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March 25, 2005

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

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

Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of the Rebuttal Testimony of Alan F. Ciamporcero and Panel Rebuttal Testimony of Thomas E. Church, William E. Loughridge and Willett Richter on behalf of Verizon Florida Inc. in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions concerning this filing, please contact me at 813-483-1256.

Sincerely,

Richard A. Chapkis

Richard A. Chapkis

RAC:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Rebuttal Testimony of Alan F. Ciamporcero and Panel Rebuttal Testimony of Thomas E. Church, William E. Loughridge and Willett Richter on behalf of Verizon Florida Inc. in Docket No. 040156-TP were sent via U. S. mail on March 25, 2005 to the parties on the attached list.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

REBUTTAL TESTIMONY OF ALAN F. CIAMPORCERO

ON BEHALF OF

VERIZON FLORIDA INC.

MARCH 25, 2005

Q. PLEASE STATE YOUR NAME AND TITLE.

A. Alan F. Ciamporcero, President-Verizon's Southeast Region.

Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will respond to most of the issues covered in the direct testimony filed by E Christopher Nurse for AT&T Communications of the Southern States, LLC ("AT&T"); Greg J. Darnell for MCI, Inc. ("MCI"); and Alan L. Sanders, Jr., James C. Falvey, and Edward J. Cadieux, on behalf of the Competitive Carriers Group ("CCC"). Verizon panel witnesses Church, Loughridge, and Richter will reply to the CLECs' testimony on Issues 16 (unbundled access to IDLC-fed loops), 18 (subloop unbundling), and 22 (routine network modifications).

Q. BEFORE ADDRESSING THE SPECIFIC ISSUES RAISED IN THE CLECS' TESTIMONY, DO YOU HAVE ANY GENERAL OBSERVATIONS ABOUT THEIR TESTIMONY?

A. Yes. Their testimony proves Verizon's point that there was no need for prefiled testimony or hearings in this case. As I pointed out in my direct testimony, Verizon has consistently maintained that issues concerning implementation of the *Triennial Review Order* ("*TRO*") and *Triennial Review Remand Order* ("*TRRO*") are legal, not fact, issues, and are properly addressed through legal briefs, rather than testimony and

hearings. In fact, at the issues identification stage of the case, MCI, AT&T and the CCC all agreed that at least a number of specific issues should be addressed solely through briefs. But they address these legal issues in their testimony, anyway. Mr. Nurse and Mr. Darnell are not lawyers and do not claim to be otherwise qualified to address legal issues, but virtually all of their respective testimony is legal in nature. Their testimony does not offer facts, but principally opinions about how they think *TRO* and *TRRO* rulings must be implemented, as a matter of law; how the change-of-law provisions in their existing agreements are supposed to operate; why they think Verizon's approach to amending its contracts is unlawful; and what the scope of the Commission's legal authority is to override the FCC's elimination of UNEs. This purely legal testimony from non-lawyers is improper, and there is no point in holding a hearing to cross-examine lay persons who are not qualified to testimony about legal issues.

Although two of the members of the CCG panel, Mr. Cadieux of NuVox Communications, and Mr. Falvey, of Xspedius Communications LLC, are lawyers, CCC's counsel agreed earlier that several of issues (1-5, 9-10, 14(a)-(e) and (g)-(j), 15-16, 19-20, 23, and 25) are "legal issues" that "should be addressed by briefing only, and should not be subject to pre-filed or live testimony." (December 1, 2004 e-mail from Brett Freedson, on behalf of CCG, to Commission Staff and parties.) Nevertheless, they inexplicably address all of these legal issues in their testimony, even though CCG admitted that such testimony was not appropriate.

Q. WILL YOU RESPOND TO THE CLECS' LEGAL TESTIMONY?

A. I will signal Verizon's disagreement with the CLECs' erroneous legal positions on each of the issues to which they testify, but I will not engage in extended explanations of Verizon's legal positions. I will leave the detailed legal analysis to the legal briefs, where it belongs.

Q. IS THE CLECS' TESTIMONY BASED ON THEIR CURRENT AMENDMENTS?

A. No. Since they filed their direct testimony, MCI and AT&T have proposed new amendments, purportedly to reflect the *TRRO*. MCI filed its amendment with the Commission on March 9, 2003, and AT&T proposed a new amendment in negotiations. I believe CCG has advised Verizon in negotiations that it intends to revise its amendment to reflect the *TRRO* rulings, but so far, it has not produced any new amendment in negotiations or filed one here.

Because settlement discussions continue, as in any arbitration, I expect that the CLECs' various amendment proposals may change again, and that Verizon may also make some changes to its amendment to the extent the parties may settle a few minor issues on which they are not already at an impasse . But from what Verizon has seen, the CLECs' revisions have not removed the basis for the parties' fundamental disputes. For example, the CLECs' Amendments still contemplate that this Commission may re-impose the unbundling obligations the FCC has eliminated.

In any event, I understand the Commission does not intend to approve any amendment language at this stage, but will resolve only the issues that have been identified. It will consider actual language only later when it considers the conforming amendments. Therefore, it is not necessary to discuss specific language at length here. In the few instances where it is useful to refer to particular language in MCI's or AT&T's Amendments, I will refer to the current versions of those amendments.

Q. WHAT IS THE CLECS' FUNDAMENTAL DISPUTE WITH VERIZON'S AMENDMENT?

A. As I explained in my direct testimony, Verizon's Amendment is very simply structured to make clear that its unbundling obligations under its interconnection agreements are the same as its obligations under section 251(c)(3) of the Act and the FCC's implementing rules. Once Verizon no longer has any obligation to provide an element under the Act or the FCC's rules, Verizon's Amendment would permit Verizon to discontinue that element upon 90 days' written notice. Verizon's Amendment thus provides for automatic implementation of reductions in unbundling obligations without prolonged and expensive proceedings like this one. When the FCC eliminates an unbundling obligation, that change should be implemented through the interconnection agreements, as well, without the need for any amendment.

The CLECs oppose Verizon's proposed mechanism for implementing

the *TRO* and *TRRO* rulings, as well as any future reductions in unbundling obligations. They say that Verizon's approach is unlawful and that Verizon should not be permitted to "unilaterally" decide that an element should be discontinued. (*See, e.g.*, Nurse Direct Testimony ("DT"), at 11; Darnell DT, at 5.) They argue that the existing change of law provisions are sufficient to implement changes in unbundling obligations, including the rulings in the *TRO* and *TRRO*.

Q. IS VERIZON'S APPROACH AS NOVEL AND EXTREME AS THE CLECS SUGGEST?

A. No. Contrary to the CLECs' characterization of Verizon's approach as unworkable, "unconscionable," and unlawful, Verizon's Amendment would bring the interconnection agreements at issue in this arbitration more in line with all of Verizon's other interconnection agreements. Verizon has over 110 interconnection agreements with CLECs. In accordance with the Commission's instructions when it dismissed Verizon's original petition for arbitration, Verizon's lawyers reviewed the change-of-law provisions in its existing agreements to determine which specific carriers should be named in this arbitration. Verizon named a relative handful of those—just 18—to this arbitration, because only their agreements might be misconstrued to require amendment before discontinuation of the UNEs "de-listed" in the *TRO*. Actually, there are just four agreements at issue in this arbitration, because most CLECs in the arbitration have adopted the AT&T agreement. As Verizon explained in its Petition for Arbitration, all of Verizon's other

agreements—the vast majority—have clear and specific language permitting Verizon to discontinue services Verizon no longer has a legal obligation to provide, usually upon specified notice.

