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February 25, 2005

**BY HAND DELIVERY**

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

Re: Docket No. 040156-TP

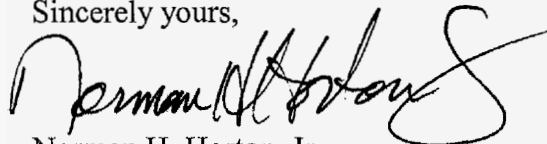
Dear Ms. Bayó:

Enclosed for filing on behalf of Competitive Carriers Group are an original and fifteen copies of the Direct Panel Testimony of Alan L. Sanders, Jr. on behalf of The Ultimate Connection, Inc. d/b/a DayStar Communications, James C. Falvey on behalf of the Xspedius Companies, and Edward J. Cadieux on behalf of NewSouth Communications Corp. in the above referenced docket.

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

Thank you for your assistance with this filing.

Sincerely yours,



Norman H. Horton, Jr.

NHH/amb  
Enclosures  
cc: Parties of Record

DOCUMENT NUMBER-DATE

01974 FEB 25 '05

**Before the  
FLORIDA PUBLIC SERVICE COMMISSION**

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

**DIRECT PANEL TESTIMONY OF THE COMPETITIVE CARRIER GROUP**

**Alan L. Sanders, Jr. on behalf of The Ultimate Connection, Inc. d/b/a DayStar Communications**

**James C. Falvey on behalf of the Xspedius Companies**

**Edward J. Cadieux on behalf of NewSouth Communications Corp.**

**FEBRUARY 25, 2005**

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**PRELIMINARY STATEMENTS  
WITNESS INTRODUCTION AND BACKGROUND**

**The Ultimate Connection, Inc. d/b/a DayStar Communications (“DayStar”)**

**Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.**

**A.** My name is Alan L. Sanders, Jr. I am employed by DayStar as President. My business address is 18215 Paulson Drive, Port Charlotte, Florida 33954.

**Q. PLEASE DESCRIBE YOUR POSITION AT DAYSTAR.**

**A.** As the President of DayStar, I am responsible for managing DayStar’s overall telecommunications operations.

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.**

**A.** Prior to joining Daystar, I acquired twenty-three years of telecommunications experience at GTE Telephone Operations, Nortel Networks and Progress Telecom (Division of Progress Energy). My functional experience includes numerous management assignments at the corporate and operating company level, Central Office and Outside Plant planning and engineering, and sales of telecommunications equipment. I have a Bachelor of Science degree in Business Management from Florida State University, and a Master of Business Administration degree from Wake Forest University.

**Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE PREVIOUSLY SUBMITTED TESTIMONY.**

**A.** I have not submitted testimony to any state commission.

1 **NewSouth Communications Corp. ("NewSouth")**

2 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.**

3

4 **A.** My name is Edward J. Cadieux. I am employed by NuVox Communications, Inc. as  
5 Senior Regulatory Counsel.<sup>1</sup> My business address is 16090 Swingley Ridge Road,  
6 Suite 450, Chesterfield, Missouri 63017.

7 **Q. PLEASE DESCRIBE YOUR POSITION AT NEWSOUTH.**

8 **A.** As Senior Regulatory Counsel to NuVox Communications, I am responsible for  
9 managing the company's federal and state regulatory matters and legislative efforts,  
10 including those related to local network interconnection.

11 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
12 **BACKGROUND.**

13 **A.** I graduated from Saint Louis University with a Bachelor of Arts in Political Science  
14 in 1975, and obtained a Juris Doctor from Saint Louis University School of Law in  
15 1978. I am licensed to practice law in the State of Missouri. I have nearly twenty-  
16 five years of experience in telecommunications law, regulation and policy in various  
17 regulatory attorney positions with state governmental agencies, including the  
18 Missouri Public Service Commission and the Massachusetts Attorney General's  
19 Office, and with several competitive telecommunications companies. Since 1996, I  
20 have specifically focused on issues related to local exchange service as in-house  
21 regulatory counsel for facilities-based competitive local exchange carriers, including

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<sup>1</sup> NewSouth Communications Corp. currently is completing an internal corporate reorganization and consolidation whereby New South Communications Corp. will be merged into its corporate parent, NuVox Communications, Inc. f/k/a NewSouth Holdings, Inc.

1 Brooks Fiber Properties and, since 1999, NuVox Communications, Inc. and its  
2 predecessor companies.

3

4 **Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE**  
5 **PREVIOUSLY SUBMITTED TESTIMONY.**

6 **A.** I have submitted testimony before the regulatory commissions for the following  
7 states: Arkansas, Illinois, Indiana, Kansas, Mississippi, Missouri, Oklahoma and  
8 Tennessee.

9

10 **The Xspedius Companies (“Xspedius”)**

11

12 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.**

13

14 **A.** My name is James C. Falvey. I am the Senior Vice President of Regulatory Affairs  
15 for Xspedius Communications, LLC, the corporate parent of Xspedius Management  
16 Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC.  
17 My business address is 14405 Laurel Place, Suite 200, Laurel, Maryland 20707-6102.

18

19 **Q. PLEASE DESCRIBE YOUR POSITION AT XSPEDIUS.**

20 **A.** As Senior Vice President of Regulatory Affairs, I manage all matters that affect  
21 Xspedius before federal, state and local regulatory agencies. I also am responsible for  
22 federal regulatory and legislative matters, state regulatory proceedings and  
23 complaints, interconnection and local rights-of-way issues.

24 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
25 **BACKGROUND.**

1    **A.**    I am a cum laude graduate of Cornell University, and received my law degree from  
2           the University of Virginia Law School. I currently am admitted to practice law in the  
3           District of Columbia and Virginia. After graduating from law school, I worked as a  
4           legislative assistant for Senator Harry M. Reid of Nevada, and then practiced antitrust  
5           litigation in the Washington D.C. office of Johnson & Gibbs. Thereafter, I practiced  
6           law with the Washington D.C. law firm of Swidler & Berlin, where I represented  
7           competitive local exchange providers and other competitive providers, in state and  
8           federal proceedings. In May 1996, I joined e.spire Communications, Inc. (“e.spire”)  
9           as Vice President of Regulatory Affairs, where I was promoted to Senior Vice  
10          President of Regulatory Affairs, in March 2000. I have continued to serve in that  
11          same position for Xspedius, after Xspedius acquired the bulk of e.spire’s assets, in  
12          August 2002.

13    **Q.**    **PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE**  
14           **PREVIOUSLY SUBMITTED TESTIMONY.**

15    **A.**    I have submitted testimony before the regulatory commissions for the following  
16           states: Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana,  
17           Mississippi, New Mexico, North Carolina, Pennsylvania, South Carolina and Texas.

1 **ISSUE 1:** SHOULD THE AMENDMENT INCLUDE RATES, TERMS, AND  
2 CONDITIONS THAT DO NOT ARISE FROM FEDERAL  
3 UNBUNDLING REGULATIONS PURSUANT TO SECTION 47 U.S.C.  
4 SECTIONS 251 AND 252, INCLUDING ISSUES ASSERTED TO  
5 ARISE UNDER STATE LAW OR THE BELL ATLANTIC/GTE  
6 MERGER CONDITIONS?

7 A. The Amendment must incorporate rates, terms and conditions that reflect  
8 Verizon's ongoing obligations, under the Bell Atlantic/GTE Merger Order<sup>2</sup>  
9 and Florida state law, to provide competitive local exchange carriers  
10 ("CLECs") access to its network elements on an unbundled basis.

11  
12 The federal Telecommunications Act of 1996 ("1996 Act") permits, and in  
13 fact requires that the Commission oversee the rates, terms and conditions  
14 applicable to the network elements provided by Verizon, whether under  
15 federal law or state law, to Florida CLECs, and further, to impose on Verizon  
16 any unbundling obligation that is consistent with the 1996 Act and Florida  
17 state law. Even in the absence of unbundling rules promulgated by the  
18 Federal Communications Commission ("FCC") pursuant to section 251(c) of  
19 the 1996 Act, the Commission may require that Verizon offer to Florida  
20 CLECs network elements, on an unbundled basis and at TELRIC rates. The

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<sup>2</sup> *In re GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221, 15 FCC Rcd 14032 (Jun. 16, 2000) ("Merger Order").*

1           1996 Act does not preempt, and in fact expressly permits the Commission to  
2           issue and enforce its own unbundling rules.

