundled network elements ("UNEs") by simply providing a notice of discontinuance to the carrier. As a result, Verizon has limited the scope of this filing to eighteen CLECs, including MCI. Verizon nevertheless asserts that it is only seeking arbitration with this group of carriers "because their interconnection agreements might be misconstrued to call for amendment before Verizon may cease providing unbundled elements ... eliminated by the *TRO* or the D.C. Circuit's mandate in its *USTA II* decision." Verizon Petition, p. 2. In a footnote, Verizon states that "the arbitration should nevertheless proceed as to all of the named CLECs in order to eliminate any doubt regarding Verizon's right to cease providing any UNEs eliminated by federal law." Verizon Petition, p. 2, n 4.

Verizon's suggestion that its interconnection agreements with MCI should be construed to allow Verizon to cease providing UNEs to MCI without amendments to its interconnection agreements is simply untenable and downright frivolous. It must be remembered that in February of this year, *Verizon*, not MCI, asked this Commission to conduct an arbitration on *Verizon's* proposed *TRO* Amendment. Verizon's proposed contract amendment "implements the changes in incumbents' network unbundling

obligations promulgated in the Federal Communications Commission's ... *Triennial Review Order*." Verizon February 2004 Petition, p.1. In that same initial filing, Verizon stated that its proposed amendment "would thus ensure that all of the interconnection agreements in Florida are brought into conformity with present law." Verizon February 2004 Petition, p. 5.

Changes in unbundling obligations under FCC rules—the impetus for Verizon's proposed contract amendment—are clearly within the scope of the "change of law" provisions of MCI's interconnection agreements with Verizon. In Florida, MCI is operating under the AT&T/GTE agreement, which MCI opted into in February of this year. The AT&T agreement has a change of law provision that is designed specifically to deal with changes in unbundling obligations. Section 3.3 of the AT&T agreement provides, in pertinent part, as follows:

GTE will not discontinue any unbundled Network Element, Ancillary Function or Combination thereof during the term of this Agreement without AT&T's written consent which consent shall not be unreasonably withheld, except (1) to the extent required by network changes or upgrades, in which event GTE will comply with the network disclosure requirements stated in the Act and the FCC's implementing regulations; or (2) if required by a final order of the Court, the FCC or the Commission as a result of remand or appeal of the FCC's order In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Docket 96-98. *In the event such a final order allows but does not require discontinuance, GTE shall make a proposal for AT&T's approval, and if the Parties are unable to agree, either Party may submit the matter to the Dispute resolution procedures described in Attachment 1....* (emphasis added)

This "change of law" provision—designed specifically for changes in Verizon's unbundling obligations under FCC rules -- binds both Verizon and MCI to negotiate contract amendments to reflect these changes. Verizon initiated that process on October 2, 2003, the effective date of the *TRO*, but now acts as if subsequent events have

somehow caused that provision of the agreement to suddenly vanish. Despite Verizon's rhetoric, the change of law provisions remain in effect and must be honored.

2. Verizon Has Abandoned Its Initial Attempt to Address All Changes in Law Made by the FCC in the *TRO*

In its February 2004 arbitration petition, Verizon described the changes to its interconnection agreements that it proposed in its original *TRO* Amendment:

These changes are not limited to those that cut back on Verizon's obligations. In those cases where the FCC's new rules work to Verizon's disadvantage, Verizon has included language to ensure that the agreements are consistent with federal law. In sum, Verizon's amendment would ensure that existing agreements are comprehensively modified to bring them into accordance with the requirements of federal law—just as the FCC has mandated.

Verizon February 2004 Petition, pp. 5-6.

Without any explanation, Verizon now omits language dealing with the new FCC rules that are not in its favor. Thus, Verizon's latest proposed *TRO* Amendment does not deal with commingling of UNEs with wholesale services, conversion of wholesale arrangements to UNEs or UNE combinations, or loop/transport combinations ("EELs"). All of these subjects are addressed in the *TRO* and all are ripe for contract amendments reflecting changes and clarifications in law mandated by the FCC's *TRO* rules, rules which have either been affirmed on appeal or not challenged on appeal.

To remedy Verizon's omission, MCI has included in its red-lined mark up of the Verizon amendment the same (or substantially the same) contract language on these subjects that it proposed in its April 13 responsive filing. Regrettably, Verizon has not only failed to include contract language on these issues, it has also failed to explain its change in position on the need for contract language to implement fully the changes mandated by the *TRO*. Further, in its September 9 filing, Verizon does not even bother to

note these issues on its issues list. The Commission should require that these issues be addressed in this docket.

3. Verizon's Request for Speedy Resolution of Its Latest Amendment Should Be Rejected

In its Petition, Verizon states that this proceeding “should move forward promptly and conclude by the six-month deadline the FCC has established for adoption of its final rules.” Verizon Petition, p. 11. Yet, it is Verizon, along with other ILEC parties, who has filed a petition for a writ of mandamus with the D.C. Circuit, seeking to invalidate the FCC’s *Interim Order*. Verizon would have the Commission, its staff and the CLECs consume scarce resources litigating the appropriateness of Verizon’s latest contract amendment, when, at the same time, it is actively seeking judicial relief that would render wasted much of those efforts.

Further, on the subjects of mass market switching, high capacity loops, and dedicated transport, it makes little sense to arbitrate any issues relating to those UNEs until the FCC has completed its rulemaking and adopted permanent rules. Although the FCC, in its *Interim Order*, acknowledged that the ILECs have the right to initiate change of law proceedings to implement the interim requirements of that order, it also clearly stated that such cases are pointless:

Moreover, whether competitors and incumbents would seek resolution of disputes arising from the operation of their change of law clauses here, in federal court, in state court, or at state public utility commissions, and what standards might be used to resolve such disputes, is a matter of speculation. *What is certain, however, is that such litigation would be wasteful in light of the Commission’s plan to adopt new permanent rules as soon as possible.*

Interim Order, ¶ 17 (emphasis added).

The clearly prudent step, at this point, is to defer any litigation of issues relating to mass market switching, high capacity loops and dedicated transport until after the FCC adopts permanent unbundling rules. Ripe for arbitration are disputed issues relating to proposed contract language to implement changes in law resulting from the *TRO* that are now legally effective and are not the subject of further proceedings at the FCC on remand from the *USTA II* court. The Commission should move forward and resolve these matters while awaiting the FCC's issuance of final rules that will apply to the disposition of the remaining issues.

MCI's RESPONSE TO VERIZON'S AMENDMENT – STATEMENT OF DISPUTED ISSUES

1. General Conditions - Change of Law Provisions

In section 2.1, Verizon has proposed contract language that would nullify the current change of law provision in the parties' interconnection agreements. Under Verizon's proposed language, Verizon's obligations under the agreements would be determined solely by the FCC's unbundling rules. The effect of this language is to eliminate the need to negotiate contract amendments to implement changes in law. Nothing in the *TRO*, *USTA II*, or the FCC's *Interim Order* invalidates change of law provisions in interconnection agreements. Indeed, the FCC has explicitly acknowledged their applicability.⁴ Under Verizon's proposed construct, any changes in law that reduce its contract obligations can thus be implemented by giving appropriate notices of discontinuance to carriers affected by the changes. This approach flies in the face of the scheme created by the Congress in the 1996 Telecommunications Act. Congress explicitly required that the ILECs' interconnection, unbundling and resale obligations be

⁴ *TRO*, ¶700.

captured in agreements that are negotiated and/or arbitrated, and ultimately approved by state commissions. Under Verizon's approach, interconnection agreements would have no practical significance, a result clearly at odds with the statutory framework created by Congress and set forth in sections 251 and 252 of the Act.

Accordingly, MCI has proposed to delete proposed section 2.1. Verizon's proposed section 3.1 (as revised by MCI), along with the appropriate definitions, accomplishes the intent of the parties in the change of law provision in their agreements, as they relate to currently effective changes in Verizon's unbundling obligations. There is simply no justification for Verizon's wholesale removal of the change of law provision to address possible future changes in Verizon's unbundling obligations.