Q. FOR THOSE CARRIERS, DID VERIZON, IN FACT, DISCONTINUE UNES THAT WERE DE-LISTED IN THE *TRO*?

A. Yes. As I explained in my Direct Testimony, Verizon sent two notices of discontinuation of de-listed UNEs. First, on October 2, 2003, the effective date of the *TRO*, Verizon sent a letter notifying CLECs that, to the extent permitted by their interconnection agreements, Verizon would, within 30 days, discontinue provisioning the UNEs the FCC eliminated in the *TRO*. These included OCn loops and transport; dark fiber transport between Verizon wire centers; dark fiber feeder subloop; newly built fiber to the home; overbuilt fiber to the home, subject to limited exceptions; hybrid loops, except for time-division multiplexing and narrowband applications; and line sharing. Verizon did, in fact, discontinue these de-listed UNEs for CLECs whose contracts plainly did not require an amendment to do so.

Verizon sent another notice on May 18, 2004, addressing enterprise switching, which had also been de-listed in the *TRO*, but under a different timetable than the other elements. Verizon notified CLECs that it would no longer provide unbundled enterprise switching as of August 22, 2004. Verizon, therefore, stopped unbundling enterprise switching on that date for CLECs whose contracts did not require an amendment

to do so.

Q. DID ANY OF THESE CLECS FILE A CONTRACT ENFORCEMENT ACTION BECAUSE VERIZON DISCONTINUED THE DE-LISTED ELEMENTS WITHOUT AN AMENDMENT?

A. No.

Q. DID THE COMMISSION APPROVE ALL OF THE CONTRACTS THAT AUTOMATICALLY IMPLEMENT DISCONTINUATION OF UNES?

A. Yes. Under section 252(e) of the Act, all negotiated or arbitrated interconnections agreements must be submitted to the relevant state commission fro approval. The Commission may reject a negotiated agreement if it discriminates against a non-party carrier or if it is not consistent with the public interest. (47 U.S.C. § 252(e)(2)(A).) It may reject an arbitrated agreement if it does not comply with the interconnection and unbundling requirements imposed under section 251 or the pricing standards in section 252. (*Id.* § 252(e)(2)(B).) The Commission did not reject any of the automatic implementation Agreements. If the CLECs are correct that automatic implementation provisions are unlawful, then this Commission and all others around the country are routinely approving unlawful agreements. I don't think that's the case.

Q. WHAT IS THE OVERARCHING LEGAL ISSUE IN THIS CASE?

A. The parties' most fundamental disagreement is whether this

Commission can re-impose unbundling obligations the FCC has eliminated. As I noted, Verizon's Amendment makes clear that its unbundling obligations are governed exclusively by section 251(c)(3) of the Act and the FCC's implementing rules. The CLECs, on the other hand, contend that this Commission has independent unbundling authority--despite the D.C. Circuit's ruling that *the FCC* has exclusive unbundling authority under the Act, which precludes "subdelegation" of unbundling determinations to state commissions. *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.) ("*USTA II*"), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004).

The CCG panel insists that "[t]his Commission has independent state law authority to order Verizon to continue to provide access to its network elements on an unbundled basis," (CCG DT, at 7) and that the Act "expressly permits this Commission to issue and enforce its own unbundling rules." (CCG DT, at 5-6.) It even presents a theory that this Commission has "*independent authority under federal law* to ensure continued access to Verizon's network elements in furtherance of competition." (Id., at 67 (emphasis added).) CCG appears to believe that the Act directly confers unbundling authority on state Commissions—which, as Verizon will explain in its brief, is just the opposite of the *USTA II* holding, which the U.S. Supreme Court refused to re-examine.

Not only does CCG argue that states have their own unbundling

authority, it seems to believe they can exercise that purported authority to override the FCC's unbundling decisions. It quotes part of section 251(d)(3) of the Act to support this notion, but leaves out the language that says a state access regulation may be enforced only to the extent that it is "consistent with the requirements of this section" and "does not substantially prevent implementation of the requirements of this section and the purposes of this part." (CCG DT, at 7; 47 U.S.C. § 251(d)(3)(A)&(B).) Verizon will make its state preemption argument in its legal briefs, but, from a simple commonsense perspective, there is no way a state order to unbundle an element the FCC has de-listed could be "consistent with" and "not substantially prevent implementation of" the FCC's rule eliminating the unbundling obligation at to that element.

MCI's witness Darnell is more circumspect about the state law issue, but no less wrong. He states that "the Commission should, as part of this proceeding, look to state law as a source of authority for unbundling obligations in the absence of a specific obligation under federal law." (Darnell DT at 2-3). In this respect, MCI's Amendment also allows for "State law" unbundling requirements to override the FCC's elimination of UNE switching. (MCI Amendment, § 8.)

AT&T's witness Nurse does not directly address the state law issue, but AT&T's Amendment does--for example, designating this Commission's "rules, regulations, decisions and orders" as potential sources of Verizon's unbundling obligations under the Amendment, (AT&T

Amendment, §2), and contemplating state impairment determinations (*Id.* § 2.37.) In addition, neither AT&T nor MCI list mass-market switching as a discontinued facility. (*See* MCI Amendment, § 12.7.5; AT&T Amendment, § 2.8.)

Q. HAS THIS COMMISSION ALREADY REJECTED THE ARGUMENT THAT STATES HAVE INDEPENDENT UNBUNDLING AUTHORITY?

A. Yes. When this Commission closed its "impairment" docket as a result of the *USTA II* decision, it correctly concluded: "USTA II is clear that the decision-making regarding impairment is reserved for the FCC, not the states." *Implementation of Requirements Arising from FCC's Triennial UNE Review*, Docket Nos. 030851-TP & 0208520-TP, at 3 (Oct. 11, 2004). The Commission understands that unbundling cannot be ordered in the absence of impairment, and only the FCC can make impairment decisions. Because the Commission has already recognized that it has no independent unbundling authority, there is no need for it to waste time considering the CLECs' frivolous arguments that this Commission may override the FCC's decisions to eliminate unbundling obligations.

Q. AT&T COMPLAINS THAT VERIZON HAS REFUSED TO NEGOTIATE ALL OF THE ISSUES RAISED BY THE *TRO* (NURSE DT, AT 4-5). IS THAT CORRECT?

A. No. As I explained in my Direct Testimony, Verizon has offered two *TRO* Amendments. Amendment 1 primarily addresses discontinuation

of de-listed UNEs. Amendment 2 fleshes out Verizon's obligations as to certain *TRO* requirements, including commingling, conversions, and routine network modifications. Although Amendment 1 was Verizon's affirmative offer in negotiations, Verizon also made Amendment 2 available once CLECs asked to negotiate the issues it covers. Amendment 2 was filed in this proceeding on October 18, 2004, after the CLECs had put its subject matter at issue in the arbitration, and the issues identified for resolution in this case address both Amendments. It makes no difference, as a substantive matter, whether the *TRO* issues are covered in one amendment or two, especially since the Commission does not intend to consider actual amendment language at this stage of the proceeding.