3  
4           The Commission has the authority under the 1996 Act to establish and  
5           maintain Verizon's existing unbundling obligations. In amending the  
6           Communications Act of 1934, Congress specifically preserved state law as a  
7           basis of requiring access to network elements.<sup>3</sup> Pursuant to section 252 of the  
8           1996 Act, state commissions, such as the Commission, may implement  
9           unbundling rules consistent with section 251(c)(3). Indeed, section 252  
10          charges state commissions with "ensur[ing]" that arbitrated agreements "meet  
11          the requirements of section 251 ... including the regulations prescribed by the  
12          [FCC] pursuant to section 251...."<sup>4</sup> In addition, section 252(e)(3) of the 1996  
13          Act provides that "nothing in this section shall prohibit a State commission  
14          from establishing or enforcing other requirements of State law in its review of  
15          an agreement, including requiring compliance with intrastate  
16          telecommunications service quality standards or requirements."<sup>5</sup> The  
17          Commission also is authorized to make unbundling determinations on issues  
18          that the FCC has not yet resolved; pursuant to section 252(c), states are tasked  
19          with arbitrating all "open issues," which includes issues that might not have  
20          been resolved by the FCC.<sup>6</sup> As such, the 1996 Act preserves and protects the

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<sup>3</sup> 47 U.S.C. § 251(d)(3).

<sup>4</sup> 47 U.S.C. § 252(c)(1).

<sup>5</sup> 47 U.S.C. § 252(e)(3).

<sup>6</sup> See 47 U.S.C. § 252(c).



1 Commission's independent authority under federal law to ensure continued  
2 access to Verizon's network elements in furtherance of competition.

3  
4 Section 251(d)(3) of the 1996 Act also provides the Commission with the  
5 authority to establish unbundling obligations, as long as those obligations  
6 comply with subsections 251(d)(3)(B) and (C). Section 251(d)(3) states that  
7 the FCC "shall not preclude the enforcement of any regulation, order, or  
8 policy of a State commission that ... establishes access and interconnection  
9 obligations of local exchange carriers."<sup>7</sup> Under this section, the Act protects  
10 state action that promotes the unbundling objectives of the statute and  
11 prohibits the FCC from interfering with such action. The FCC's *Triennial*  
12 *Review Order*<sup>8</sup> and *Triennial Review Remand Order*<sup>9</sup> do not displace the  
13 Commission's authority to order unbundling pursuant to these provisions.

14  
15 The Commission has independent state law authority to order Verizon to  
16 continue to provide access to its network elements on an unbundled basis.

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<sup>7</sup> 47 U.S.C. § 251(d)(3).

<sup>8</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) ("*Triennial Review Order*" or "TRO"), *vacated and remanded in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

<sup>9</sup> *In the Matter of Unbundled Access to Network Elements* (WC Docket No 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), Order on Remand, FCC 04-290 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*").

1           Specifically, § 364.161(1) of the Florida Code<sup>10</sup> provides that local carriers  
2           such as Verizon “unbundle all of its network features, functionalities and  
3           capabilities.” The aforementioned Florida statute gives the Commission  
4           authority, in order to promote telecommunications competition and the  
5           availability of quality services to Florida consumers, to require Verizon to  
6           unbundle certain of its network elements, notwithstanding whether such  
7           unbundling obligations also are imposed by federal law.

8  
9           The Merger Order also imposes on Verizon a separate and independent  
10          obligation to provide to requesting carriers UNEs and UNE combinations at  
11          TELRIC rates, as must be incorporated into the Amendment. To mitigate any  
12          adverse impact on the public interest threatened by its proposed merger with  
13          GTE Corporation (“GTE”), Bell Atlantic Corporation (“Bell Atlantic”)  
14          voluntarily agreed to abide by the conditions set forth in the Merger Order,  
15          which include a voluntary commitment by the merged entity (Verizon) to  
16          facilitate and preserve UNE-based. Indeed, the Merger Order emphasized that  
17          the conditions imposed on the Bell Atlantic/GTE merger specifically were  
18          adopted to further that end.<sup>11</sup>

19  
20          The plain language of the Merger Order requires that Verizon provide to all  
21          requesting carriers UNEs and combinations of UNEs, including UNE-P,  
22          dedicated transport and high capacity loop facilities, at TELRIC rates, without

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<sup>10</sup> Fla. Admin. Code § 364.161(1).

<sup>11</sup> Verizon Merger Order at ¶ 3.

1 interruption, until all legal challenges to the FCC’s unbundling rules are  
2 finally resolved.<sup>12</sup> To reduce any uncertainty to CLECs that may have  
3 otherwise resulted from the Bell Atlantic/GTE merger, the Merger Order  
4 endeavored to maintain the regulatory status quo until the FCC’s “final and  
5 non-appealable” unbundling rules were in place.<sup>13</sup> In that regard, the Merger  
6 Order states:

7 [F]rom now until the date on which the Commission’s Orders  
8 in those proceedings and any subsequent proceedings become  
9 final and non-appealable, Bell Atlantic and GTE will continue  
10 to make available to telecommunications carriers, in  
11 accordance with those orders, each UNE and combination of  
12 UNEs that is required under those orders, until the date of any  
13 final and non-appealable judicial decision that determines that  
14 Bell Atlantic/GTE is not required to provide the UNE or  
15 combination of UNEs in all or a portion of its operating  
16 territory. This condition only would have practical effect in the  
17 event that our rules adopted in the UNE Remand and Line  
18 Sharing proceedings are stayed or vacated. Compliance with  
19 this condition includes pricing these UNEs at cost-based rates  
20 in accordance with the forward-looking cost methodology first  
21 articulated by the Commission in the Local Competition Order,  
22 until the date of any final and non-appealable judicial decision  
23 that determines that Bell Atlantic/GTE is not required to  
24 provide UNEs at cost-based rates.<sup>14</sup>

25  
26 The Merger Order clearly affirms that Verizon’s unbundling obligations are  
27 not subject to an expiration date. At this time, no “final and non-appealable”  
28 Order has been issued that would cause the unbundling obligations imposed  
29 by the Merger Order to be superseded.  
30

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12 *Id.* at ¶ 316.

13 *Id.*

14 *Id.*

1 Specifically, in *USTA II*, the D.C. Circuit vacated and remanded for further  
2 proceedings the FCC's unbundling rules applicable to local switching and  
3 dedicated transport facilities. Although the FCC has issued revised  
4 unbundling rules, under the *Triennial Review Remand Order*, those  
5 unbundling rules have not yet survived the judicial appeals that have been  
6 initiated.<sup>15</sup> Accordingly, the *Triennial Review Remand Order* does not  
7 constitute a "final and non-appealable" judicial decision that would cause  
8 existing unbundling requirements imposed by the Merger Order to be  
9 superseded. Until such time as the unbundling obligations imposed on  
10 Verizon by the Merger Order are terminated by a "final and non-appealable"  
11 order of the FCC, such federal law unbundling obligations must be enforced  
12 under the interconnection agreements between Verizon and Florida CLECs.

13  
14 **ISSUE 2: WHAT RATES, TERMS, AND CONDITIONS REGARDING**  
15 **IMPLEMENTING CHANGES IN UNBUNDLING OBLIGATIONS OR**  
16 **CHANGES OF LAW SHOULD BE INCLUDED IN THE**  
17 **AMENDMENT TO THE PARTIES' INTERCONNECTION**  
18 **AGREEMENTS?**

- 19 **A.** The Competitive Carrier Group has not been provided sufficient time to  
20 review and interpret the *Triennial Review Remand Order*, and to properly  
21 assess the impact of the *Triennial Review Remand Order* on the Issues List

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<sup>15</sup> See *United States Telecom Ass'n et al. v. FCC*, Petition for Review of United States Telecom Associations, BellSouth Corporation, Qwest Communications International Inc. SBC Communications Inc. and the Verizon Telephone Companies, filed Feb. 24, 2005.

1           appended to the Commission’s Order Establishing Procedure in this  
2           arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
3           requests the right to provide supplemental direct and rebuttal testimony on this  
4           Issue 2, and to propose additional issues and/or sub-issues that address the  
5           impact of the *Triennial Review Remand Order* on the subject matter of this  
6           Issue 2.

7  
8           The Amendment to the parties’ interconnection agreements must include  
9           rates, terms and conditions that reflect any change to Verizon’s federal  
10          unbundling obligations brought about by the *Triennial Review Order* and/or  
11          the *Triennial Review Remand Order*, including, without limitation, the  
12          transition plan set forth in the *Triennial Review Remand Order* for each  
13          network element that Verizon no longer is obligated to provide under section  
14          251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that  
15          the FCC’s unbundling determinations are not “self-effectuating,” and  
16          accordingly, that Verizon and Florida carriers may implement changes of law  
17          arising under the *Triennial Review Order* and the *Triennial Review Remand*  
18          *Order* **only** “as directed by section 252 of the Act,”<sup>16</sup> and consistent with the  
19          change of law processes set forth in carriers’ individual interconnection  
20          agreements with Verizon. Furthermore, the *Triennial Review Remand Order*  
21          expressly requires that Verizon and Florida carriers “negotiate in good faith  
22          regarding any rates, terms and conditions necessary to implement [the FCC’s

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<sup>16</sup> *Triennial Review Remand Order* at ¶ 233.