2. General Conditions – Use Restrictions

In its proposed section 2.2, Verizon again attempts to gut the change of law provision by limiting use of UNEs to those uses permitted by federal unbundling rules. Verizon offers no explanation why the change of law amendment process could not handle a future change of law on the subject of UNE use restrictions. The MCI proposed revision of this section captures the present state of the law on this issue.

3. General Conditions – Re-imposition of Unbundling Obligations

In proposed section 2.3, Verizon once again proposes unnecessary contract language on the subject of changes in law. This time, Verizon attempts to address the scenario under which Verizon is forced to resume providing a previously discontinued UNE or UNE combination, *i.e.* an arrangement that it was not obligated to provide on the effective date of the amended agreement. Contrary to its approach when the changes in law favor Verizon, Verizon addresses this scenario by providing that these newly "re-

listed” UNEs may only be provided once Verizon files appropriate tariff changes or negotiates an appropriate amendment to its interconnection agreements. Apparently, a CLEC notice to Verizon to re-impose obligations would not suffice.

4. Discontinued Elements⁵ – Section 3.1

MCI does not object to part of proposed section 3.1, namely, that 90 days notice is sufficient to discontinue the provisioning of Discontinued Elements, defined as: 1) enterprise switching; 2) OCn loops and OCn dedicated transport; 3) the Feeder portion of a Loop; 4) Line Sharing (subject to the FCC’s transition rules); 5) call related databases (other than 911/E911) not provided in connection with use of Mass Market switching; 6) signaling or shared transport provisioned in connection with enterprise switching; 7) FTTP Loops; and 8) Hybrid Loops (subject to exceptions for narrowband services). These changes in Verizon’s unbundling obligations are in effect and not the subject of further appeals or remand proceedings.

Verizon goes one step further, however, and seeks to include contract language on UNEs that *might* be removed from federal unbundling rules in the future. The proposed first sentence of section 4.7.3 would define a “Discontinued Facility” as any UNE or combination that has ceased to be the subject of unbundling requirements under Federal rules. Again, Verizon is seeking to gut the change of law provisions of its interconnection agreements. This amendment should address UNEs and UNE combinations that are no longer the subject of federal unbundling obligations. MCI’s revised version of the Verizon language would do just that. There is no justification for addressing speculative, future changes in Verizon’s unbundling obligations.

⁵ Verizon uses the term “Discontinued Facility” to describe and define UNEs that have been removed from the FCC’s rules. The term is misleading as Verizon has offered to maintain existing facilities, but at a higher price. A more appropriate term for so called “de-listed” UNEs would be “Discontinued Elements.”

Further, MCI has proposed to delete a sentence that would allow Verizon to give notice of discontinuance in advance of the effective date of removal of unbundling requirements. This provision is not necessary, given MCI's proposed limitation of the scope of the definition of "Discontinued Element."

Finally, in the last sentence of proposed section 3.1, Verizon attempts to create an exception to the 90-day notice provision by preserving any rights Verizon may have under the agreement, any Verizon tariff or SGAT, to cease providing a facility that becomes a "Discontinued Facility." First, the whole purpose of this section is to define when Verizon may discontinue offering certain UNEs and UNE combinations. Other contract provisions should not override this section. Second, if a party is purchasing UNEs out of the agreement, Verizon tariffs and SGATs have no relevance whatsoever. Finally, as argued above, this amendment should address current changes in law, not future changes in law that may result in additional UNEs becoming "Discontinued Elements." For future changes in Verizon unbundling obligations, transition arrangements may need to be negotiated and arbitrated in the change of law process established by the parties' original interconnection agreements.

5. Continuation of Facilities Under Separate Arrangement – section 3.2

MCI offers the following specific objections or comments to Verizon's proposed section 3.2. First, re-pricing of existing arrangements through application of a surcharge is inappropriate. If Verizon intends to charge "resale rates" for a UNE, *e.g.* enterprise switching, then Verizon should charge the appropriate resale rate. Second, MCI is unable to verify that Verizon has duly sent all appropriate notices to MCI; accordingly, MCI has deleted the acknowledgement to that effect. MCI will review that issue with Verizon in

ongoing negotiations to verify its accuracy. Third, MCI has proposed additional language for this section that would prohibit Verizon from assessing any non-recurring charges for the disconnection of a UNE arrangement or for the re-connection of service under an alternative arrangement. If Verizon should seek to assess such charges, it should be required to provide appropriate cost support to justify the need for any such charges.

6. Limitation with respect to Replacement Arrangements – section 3.3

Verizon proposes language that would stipulate that negotiations over replacement arrangements are not governed by section 252 of the Act. MCI has a contrary legal interpretation; accordingly, MCI has deleted this proposed section.

7. Pre-Existing and Independent Discontinuance Rights – section 3.4

Verizon's proposed section 3.4 provides that section 3 of this 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. This proposal, as explained earlier, cannot be justified. The purpose of section 3 is to define the terms of when Verizon may discontinue offering certain UNEs and UNE combinations. Other contract provisions should not override this section. In all other respects, the proposed amendment supercedes inconsistent provisions in the original agreement. See Section 1. In addition, if MCI is purchasing UNEs out of the agreement, Verizon tariffs and SGATs have no relevance whatsoever. Verizon has no legal basis to apply tariff (or SGAT) language to override inconsistent language in an interconnection agreement.

8. Implementation of Rate Changes – section 3.5

Verizon proposes that any rate increases or new charges that may be established by the FCC in the *Interim Order* or other proceedings may be implemented by Verizon on the effective date of the rate increase or new charge by the mere issuance of a rate schedule to MCI. Again, Verizon offers no justification for not complying with the “change of law” provision in the underlying agreement. Verizon’s proposed course would have MCI be liable for charges solely upon Verizon’s interpretation of how any new rates or rate increases are to be applied. Were Verizon to follow the change of law process, disputes about the proper application of new rates or rate increases would be the subject of dispute resolution. **Verizon’s proposed language does not even contain a notice provision, which might in theory allow MCI to seek dispute resolution under the agreement before the new rates go into effect.** Accordingly, MCI proposes to delete section 3.5.

9. Other TRO-mandated changes – MCI’s proposed sections 4 through 7

As noted in the introduction to this response, Verizon’s latest proposed *TRO* Amendment takes a very one-sided view of the changes that are necessary to implement the new rules adopted by the FCC in the *TRO*. To address this deficiency, MCI has inserted into the attached red-lined version of the Verizon proposal the following new sections to address the subjects that Verizon has chosen to ignore:

Section 4 - Commingling of UNEs and wholesale services, EELs, and other combinations

Section 5 - Conversions of wholesale services to UNEs/UNE Combinations

Section 6 - Line Splitting⁶

Section 7 - Provisioning of FTTP Loops, Hybrid Loops, Retirement of Copper Loops, and Line Conditioning

The contract language proposed by MCI is the same or substantially similar to contract language proposed by MCI in its April 13, 2004 response to Verizon's original arbitration filing.

10. Transition Provisions – MCI's proposed section 8

MCI's proposed section 8 addresses the transition arrangements that would apply if the FCC were to determine that CLECs are not impaired without access to other unbundled elements, including, for example, Mass Market Switching. MCI's proposed language, with some exceptions, is the same language proposed by MCI in its April 13, 2004 responsive filing. The proposed transition arrangements are a default arrangement; they would apply in the absence of a transition process established by the FCC or the Commission. In addition, the transition arrangements for Mass Market Switching would use the timelines set forth in the *TRO*, and would be triggered by Verizon's implementation of both a batch hot cut process and an individual hot cut process.

11. Definitions (MCI proposed section 9.7, Verizon proposed section 4.7)

MCI has proposed a number of revisions to Verizon's proposed definitions.

(a) Sections 9.7.2 and 9.7.3 – Combination; Commingling

MCI has proposed definitions that are based on the FCC's definitions. These proposed definitions were also included in MCI's initial responsive filing.