Mr. Nurse appears to be criticizing a bifurcation proposal that Verizon initially made to avoid burdening this time-constrained arbitration with complex cost litigation. But his criticisms are moot, because Verizon never moved the Commission to bifurcate the arbitration and it agreed to address the Amendment 2 issues in this arbitration once the parties agreed to Issue 26, allowing Verizon to propose adoption of its proposed rates on an interim basis.

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

Q. DOES VERIZON AGREE WITH THE CLECS' THAT THE *TRO* AMENDMENT SHOULD ADDRESS ITEMS OUTSIDE VERIZON'S UNBUNDLING OBLIGATIONS UNDER SECTIONS 251 AND 252 OF THE ACT?

A. No. Verizon proposed its Amendments and filed its Petition to conform the interconnection agreements at issue in this proceeding to federal law—specifically, the unbundling obligations set forth in section 251(c)(3) of the Act and he FCC's rules implementing rules. As I noted above and as Verizon will more fully explain in legal briefs, neither state law nor anything else can or does impose unbundling obligations on Verizon. As the Commission has already recognized, it has no independent unbundling authority and cannot override FCC decisions eliminating unbundling requirements.

Q. ASIDE FROM STATE LAW, DO THE CLECS CLAIM ANY OTHER SOURCE OF LAW ALLOWS THIS COMMISSION TO PREEMPT THE FCC'S DECISIONS ELIMINATING UNBUNDLING REQUIREMENTS?

A. Yes. CCG contends that the FCC's Order approving the merger of GTE and Bell Atlantic nearly five years ago[1] requires Verizon to continue providing indefinitely the UNEs required by the FCC's *UNE Remand Order*[2] and *Line Sharing Order.*[3] Mr. Darnell mentions the merger

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[1] Memorandum Opinion and Order, *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control*, 15 FCC Rcd 14032 (2000) ("*Merger Order*").

[2] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*") (subsequent history omitted).

conditions as a potential source of unbundling obligations for Verizon, but does not elaborate further. (Darnell DT, at 2.)

CLECs made the merger conditions argument in the context of their unsuccessful effort last year to obtain a "standstill" order forcing Verizon to continue providing de-listed UNEs indefinitely, regardless of contract terms permitting Verizon to discontinue them without an amendment. Verizon explained there why this argument is baseless (*see* Verizon's June 10, 2004 Motion to Dismiss and Supporting Memorandum filed in Docket 040489-TP) and will do so again in its legal brief in this proceeding. Despite the CLECs having raised this argument across Verizon's footprint during the standstill battles, no state Commission ever accepted it. From a simple common-sense perspective, it is ridiculous to argue that the FCC did not intend for the *TRO* and *TRRO* delistings to apply to Verizon when the Orders themselves say they do.

Q. DO THE CLECS ARGUE THAT VERIZON HAS SECTION 271 UNBUNDLING OBLIGATIONS?

A. No. Although Mr. Darnell mentions section 271 in passing as a potential source of unbundling obligations (Darnell DT, at 2), I don't think any party disputes the fact that section 271, which governed the Bell Companies' entry into the interLATA long-distance market, does not apply to Verizon in Florida. To the extent MCI's and AT&T's multi-state

[3] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*") (subsequent history omitted).

amendments reference section 271, I assume they are not proposing that language for Florida.

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

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE AS TO THIS ISSUE?

A. It is the fundamental dispute I explained above. Verizon's Amendments make clear that its unbundling obligations under the interconnection agreements are co-extensive with its unbundling obligations under federal law. The CLECs complain that the contracts should not automatically implement elimination of unbundling requirements, but that they should be able to continue to receive de-listed UNEs for as long as they can drag out the negotiation and dispute resolution process. As I explained, there is no reason to give a handful of CLECs the contractual right to receive UNEs that have been eliminated for the majority of CLECs whose contracts conform to federal law and allow discontinuation of de-listed UNEs upon notice. The 18 CLECs Verizon named in its Petition—and only those 18 CLECs--continue to receive UNEs that were de-listed in the *TRO almost 18 months ago*. By the time this proceeding concludes, they will have succeeded in delaying the implementation of federal law ***for two years***.

Contract provisions that call for negotiation of amendments before discontinuation of de-listed UNEs may have appeared reasonable when the contracts were executed, but experience over the past year and a half has shown that they do not work as intended. Change-of-law clauses are supposed to facilitate an orderly transition to a new legal regime. The CLECs in this case, however, have relied on the amendment provisions in their contracts to serve precisely the opposite end—that is, to *block* the transition to new FCC rules. Mr. Darnell, for example, acknowledges that the change-of-law language in MCI's contract (which is an adoption of the AT&T contract) requires it "to negotiate contract amendments to reflect changes in law, such as unbundling, once there is a final order." (Darnell, DT at 5.) But, a year and a half after the *TRO* took effect—and despite the nine-month amendment timeframe the *TRO* established—MCI and the other CLECs with this contract *still* have not amended it. Clearly, something is wrong with the existing contract language that gave rise to this regulatory gaming by the CLECs.

Q. MR. NURSE ARGUES THAT VERIZON'S APPROACH IS "WASTEFUL OF THE COMMISSION'S AND THE PARTIES' TIME AND RESOURCES." (NURSE DT, AT 14.) HOW DO YOU RESPOND TO THAT ALLEGATION?

A. It is outrageous. Verizon filed for arbitration over a year ago. Despite the FCC's explicit direction to promptly implement the *TRO* rulings, the parties are only now beginning to reach the merits of the case, *solely*

because of the CLECs' unrelenting efforts to derail the arbitration and amendment process the FCC specifically prescribed. Their procedural gambits have cost Verizon and the CLECs themselves many millions of dollars and wasted a year's worth of time for the Commission and company employees involved in the arbitrations. Contrary to Mr. Nurse's remarks, Verizon's proposed approach to implementing changes in unbundling obligations is the only way the Commission can be sure of preventing another enormous waste of resources in the event that future FCC rulings remove additional unbundling obligations.

Mr. Nurse and Mr. Darnell characterize Verizon's approach as expensive and unworkable, but these criticisms are demonstrably false. As I explained, the majority of Verizon's amendments already permit Verizon to discontinue UNEs upon notice, and the *TRO* rulings have been implemented in an orderly way under those contracts. Moreover, as I emphasized in my Direct Testimony, Verizon has not and will not, under its proposed amendment, discontinue service unless that is the option the CLEC chooses.

Q. IS VERIZON'S PROPOSAL OUTSIDE THE SCOPE OF THIS PROCEEDING, AS MR. NURSE ALLEGES (NURSE DT, AT 11)?

A. No. Verizon's Amendment implements the *TRO* and *TRRO* rulings and, unlike the CLECs' amendments, properly specifies the de-listed elements that are no longer available as UNEs. But the Amendment's mechanism for implementing the *TRO* and *TRRO* changes will also

ensure smooth implementation of any future rulings eliminating unbundling obligations. That is why Verizon did not need to rewrite its Amendment when the *TRRO* was released. As I said, the Amendment makes clear that Verizon has no obligation to provide UNEs where its obligation to do so has ended. There is no legitimate reason to allow the small group of CLECs in this case to retain unbundled access to particular elements when they have been eliminated by governing federal law and are not available as UNEs to anyone else.