1 rule changes.”<sup>17</sup> At bottom, Verizon is bound by the unbundling obligations  
2 set forth in its existing interconnection agreements with Florida carriers until  
3 such time as those agreements are properly amended to incorporate the  
4 changes of law and FCC-mandated transition plans established under the  
5 *Triennial Review Order* and the *Triennial Review Remand Order*.

6  
7 **ISSUE 3: WHAT OBLIGATIONS UNDER FEDERAL LAW, IF ANY, WITH**  
8 **RESPECT TO UNBUNDLED ACCESS TO LOCAL CIRCUIT**  
9 **SWITCHING, INCLUDING MASS MARKET AND ENTERPRISE**  
10 **SWITCHING (INCLUDING FOUR-LINE CARVE-OUT SWITCHING),**  
11 **AND TANDEM SWITCHING, SHOULD BE INCLUDED IN THE**  
12 **AMENDMENT TO THE PARTIES’ INTERCONNECTION**  
13 **AGREEMENTS?**

14 A. The Competitive Carrier Group has not been provided sufficient time to  
15 review and interpret the *Triennial Review Remand Order*, and to properly  
16 assess the impact of the *Triennial Review Remand Order* on the Issues List  
17 appended to the Commission’s Order Establishing Procedure in this  
18 arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
19 requests the right to provide supplemental direct and rebuttal testimony on this  
20 Issue 3, and to propose additional issues and/or sub-issues that address the  
21 impact of the *Triennial Review Remand Order* on the subject matter of this  
22 Issue 3.

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<sup>17</sup> *Id.*

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The Amendment to the parties' agreements must incorporate the complete unbundling framework ordered by the FCC under the *Triennial Review Order* and the *Triennial Review Remand Order*, including the transition plan set forth for mass market local switching no longer available under section 251 of the 1996 Act. Specifically, the Amendment must expressly provide a twelve-month transition period, beginning on March 11, 2005, during which competitive carriers may convert existing mass market customers to alternative local switching arrangements. The Amendment also must state that competitive carriers will continue to have access to the Unbundled Network Element Platform ("UNE-P") priced at TELRIC rates plus one dollar until such time as Verizon successfully migrates existing UNE-P customers to competitive carriers' switches or alternative switching arrangements, which rate shall be trued up to the March 11, 2005 effective date of the *Triennial Review Remand Order*. In accordance with the *Triennial Review Remand Order*, Verizon and competitive carriers within Florida must execute an amendment to existing interconnection agreements within the prescribed twelve-month transition period, including any change of law processes required by the parties' respective interconnection agreements.

In setting forth the transition plan for mass market local switching required by the *Triennial Review Remand Order*, the Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan

1 will apply. Specifically, the Amendment should clarify that any UNE-P line  
2 added, moved or changed by a competitive carrier, at the request of a UNE-P  
3 customer served by the competitive carrier's network on or before March 11,  
4 2005, is within the competitive carrier's "embedded customer base" for which  
5 the FCC-mandated transition plan applies. In addition, consistent with the  
6 *Triennial Review Remand Order*, the Commission should not permit Verizon  
7 to refuse to provision UNE-P lines for new customers of competitive carriers  
8 until such time as the *Triennial Review Remand Order* is properly  
9 incorporated into the parties' agreements through the change of law processes  
10 set forth therein, as contemplated by section 252 of the 1996 Act.

11  
12 The Amendment also must reflect the fact that the FCC's Four-Line Carve-  
13 Out is no longer a component of the section 251(c) unbundling regime and  
14 must not be included in the Amendment. The *Triennial Review Remand*  
15 *Order* confirmed that CLECs are eligible to purchase unbundled mass market  
16 local switching, subject to the transition plan, to serve all customers at less  
17 than the DS1 capacity level.<sup>18</sup>

18  
19 **ISSUE 4: WHAT OBLIGATIONS UNDER FEDERAL LAW, IF ANY, WITH**  
20 **RESPECT TO ACCESS TO UNBUNDLED DS1 LOOPS, UNBUNDLED**  
21 **DS3 LOOPS, AND UNBUNDLED DARK FIBER LOOPS, SHOULD BE**

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<sup>18</sup> *Triennial Review Remand Order* at n. 625.



1                   **INCLUDED IN THE AMENDMENT TO THE PARTIES'**  
2                   **INTERCONNECTION AGREEMENTS?**

3    **A.**           The Competitive Carrier Group has not been provided sufficient time to  
4                   review and interpret the *Triennial Review Remand Order*, and to properly  
5                   assess the impact of the *Triennial Review Remand Order* on the Issues List  
6                   appended to the Commission's Order Establishing Procedure in this  
7                   arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
8                   requests the right to provide supplemental direct and rebuttal testimony on this  
9                   Issue 4, and to propose additional issues and/or sub-issues that address the  
10                  impact of the *Triennial Review Remand Order* on the subject matter of this  
11                  Issue 4.

12  
13                  The Amendment to the parties' agreements must incorporate the complete  
14                  unbundling framework ordered by the FCC under the *Triennial Review Order*  
15                  and the *Triennial Review Remand Order*, including the transition plan set  
16                  forth for high capacity (i.e., DS1 and DS3) and dark fiber loop facilities that  
17                  no longer are available under section 251 of the 1996 Act. The Amendment  
18                  must state that Verizon remains obligated to provide to Florida carriers  
19                  unbundled access to its high capacity loops, including DS3 loops and DS1  
20                  loops, at any location within the service area of a Verizon wire center for  
21                  which carriers would be impaired, under the criteria set forth in the *Triennial*  
22                  *Review Remand Order*, without access to such facilities. The FCC has  
23                  determined that competitive carriers are impaired without access to DS3

1 capacity loops at any location within the service area of a Verizon wire center  
2 containing fewer than 38,000 business lines or fewer than four fiber-based  
3 collocators, and are impaired without access to DS1 capacity loops at any  
4 location within the service area of a Verizon wire center containing fewer than  
5 60,000 business lines or four or more fiber-based collocators. To be sure, the  
6 criteria established by the FCC for a determination of impairment, and thus,  
7 for competitive carriers' access to high capacity loops, including DS1 loops  
8 and DS3 loops, should be expressly incorporated into the terms and conditions  
9 of the Amendment. Further, the Amendment must clearly define "business  
10 lines" and "fiber-based collocators," as those terms are defined under the  
11 *Triennial Review Remand Order*.

12  
13 Importantly, the Amendment must include a comprehensive list of the  
14 Verizon wire centers that satisfy the non-impairment criteria for DS1 and DS3  
15 loops set forth in the *Triennial Review Remand Order*. This list must be the  
16 result of a process whereby the parties to this proceeding are afforded access  
17 to and a reasonable opportunity to review and verify the data Verizon believes  
18 supports its initial identification of wire center locations where non-  
19 impairment exists for DS1 and DS3 loops. In addition, the Amendment must  
20 establish a process for review and investigation of any future claim by  
21 Verizon that an additional specified wire center location within Florida meets  
22 the FCC's criteria for unbundling relief. Specifically, the Amendment should  
23 require that Verizon submit to Florida carriers all documentation and other

1 information that reasonably supports its claim of “no impairment” for a  
2 specified wire center location within Florida. In the event that Verizon and  
3 any Florida carrier disagree as to whether any wire center location within  
4 Florida actually satisfies the FCC’s criteria for unbundling relief, or whether  
5 Verizon has presented documentation and other information that reasonably  
6 supports its “no impairment” claim, the Amendment must expressly permit  
7 either party to submit the dispute for resolution by the Commission, in  
8 accordance with the dispute resolution provisions set forth in the parties’  
9 interconnection agreements. Moreover, the Amendment must establish a  
10 process for review, on an annual basis, of the list of the Verizon wire centers  
11 that satisfy the FCC’s criteria for unbundling relief, which shall include the  
12 same procedures for review of Verizon “no impairment” claims and for  
13 resolution of carrier disputes by the Commission.

14  
15 For high capacity loop facilities that Verizon no longer is obligated to provide  
16 under section 251(c) of the 1996 Act, the Amendment must expressly provide  
17 a transition plan, consistent with the *Triennial Review Remand Order*, during  
18 which competitive carriers may convert existing customers to alternative  
19 service arrangements. The time period established for the transition of  
20 customers from DS1 and DS3 capacity loop facilities that no longer will be  
21 provided by Verizon subject to the impairment criteria set forth in the  
22 *Triennial Review Remand Order*, is twelve months, effective March 11, 2005.  
23 The time period established for the transition of customers from dark fiber

1 loop facilities that no longer will be provided by Verizon under section 251(c)  
2 is eighteen months, effective March 11, 2005. The Amendment must state  
3 that Verizon will be required to provide, for the duration of the applicable  
4 transition period, grandfathered high capacity loops facilities, including DS1  
5 and DS3 loops, and dark fiber loops, at the rates set forth in the *Triennial*  
6 *Review Remand Order*, which shall be the higher of (1) 115 percent of the rate  
7 of the requesting carrier for the loop facility on June 15, 2004; or (2) 115  
8 percent of the rate that a state commission has established for the requested  
9 loop facility since June 16, 2004.