(b) Section 9.7.5 – Discontinued Element

⁶ The line splitting in section 6 and the line conditioning language in section 7 has been added to fill a void that exists in many of Verizon's contracts with MCI.

As argued previously, the definition of Discontinued Element should be limited to the specific UNEs that have been removed from the federal unbundling rules by the *TRO*. If additional UNEs are removed from the list in the future, an additional amendment should be negotiated to address those elements.

In addition, MCI has deleted items from the list of Discontinued Elements. First, entrance facilities are not separate UNEs. The new definition of dedicated transport proposed by Verizon excludes entrance facilities from the definition. Second, the FCC's Four Line Carve Out switching rule is not in effect, and should be deleted from the list. Finally, the last item, (j), is too open ended. The definition should list all "de-listed" UNEs. If Verizon has other UNEs in mind when it drafted this language, it should list them explicitly.

(c) Section 9.7.7 – Entrance Facility

MCI has deleted this definition. Entrance facilities are not separate UNEs. The new definition of dedicated transport proposed by Verizon excludes entrance facilities from the definition.

(d) Sections 9.7.10, 9.7.16 - Four Line Carve Out Switching

MCI has deleted this definition. The FCC's unbundling rules on switching have been vacated as a result of the *USTA II* mandate, so the Four Line Carve Out rule is no longer in effect. The term also appears in section 9.7.16, which sets forth the definition of Mass Market switching.

(e) Section 9.7.13 – Line Splitting

MCI has added a definition for Line Splitting because MCI has proposed to add language to the agreement to address line splitting.

(f) Section 9.7.14 – Local Switching

MCI has revised Verizon's proposed definition to bring it into conformity with the FCC's definition. This language is based on MCI's original proposal set forth in its April filing. Subsection (iii) has been added to address the potential that Verizon may seek to discontinue Mass Market switching even where impairment is found, by transitioning all of its voice traffic to packet switches in order to attempt to escape obligations to provide unbundled circuit switching.

(g) Section 9.7.15 – Loop

Verizon neglected to include a current definition of Loop. MCI has added language to supply the FCC's definition.

(h) Section 9.7.17 – Tandem Switching

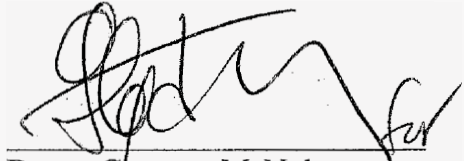
MCI has deleted the definition of Tandem Switching because it is no longer a separately listed UNE in the FCC's unbundling rules.

WHEREFORE, MCI respectfully requests that the Commission:

- (1) Order that the language proposed by MCI relating to changes in the law arising from the TRO that are not subject to further rulemaking by the FCC (including but not limited to commingling of UNEs with wholesale services, conversion of wholesale arrangements to UNEs or UNE combinations, and EELs) be incorporated into the parties' interconnection agreements;
- (2) Order that proceedings in this docket related to mass market switching, high capacity loops, and dedicated transport be deferred until final rules concerning those elements are issued by the FCC; and

(3) Order such further relief as is just and proper.

Respectfully submitted, this 4th day of October, 2004.



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MCImetro Access Transmission
Services, LLC, MCI WORLDCOM
Communications, Inc., Metropolitan
Fiber Systems of Florida, Inc., and
Intermedia Communications Inc.

AMENDMENT NO. ____

to the

INTERCONNECTION AGREEMENT

between

[VERIZON LEGAL ENTITY]

and

[MCI Entity CLEC FULL NAME]

This Amendment No. [NUMBER] (the "Amendment") is made by and between [VERIZON LEGAL ENTITY] ("Verizon"), a [STATE OF INCORPORATION] corporation with offices at [VERIZON STATE ADDRESS], and [CLEC FULL NAME], a [CORPORATION/PARTNERSHIP] with offices at [CLEC ADDRESS] 22001 Loudoun County Parkway, Ashburn, VA 20147 (****CLEC Acronym TXT****), and shall be deemed effective **[FOR CALIFORNIA]** upon Commission approval pursuant to Section 252 of the Act (the "Amendment Effective Date").] **[FOR ALL OTHER STATES: on _____ (the "Amendment Effective Date").]** Verizon and ***CLEC Acronym TXT*** are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in Verizon's service territory in the [State or Commonwealth] of [STATE/COMMONWEALTH NAME] (the "State"/"Commonwealth").

WITNESSETH:

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

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

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

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

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

WHEREAS, on March 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") issued a decision affirming in part and vacating in part the TRO (the "D.C. Circuit Decision"), and such vacatur became effective on June 16, 2004; and

WHEREAS, on August 20, 2004, the FCC released an Order and Notice of Proposed Rulemaking in WC Docket No. 04-313 and CC Docket No. 01-338 (the "Interim Rules Order") setting forth

certain interim rules regarding the ~~temporary continued access to~~ reinstatement of unbundling obligations for certain network elements ~~pending the promulgation by the FCC of permanent UNE rules with respect to which the D.C. Circuit Decision holds that the FCC has made no lawful impairment finding under Section 251 of the Act; and~~

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

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

1. Amendment to Agreement. The Agreement is amended to include the following provisions, which shall apply to and be a part of the Agreement notwithstanding any other provision of the Agreement or a Verizon tariff or a Verizon Statement of Generally Available Terms and Conditions ("SGAT").
2. General Conditions.
 - 2.1 ~~Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT: (a) Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs") and combinations of unbundled Network Elements ("Combinations") to ***CLEC Acronym TXT*** under the terms of this Amended Agreement only to the extent required by the Federal Unbundling Rules, and (b) Verizon may decline to provide access to UNEs and Combinations to ***CLEC Acronym TXT*** to the extent that provision of access to such UNEs or Combinations is not required by the Federal Unbundling Rules. Intentionally Left Blank~~
 - 2.2 ~~***CLEC Acronym TXT*** may use a Network Element UNE or a Combination only for the provision of any Telecommunications Service those purposes for which Verizon is required by the Federal Unbundling Rules to provide such UNE or Combination to ***CLEC Acronym TXT***.~~
 - 2.3 ~~Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent Verizon becomes obligated to provide to ***CLEC Acronym TXT*** pursuant to the Federal Unbundling Rules a Discontinued Facility or a UNE, Combination, or related service that, as of the Amendment Effective Date, Verizon is not required to provide to ***CLEC Acronym TXT*** under the Amended Agreement and the Federal Unbundling Rules, the rates, terms, conditions for such Discontinued Facility, UNE, Combination, or related service shall be as provided in an applicable Verizon tariff that Verizon, after the Amendment Effective Date, establishes or revises to provide for such rates, terms, and conditions, or (in the absence of an applicable Verizon tariff that Verizon, after the Amendment Effective Date, establishes or revises to provide for such rates, terms, and conditions) as mutually agreed by the Parties in a written amendment to the Amended Agreement. For the avoidance of doubt, notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, Verizon, unless and until such time as Verizon is required to do so by an applicable Verizon tariff that Verizon, after the Amendment Effective Date, establishes or revises to provide for the applicable rates, terms, and conditions or by a mutually agreed written amendment to the Amended Agreement setting forth the applicable rates, terms, and conditions, shall not be required under the Amended Agreement (a) to perform any routine network modification that the Agreement does not expressly and specifically require Verizon to perform (including, but not limited to, any routine network modification required under 47 C.F.R. § 51.319(a)(8) or 47 C.F.R. § 51.319(e)(5)), (b) to commingle, or to permit the commingling of, UNEs or Combinations with other wholesale services obtained from~~

~~Verizon under a Verizon access tariff, separate non-251 agreement, or otherwise, or (c) to offer or provide, for any period of time not required under Section 3 of this Amendment, any facility that is or becomes a Discontinued Facility.~~ Intentionally Left Blank