Q. CCG ARGUES THAT THE INTERCONNECTION AGREEMENTS MUST BE AMENDED BEFORE THE PARTIES MUST COMPLY WITH "THE FCC-MANDATED TRANSITION PLANS ESTABLISHED UNDER THE *TRIENNIAL REVIEW ORDER* AND THE *TRIENNIAL REVIEW REMAND ORDER*." IS THAT RIGHT?

A. No. Verizon fully briefed this issue in its opposition to American Dial Tone's "emergency petition" asking the Commission to order Verizon to keep accepting new orders for de-listed UNEs, despite the FCC's "no-new-adds" directive. (Verizon's Opposition to Emergency Petition of American Dial Tone, Inc., Docket No. 050172-TP, filed March 18, 2005). As Verizon explained there, the transition plan—which even CCG admits is "FCC-mandated"--"*does not permit* competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching" on or after March 11, 2005.[4] This immediately effective bar

[4] *TRRO* ¶ 227 (emphasis added).

on new orders also applies to high capacity enterprise loops and dedicated transport facilities for which no impairment exists under the criteria established in the *TRRO*.[5]

CCG's claim that the FCC ordered parties to negotiate *every* aspect of the *TRRO* over the 12-month transition period (or 18 months for dark fiber facilities) the FCC prescribed makes no sense. The FCC repeatedly emphasized that this transition period "*applies only to the embedded customer base*, and does not permit competitive LECs to add new switching UNEs" (*TRRO* ¶¶ 5, 199) (emphasis added)) or de-listed loops or transport facilities (*TRRO* ¶¶ 5, 142, 195). Obviously, the FCC's explicit direction that the no-new-adds rules take effect on March 11, 2005 would be meaningless if carriers could wait a year (or 18 months) to implement them.

In any event, I expect that this issue will be decided soon, in the context of American Dial Tone's motion, rather than in this arbitration.

***Issue 3**: What obligations under federal law, if any, with respect to unbundled access to local circuit switching, including mass market and enterprise switching (including Four-Line Carve-Out switching), and tandem switching, should be included in the Amendment to the parties' interconnection agreements?*

[5] *TRRO* ¶¶ 142 (transport), 195 (loops).

Q. DO THE CLECS ACKNOWLEDGE THAT VERIZON NO LONGER HAS ANY OBLIGATION, UNDER FEDERAL LAW, TO UNBUNDLE SWITCHING?

A. Mr. Nurse most explicitly recognizes that the FCC has ordered "the nationwide elimination of unbundled switching and UNE-P" and that "incumbents LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching." (Nurse DT, at 12.) The CCG Panel mentions that mass market switching is "no longer available under section 251 of the 1996 Act." (CCG DT, at 13.) Mr. Darnell just states that MCI's position on Issue 3 is outlined in section 8 of its amendment (Darnell DT, at 6), which provides that Verizon is not required to provide unbundled access to mass-market switching "unless Verizon is required to do so under the applicable Federal Unbundling Rules or State law." (MCI Amendment, § 8.1.).

Q. EVEN THOUGH THE CLECS MAY RECOGNIZE THAT VERIZON HAS NO OBLIGATION TO PROVIDE UNBUNDLED ACCESS TO SWITCHING UNDER FEDERAL LAW, DO THEIR AMENDMENTS PROPERLY RECOGNIZE THE ELIMINATION OF UNE SWITCHING?

A. No. As I discussed earlier, and as is apparent in the above-quoted language from the MCI amendment, the CLECs' amendments contemplate that this Commission may re-impose unbundling obligations the FCC has eliminated. As I noted, Verizon will more fully address this legal issue in its briefs, but it should be obvious that this Commission cannot ignore the FCC's rules and order unbundling where

the FCC has eliminated it. The Commission must reject any provisions that admit this possibility.

Q. IN THEIR DISCUSSIONS OF THIS ISSUE, THE CLECS FOCUS PRIMARILY ON THE FCC'S TRANSITION PLAN. ARE THEY RIGHT ABOUT THE DETAILS OF THE PLAN?

A. They are partly right and partly wrong. As I discussed above, the CCG panel erroneously argues that a contract amendment is necessary to implement the FCC's "no-new-adds" directive for de-listed UNEs, including mass-market switching (CCG DT, at 14). Mr. Darnell does not discuss the no-new-adds directive in his testimony, but MCI's amendment would allow it to add de-listed UNEs after March 1, 2005, until the contract is executed. (MCI Amendment, § 8.1.1.) As Verizon discussed in its opposition to American Dial Tone, the Commission cannot stay the March 11 effective date for the no-new-adds mandate in the *TRRO*, so it cannot approve amendment language that would do so.

Mr. Nurse, at least, appears to acknowledge the FCC's distinction between the embedded base and new additions. He recognizes that the *TRRO* "allows CLECs to continue to serve their embedded customer base...but it prohibits CLECs from adding new UNE-P arrangements" as of the March 11, 2005 effective date of the *TRRO*. (Nurse DT, at 13.) And both Mr. Nurse and the CCG panel correctly understand that the *TRRO* requires CLECs to convert their embedded base of de-listed UNEs to alternative service arrangements within 12 months. (Nurse DT,

at 13; CCG DT, at 13.) They also recognize that the FCC has prescribed rate increases to apply to the embedded base of UNE-P arrangements until they are converted over the transition period. Specifically, the transition price will be $1 more than the rate in effect as of June 15, 2004. For DS1, DS3, and dark fiber loops, the rate will be 115% of the rate the CLEC paid for the facility on June 15, 2004. For contracts to be amended, the rates will be trued up to the transition rate upon amendment, to the extent a particular contract might not already allow immediate billing of the transition rates. (*See* Nurse DT, at 12-14; *TRRO* ¶ 5 & nn. 408, 524, 630.)

Although it is not necessary, Verizon has no objection to adding language to the amendment recognizing its obligation to continue serving the embedded base of *TRRO* de-listed facilities during the FCC's transition periods, at the rates the FCC has established. Verizon has offered such language to CLECs in negotiations.

Q. DO THE CLECS DISCUSS ENTERPRISE SWITCHING?

A. The CLECs focus on mass-market switching, but there is a footnote in Mr. Nurse's testimony about enterprise switching. He says that "Verizon is required to provide CLECs that may be presently utilizing unbundled local circuit switching to serve enterprise customers with notice of the discontinuance of these facilities and permit the FCC prescribed 12-month transition for the CLEC to find alternative arrangements." (Nurse DT, at 13 n. 20.)

Mr. Nurse is confused about the status of enterprise switching. Enterprise switching was one of the UNEs eliminated in the *TRO* 18 months ago. ("We find, on a national basis, that competitive LECs are not impaired without unbundled local circuit switching when serving the enterprise market," defined as customers using loops at the DS1 capacity and above. *See TRO* ¶¶ 7, 451.) The *TRRO* notes that the D.C. Circuit upheld the *TRO*'s nationwide finding of non-impairment for enterprise switching. (*TRRO* ¶ 201, *quoting* the D.C. Circuit's observation that "'the CLECs do not contradict the Commission's observation about the absence of evidence of impairment either nationwide or in specific markets.'" (*USTA II*, 359 F.3d at 586-87.) Because the *TRRO* addressed only mass-market switching, the FCC's 12-month transition period explicitly applies only for the migration of "the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement." (*TRRO* ¶ 226.) To the extent Mr. Nurse is suggesting that the *TRRO*'s transition period applies to enterprise switching, he is plainly wrong.