10  
11 In setting forth the transition plan for high capacity and dark fiber loop  
12 facilities required by the *Triennial Review Remand Order*, the Amendment  
13 must define competitive carriers' "embedded customer base" for which the  
14 prescribed transition plan will apply. For loop facilities that Verizon no  
15 longer is obligated to provide under section 251 of the 1996 Act, the  
16 Amendment should clarify that any loop added, moved or changed by a  
17 competitive carrier, at the request of a customer served by the competitive  
18 carrier's network on or before March 11, 2005, is within the competitive  
19 carrier's "embedded customer base" for which the FCC-mandated transition  
20 plan applies. Consistent with the *Triennial Review Remand Order*, the  
21 Commission should not permit Verizon to block "new adds" by competitive  
22 carriers until time as the *Triennial Review Remand Order* is properly

1 incorporated into the parties' agreements through the change of law processes  
2 set forth therein, as contemplated by section 252 of the Act.

3  
4 **ISSUE 5: WHAT OBLIGATIONS UNDER FEDERAL LAW, IF ANY, WITH**  
5 **RESPECT TO UNBUNDLED ACCESS TO DEDICATED**  
6 **TRANSPORT, INCLUDING DARK FIBER TRANSPORT, SHOULD**  
7 **BE INCLUDED IN THE AMENDMENT TO THE PARTIES'**  
8 **INTERCONNECTION AGREEMENTS?**

9 **A.** The Competitive Carrier Group has not been provided sufficient time to  
10 review and interpret the *Triennial Review Remand Order*, and to properly  
11 assess the impact of the *Triennial Review Remand Order* on the Issues List  
12 appended to the Commission's Order Establishing Procedure in this  
13 arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
14 requests the right to provide supplemental direct and rebuttal testimony on this  
15 Issue 5, and to propose additional issues and/or sub-issues that address the  
16 impact of the *Triennial Review Remand Order* on the subject matter of this  
17 Issue 5.

18  
19 The Amendment to the parties' agreements must incorporate the complete  
20 unbundling framework ordered by the FCC under the *Triennial Review*  
21 *Remand Order*, including the transition plan set forth for dedicated interoffice  
22 transport facilities, including DS1, DS3 and dark fiber transport, that no  
23 longer are available under section 251 of the 1996 Act. The Amendment must

1 state that Verizon remains obligated under section 251(c) of the 1996 Act to  
2 provide to Florida carriers unbundled access to dedicated interoffice transport,  
3 including DS3 and DS1 transport facilities, at any location within the service  
4 area of a Verizon wire center for which carriers would be impaired, under the  
5 criteria set forth in the *Triennial Review Remand Order*, without access to  
6 such facilities. The FCC has determined that competitive carriers are  
7 impaired without unbundled access to DS3 dedicated transport facilities along  
8 any route that originates or terminates in any Tier 3 wire center (i.e., any wire  
9 center that contains less than three fiber-based collocators and less than  
10 24,000 business lines), and are impaired without unbundled access to DS1  
11 dedicated transport facilities in all routes where at least one end-point of the  
12 route is a wire center containing fewer than 38,000 business lines and fewer  
13 than four fiber-based collocators. To be sure, the criteria established by the  
14 FCC for a determination of impairment, and thus, for competitive carriers'  
15 access to dedicated interoffice transport facilities, including DS1 and DS3  
16 transport facilities, under section 251(c) of the 1996 Act should be expressly  
17 incorporated into the terms and conditions of the Amendment. Further, the  
18 Amendment must clearly define "business lines" and "fiber-based  
19 collocators," as those terms are defined under the *Triennial Review Remand*  
20 *Order*.

21  
22 Importantly, the Amendment must include a comprehensive list of the  
23 Verizon wire centers that satisfy the "no impairment" criteria for dedicated

1 transport, including dark fiber transport, set forth in the *Triennial Review*  
2 *Remand Order*. This list must be the result of a process whereby the parties to  
3 this proceeding are afforded access to and a reasonable opportunity to review  
4 and verify the data Verizon believes supports its initial identification of wire  
5 centers where non-impairment exists for DS1, DS3 and dark fiber transport.  
6 Further, the Amendment must establish a process for review and investigation  
7 of any future claim by Verizon that an additional specified wire center  
8 location within Florida meets the FCC's criteria for unbundling relief.  
9 Specifically, the Amendment should require that Verizon submit to Florida  
10 carriers all documentation and other information that reasonably supports its  
11 claim of "no impairment" for a specified wire center location within Florida.  
12 In the event that Verizon and any Florida carrier disagree as to whether any  
13 wire center location within Florida actually satisfies the FCC's criteria for  
14 unbundling relief, or whether Verizon has presented documentation and other  
15 information that reasonably supports its "no impairment" claim, the  
16 Amendment must expressly permit either party to submit the dispute for  
17 resolution by the Commission, in accordance with the dispute resolution  
18 provisions set forth in the parties' interconnection agreements. Moreover, the  
19 Amendment must establish a process for review, on an annual basis, of the list  
20 of the Verizon wire centers that satisfy the FCC's criteria for unbundling  
21 relief, which shall include the same procedures for review of Verizon "no  
22 impairment" claims and for resolution of carrier disputes by the Commission.

23

1 For dedicated interoffice transport facilities that Verizon no longer is  
2 obligated to provide under section 251 of the 1996 Act, the Amendment must  
3 expressly provide a transition plan, consistent with the *Triennial Review*  
4 *Remand Order*, during which competitive carriers may convert existing  
5 customers to alternative service arrangements offered by Verizon. The time  
6 period established for the transition of customers from DS1 and DS3 transport  
7 facilities that no longer will be provided by Verizon subject to the impairment  
8 criteria set forth in the *Triennial Review Remand Order*, is twelve months,  
9 effective March 11, 2005. The time period established for the transition of  
10 customers from dark fiber transport facilities that no longer will be provided  
11 by Verizon is eighteen months, effective March 11, 2005. The Amendment  
12 must state that Verizon will be required to provide, for the duration of the  
13 applicable transition period, grandfathered dedicated transport facilities,  
14 including DS1 and DS3 transport facilities, and dark fiber transport facilities,  
15 at the rates set forth in the *Triennial Review Remand Order*, which shall be the  
16 higher of (1) 115 percent of the rate of the requesting carrier for the interoffice  
17 transport facility on June 15, 2004; or (2) 115 percent of the rate that a state  
18 commission has established for the requested interoffice transport facility  
19 since June 16, 2004.

20  
21 In setting forth the transition plan for dedicated interoffice transport facilities  
22 required by the *Triennial Review Remand Order*, the Amendment must define  
23 competitive carriers' "embedded customer base" for which the prescribed



1 transition plan will apply. For dedicated interoffice transport facilities that  
2 Verizon no longer is obligated to provide under section 251 of the 1996 Act,  
3 the Amendment should clarify that any line added, moved or changed by a  
4 competitive carrier, at the request of a customer served by the competitive  
5 carrier's network on or before March 11, 2005, is within the competitive  
6 carrier's "embedded customer base" for which the FCC-mandated transition  
7 plan applies. Consistent with the *Triennial Review Remand Order*, the  
8 Commission should not permit Verizon to refuse to provision new dedicated  
9 transport circuits for competitive carriers until time as the *Triennial Review*  
10 *Remand Order* is properly incorporated into the parties' agreements through  
11 the change of law processes set forth therein, as contemplated by section 252  
12 of the Act.

13  
14 In addition to the impairment criteria set forth in the *Triennial Review Remand*  
15 *Order* for DS1 dedicated transport facilities, the FCC also imposed a  
16 limitation on the availability of such facilities on routes for which the FCC  
17 determined that Verizon no longer is required to unbundle DS3 dedicated  
18 transport facilities under section 251 of the 1996 Act. Specifically, under the  
19 *Triennial Review Remand Order*, a competitive carrier may not obtain from  
20 Verizon more than ten DS1 transport circuits on a single route for which the  
21 FCC did not impose on Verizon a section 251 unbundling obligation for  
22 dedicated DS3 transport facilities. To the extent that Verizon elects to  
23 implement the so-called "DS1-cap" under the parties' agreements, the

1 Amendment must state that the FCC's limitation on Verizon's obligation to  
2 provide to carriers unbundled DS1 dedicated transport facilities applies only if  
3 section 251(c) unbundling relief also has been granted for DS3 dedicated  
4 transport facilities on the same route.