3. Discontinued Facilities Elements.

3.1 Generally. Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, Verizon shall not be obligated to offer or provide access on an unbundled basis at rates prescribed under Section 251 of the Act to any element facility that is ~~or becomes~~ a Discontinued Facility Element, whether as a stand-alone UNE, as part of a Combination, ~~or otherwise.~~ To the extent Verizon has not already ceased providing a particular Discontinued Element Facility to ***CLEC Acronym TXT***, Verizon, provided it has given at least ninety (90) days written notice of discontinuance of such Discontinued Facility Element, will continue to provide such Discontinued Facility Element under the Amended Agreement only through the effective date of the notice of discontinuance, and not beyond that date. To the extent an element is a facility is ~~(or becomes)~~ a Discontinued Facility Element only as to new orders that ***CLEC Acronym TXT*** may place for such an element facility, Verizon, to the extent it has not already discontinued its acceptance of such new orders and provided it has given at least ninety (90) days written notice of its intention to do so, may reject such new orders on the effective date of the notice of discontinuance and thereafter. ~~Verizon may, but shall not be required to, issue the foregoing notice in advance of the date on which the facility shall become a Discontinued Facility as to new orders that ***CLEC Acronym TXT*** may place, so as to give effect to Verizon's right to reject such new orders immediately on that date.~~ The Parties acknowledge that Verizon, prior to the Amendment Effective Date, has provided ***CLEC Acronym TXT*** with any required notices of discontinuance of certain Discontinued Elements Facilities, and that Verizon, to the extent it has not already done so pursuant to a pre-existing or independent right it may have under the Amended Agreement, a Verizon SGAT or tariff, or otherwise, may, at any time and without further notice to ***CLEC Acronym TXT***, cease providing any such Discontinued Elements Facilities. This Section 3.1 is intended to limit any obligation Verizon might otherwise have to provide to ***CLEC Acronym TXT*** (or to notify ***CLEC Acronym TXT*** of the discontinuance of) any facility that is ~~or becomes~~ a Discontinued Element Facility, and nothing contained in this Section 3.1 or elsewhere in this Amendment shall be deemed to establish in the first instance or to extend any obligation of Verizon to provide any facility ~~or Discontinued Element Facility~~. This Section 3.1 shall apply ~~notwithstanding anything contained in the Agreement, this Amendment, or any Verizon tariff or SGAT,~~ but without limiting any other right Verizon may have under the Agreement, this Amendment, or any Verizon tariff or SGAT to cease providing a facility that is ~~or becomes~~ a Discontinued Facility.

3.2 Continuation of Facilities Under Separate Arrangement. To the extent ***CLEC Acronym TXT*** wishes to continue to obtain access to a Discontinued Element Facility under a separate arrangement (e.g., a separate agreement at market-based or other rates, an arrangement under a Verizon access tariff, or resale), ***CLEC Acronym TXT*** shall have promptly undertaken and concluded such efforts as may be required to secure such arrangement prior to the date on which Verizon is permitted to cease providing the Discontinued Element Facility; provided, however, that in no event shall ***CLEC Acronym TXT***'s failure to secure such an arrangement affect Verizon's right to cease providing a facility that is ~~or becomes~~ a Discontinued Element Facility. If Verizon is permitted to cease providing a Discontinued Facility Element under this Section 3 and ***CLEC Acronym TXT*** has not submitted an LSR or ASR, as appropriate, to Verizon requesting disconnection of the Discontinued Facility Element and has not separately secured from Verizon an alternative arrangement to replace the Discontinued Facility Element, then Verizon, to the extent it has not already done so prior to execution of this Amendment, shall reprice the subject Discontinued Facility Element by application

of a new rate (or, in Verizon's sole discretion, by application of a surcharge) to be equivalent to access, resale, or other analogous arrangement that Verizon shall identify in a written notice to ***CLEC Acronym TXT***. The rates, terms, and conditions of any such arrangements shall apply and be binding upon ***CLEC Acronym TXT*** as of the date specified in the written notice issued by Verizon; provided such notice is delivered to ***CLEC Acronym TXT*** no later than forty-five (45) days prior to the application of such new rate. ~~The Parties acknowledge~~ that Verizon has, in such written notices issued to ***CLEC Acronym TXT*** prior to the Amendment Effective Date, identified such arrangements to replace certain Discontinued Facilities and that Verizon, to the extent it has not already done so, may implement such arrangements without further notice. Verizon shall not assess or charge ***CLEC Acronym TXT*** any non-recurring charges for the discontinuation or disconnection of a Discontinued Element or for the reconnection or establishment of service under the alternative arrangement.

- 3.3 Limitation With Respect to Replacement Arrangements. Notwithstanding any other provision of this Amended Agreement, any negotiations regarding any replacement arrangement or other facility or service that Verizon is not required to provide under the Federal Unbundling Rules shall be deemed not to have been conducted pursuant to the Amended Agreement, 47 U.S.C. § 252(a)(1), or 47 C.F.R. Part 51, and shall not be subject to arbitration pursuant to 47 U.S.C. § 252(b). Any reference in this Amended Agreement to Verizon's provision of a facility, service, or arrangement that Verizon is not required to provide under the Federal Unbundling Rules is solely for the convenience of the Parties and shall not be construed to require or permit arbitration of such rates, terms, or conditions pursuant to 47 U.S.C. § 252(b). Intentionally Left Blank
- 3.4 Pre-Existing and Independent Discontinuance Rights. Verizon's rights as to discontinuance of Discontinued Facilities pursuant to this Section 3 are in addition to, and not in limitation of, any rights Verizon may have as to discontinuance of Discontinued Facilities under the Agreement, a Verizon tariff or SGAT, or otherwise. Nothing contained herein shall be construed to prohibit, limit, or delay Verizon's exercise of any pre-existing or independent right it may have under the Agreement, a Verizon tariff or SGAT, or otherwise to cease providing a Discontinued Facility. Intentionally Left Blank
- 3.5 Implementation of Rate Changes. Notwithstanding any other provision of the Amended Agreement (including, but not limited to, the rates and charges set forth therein), Verizon may, but shall not be required to, implement any rate increases or new charges that may be established by the FCC in its Interim Rules Order or subsequent rulemakings, once effective, for unbundled network elements, combinations of unbundled network elements, or related services, by issuing to ***CLEC Acronym TXT*** a schedule of such rate increases and/or new charges, provided that the rate provisions of such FCC orders and/or rulemakings are not subject to a stay issued by any court of competent jurisdiction. Any such rate increases or new charges shall take effect on the date indicated in the schedule issued by Verizon, but no earlier than the date established by the FCC, and shall be paid by ***CLEC Acronym TXT*** in accordance with the terms of the Amended Agreement. Any such rate increases and new charges that the FCC may establish shall be in addition to, and not in limitation of, any rate increases and new charges that the [***State Commission TXT***] may approve or that Verizon may otherwise implement under the Amended Agreement or applicable tariffs. Nothing set forth in this Section 3.5 shall be deemed an admission of Verizon or limit Verizon's right to appeal, seek reconsideration of, or otherwise seek to have stayed, modified, reversed, or invalidated any limit the FCC may impose on Verizon's rates and charges. Intentionally Left Blank

4. ~~Commingling and Combinations~~

4.1 Commingling. Verizon shall, upon request of ***CLEC Acronym TXT***, perform the functions necessary to Commingle or combine Network Elements with wholesale services. The rates, terms and conditions of the applicable wholesale or access tariff or separate non-251 agreement will apply to the wholesale services, and the rates, terms and conditions of the Amended Agreement or the Verizon UNE tariff, as applicable, will apply to the Network Element(s). Verizon shall not deny access to a Network Element or a Combination on the grounds that one or more of the Network Elements (i) is connected to, attached to, linked to, associated with, or combined with, a facility or service obtained from Verizon; or (ii) shares part of Verizon's network with access services or inputs for non-telecommunication services. When ***CLEC Acronym TXT*** purchases Commingled Network Elements and wholesale services from Verizon, Verizon shall charge ***CLEC Acronym TXT*** on an element-by-element and service-by-service rate. "Ratcheting," as that term is defined by the FCC, shall not be required. Verizon's performance in connection with the provisioning of Commingled facilities and services shall be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or under Applicable Law. In addition, Verizon shall cooperate fully with ***CLEC Acronym TXT*** to ensure that operational policies and procedures implemented to effect Commingled arrangements shall be handled in such a manner as to not operationally or practically impair or impede ***CLEC Acronym TXT***'s ability to implement new Commingled arrangements and convert existing arrangements to Commingled arrangements in a timely and efficient manner and in a manner that does not affect service quality, availability, or performance from the end user perspective. For the avoidance of any doubt, Verizon acknowledges and agrees that the language of this Section [4.1] complies with and satisfies the requirements of Verizon's wholesale and access tariffs with respect to Commingling. Verizon shall not change its wholesale or access tariffs in any fashion that impacts the availability or provision of Commingling under this Amendment, unless Verizon and ***CLEC Acronym TXT*** have amended the Amended Agreement in advance to address Verizon's proposed tariff changes.