Mr. Nurse is also incorrect in suggesting that Verizon must give notice of discontinuance of enterprise switching to AT&T and others in this proceeding. As I explained in my Direct Testimony (at 10-11), Verizon gave CLECs notice of discontinuation of enterprise switching in a May 18, 2004 letter. But because AT&T's contract might be misconstrued to require amendment before Verizon may discontinue UNE enterprise switching, AT&T might still attempt to receive it until the contracts are

amended. Under the existing schedule, it will be more than a year from the time AT&T was notified of the discontinuation of enterprise switching until its contract is amended. Certainly, a year's advance notice is much more than sufficient for AT&T to have prepared for the transition away from any enterprise switching it might be using. There is no legitimate reason to force Verizon to give yet another notice period after the contracts are amended.

Q. DOES VERIZON AGREE WITH AT&T THAT NOT ALL DETAILS FOR TRANSITIONING THE EMBEDDED BASE OF UNE-P MUST BE INCORPORATED INTO THE AMENDMENT?

A. Yes. The actual transition procedures for carriers' conversion of the embedded base can best be addressed through business-to-business operational negotiations, as Mr. Nurse observes. (Nurse DT, at 16.) These kinds of operational details are not typically incorporated into contracts, and I don't think anyone has suggested they should be part of the *TRO* amendment.

Q. IS MR. NURSE CORRECT THAT THE FCC'S "FOUR-LINE CARVE-OUT" HAS BEEN SUPERSEDED?

A. Not superseded so much as irrelevant to the current contest. The FCC adopted its Four-Line Carve-Out in the 1999 *UNE Remand Order*, holding that competitors are not impaired without unbundled access to switching to serve customers with four or more DS0 lines in density zone one of the top 50 metropolitan statistical areas. The FCC

reaffirmed the carve-out in the *TRO*, and promulgated regulations declaring that "an incumbent LEC shall comply with the four-line 'carve-out' for unbundled switching established in" the *UNE Remand Order*. 47 C.F.R. § 51.319(d)(3)(ii) (emphasis added).

Mr. Nurse is correct that after the *TRRO*, all unbundled local circuit switching, including the Four-Line Carve-Out, has now been eliminated. But as a practical matter, the *TRRO* adds nothing to this issue, because Verizon's predecessor, GTE, fully implemented the Four-Line Carve-Out soon relatively soon after the *UNE Remand Order* issued. It appears that Mr. Nurse does not realize this, because he states that the Four-Line Carve-Out was "largely un-enforced" and assumes that customers subject to the Four-Line Carve-Out rule still need to be transitioned. (Nurse DT, at 14.) Because the Four-Line Carve-Out was implemented in Florida years ago, there are no transition issues relating to the Four-Line Carve-Out and no need for any language to implement the Four-Line Carve-Out in the *TRO* amendment.

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

Q. DO THE CLECS RECOGNIZE THAT VERIZON NO LONGER HAS ANY SECTION 251 OBLIGATION TO UNBUNDLE DARK FIBER

LOOPS AND CERTAIN DS1 AND DS3 LOOPS?

A. Mr. Nurse correctly states that "the FCC ruled that CLECs are not impaired without access to dark fiber loops" in any instance. (Nurse DT, at 17, 21; *TRRO* ¶ 146.) In addition, Mr. Nurse and the CCG panel recognize the *TRRO*'s restrictions on unbundling of DS1 and DS3 loops. Specifically, CLECs are not impaired without access to (1) DS1 loops out of in wire centers containing at least 60,000 business lines and 4 or more fiber-based collocators; and (2) DS3 loops out of wire centers containing at least 38,000 business lines and 4 or more fiber-based collocators. (Nurse DT, at 18-19; CCG DT, at 15-16; *TRRO* ¶ 5.) In addition, a CLEC cannot obtain more than one unbundled DS3 loop or 10 unbundled DS1 loops per building. (*See* Nurse DT, at 20-22; *TRRO* ¶¶ 177, 180.) Mr. Nurse also notes that the FCC revised its rules to prohibit CLECs from using UNEs for the exclusive provision of mobile wireless or interexchange services. (Nurse DT, at 20, *citing* 47 U.S.C. § 51.309(b).

Both Mr. Nurse and the CCG panel recognize that the FCC established a 12-month period, from March 11, 2005, for transition of the embedded base of DS1 and DS3 loops where no impairment exists, and an 18-month transition for dark fiber loops. (CCG DT, at 17-18; Nurse DT, at 25.) Mr. Nurse correctly observes that these transition periods "only apply to a CLEC's embedded customer base, and do[] not permit CLECs to add new high-capacity loop UNEs where an unbundling obligation no longer exists." (Nurse DT, at 25.) The CLECs agree that

the transition rates the FCC established for non-impaired DS1 and DS3 loops are 115% of the rate as of June 15, 2004. (*See* Nurse DT, at 25 n. 45; CCG DT, at 18.)

Again, however, despite their recognition that the FCC has removed unbundling obligations for dark fiber loops and for certain DS1 and DS3 loops, the CLECs maintain, in their amendments, the erroneous position that this Commission may require Verizon to continue providing de-listed loops even though Verizon has no obligation to do so.

Q. WHAT IS MR. DARNELL'S POSITION ON ISSUE 4?

A. Mr. Darnell does not state any substantive position on Issue 4 (loops) or Issue 5 (transport). He just argues that Verizon should continue to provide all elements in accordance with MCI's existing agreement until MCI and Verizon have the opportunity to negotiate amendments "in accordance with the existing change of law provisions" in that agreement. (Darnell DT, at 6-7.)

Of course, the parties have been negotiating amendments for some time now. As I pointed out in my Direct Testimony, in a letter sent to MCI and the other CLECs in this proceeding on February 14, 2005, Verizon made clear that its previously released *TRO* Amendment, filed here on September 9, 2005, was suited for implementing the *TRRO*'s no-impairment findings as to the CLECs' embedded base of discontinued UNEs, and that Verizon was prepared to continue negotiating that

amendment (to the extent any negotiations might have been necessary given that Verizon's amendment had already been drafted to implement the *TRRO*). To the extent negotiations have not succeeded, of course, this arbitration is intended to resolve the parties' disputes.

Q. MR. NURSE ARGUES THAT IT IS "IMPORTANT FOR COMPETITORS LIKE AT&T TO HAVE UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AT THE DS1 AND DS3 LEVELS." (NURSE DT, AT 17.) IS THIS TESTIMONY RELEVANT TO RESOLVING ANY ISSUE IN THIS ARBITRATION?

A. No. The FCC has eliminated, on a nationwide basis, unbundling obligations for DS1 and DS3 loops that meet the *TRRO*'s criteria. So it doesn't matter how much AT&T would like to continue receiving these de-listed facilities. This Commission cannot find impairment where the FCC did not. And the statements AT&T cites from the *TRO*, of course, have no effect now that the FCC has determined that CLECs are *not*, in fact, impaired on a nationwide basis without access to high-capacity oops.

Q. IS MR. NURSE CORRECT THAT VERIZON HAS MADE AN FCC FILING INDICATING THAT IT STILL HAS AN OBLIGATION TO PROVIDE ACCESS TO UNBUNDLED DS1 AND DS3 LOOPS AT ALL OF ITS WIRE CENTERS IN FLORIDA? (NURSE DT, AT 22.)