5  
6 **ISSUE 6: UNDER WHAT CONDITIONS, IF ANY, IS VERIZON PERMITTED**  
7 **TO RE-PRICE EXISTING ARRANGEMENTS WHICH ARE NO**  
8 **LONGER SUBJECT TO UNBUNDLING UNDER FEDERAL LAW?**

9 **A.** The Competitive Carrier Group has not been provided sufficient time to  
10 review and interpret the *Triennial Review Remand Order*, and to properly  
11 assess the impact of the *Triennial Review Remand Order* on the Issues List  
12 appended to the Commission's Order Establishing Procedure in this  
13 arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
14 requests the right to provide supplemental direct and rebuttal testimony on this  
15 Issue 6, and to propose additional issues and/or sub-issues that address the  
16 impact of the *Triennial Review Remand Order* on the subject matter of this  
17 Issue 6.

18  
19 As set forth more fully in response to Issues 2-5 above, the Amendment to the  
20 parties' interconnection agreements must include rates, terms and conditions  
21 that reflect any change to Verizon's federal unbundling obligations brought  
22 about by the *Triennial Review Order* and/or the *Triennial Review Remand*  
23 *Order* for each network element that Verizon no longer is obligated to provide

1 under section 251 of the 1996 Act. Verizon may re-price existing  
2 arrangements, however, **only** in accordance with the incremental rate  
3 increases prescribed by the FCC, and set forth in the Amendment, for those  
4 network elements that Verizon no longer is obligated to provide under section  
5 251 of the Act. Under the *Triennial Review Remand Order*, Verizon is **not**  
6 permitted to impose any termination or other non-recurring charge in  
7 connection with any carrier's request to transition from a current arrangement  
8 that Verizon is no longer obligated to provide under section 251 of the 1996  
9 Act. Notwithstanding the above, Verizon is bound by the unbundling  
10 obligations set forth in its existing interconnection agreements with Florida  
11 carriers, including the rates, terms and conditions for section 251 unbundled  
12 network elements, until such time as those agreements are properly amended  
13 to incorporate the changes of law and FCC-mandated transition plans  
14 (including transition rates) established under the *Triennial Review Remand*  
15 *Order*.

16  
17 **ISSUE 7: SHOULD VERIZON BE PERMITTED TO PROVIDE NOTICE OF**  
18 **DISCONTINUANCE IN ADVANCE OF THE EFFECTIVE DATE OF**  
19 **REMOVAL OF UNBUNDLING REQUIREMENTS?**

20 **A.** The Competitive Carrier Group has not been provided sufficient time to  
21 review and interpret the *Triennial Review Remand Order*, and to properly  
22 assess the impact of the *Triennial Review Remand Order* on the Issues List  
23 appended to the Commission's Order Establishing Procedure in this

1 arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
2 requests the right to provide supplemental direct and rebuttal testimony on this  
3 Issue 7, and to propose additional issues and/or sub-issues that address the  
4 impact of the *Triennial Review Remand Order* on the subject matter of this  
5 Issue 7.

6  
7 As set forth more fully in response to Issues 2-5 above, the Amendment to the  
8 parties' interconnection agreements must include rates, terms and conditions  
9 that reflect any change to Verizon's federal unbundling obligations brought  
10 about by the *Triennial Review Order* and/or the *Triennial Review Remand*  
11 *Order*, including, without limitation, the transition plan set forth in the  
12 *Triennial Review Remand Order* for each network element that Verizon no  
13 longer is obligated to provide under section 251 of the 1996 Act. The  
14 *Triennial Review Remand Order* makes clear that the FCC's unbundling  
15 determinations are not "self-effectuating," and accordingly, that Verizon and  
16 Florida carriers may implement changes of law arising under the *Triennial*  
17 *Review Order* and the *Triennial Review Remand Order* only "as directed by  
18 section 252 of the Act," and consistent with the change of law processes set  
19 forth in carriers' individual interconnection agreements with Verizon.  
20 Furthermore, the *Triennial Review Remand Order* expressly requires that  
21 Verizon and Florida carriers "negotiate in good faith regarding any rates,  
22 terms and conditions necessary to implement [the FCC's] rule changes.  
23 Therefore, the *Triennial Review Remand Order* expressly precludes any effort

1 by Verizon to circumvent the change of law process set forth in its  
2 interconnection agreements with Florida carriers by providing notice of  
3 discontinuance of any network element in advance of the date on which such  
4 agreements are properly amended to reflect changes to the FCC's unbundling  
5 rules.

6  
7 **ISSUE 8: SHOULD VERIZON BE PERMITTED TO ASSESS NON-**  
8 **RECURRING CHARGES FOR THE DISCONNECTION OF A UNE**  
9 **ARRANGEMENT OR THE RECONNECTION OF SERVICE UNDER**  
10 **AN ALTERNATIVE ARRANGEMENT? IF SO, WHAT CHARGES**  
11 **APPLY?**

12 **A.** The Competitive Carrier Group has not been provided sufficient time to  
13 review and interpret the *Triennial Review Remand Order*, and to properly  
14 assess the impact of the *Triennial Review Remand Order* on the Issues List  
15 appended to the Commission's Order Establishing Procedure in this  
16 arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
17 requests the right to provide supplemental direct and rebuttal testimony on this  
18 Issue 8, and to propose additional issues and/or sub-issues that address the  
19 impact of the *Triennial Review Remand Order* on the subject matter of this  
20 Issue 8.

21  
22 As set forth more fully in response to Issues 2-5 above, the Amendment to the  
23 parties' interconnection agreements must include rates, terms and conditions

1 that reflect any change to Verizon’s federal unbundling obligations brought  
2 about by the *Triennial Review Order* and/or the *Triennial Review Remand*  
3 *Order*, including, without limitation the transition plan set forth in the  
4 *Triennial Review Remand Order* for each network element that Verizon no  
5 longer is obligated to provide under section 251 of the 1996 Act. The  
6 transition plans ordered by the FCC for unbundled dedicated transport, high  
7 capacity loops and mass market local switching, each prescribe the rates that  
8 Verizon may impose when a “no impairment” finding exists and the *Triennial*  
9 *Review Remand Order* does not permit Verizon to impose any additional  
10 charges, including non-recurring charges, for the disconnection of a “de-  
11 listed” UNE or the reconnection of an alternative service arrangement.

12 Moreover, the cost of converting unbundled network elements to alternative  
13 arrangement should be incurred by the “cost causer,” i.e. Verizon.  
14 Specifically, because the disconnection of a UNE arrangement and the  
15 reconnection of an alternative service arrangements is the result of Verizon’s  
16 decision to forego unbundling, the cost of such network modifications should  
17 not be borne by any carrier that otherwise would continue using the UNE  
18 arrangements that Verizon currently provides.

19  
20 **ISSUE 9: WHAT TERMS SHOULD BE INCLUDED IN THE AMENDMENTS’**  
21 **DEFINITIONS SECTION AND HOW SHOULD THOSE TERMS BE**  
22 **DEFINED?**

1 A. The Amendment’s Definition Section should include all terms necessary to  
2 properly implement changes to the FCC’s unbundling rules under the  
3 *Triennial Review Order* and *Triennial Review Remand Order*, including new  
4 terms defined in those Orders, and required modifications to the definitions of  
5 existing terms under the parties’ interconnection agreements.  
6

7 **ISSUE 10: SHOULD VERIZON BE REQUIRED TO FOLLOW THE CHANGE OF**  
8 **LAW AND/OR DISPUTE RESOLUTION PROVISIONS IN EXISTING**  
9 **INTERCONNECTION AGREEMENTS IF IT SEEKS TO**  
10 **DISCONTINUE THE PROVISIONING OF UNES?**

11 A. The Competitive Carrier Group has not been provided sufficient time to  
12 review and interpret the *Triennial Review Remand Order*, and to properly  
13 assess the impact of the *Triennial Review Remand Order* on the Issues List  
14 appended to the Commission’s Order Establishing Procedure in this  
15 arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
16 requests the right to provide supplemental direct and rebuttal testimony on this  
17 Issue 10, and to propose additional issues and/or sub-issues that address the  
18 impact of the *Triennial Review Remand Order* on the subject matter of this  
19 Issue 10.  
20

21 Yes, Verizon must follow the “change of law” and dispute resolution  
22 provisions set forth in its interconnection agreements with Florida carriers to  
23 discontinue any network element that Verizon no longer is obligated to

1 provide under section 251 of the 1996 Act. The *Triennial Review Remand*  
2 *Order* makes clear that the FCC’s unbundling determinations are not “self-  
3 effectuating,” and accordingly, that Verizon and Florida carriers may  
4 implement changes of law arising under the *Triennial Review Order* and the  
5 *Triennial Review Remand Order* only “as directed by section 252 of the Act,”  
6 and consistent with the change of law processes set forth in carriers’  
7 individual interconnection agreements with Verizon. Furthermore, the  
8 *Triennial Review Remand Order* expressly requires that Verizon and Florida  
9 carriers “negotiate in good faith” any rates, terms and conditions necessary to  
10 implement [the FCC’s rule changes.” At bottom, Verizon is bound by the  
11 unbundling obligations set forth in its existing interconnection agreements  
12 with Florida carriers until such time as those agreements are properly  
13 amended to incorporate the changes of law and FCC-mandated transition  
14 plans established under the *Triennial Review Remand Order*.