4.2 Service Eligibility Criteria for High-Capacity Loop/Transport Combinations and Commingled Facilities and Services.

4.2.1 Unless ***CLEC Acronym TXT*** certifies to Verizon in writing (via email or letter) that ***CLEC Acronym TXT*** is in compliance with each of the High-Cap EEL service eligibility criteria set forth in 47 C.F.R. § 51.318, Verizon shall not be obligated to provide:

4.2.1.1 an unbundled DS1 Loop in combination with unbundled DS1 or DS3 Dedicated Transport, or Commingled with a DS1 or DS3 interoffice access transport service;

4.2.1.2 an unbundled DS3 Loop in combination with unbundled DS3 Dedicated Transport, or Commingled with a DS3 interoffice access transport service;

4.2.1.3 unbundled DS1 Dedicated Transport Commingled with DS1 channel termination service;

4.2.1.4 unbundled DS3 Dedicated Transport Commingled with DS1 channel termination service; or

4.2.1.5 unbundled DS3 Dedicated Transport Commingled with DS3 channel termination service.

Anything to the contrary in this Section [4.2] notwithstanding, ***CLEC Acronym TXT*** shall not be required to provide certification to obtain access to lower capacity EELs, other Combinations, or individual Network Elements. ***CLEC Acronym TXT*** must remain in compliance with the service eligibility criteria for so long as ***CLEC Acronym TXT*** continues to receive the aforementioned combined or Commingled facilities and/or services from Verizon. The High-Cap EEL service eligibility criteria shall be applied to each DS1 circuit or DS1 equivalent circuit. The foregoing shall apply whether the circuits in question are being provisioned to establish a new circuit or to convert an existing wholesale service, or any part thereof, to unbundled Network Elements. For existing circuits, ***CLEC Acronym TXT*** must re-certify in writing for each DS1 circuit or DS1 equivalent within sixty (60) days after the Amendment Effective Date.

4.2.2 Each written certification to be provided by ***CLEC Acronym TXT*** pursuant to Section [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; (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.

4.2.3 Other than the High-Cap EEL service eligibility criteria, Verizon shall not impose terms and conditions, including without limitation, pre-audits and requirements to purchase special access and then convert to EELs, on ***CLEC Acronym TXT***'s purchase of High-Capacity EELs.

4.3 Combinations.

4.3.1 ***CLEC Acronym TXT*** may, at its option, combine a Network Element with any other Network Element to the extent Technically Feasible. Verizon, however, may not require ***CLEC Acronym TXT*** to combine Network Elements.

4.3.2 In addition to offering each Network Element individually, Verizon shall, upon ***CLEC Acronym TXT***'s request, perform the functions necessary to combine Network Elements in any manner, even if those Network Elements are not ordinarily combined in Verizon's network; provided, however, that such Combination (i) is Technically Feasible; and (ii) would not undermine the ability of other carriers to obtain access to Network Elements or to interconnect with Verizon's network. If Verizon denies ***CLEC Acronym TXT*** access to any Combination based on a claim that it is not Technically Feasible, Verizon must prove to the [***State Commission TXT***] that the requested Combination is not Technically Feasible. If Verizon denies ***CLEC Acronym TXT*** access to any Combination based on a claim that it would undermine the ability of other carriers to access Network Elements or to interconnect, Verizon must prove to the [***State Commission TXT***] that the requested Combination would impair the ability of other carriers to obtain access to Network Elements or to interconnect with Verizon's network.

4.3.3 Upon ***CLEC Acronym TXT***'s request, Verizon shall perform the functions necessary to combine Network Elements with elements possessed or provided by ***CLEC Acronym TXT*** in any Technically Feasible manner.

4.3.4 Except when requested by ***CLEC Acronym TXT***, Verizon shall not separate requested Network Elements that Verizon currently combines.

5. Conversion of Services and Network Elements.

5.1 Upon ***CLEC Acronym TXT***'s request, Verizon shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element or Combination, that is available to ***CLEC Acronym TXT*** under the Amended Agreement. Unless otherwise agreed to in writing by the Parties, such conversion shall be completed in a manner so that the correct charge is reflected on the next billing cycle after the date of ***CLEC Acronym TXT***'s request.

5.2 Verizon shall perform any conversion from a wholesale service or group of wholesale services to a Network Element or Combination without adversely affecting the service quality perceived by ***CLEC Acronym TXT***'s customer. Verizon shall not perform any conversion by disconnecting or discontinuing a wholesale service and reconnecting or re-establishing it as a Network Element or Combination.

5.3 In connection with any conversion between a wholesale service or group of wholesale services and a Network Element or Combination, Verizon shall not impose any untariffed termination charges. Further, Verizon shall not impose 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 a Network Element or Combination.

5.4 Until such time as Verizon and ***CLEC Acronym TXT*** mutually agree on an automated conversion process, conversion of a wholesale service, or group of wholesale services, to unbundled Network Elements will be performed manually on a project basis. The effective bill date for conversions is the first of the month following Verizon's receipt of a written request from ***CLEC Acronym TXT*** reasonably identifying the circuits or other facilities that are the subject of the conversion request.

5.5 For so long as requests for conversions are handled via a manual process as a project, they will be excluded from all ordering and provisioning metrics.

6. Line Splitting. CLECs may provide integrated voice and data services over the same Loop by engaging in "Line Splitting" as set forth in paragraph 18 of the FCC's Line Sharing Reconsideration Order (CC Docket Nos. 98-147, 96-98), released January 19, 2001. Any Line Splitting between two CLECs shall be accomplished by prior negotiated arrangement between those CLECs. To achieve a Line Splitting capability, CLECs may utilize supporting Verizon OSS to order and combine in a Line Splitting configuration an unbundled xDSL Compatible Loop terminated to a collocated splitter and DSLAM equipment provided by a participating CLEC, unbundled switching combined with shared transport, collocator-to-collocator connections, and available cross-connects, under the terms and conditions set forth in their Interconnection Agreement(s). The participating CLECs shall provide any splitters used in a Line Splitting configuration. CLECs seeking to migrate existing UNE platform configurations to a Line Splitting configuration using the same Network Elements utilized in the pre-existing platform arrangement, or seeking to migrate a Line Sharing arrangement to a Line Splitting configuration using the existing Loop, a Verizon Local Switching Network Element, and the existing central office wiring configuration, may do so consistent with such implementation schedules, terms, conditions and guidelines as are agreed upon for such migrations in the ongoing DSL Collaborative in the State of New York, NY PSC Case 00-C-0127, allowing for local jurisdictional and OSS differences.