A. Yes. At the request of the FCC's Wire Line Competition Bureau Chief, on February 18, 2005, Verizon filed with the FCC a list of its wire centers

currently qualifying for relief from loop and transport unbundling under the *TRRO* criteria (attached as Ex. AFC-1). This list has also been published on Verizon's website. It shows that none of Verizon Florida's wire centers currently qualify for relief from DS1 or DS3 loop unbundling.

Apparently, the CCG panel has not reviewed Verizon's list, because they propose that the Amendment should include "a comprehensive list of the Verizon wire centers that satisfy the non-impairment criteria for DS1 and DS3 loops set forth in the *Triennial Review Remand Order*." (CCG DT, at 16.) Obviously, there is no need for the Amendment to list offices that meet the FCC's criteria for loop unbundling relief if there aren't any at this time.

Q. DOES MR. NURSE NEVERTHELESS ASK THE COMMISSION TO VERIFY THAT VERIZON IS NOT ENTITLED TO ANY UNBUNDLING RELIEF FOR DS1 AND DS3 LOOPS?

A. Mr. Nurse's testimony in unintelligible on this issue. He first states that there is no need for the Commission to take any further step to verify Verizon's loop certification, then he apparently changes his mind a couple of sentences later and says that Verizon should "provide the Commission, AT&T and other CLECs the wire-center specific information on which it relied in making its certifications." (Nurse DT, at 23.) In the same answer, he names specific types of information Verizon should be required to produce for "each wire center where non-impairment is asserted" and concludes that "[t]his information is

essential to ensure that both the Commission and CLECs are able to properly determine if future classification changes meet the *TRRO* requirements." (*Id.* at 23-24.)

I'm not sure what this testimony is supposed to mean, but the bottom line is that Verizon has not asserted non-impairment for DS1 or DS3 loops in any wire center, so even under Mr. Nurse's own recommendation, there is nothing for Verizon to provide. Indeed, unless the CLECs intend to challenge Verizon's conclusion that no Florida wire centers currently meet the *TRRO*'s exemption criteria, it would be pointless to launch an inquiry into how Verizon reached that conclusion. And information showing that no wire center meets the FCC's non-impairment criteria today tells us nothing about whether a particular wire center might meet the FCC's criteria sometime in the future. In any event, as I discuss below in response to Issue 5, inquiries about wire center certifications for loop or transport availability do not belong in this arbitration.

Q. CCG ARGUES THAT THE AMENDMENT SHOULD ESTABLISH A PROCESS FOR REVIEW AND INVESTIGATION OF FUTURE CLAIMS THAT WIRE CENTERS MEET THE FCC'S CRITERIA FOR UNBUNDLING RELIEF." (CCG DT, AT 16.) IS THAT APPROPRIATE?

A. No. CCG states that the Amendment should require Verizon to submit to CLECs any information supporting a non-impairment claim for a specified wire center; permit either party to submit disputes about wire

center classification to the Commission for resolution; and provide for an annual review of exempt wire centers using the same procedures that CCG proposes for individual non-impairment claims. (CCG DT, at 16-17.)

The Commission must reject this proposal, because it is completely at odds with the process established by the FCC. CCG would have the Amendment require Verizon to show which wire centers meet the FCC's loop non-impairment criteria, not once, but twice—first, when the wire center is certified, and then in the annual review—and then CCG could challenge the non-impairment showing at either or both the initial and annual review processes. This is not the process established in the *TRRO*. Under paragraph 234 of the *TRRO*, "to submit an order to obtain a high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry" in order to certify that it is entitled to unbundled access to the facility under the *TRRO* criteria. If the request "indicates that the UNE meets the relevant factual criteria," the ILEC must process the request. To the extent that an incumbent LEC seeks to challenge a particular CLEC request, *the ILEC* must bring the dispute "before a state commission or other appropriate authority." (*TRRO* ¶ 234 (emphasis added).) At this point, Verizon has not brought any such disputes before the Commission, so there is nothing for the Commission to do. There are enough issues for the Commission to resolve in this arbitration without trying to address hypothetical disputes. If Verizon wishes to challenge a future order from a CLEC for high-

capacity loops or transport, then Verizon will raise that dispute in the manner the FCC prescribed in the *TRRO*, not in this arbitration.

Q. MR. NURSE SUGGESTS THAT A DESIGNATION OF IMPAIRMENT FOR A PARTICULAR WIRE CENTER SHOULD APPLY FOR THE TERM OF THE INTERCONNECTION AGREEMENT. (NURSE DT, AT 24.) IS THERE ANY BASIS FOR THAT POSITION IN THE *TRRO*?

A. No. The FCC did not rule that a wire center that did not meet the FCC's non-impairment criteria when a contract was executed could not meet those criteria during the term of the contract. Indeed, all of the *TRRO* text and rules Mr. Nurse cites prove only that loop and transport unbundling obligations cannot be *re-imposed* once they are eliminated for a particular wire—not that unbundling obligations should persist for potentially years after the FCC's non-impairment criteria are met. (Nurse DT, at 24, *citing TRRO* n. 466; 47 U.S.C. §§ 51.319(a)(4) & (5), (e)(3)(1) & (2).)

Aside from having no grounding in the FCC's rules, Mr. Nurse's proposal makes no sense. Under AT&T's discriminatory approach, some carriers would be able to obtain unbundled DS1 and DS3 loops out of particular wire centers, while others would not, solely because they signed their contracts later after Verizon had certified that the wire centers met the FCC's criteria.

Q. MR. NURSE BELIEVES THAT THE FCC'S 12-MONTH TRANSITION PERIOD FOR THE EMBEDDED BASE OF DE-LISTED HIGH-CAPACITY LOOPS APPLIES TO FUTURE RECLASSIFICATION OF WIRE CENTERS, AS WELL. (NURSE DT, at 25.) IS THERE ANY BASIS FOR THIS BELIEF?

A. No, and Mr. Nurse does not cite any. On the contrary, he admits that carriers are supposed to "negotiate appropriate transition mechanisms through the section 252 process" to address wire centers that are reclassified in the future as meeting the FCC's non-impairment criteria. (Nurse DT, at 25 n. 55, *quoting TRRO* n. 519.) So the FCC has clearly *not* established any transition periods to apply to future wire center reclassifications.

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

Q. DO THE CLECS RECOGNIZE THAT VERIZON NO LONGER HAS ANY SECTION 251 OBLIGATION TO UNBUNDLE DEDICATED INTEROFFICE TRANSPORT, INCLUDING DARK FIBER TRANSPORT, IN SOME CIRCUMSTANCES?

A. Yes. The CCG and Mr. Nurse recognize that CLECs are not impaired without access to entrance facilities connecting an ILEC and CLEC networks in any instance, and that certain DS1, DS3, and dark fiber transport facilities "no longer are available under section 251 of the 1996

Act" (CCG DT, at 19; Nurse DT, at 27-28). Specifically, CLECs are impaired without access to DS1 transport except on routes connecting wire centers that both contain at least four fiber-based collocators or at least 38,000 business access lines. CLECs are impaired without access to DS3 or dark fiber transport except on routes connecting a pair of wire centers where each contains at least three fiber-based collocators or at least 24,000 business lines. (*See* CCG DT, at 19-20; *TRRO* ¶ 5.)