15  
16 **ISSUE 11: HOW SHOULD ANY RATE INCREASES AND NEW CHARGES**  
17 **ESTABLISHED BY THE FCC IN ITS FINAL UNBUNDLING RULES**  
18 **OR ND ELSEWHERE BE IMPLEMENTED?**

19 A. The Competitive Carrier Group has not been provided sufficient time to  
20 review and interpret the *Triennial Review Remand Order*, and to properly  
21 assess the impact of the *Triennial Review Remand Order* on the Issues List  
22 appended to the Commission’s Order Establishing Procedure in this  
23 arbitration. Accordingly, the Competitive Carrier Group reserves and/or



1 requests the right to provide supplemental direct and rebuttal testimony on this  
2 Issue 11, and to propose additional issues and/or sub-issues that address the  
3 impact of the *Triennial Review Remand Order* on the subject matter of this  
4 Issue 11.

5  
6 The Amendment to the parties' interconnection agreements must include  
7 rates, terms and conditions that reflect any change to Verizon's federal  
8 unbundling obligations brought about by the *Triennial Review Order* and/or  
9 the *Triennial Review Remand Order*, including, without limitation the  
10 transition plan set forth in the *Triennial Review Remand Order* for each  
11 network element that Verizon no longer is obligated to provide under section  
12 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that  
13 the FCC's unbundling determinations are not "self-effectuating," and  
14 accordingly, that Verizon and Florida carriers may implement changes of law  
15 arising under the *Triennial Review Order* and the *Triennial Review Remand*  
16 *Order*, including without limitation, changes in the rates and new changes,  
17 only "as directed by section 252 of the Act," and consistent with the change of  
18 law processes set forth in carriers' individual interconnection agreements with  
19 Verizon. Furthermore, the *Triennial Review Remand Order* expressly  
20 requires that Verizon and Florida carriers "negotiate in good faith regarding  
21 any rates, terms and conditions necessary to implement [the FCC's rule  
22 changes. At bottom, Verizon is bound by the unbundling obligations and rates  
23 set forth in its existing interconnection agreements with Florida carriers until

1 such time as those agreements are properly amended to incorporate the  
2 changes of law and FCC-mandated transition plans (including transition rates)  
3 established under the *Triennial Review Remand Order*.  
4

5 **ISSUE 12: SHOULD THE INTERCONNECTION AGREEMENTS BE AMENDED**  
6 **TO ADDRESS CHANGES ARISING FROM THE TRO WITH**  
7 **RESPECT TO COMMINGLING OF UNES WITH WHOLESALE**  
8 **SERVICES, EELS, AND OTHER COMBINATIONS? IF SO, HOW?**

9 A. Yes, the parties' interconnection agreements must be amended to reflect  
10 Verizon's obligation to provide commingling of unbundled network elements  
11 ("UNEs") or combinations of UNEs with wholesale services, as clarified by  
12 the FCC under the *Triennial Review Order*, including the terms under which  
13 carriers may commingle UNEs and wholesale services. Specifically, the FCC  
14 determined that "a restriction on commingling would constitute an unjust and  
15 unreasonable practice under section 201 of the Act," and an "undue and  
16 unreasonable prejudice or advantage" under section 202 of the Act, and would  
17 violate the "nondiscrimination requirement in section 251(c)(3)."<sup>19</sup> Therefore,  
18 affirmatively found that competitive carriers may "connect, combine or other  
19 attach UNEs and UNE combinations to wholesale services," including  
20 switched or special access services offered under the rates, terms and  
21 conditions of an effective tariff.<sup>20</sup> Importantly, the *Triennial Review Order*

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<sup>19</sup> *Triennial Review Order* at ¶ 581.

<sup>20</sup> *Id.* at ¶ 579.

1 also requires Verizon to effectuate commingling immediately, subject to  
2 penalties for noncompliance.

3

4 **ISSUE 13:** SHOULD THE INTERCONNECTION AGREEMENTS BE AMENDED  
5 TO ADDRESS CHANGES ARISING FROM THE TRO WITH  
6 RESPECT TO CONVERSION OF WHOLESALE SERVICES TO  
7 UNES/UNE COMBINATIONS? IF SO, HOW?

8 A. Yes, parties' interconnection agreements should be amended to reflect that  
9 competitive carriers may convert tariffed services provided by Verizon to  
10 UNEs or UNE combinations, provided that the service eligibility criteria  
11 established by the FCC, under the *Triennial Review Order*, are satisfied.  
12 Neither the D.C. Circuit's *USTA II* decision, nor the *Triennial Review Remand*  
13 *Order* displaced the FCC's earlier findings with regarding to competitive  
14 carriers' right to covert Verizon wholesale services to UNEs or combinations  
15 of UNEs, as permitted by the *Triennial Review Order*.

16

17 **ISSUE 14:** SHOULD THE INTERCONNECTION AGREEMENTS BE AMENDED  
18 TO ADDRESS CHANGES, IF ANY, ARISING FROM THE TRO WITH  
19 RESPECT TO: (A) LINE SPLITTING; (B) NEWLY BUILT FTTP  
20 LOOPS; (C) OVERBUILT FTTP LOOPS; (D) ACCESS TO HYBRID  
21 LOOPS FOR THE PROVISION OF BROADBAND SERVICES; (E)  
22 ACCESS TO HYBRID LOOPS FOR THE PROVISION OF  
23 NARROWBAND SERVICES; (F) RETIREMENT OF COPPER

1           **LOOPS; (G) LINE CONDITIONING; (H) PACKET SWITCHING; (I)**  
2           **NETWORK INTERFACE DEVICES (NIDS); (J) LINE SHARING? IF**  
3           **SO, HOW?**

- 4    **A.**       Yes, the parties' interconnection agreements should be amended to reflect any  
5           changes to the FCC's unbundling rules arising under the *Triennial Review*  
6           *Order* that were not vacated by the D.C. Circuit in *USTA II*, and/or modified  
7           by the FCC in the *Triennial Review Remand Order* or other FCC order. The  
8           Amendment should expressly incorporate the requirements of the *Triennial*  
9           *Review Order* and the FCC's rules with regard to the following: line splitting;  
10          newly built fiber-to-the-home and/or fiber-to-the-curb loops; overbuilt fiber-  
11          to-the-home and/or fiber-to-the curb loops; access to hybrid loops for the  
12          provision of broadband services; access to hybrid loops for the provision of  
13          narrowband services; retirement of copper loops; line conditioning; packet  
14          switching; network interface devices (NIDs); and line sharing.

15  
16    **ISSUE 15:   WHAT SHOULD BE THE EFFECTIVE DATE OF THE**  
17           **AMENDMENT TO THE PARTIES' INTERCONNECTION**  
18           **AGREEMENTS?**

- 19    **A.**       The Competitive Carrier Group has not been provided sufficient time to  
20           review and interpret the *Triennial Review Remand Order*, and to properly  
21           assess the impact of the *Triennial Review Remand Order* on the Issues List  
22           appended to the Commission's Order Establishing Procedure in this  
23           arbitration. Accordingly, the Competitive Carrier Group reserves and/or

1 requests the right to provide supplemental direct and rebuttal testimony on this  
2 Issue 15, and to propose additional issues and/or sub-issues that address the  
3 impact of the *Triennial Review Remand Order* on the subject matter of this  
4 Issue 15.

5  
6 The Amendment to the parties' agreements should be effective as of the date  
7 of the last signature on the Amendment, except with respect to the transition  
8 rates for network elements that Verizon no longer is obligated to provide  
9 under section 251 of the 1996 Act, as expressly provided by the FCC's rules  
10 and/or Orders, including the *Triennial Review Remand Order*. To the extent  
11 that any provision of the Amendment should be given retroactive effect, as  
12 required by the FCC, the Amendment must state the effective date of the  
13 specified provision of the Amendment and the controlling FCC rule and/or  
14 Order.

15  
16 With regard to any rates, terms and conditions set forth in the Amendment  
17 applicable to commingling and conversions, the effective date of such  
18 provisions will be, as required by the FCC, October 2, 2003, the effective date  
19 of the *Triennial Review Order*. Specifically, under the *Triennial Review*  
20 *Order*, Verizon must permit commingling and conversions as of the effective  
21 date of the *Triennial Review Order* in the event that a requesting carrier  
22 certifies that it has complied with the FCC's service eligibility criteria. Under  
23 section 51.318 of the FCC's rules, Verizon must provide to requesting

1 carriers, as of October 2, 2003, commingling and conversions unencumbered  
2 by additional processes or requirements not specified in the *Triennial Review*  
3 *Order*, and requesting carriers must receive pricing for new EELs/conversions  
4 as of the date the request was made to Verizon.