6.1 Line Splitting with a CLEC-Owned Switch ("Loop Splitting"). When provisioning a ***CLEC Acronym TXT*** Line Splitting order for a standalone Loop where ***CLEC Acronym TXT*** or a third party LEC is providing switching, Verizon shall use the same length of tie pairs and CFA assignments it uses for Line Splitting in conjunction with Verizon provided switching plus an additional CLEC-to-CLEC connection and shall employ a basic installation "lift and lay" procedure, in which the Verizon technician lifts the Loop from its existing termination in the applicable Verizon wire center and lays it on a new termination connection to ***CLEC Acronym TXT***'s or its associated advanced services provider's collocated equipment in the same wire center utilizing the existing CFA. When submitting an order for Line Splitting for a standalone Loop where ***CLEC Acronym TXT*** or a third party LEC is providing switching, ***CLEC Acronym TXT*** or its associated advanced services provider will provide, on the service order, the appropriate frame terminations that are dedicated to splitters. Verizon shall administer all cross connects/jumpers on the COSMIC/MDF and IDF.

7. Provision of Certain Loop Facilities and Services.

7.1 FTTP Loops – Overbuilds. If an FTTP Loop replaces a copper Loop that Verizon has retired, and there are no other available copper Loops or Hybrid Loops for ***CLEC Acronym TXT***'s provision of a voice grade service to its end user customer, Verizon shall provide ***CLEC Acronym TXT*** with nondiscriminatory access on an unbundled basis to a transmission path, capable of carrying voice grade service, from the main distribution frame (or its equivalent) in a Verizon wire center serving the end user to the demarcation point at the end user's customer premises. For the avoidance of doubt, in no event shall ***CLEC Acronym TXT*** be entitled to obtain access to an FTTP Loop (or any segment thereof) on an unbundled basis where Verizon has deployed such a Loop to an end user customer's premises that previously was not served by any Verizon Loop other than an FTTP Loop.

7.2 Hybrid Loops – Narrowband Services.

7.2.1 Generally. When ***CLEC Acronym TXT*** seeks access to a Hybrid Loop for the provision to its customer of "narrowband services," as such term is defined by the FCC, Verizon shall either (a) provide access to a spare home-run copper Loop serving that customer on an unbundled basis, or (b) provide access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service, using time division multiplexing technology.

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

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 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.

7.3 Retirement of Copper Loops. Prior to retiring any copper Loop that has been replaced with a FTTP Loop, Verizon shall comply with (i) the network disclosure requirements set forth in Section 251(c)(5) of the Act and in Sections 51.325 through 51.335 of the FCC's

Rules (which, in part, require Verizon to submit notice of copper Loop retirement no later than nine-one (91) days prior to the planned date of such retirement); and (ii) any applicable requirements of state law. If ***CLEC Acronym TXT*** is leasing a copper Loop when Verizon submits its notice pursuant to the foregoing sentence, Verizon shall also provide ***CLEC Acronym TXT*** with a copy of such notice pursuant to the notice provisions of the Amended Agreement.

- 7.4 Line Conditioning. Verizon shall condition a copper Loop at the request of ***CLEC Acronym TXT*** when seeking access to a copper Loop or any portion of a copper Loop, including, without limitation, the high frequency portion of a copper Loop, to ensure that the copper Loop or copper sub-Loop is suitable for providing xDSL services, including those provided over the high frequency portion of the copper Loop or copper sub-Loop, whether or not Verizon offers advanced services to the end-user customer on that copper Loop or copper sub-Loop. If Verizon seeks compensation from ***CLEC Acronym TXT*** for line conditioning, ***CLEC Acronym TXT*** has the option of refusing, in whole or in part, to have the line conditioned; and ***CLEC Acronym TXT***'s refusal of some or all aspects of line conditioning will not diminish any right it may have, under this Section [7.4], to access the copper Loop, the high frequency portion of the copper Loop, or the copper Sub-Loop.
- 7.4.1 Line conditioning is defined as the removal from a copper Loop or copper Sub-Loop of any device that could diminish the capability of the Loop or Sub-Loop to deliver high-speed switched wireline telecommunications capability, including DSL service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.
- 7.4.2 Verizon shall recover the costs of line conditioning from ***CLEC Acronym TXT*** in accordance with the FCC's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in Section 51.507(e) of the FCC's rules.
- 7.4.3 Insofar as it is Technically Feasible, Verizon shall test and report troubles for all the features, functions, and capabilities of conditioned copper Loops, and may not restrict its testing to voice transmission only.
- 7.4.4 Where ***CLEC Acronym TXT*** is seeking access to the high frequency portion of a copper Loop or copper Sub-Loop and Verizon claims that conditioning that Loop or Sub-Loop will significantly degrade, as defined in Section 51.233 of the FCC's rules, the voiceband services that Verizon is currently providing over that Loop or Sub-Loop, Verizon must either:
- 7.4.4.1 Locate another copper Loop or copper Sub-Loop that has been or can be conditioned, migrate Verizon's voiceband service to that Loop or Sub-Loop, and provide ***CLEC Acronym TXT*** with access to the high frequency portion of that alternative Loop or Sub-Loop; or
- 7.4.4.2 Make a showing to the [***State Commission TXT***] that the original copper Loop or copper Sub-Loop cannot be conditioned without significantly degrading voiceband services on that Loop or Sub-Loop, as defined in Section 51.233 of the FCC's rules, and that there is no adjacent or alternative copper Loop or copper Sub-Loop available that can be conditioned or to which the end-user customer's voiceband service can be moved to enable Line Sharing.

7.4.5 If, after evaluating Verizon's showing under Section [7.4.4.2] above, the [***State Commission TXT***] concludes that a copper Loop or copper Sub-Loop cannot be conditioned without significantly degrading the voiceband service, Verizon cannot then or subsequently condition that Loop or Sub-Loop to provide advanced services to its own customers without first making available to any requesting telecommunications carrier, including ***CLEC Acronym TXT***, the high frequency portion of the newly conditioned Loop or Sub-Loop.

8. **Transitional Provisions for Certain Network Elements.** If after the Amendment Effective Date the FCC or [***State Commission TXT***] makes a determination that competitive carriers are not impaired without unbundled access to a certain Network Element, and that determination becomes final (e.g., not subject to a stay) and non-appealable ("Transition Commencement Date"), Verizon and ***CLEC Acronym TXT*** shall commence, and abide by, whatever transition process the FCC or [***State Commission TXT***] establishes with respect to the continued provision of access to that Network Element. If the FCC or [***State Commission TXT***] does not establish a transition process or schedule for the continued provision of access to a particular Network Element, the Parties agree to migrate Verizon's provision of that Network Element as follows:

8.1 **Mass Market Switching.** Upon the latter of (i) the Transition Commencement Date or (ii) the date on which Verizon has established both a Batch Hot Cut process and individual Hot Cut process ("MM Switching Migration Date"), Verizon will continue accepting orders under the Amended Agreement from ***CLEC Acronym TXT*** for Mass Market Switching for a transitional period of five (5) months. Thereafter, Verizon shall be under no obligation to accept new orders for Mass Market Switching. Counting from the MM Switching Migration Date, ***CLEC Acronym TXT*** shall submit orders to Verizon to migrate the embedded base of its end user customers in the subject market of Verizon's Mass Market Switching product to any other switching service or product made available by Verizon under separate agreement, or to ***CLEC Acronym TXT***'s own or a third party's facilities, in accordance with the following schedule: (a) by the end of month 13, ***CLEC Acronym TXT*** must submit orders to migrate one-third of its embedded base of end user customers; (b) by the end of month 20, ***CLEC Acronym TXT*** must submit orders to migrate one-half of the remaining embedded base of end user customers; and (c) by the end of month 27, ***CLEC Acronym TXT*** must submit orders to migrate the remainder of its embedded base of end user customers. For the avoidance of doubt, Mass Market Switching (i) provided under this Amended Agreement to new customers ordering service within the five-month transitional period specified above or (ii) provided for the embedded based during the migration period specified above shall, in either and both cases, be subject to the rates in effect under the Agreement as of the day before the Transition Commencement Date. Verizon shall waive all non-recurring charges related to, or resulting from, the disconnection or discontinuation of Mass Market Switching and all non-recurring charges related to, or resulting from, the establishment of any alternative arrangement provided by Verizon.