The CCG panel and Mr. Nurse correctly explain that, under the FCC's classification approach, "Tier 1" wire centers are those with four or more fiber-based collocations or 38,000 or more business lines; "Tier 2" wire centers are those that are not Tier 1 wire centers and that have at least three fiber-based collocations or at 24,000 business lines; and "Tier 3" wire centers are those that are not either Tier 1 or Tier 2 wire centers. (*See* Nurse DT, at 28; CCG DT, at 20; *TRRO* ¶¶ 112, 118, 123.) So DS1 dedicated transport remains available except where both ends of the route are Tier 1; and DS3 dedicated transport remains available except if both ends are either Tier 1 or Tier 2 wire centers. (*See* Nurse DT, at 29-30.)

The CLECs further recognize that a CLEC is limited to a maximum of 10 DS1 circuits on a single route, and 12 DS3 circuits on a single route. (*See* Nurse DT, at 29-30; CCG DT, at 23; *TRRO* ¶¶ 128, 131.) And they acknowledge that the FCC prescribed a 12-month transition period for DS1 and DS3 dedicated transport, and 18 months for dark fiber

transport. (Nurse DT, at 33; CCG DT, at 22; *TRRO* ¶¶ 142-44.) Mr. Nurse correctly observes that these transition periods "only appl[y] to a CLEC's embedded customer base and CLECs are prohibited from ordering new transport UNEs not permitted under the *TRRO*'s new rules." (Nurse DT, at 33; *TRRO* ¶ 142.)

Finally, CCG and AT&T recognize that the transitional rates for dedicated transport where no impairment exists are 115% of the rates in effect as of June 15, 2004. (Nurse DT, at 33-34; CCG DT, at 22; *TRRO* ¶145.)

Once again, however, because the CLECs' amendments would allow the Commission to impose unbundling obligations irrespective of the FCC's elimination of those obligations, their amendments do not properly implement governing law.

Q. WHAT IS MCI'S POSITION ON ISSUE 5?

A. Mr. Darnell does not state any substantive position, but just notes that MCI and Verizon should have the opportunity to further negotiate terms of the contract amendment in light of the *TRRO*'s release. (Darnell DT, at 7.) This is just another proposal to slow-roll compliance with federal law. As I discussed earlier, Verizon and MCI have been negotiating the same *TRO* amendment since September of last year, but Verizon remains willing to negotiate *TRRO*-specific changes in response to CLEC requests. Such negotiations will, of course, run concurrently with

this Commission's consideration of the issues.

Q. MR. NURSE ARGUES THAT IT IS "IMPORTANT FOR COMPETITORS LIKE AT&T TO HAVE UNBUNDLED ACCESS TO DEDICATED INTEROFFICE TRANSPORT, INCLUDING DARK FIBER TRANSPORT." (NURSE DT, AT 26.) IS THIS TESTIMONY RELEVANT TO RESOLVING ANY ISSUE IN THIS ARBITRATION?

A. No. As I explained earlier, it doesn't matter how much AT&T wishes to retain a de-listed UNE. This Commission cannot order Verizon to unbundle a particular element when the FCC has ruled that Verizon has no obligation to do so.

Q. MR. NURSE STATES THAT VERIZON HAS CLASSIFIED 9 OF ITS WIRE CENTERS AS TIER 1 AND 4 AS TIER 2. IS THAT RIGHT?

A. Yes. Verizon listed those wire centers in its February 18 submission to the FCC.

Q. DO THE CLECS RECOMMEND FURTHER ACTION WITH RESPECT TO VERIZON'S CLASSIFICATION OF WIRE CENTERS EXEMPT FROM DEDICATED TRANSPORT UNBUNDLING?

A. Yes. Mr. Nurse asks the Commission to initiate a "generic inquiry into the wire centers identified by Verizon as part of this proceeding"; to require Verizon to produce the information supporting its exemption designations; to resolve disputes concerning Verizon's classifications; and to incorporate a list of wire center designations in the amendment.

(Nurse DT, at 32.)

The CCG panel would also require the amendment to list non-impaired wire centers for dedicated transport (CCG DT, at 20-21), derived through the same "review and investigation" process it proposed with respect to DS1 and DS3 loops—that is, Verizon would produce its back-up data for offices when they are classified as non-impaired and again during an annual review, and the CLEC could challenge Verizon's conclusions at either or both points, through a Commission proceeding. (CCG DT, at 20-221.)

Q. ARE THESE PROPOSALS ACCEPTABLE?

A. No. As I explained above, the FCC set forth a specific process under which CLECs would certify their entitlement to particular facilities and Verizon would provide those facilities subject to its right to then initiate dispute resolution proceedings before the appropriate authority. (*TRRO* ¶ 234.) Verizon has not yet initiated any such disputes, so the Commission need not waste its time and resources trying to anticipate and address potential future disputes.

The CLECs cannot force Verizon to accept an alternative system for ordering UNE loops and transport and for resolving related disputes that differs from the system established by the FCC. Again, paragraph 234 of the *TRRO* requires "a requesting carrier" to undertake a reasonably diligent inquiry before ordering a UNE loop or transport and then based

on that inquiry "self-certify" that the order is consistent with the *TRRO*'s requirements. In contrast, the CLECs ask *the Commission* to conduct that inquiry and ask *the Commission* – by its decision in this arbitration – to certify which central offices satisfy which FCC criteria. Paragraph 234 anticipates that the requesting carrier will undertake an inquiry each time it prepares to submit a UNE loop or transport order, but the CLECs would have a single inquiry conducted now and presumably would rely on the results of that inquiry in submitting all future orders.

More importantly, the case-by-case dispute resolution process set forth in paragraph 234 is sufficiently flexible to account for changes in facts affecting central offices, such as installation of new collocation arrangements. In contrast, the CLECs seek to freeze in place an initial decision applying the FCC's unbundling criteria to every central office in the state, by memorializing it in a list of offices to be incorporated into the interconnection agreements. Presumably, the CLECs will seek to prohibit any changes in that list outside of a lengthy negotiation and arbitration process. Verizon is not obligated to agree to the CLECs' alternative arrangement, and the CLECs have no right to force it upon Verizon in this arbitration.

Q. HAS VERIZON MADE AVAILABLE THE INFORMATION UNDERLYING ITS WIRE CENTER CERTIFICATIONS?

A. Yes. So, contrary to the CLECs' suggestions, there is no need for the Commission to compel Verizon to do so, either in this arbitration or

anywhere else. As Verizon has informed carriers by means of an industry letter that is published on its website, where Verizon has certified that a particular wire center meet the FCC's criteria for loop or transport unbundling relief, and a CLEC requests Verizon's back-up data, Verizon will provide it upon execution of an appropriate non-disclosure agreement. In fact, Verizon has provided the back-up data to all CLECs that have signed the non-disclosure agreement. So even if the CLECs' "investigative" procedures were permissible (and they are not), they would not be necessary, because Verizon is already providing the supporting data for its identification of wire centers meeting the FCC's non-impairment criteria.

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

Q. HOW DO THE CLECS RESPOND TO THIS QUESTION?

A. None of the CLEC witnesses directly addresses it. Mr. Nurse doesn't answer the question at all. Mr. Darnell takes the position he does on all the issues—that is, the parties must negotiate changes, including pricing changes. And the CCG states that Verizon may re-price in accordance with the *TRRO*'s transitional rate increases, but doesn't offer any opinion as to what happens after the transition period is over.