5  
6 **ISSUE 16: HOW SHOULD CLEC REQUESTS TO PROVIDE NARROWBAND**  
7 **SERVICES THROUGH UNBUNDLED ACCESS TO A LOOP WHERE**  
8 **THE END USER IS SERVED VIA INTEGRATED DIGITAL LOOP**  
9 **CARRIER (IDLC) BE IMPLEMENTED?**

10 **A.** The Amendment should require that Verizon comply with section  
11 51.319(a)(iii) of the FCC's rules, which requires that, where a requesting  
12 carrier seeks access to a hybrid loop for the provision of narrowband services,  
13 Verizon provide nondiscriminatory access to either an entire unbundled  
14 hybrid loop capable of providing voice-grade service, using time division  
15 multiplexing technology, or a spare home-run copper loop serving that  
16 customer on an unbundled basis. However, in the event that a requesting  
17 carrier specifies access to an unbundled copper loop in its request to Verizon,  
18 the Amendment should obligate Verizon to provide an unbundled copper  
19 loop, using Routine Network Modifications as necessary, unless no such  
20 facility can be made available via Routine Network Modifications.

21  
22 **ISSUE 17: SHOULD VERIZON BE SUBJECT TO STANDARD PROVISIONING**  
23 **INTERVALS OR PERFORMANCE MEASUREMENTS AND**

1           **POTENTIAL REMEDY PAYMENTS, IF ANY, IN THE UNDERLYING**  
2           **AGREEMENT OR ELSEWHERE, IN CONNECTION WITH ITS**  
3           **PROVISION OF (A) UNBUNDLED LOOPS IN RESPONSE TO CLEC**  
4           **REQUESTS FOR ACCESS TO IDLC-SERVED HYBRID LOOPS; (B)**  
5           **COMMINGLED ARRANGEMENTS; (C) CONVERSION OF ACCESS**  
6           **CIRCUITS TO UNES; (D) LOOPS OR TRANSPORT (INCLUDING**  
7           **DARK FIBER TRANSPORT AND LOOPS) FOR WHICH ROUTINE**  
8           **NETWORK MODIFICATIONS ARE REQUIRED.**

9    **A.**       Yes. Verizon should be subject to standard provisioning intervals or  
10       performance measurements, and potential remedy payments in the parties'  
11       underlying agreement or elsewhere for the facilities and services identified in  
12       the Commission's Order Establishing Procedure, including: (a) unbundled  
13       loops provided by Verizon in response to a carrier's request for access to  
14       IDLC-served hybrid loops; (b) commingled arrangements; (c) conversion of  
15       access circuits to UNEs; (d) Loops and Transport (including Dark Fiber  
16       Transport and Loops) for which routine network modifications are required.

17  
18    **ISSUE 18:   HOW SHOULD SUBLOOP ACCESS BE PROVIDED UNDER THE**  
19    **TRO?**

20    **A.**       Verizon is obligated to provide access to its subloops and network interface  
21       device ("NID"), on an unbundled basis, in accordance with section 51.319(b)  
22       of the FCC's rules and the *Triennial Review Order*. Under the *Triennial*  
23       *Review Order*, Verizon is obligated to provide a requesting carrier access to

1 its subloops at any technically feasible access point located near a Verizon  
2 remote terminal for the requested subloop facilities. Accordingly, the  
3 Amendment should incorporate the requirements of the *Triennial Review*  
4 *Order* and the FCC's applicable rules. Specifically, the Amendment to the  
5 parties' interconnection agreements should include: (a) detailed definitions of  
6 subloops and access terminals, consistent with the *Triennial Review Order*;  
7 (b) detailed procedures for the connection of subloop elements to any  
8 technically feasible point both with respect to distribution subloop facilities  
9 and subloops in multi-tenant environments. The Amendment also should  
10 include requirements set forth in the *Triennial Review Order* applicable to  
11 Inside Wire Subloops, and to Verizon's provision of a single point of  
12 interconnection ("SPOI") suitable for use by multiple carriers.

13  
14 **ISSUE 19: WHERE VERIZON COLLOCATES LOCAL CIRCUIT SWITCHING**  
15 **EQUIPMENT (AS DEFINED BY THE FCC'S RULES) IN A CLEC**  
16 **FACILITY/PREMISES, SHOULD THE TRANSMISSION PATH**  
17 **BETWEEN THAT EQUIPMENT AND THE VERIZON SERVING**  
18 **WIRE CENTER BE TREATED AS UNBUNDLED TRANSPORT? IF**  
19 **SO, WHAT REVISIONS TO THE AGREEMENT ARE NEEDED?**

20 **A.** The Competitive Carrier Group hereby adopts the testimony of E. Christopher  
21 Nurse on behalf of AT&T Communications of the Southern States, LLC on  
22 this Issue 19, as though it were reprinted here.

23



1 **ISSUE 20:** ARE INTERCONNECTION TRUNKS BETWEEN A VERIZON WIRE  
2 CENTER AND A CLEC WIRE CENTER, INTERCONNECTION  
3 FACILITIES UNDER SECTION 251(C)(2) THAT MUST BE  
4 PROVIDED AT TELRIC?

5 A. The Competitive Carrier Group hereby adopts the testimony of E. Christopher  
6 Nurse on behalf of AT&T Communications of the Southern States, LLC on  
7 this Issue 19, as though it were reprinted here.

8

9 **ISSUE 21:** WHAT OBLIGATIONS UNDER FEDERAL LAW, IF ANY, WITH  
10 RESPECT TO EELS SHOULD BE INCLUDED IN THE  
11 AMENDMENT TO THE PARTIES' INTERCONNECTION  
12 AGREEMENTS?

13 A. The parties' interconnection agreements should be amended to address  
14 changes of law that address Verizon's obligation to provide "new" EELs, in  
15 addition to EELs converted from existing special access circuits, including the  
16 high capacity EEL service eligibility criteria set forth in section 51.318 of the  
17 FCC's rules. In light of the FCC's rule setting forth Verizon's obligation to  
18 provide EELs, the Amendment should make clear that: (1) Verizon is required  
19 to provide access to new and converted EELs unencumbered by additional  
20 processes or requirements not specified in the *Triennial Review Order*; (2)  
21 competitive carriers must self-certify compliance with the applicable high  
22 capacity EEL service eligibility criteria for high capacity EELs, by manual or  
23 electronic request, and permit a limited annual audit by Verizon to confirm

1 their compliance with the FCC's high capacity EEL service eligibility criteria;  
2 (3) Verizon's performance in connection EEL facilities must be subject to  
3 standard provisioning intervals and performance measures; and (4) Verizon  
4 will not impose charges for conversion from wholesale to UNEs or UNE  
5 combinations, other than a records change charge. In addition, the  
6 Commission should permit competitive carrier to re-certify prior conversions  
7 in a single batch, and to certify requests for future conversions in one batch,  
8 rather than to certify individual requests on a circuit-by-circuit basis.

9  
10 **(A) What information should a CLEC be requires to provide to Verizon**  
11 **as certification to satisfy the service eligibility criteria (47 C.F.R. §**  
12 **51.318) of the TRO in order to (1) convert existing circuits/services to**  
13 **EELS, and (2) order new EELs?**

14 The Amendment should require that competitive carriers comply with the  
15 service eligibility requirements established by the *Triennial Review Order* and  
16 section 51.318 of the FCC's rules. Specifically, to obtain a new or converted  
17 EEL under the *Triennial Review Order* and section 51.318 of the FCC's rules,  
18 the Amendment should require that a competitive carrier supply self-  
19 certification to Verizon of the following information: (1) state certification to  
20 provide local voice service, or proof of registration, tariff and compliance  
21 filings; (2) that at least one number local number is assigned to each DS1  
22 circuit prior to provision of service over that circuit; (3) that each circuit has  
23 911/E911 capability prior to the provision of service over that circuit; (4) that

1 the circuit terminates to a collocation or reverse collocation; (5) that each  
2 circuit is served by an interconnection trunk in the same LATA over which  
3 calling party number ("CPN") will be transmitted; (6) that one DS1  
4 interconnection trunk (over which CPN will be passed) is maintained for  
5 every 24 DS1 EELs; and (7) that the circuit is served by a Class 5 switch or  
6 other switch capable of providing local voice traffic.