8.2 **Other Network Elements.** Upon or after a Transition Commencement Date with respect to a Network Element other than Mass Market Switching, Verizon may notify ***CLEC Acronym TXT*** in writing as to its desire to discontinue accepting orders for that unbundled Network Element ("Transition Element"). Such notice ("Transition Notice") shall identify the type of Transition Element generally, identify and describe the legal authority under which Verizon has determined that it is unbundling obligation no longer exists, and provide, with respect to each instance of such Transition Element (e.g., such as a circuit, customer location, transport route, geographic market or other granular attribute) specific information identifying each instance of each Transition Element obtained by ***CLEC Acronym TXT***, including without limitation, for each such Transition Element, the Verizon account number; the ***CLEC Acronym TXT***

identification number associated with each such Transition Element to the extent contained in Verizon's records; the street address associated with the locations at which each such Transition Element is provided; the CLLI codes associated with the locations at which each such Transition Element is provided, if applicable; and any and all other information reasonably available to Verizon that would help identify, with particularity, each instance of a Transition Element that Verizon intends to have covered by the Transition Notice provided under this Section [8.2]. Verizon shall waive all non-recurring charges related to, or resulting from, the disconnection or discontinuation of a Transition Element and all non-recurring charges related to, or resulting from, the establishment of any alternative arrangement provided by Verizon.

8.2.1 If the Transition Notice identifies a significant number of Transition Elements (e.g., more than one hundred Loops or more than one hundred Dedicated Transport circuits) ***CLEC Acronym TXT*** shall have a transition period of ninety (90) days after receipt of the Transition Notice within which to specify one of the Alternate Service Arrangements specified below with respect to each Transition Element. If the Transition Notice does not identify a significant number of Transition Elements (e.g., fewer than one hundred Loops or fewer than one hundred Dedicated Transport circuits) ***CLEC Acronym TXT*** shall have a transition period of thirty (30) days after receipt of the Transition Notice within which to specify one of the Alternate Service Arrangements specified below with respect to each Transition Element. In either case, Verizon agrees to continue providing the Transition Elements that are the subject of the Transition Notice during the applicable transition period (and thereafter to the extent specified for a given Alternative Service Arrangement) under the rates, terms, and conditions of the Amended Agreement, as the same were in effect as of the day before the Transition Commencement Date.

8.2.2 By the end of the applicable transition period specified in Section [8.2.1] above, ***CLEC Acronym TXT*** shall designate one of the following Alternative Service Arrangements for each Transition Element identified in the Transition Notice.

8.2.2.1 Conversion to Access Service: ***CLEC Acronym TXT*** may elect to convert a Transition Element to the analogous access service, if available. Where the Transition Elements are converted to an analogous access service, from and after the date on which Verizon processes ***CLEC Acronym TXT***'s order, Verizon shall provide such access services at the rates applicable under the term plan selected by ***CLEC Acronym TXT***, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the date on which Verizon processes ***CLEC Acronym TXT***'s order. Conversion to an analogous access service shall be accomplished via the applicable LSR or ASR process, or with respect to a significant number of Transition Elements, via letter and spreadsheet, which will be coordinated by the Parties on a project basis. Until the date on which Verizon processes ***CLEC Acronym TXT***'s order with respect to a particular Transition Element and converts it to the analogous access service, Verizon agrees to continue providing such Transition Element under the rates, terms, and conditions of the Amended Agreement, as the same were in effect as of the day before the Transition Commencement Date.

- 8.2.2.2 Conversion to Resale Arrangement: ***CLEC Acronym TXT*** may elect to convert a Transition Element to a resale arrangement (either under the Amended Agreement or otherwise), if available. Where the Transition Elements are converted to such a resale arrangement, from and after the date on which Verizon processes ***CLEC Acronym TXT***'s order, Verizon shall provide such resale arrangements under the rates, terms, and conditions applicable under the Amended Agreement (or if applicable, the relevant Verizon tariff), with the effective bill date being the first day following the date on which Verizon processes ***CLEC Acronym TXT***'s order. Conversion to a resale arrangement shall be accomplished via the applicable LSR or ASR process, or with respect to a significant number of Transition Elements, via letter and spreadsheet, which will be coordinated by the Parties on a project basis. Until the date on which Verizon processes ***CLEC Acronym TXT***'s order with respect to a particular Transition Element and converts it to a resale arrangement, Verizon agrees to continue providing such Transition Element under the rates, terms, and conditions of the Amended Agreement, as the same were in effect as of the day before the Transition Commencement Date.
- 8.2.2.3 Conversion to Alternative Verizon Service Arrangement ***CLEC Acronym TXT*** and Verizon may mutually agree to convert a Transition Element to some other service arrangement (e.g., a separate agreement at market-based or other rates). Conversion to some other service arrangement shall be accomplished via a process to be mutually agreed-upon by the Parties. Until the date on which the conversion is completed per the terms agreed-upon by the Parties, Verizon agrees to continue providing such Transition Element under the rates, terms, and conditions of the Agreement, as the same were in effect as of the day before the Transition Commencement Date.
- 8.2.2.4 Disconnection of a Transition Element: ***CLEC Acronym TXT*** may elect to disconnect a Transition Element. Disconnection of a Transition Element shall be accomplished via the applicable LSR or ASR process, or with respect to a significant number of Transition Elements, via letter and spreadsheet, which will be coordinated by the Parties on a project basis. Billing for such Transition Element shall cease as of the effective date of disconnect specified by ***CLEC Acronym TXT*** in its order (which date shall be no earlier than fifteen (15) days after the date of ***CLEC Acronym TXT***'s order. Until the date on which Verizon processes ***CLEC Acronym TXT***'s disconnect order with respect to a particular Transition Element, Verizon agrees to continue providing such Transition Element under the rates, terms, and conditions of the Amended Agreement, as the same were in effect as of the day before the Transition Commencement Date.
- 8.2.2.5 **Transfer of Service to ***CLEC Acronym TXT*** or a Third Party:** ***CLEC Acronym TXT*** may elect to replace a Transition Element with a service provisioned on ***CLEC Acronym TXT***'s own facilities or those of a third-party. With respect to such Transition Elements, Verizon shall cooperate fully with ***CLEC Acronym TXT*** to accomplish a seamless transition that does not

affect service quality, availability, or performance from the end user perspective. Verizon and ***CLEC Acronym TXT*** shall use commercially reasonable efforts to expedite the preparation of the relevant facilities or the applicable third-party facilities to meet the transition schedules. Until the date on which Verizon processes ***CLEC Acronym TXT***'s transfer order with respect to a particular Transition Element, Verizon agrees to continue providing such Transition Element under the rates, terms, and conditions of the Amended Agreement, as the same were in effect as of the day before the Transition Commencement Date, provided that to the extent undue delays in the transfer process are attributable to ***CLEC Acronym TXT*** or the third-party, Verizon shall have the right to obtain an equitable adjustment in the rates payable by ***CLEC Acronym TXT*** for all time periods resulting from such undue delays.

8.2.3 At the end of the applicable transition period specified in Section [8.2.2], if ***CLEC Acronym TXT*** has not designated an Alternative Service Arrangement for a Transition Element listed in the Transition Notice, Verizon may convert such Transition Elements to an analogous access service, if available, and provide such access services at the month-to-month rates, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the applicable transition period; provided that if no analogous access service is available, Verizon may disconnect such Transition Elements.

4.9. Miscellaneous Provisions.

4-19.1 Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement this Amendment shall govern, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section [9-4.1].

4-29.2 Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

4-39.3 Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.

4-49.4 Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly herein. As used herein, the Agreement, as revised and supplemented by this Amendment, shall be referred to as the "Amended Agreement". Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.

4-59.5 Reservation of Rights. Notwithstanding any contrary provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, nothing contained in the Agreement, this Amendment, or any Verizon tariff or SGAT shall limit either Party's right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated

any order, rule, regulation, decision, ordinance or statute issued by the [***State Commission TXT***], the FCC, any court or any other governmental authority related to, concerning or that may affect either Party's rights or obligations under the Agreement, this Amendment, any Verizon tariff or SGAT, or Applicable Law.

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

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

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

9.7.2 Combination. The provision of unbundled Network Elements in combination with each other, including, but not limited to, the Loop and Switching Combinations (also known as Network Element Platform or UNE-P) and the Combination of Loops and Dedicated Transport (also known as an EEL).

9.7.3 Commingling. The connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more facilities or services that ***CLEC Acronym TXT*** has obtained at wholesale from Verizon pursuant to any other method other than unbundling under Section 251(c)(3) of the Act, or the combining of a Network Element, or a Combination, with one or more such facilities or services. "Commingle" means the act of Commingling.

4.7.29.7.4 Dedicated Transport. A DS1 or DS3 transmission facility between Verizon switches (as identified in the LERG) or wire centers, within a LATA, that is dedicated to a particular end user or carrier. Transmission facilities or services provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of ***CLEC Acronym TXT*** or a third party are not Dedicated Transport.

4.7.39.7.5 Discontinued FacilityElement. ~~Any facility that Verizon, at any time, has provided or offered to provide to ***CLEC Acronym TXT*** on basis pursuant to the Federal Unbundling Rules (whether under the Agreement, a Verizon tariff, or a Verizon SGAT), but which by operation of law has ceased or ceases to be subject to an unbundling requirement under the Federal Unbundling Rules. By way of example and not by way of limitation, Discontinued ElementsFacilities are include the following, whether as stand-alone elementsfacilities or combined or commingled with other elementsfacilities: (a) any Entrance Facility; (b) Enterprise Switching; (c) Four-Line Carve-Out Switching; (db) OCn Loops and OCn Dedicated Transport; (ec) the Feeder portion of a Loop; (fd) Line Sharing (subject, however, to the FCC's rules regarding the transition of Line Sharing); (ge) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with ***CLEC Acronym TXT***'s use of Verizon's Mass Market Switching; (hf) Signaling or Shared Transport that is provisioned in connection with ***CLEC Acronym TXT***'s use of Verizon's Enterprise Switching or Four-Line Carve Out Switching; (ig) FTTP Loops (lit or unlit); and (jh) Hybrid Loops (subject to~~

exceptions for narrowband services (i.e., equivalent to DS0 capacity); and (j) any other facility or class of facilities as to which the FCC has not made a finding of impairment that remains effective or otherwise addressed in the Interim Rules Order or similar order, or as to which the FCC has made a finding of nonimpairment.

4.7.49.7.6 Enterprise Switching. Local Switching or Tandem Switching that, if provided to ***CLEC Acronym TXT*** would be used for the purpose of serving ***CLEC Acronym TXT***'s customers using DS1 or above capacity Loops.

4.7.59.7.7 Entrance Facility. A transmission facility (lit or unlit) or service provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of ***CLEC Acronym TXT*** or a third party Reserved.

4.7.69.7.8 Federal Unbundling Rules. Any lawful requirement to provide access to unbundled network elements that is imposed upon Verizon by the FCC pursuant to both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or pursuant to the Interim Rules Order (but only once effective and only to the extent not stayed, vacated, reversed, modified or otherwise rendered ineffective by the FCC or a court of competent jurisdiction). Any reference in this Amendment to "Federal Unbundling Rules" shall not include an unbundling requirement if the unbundling requirement does not exist under both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or under the Interim Rules Order.

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

4.7.89.7.10 Four Line Carve Out Switching. ~~Local Switching that Verizon is not required to provide pursuant to 47 C.F.R. § 51.319(d)(3)(ii).~~ **[IN NY, DELETE THE PRECEDING SENTENCE AND INSERT: Local Switching that Verizon, pursuant to Section 5.12.3(B)(4) of Verizon's New York PSC Tariff No. 10, is not required to provide.]** Reserved

4.7.99.7.11 FTTP Loop. A Loop consisting entirely of fiber optic cable, whether dark or lit, that extends from (a) the main distribution frame (or its equivalent) in an end user's serving wire center to (b) the demarcation point at the end user's customer premises; provided, however, that in the case of predominantly residential multiple dwelling units (MDUs), an FTTP Loop is a Loop consisting entirely of fiber optic cable, whether dark or lit, that extends from the main distribution frame (or its equivalent) in the wire center that serves the multiunit premises, to or beyond the multiunit premises' minimum point of entry (MPOE), as defined in 47 C.F.R § 68.105.

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

9.7.13 Line Sharing. **[FOR AZ, CA, DE, ID, IL, IN, MD, MI, NV, NC, OH, OR, PA-East and West, SC, TX, VA-East and West, DC, WA, WV and WI]:** The process by which ***CLEC Acronym TXT*** provides xDSL service over the same copper Loop that Verizon uses to provide voice service by utilizing the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions (the High Frequency Portion of the Loop, or "HFPL"). The HFPL includes the features, functions, and capabilities of the copper Loop that are used to establish a complete transmission path between Verizon's main distribution frame (or its equivalent) in its serving Wire Center and the demarcation point at the end user's customer premises.

~~[FOR ALL OTHER STATES]:~~

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

9.7.13 Line Splitting. The process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper Loop and a second competitive LEC provides xDSL service over the HFPL of the same Loop.

~~9.7.14 Local Switching. The line-side and trunk-side facilities associated with the line-side port, on a circuit-switch in Verizon's network (as identified in the LERG), plus the features, functions, and capabilities of that switch, unbundled from loops and transmission facilities, including: (a) the line-side Port (including the capability to connect a Loop termination and a switch-line card, telephone number assignment, dial tone, one primary directory listing, pre-subscription, and access to 911); (b) line and line group features (including all vertical features and line blocking options the switch and its associated deployed switch software are capable of providing that are provided to Verizon's local exchange service Customers served by that switch); (c) usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks); and (d) trunk features (including the connection between the trunk termination and a trunk card). (i) Local Switching encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks.~~

4.7.12(ii) Local Switching includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any Technically Feasible customized routing functions.

(iii) Local Switching includes the circuit switching functionalities of any switching facility regardless of the technology used by that facility.

9.7.15 Loop. A transmission facility between a distribution frame (or its equivalent) in Verizon's wire center and the loop demarcation point (marking the end of Verizon's control of the Loop) at a customer premises, including inside wire owned by Verizon. The Loop includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber, all electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises.

4.7.139.7.16 Mass Market Switching. Local Switching or Tandem Switching that, if provided to ***CLEC Acronym TXT***, would be used for the purpose of

servicing a ***CLEC Acronym TXT*** end user customer with three or fewer over DS0 Loops. Mass Market Switching does not include Four Line Carve-Out Switching.

~~4.7.14~~ ~~9.7.17~~ 9.7.17 Signaling. Signaling includes, but is not limited to, signaling links and signaling transfer points.

~~9.7.18~~ 9.7.18 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.

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

CLEC FULL NAME

VERIZON LEGAL ENTITY

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

[FOR CALIFORNIA, FLORIDA, PENNSYLVANIA and WEST VIRGINIA ONLY, ADD:]

Date: _____

Date: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U.S. Mail on this 4th day of October, 2004.

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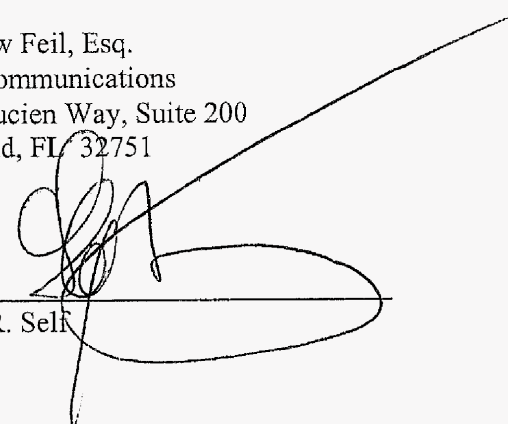
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