7  
8 **(B) Conversion of existing circuits/services to EELs:**

9  
10 **(1) Should Verizon be prohibited from physically disconnecting,**  
11 **separating or physically altering the existing facilities when a CLEC**  
12 **requests conversion of existing circuits/services to an EEL unless the**  
13 **CLEC requests such facilities alternation?**

14 Yes. The Amendment to the parties' interconnection agreements should state  
15 that, when existing circuits/services employed by a competitive carrier are  
16 converted to an EEL Verizon shall not physically disconnect, separate, alter or  
17 change in any fashion equipment and facilities employed to provide the  
18 wholesale service, except at the request of the competitive carrier.

19  
20 **(2) In the absence of a CLEC request for conversion of existing access**  
21 **circuits/services to UNE loops and transport combinations, what types of**  
22 **charges, if any, can Verizon impose?**

1 In the absence of a CLEC request for conversion of existing access  
2 circuits/services to UNE loops and transport, the amendment should expressly  
3 preclude Verizon from imposing additional charges on any competitive  
4 carrier.

5  
6 **(3) Should EELs ordered by a CLEC prior to October 2, 2003 be  
7 required to meet the TRO's service eligibility criteria?**

8 No. Any EEL provided by Verizon to a competitive carrier prior to October  
9 2, 2003 should not be required to be the service eligibility criteria set forth in  
10 the *Triennial Review Order* and section 51.318 of the FCC's rules.

11  
12 **(4) For conversion requests submitted by a CLEC prior to the effective  
13 date of the Amendment, should CLECs be entitled to EELs/UNEs pricing  
14 effective as of the date the CLEC submitted the request (but not earlier  
15 than October 2, 2003)?**

16 Yes. The Amendment should expressly state that conversion requests issued  
17 by a competitive carrier after the effective date of the *Triennial Review Order*  
18 and before the effective date of the Amendment shall be deemed to have been  
19 completed on the effective date of the Amendment, and as such, should be  
20 subject to EELs/UNEs pricing available under the *Triennial Review Order*.

21  
22 **(C) What are Verizon's rights to obtain audits of CLEC compliance with  
23 the service eligibility criteria in 47 C.F.R. 51.318?**

1 Under the *Triennial Review Order*, Verizon is permitted to conduct one audit  
2 of a competitive carrier to determine compliance with the FCC’s service  
3 eligibility criteria for EELs, provided that Verizon demonstrates cause with  
4 respect to the particular circuits it seeks to audit, and obtains and pays for an  
5 AICPA-compliant independent auditor to conduct such audit. The  
6 independent auditor is required to perform its evaluation of the competitive  
7 carrier in accordance with the standards established by the American Institute  
8 for Certified Public Accountants (AICPA), which require that the auditor  
9 perform an “examination engagement” and issue an opinion regarding the  
10 carrier’s compliance with the FCC’s service eligibility criteria. The  
11 independent auditor must conclude whether the competitive carrier has  
12 complied in all material respects with the applicable service eligibility criteria.  
13 If the auditor’s report concludes that the competitive carrier failed to  
14 materially comply with the service eligibility criteria in all respects, the carrier  
15 will be required to true-up any difference in payments, convert all  
16 noncompliant circuits to the appropriate service and make correct payments  
17 on a going-forward basis. In such cases, the competitive carrier also must  
18 reimburse Verizon for the costs associated with the audit. If the auditor’s  
19 report concludes that the competitive carrier has complied with the FCC’s  
20 service eligibility criteria, Verizon must reimburse the competitive carrier its  
21 costs (including staff time and other appropriate costs) associated with the  
22 audit.

1 **ISSUE 22: HOW SHOULD THE AMENDMENT REFLECT AN OBLIGATION**  
2 **THAT VERIZON PERFORM ROUTINE NETWORK**  
3 **MODIFICATIONS NECESSARY TO PERMIT ACCESS TO LOOPS,**  
4 **DEDICATED TRANSPORT, OR DARK FIBER TRANSPORT**  
5 **FACILITIES WHERE VERIZON IS REQUIRED TO PROVIDE**  
6 **UNBUNDLED ACCESS TO THOSE FACILITIES UNDER 47 U.S.C. §**  
7 **251(C)(3) AND 47 C.F.R. PART 51?**

8 **A.** The Competitive Carrier Group consistently has maintained that Verizon’s  
9 obligation, under federal law, to provide routine network modifications to  
10 permit access to its network elements that are subject to unbundling under  
11 section 251 of the 1996 Act and the part 51 of the FCC’s rules existed prior to  
12 the *Triennial Review Order*. Therefore, because the *Triennial Review Order*  
13 provides only clarification with respect to Verizon’s obligation to provide  
14 routine network modifications, the *Triennial Review Order* does not constitute  
15 a “change of law” under the parties’ agreements for which a formal  
16 amendment is required. Nonetheless, for avoidance of doubt, the Competitive  
17 Carrier Group maintains that the Amendment include language clarifying the  
18 scope of Verizon obligation to provide to competitive carriers routine network  
19 modifications to permit access to its UNEs.

20  
21 Consistent with the *Triennial Review Order*, the Amendment should define  
22 Routine Network Modifications as those prospective or reactive activities that  
23 Verizon regularly undertakes when establishing or maintaining network

1 connectivity for its own retail customers. A determination of whether or not a  
2 requested modification is in fact “routine” should, under the Agreement, be  
3 based on the tasks associated with the modification, and not on the end-user  
4 service that the modification is intended to enable. The Amendment should  
5 specify that the costs for Routine Network Modifications are already included  
6 in the existing rates for the UNE set forth in the parties’ interconnection  
7 agreements, and accordingly, that Verizon may not impose additional charges  
8 in connection with its performance of routine network modifications.

9  
10 **ISSUE 23: SHOULD THE PARTIES RETAIN THEIR PRE-AMENDMENT**  
11 **RIGHTS ARISING UNDER THE AGREEMENT, TARIFFS AND**  
12 **SGATS?**

13 **A.** Yes, the parties should retain their pre-Amendment rights under the  
14 Agreement, tariffs and SGATs.

15  
16 **ISSUE 24: SHOULD THE AMENDMENT SET FORTH A PROCESS TO**  
17 **ADDRESS THE POTENTIAL EFFECT ON THE CLECS’**  
18 **CUSTOMERS’ SERVICES WHEN A UNE IS DISCONTINUED?**

19 **A.** The Competitive Carrier Group has not been provided sufficient time to  
20 review and interpret the *Triennial Review Remand Order*, and to properly  
21 assess the impact of the *Triennial Review Remand Order* on the Issues List  
22 appended to the Commission’s Order Establishing Procedure in this  
23 arbitration. Accordingly, the Competitive Carrier Group reserves and/or

1 requests the right to provide supplemental direct and rebuttal testimony on this  
2 Issue 25, and to propose additional issues and/or sub-issues that address the  
3 impact of the *Triennial Review Remand Order* on the subject matter of this  
4 Issue 25.

5  
6 The Amendment should include a process to address the potential effect on  
7 CLECs' customers' services when a section 251(c) UNE is discontinued, to  
8 ensure that loss of service to a CLECs' customers does not result from  
9 Verizon's discontinuance of that particular UNE.

10

11 **ISSUE 25: HOW SHOULD THE AMENDMENT IMPLEMENT THE FCC'S**  
12 **SERVICE ELIGIBILITY CRITERIA FOR COMBINATIONS AND**  
13 **COMMINGLED FACILITIES AND SERVICES THAT MAY BE**  
14 **REQUIRED UNDER 47 U.S.C. § 251(C)(3) AND 47 C.F.R. PART 51?**

15 **A.** As discussed more fully in response to Issue 21 above, the Amendment should  
16 expressly incorporate the FCC's service eligibility criteria set forth in the  
17 *Triennial Review Order* and section 51.318 of the FCC's rules for  
18 combinations and commingled facilities and service.

19

20 **ISSUE 26: SHOULD THE COMMISSION ADOPT THE NEW RATES**  
21 **SPECIFIED IN VERIZON'S PRICING ATTACHMENT ON AN**  
22 **INTERIM BASIS?**

23 **A.** The Competitive Carrier Group has not been provided sufficient time to  
24 review and interpret the *Triennial Review Remand Order*, and to properly



1 assess the impact of the *Triennial Review Remand Order* on the Issues List  
2 appended to the Commission's Order Establishing Procedure in this  
3 arbitration. Accordingly, the Competitive Carrier Group reserves and/or  
4 requests the right to provide supplemental direct and rebuttal testimony on this  
5 Issue 26, and to propose additional issues and/or sub-issues that address the  
6 impact of the *Triennial Review Remand Order* on the subject matter of this  
7 Issue 26.

8  
9 No, the Commission should not adopt the new rates specified in Verizon's  
10 pricing attachment on an interim basis.

## 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 25<sup>th</sup> day of February, 2005.

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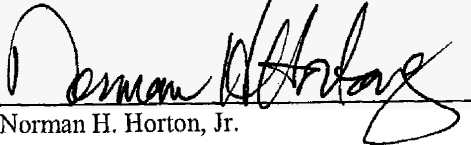
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