Q. WHAT IS YOUR RESPONSE TO THE CLECS' LIMITED TESTIMONY ON THIS ISSUE?

A. The CCG is correct that Verizon must re-price de-listed UNEs at the FCC-prescribed transitional rates, but those rates last only until the de-listed UNEs are eliminated or converted to other arrangements no later than the end of the transition on March 11, 2006 (or, for dark fiber, September 11, 2006). Once a service is no longer a UNE and the transition period has passed, Verizon is entitled to discontinue that UNE. As I discussed in my Direct Testimony, however, Verizon's Amendment would allow the CLEC to continue de-listed facilities under separate arrangements, with repricing equivalent to access, resale, or other analogous arrangements, as Verizon deems appropriate (unless, of course, the CLEC requests disconnection). (Amendment 1, § 3.2.) Verizon's Amendment specifies that any negotiations for replacement arrangements shall be deemed not to have been conducted pursuant to section 252 of the Act or the FCC's rules, and shall not be subject to arbitration. (Amendment 1, § 3.3.) Contrary to Mr. Darnell's conclusion, the rates for new commercial arrangements do *not* need to be negotiated or filed in an interconnection agreement with the Commission. This is a legal issue, however, and it will be fully addressed in Verizon's brief.

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

Q. HOW DO THE CLECS ANSWER THIS QUESTION?

A. Mr. Nurse takes no position on this issue. The CCG argues Verizon can't "circumvent the change of law process" in interconnection

agreements by providing notice of discontinuation of a UNE before agreements are amended to reflect changes in unbundling rules. (CCG DT, at 27-28.) Mr. Darnell agrees that Verizon's proposed 90-day advance notice of discontinuation of de-listed UNEs is acceptable (Darnell DT, at 9), but argues that Verizon's language allowing it to rely on notices of discontinuation issued before the effective date of removal of an unbundling obligation is unnecessary, given MCI's proposed limitation on the scope of the definition of "Discontinued Element" in its amendment. (Darnell DT, at 9-10.)

Q. HOW DO YOU RESPOND TO THE CLECS' TESTMIONY?

A. They seem to be missing the point. As to the elements de-listed in *TRO* rulings that were not challenged or that were affirmed over a year ago in *USTA II*, unbundling requirements for these services were removed long ago, even though the CLECs have obstructed efforts to amend their contracts to implement these delistings. Because the effective date of elimination of unbundling obligations for these elements has long since passed, there should be no question about Verizon's ability to rely on the October 2, 2003 and May 18, 2004 notices it already sent regarding discontinuation of the *TRO* elements. As I explained in my Direct Testimony, by the time this arbitration concludes, the CLECs will have had over a year's advance notice of discontinuation of enterprise switching, and closer to two years' advance notice of discontinuation of the *TRO* elements covered by the October 2, 2003 notice. Given the outrageously long period these CLECs have kept de-listed elements,

there is certainly no reason to reward their recalcitrance by giving them yet *another* three months' notice of discontinuation after the amendments take effect.

For the elements de-listed in the *TRRO*, it appears the CLECs are trying to override the FCC's mandatory transition plan with their advance notice proposals. The FCC has given CLECs a year from March 11, 2005 (or 18 months, in the case of dark fiber facilities) to finish converting their embedded base of de-listed facilities to alternative, commercial arrangements, or disconnecting them. During the transition period, Verizon and the CLECs are to work out the operational issues to ensure that the transition of the entire base is complete at the end of the relevant transition period. In this regard, Verizon's notice dated February 10, 2004 (and discussed in my Direct Testimony) asked CLECs with facilities or arrangements de-listed in the *TRRO* to contact their Verizon account manager no later than May 15, 2005 in order to review their proposed transition plans. Therefore, there should be no "notice" issue because Verizon and the CLECs will presumably have agreed on the timing of the conversions and the commercial arrangements that will govern services going forward. CLECs cannot, in any event, extend the FCC-mandated transition period by refusing to agree to convert their embedded base within the periods the FCC has set, or by dragging out execution of amendments until the end of the transition period. To the extent that the CLECs are suggesting that anything in their existing agreements would allow them to alter the FCC-

mandate transition period and keep receiving service after the transition period has expired, they are wrong. Verizon will more fully address the legal aspects of this issue in its brief.

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

Q. THE CLECS UNIFORMLY PROPOSE DENYING VERIZON THE RIGHT TO REOCVER ANY NON-RECURRING COSTS IT MAY INCUR IN DISCONNECTING UNES AND RECONNECTING SERVICE UNDER AN ALTERNATIVE ARRANGMENT. IS THEIR POSITION DEFENSIBLE?

A. No. Verizon is not proposing, in this arbitration, any new, non-recurring charges associated with conversion of UNE arrangements to replacement services. However, if Verizon incurs additional costs in setting up an alternative service, Verizon is entitled to seek recovery of those costs later. Nothing in the Amendment should foreclose Verizon's ability to do so.

n addition, as Verizon will discuss in its brief, the Commission cannot mpose any constraints on Verizon's ability to negotiate non-recurring charges in the context of non-section-251 commercial agreements or other arrangements that are not subject to the negotiation and arbitration requirements of section 252.

Q. MR. DARNELL SUGGESTS DENYING VERIZON THE RIGHT TO CHARGE EVEN RATES THAT THE COMMISSION HAS ALREADY ESTABLISHED. (DARNELL DT, AT 10.) WHAT IS YOUR RESPONSE?

A. Mr. Darnell suggests that Verizon should not be permitted to assess its existing, Commission-approved loop disconnect charges on "loops that are not disconnected or on loops that are disconnected as part of a group or batch request." Mr. Darnell does not indicate that he has reviewed the cost studies underlying the existing rates, so I think he is just assuming, without any support, that they are inappropriate for group disconnections. In short, as long as any Commission-approved rates apply to the activity Verizon is performing, Verizon is entitled to recover them. If Verizon charges any Commission-approved loop disconnection rate in the future and MCI claims Verizon is not entitled to do so, it can bring a complaint before the Commission. But there is no need to resolve purely hypothetical disputes about rate application in this arbitration.

Q. MR. NURSE AND THE CCG PANEL ARGUE THAT, IF VERIZON INCURS ANY COSTS TO CONVERT UNES TO REPLACEMENT ARRANGMENT, VERIZON IS THE "COST CAUSER" AND SHOULD BEAR THOSE COSTS. (NURSE DT, AT 35; CCG DT, AT 28.) IS THAT CORRECT?

A. Absolutely not. Any disconnect or other costs of moving UNEs to replacement services are not the "result of Verizon's decision to forego

unbundling," as CCG asserts. (CCG DT, at 28.) They are the result of the CLEC's decision to order unbundled services to which they were never entitled in the first place. In the years following adoption of the 1996 Act, the FCC repeatedly adopted unbundling rules that were unlawfully overbroad. In the *TRO,* the FCC finally began the process of placing meaningful limitations on incumbents' unbundling obligations under section 251(c)(3), a process that it continued in the *TRRO.* Verizon did not voluntarily provide the UNEs that have been discontinued, so it is not simply deciding to "forego unbundling." It is implementing the FCC's rules, under which it is entitled to discontinue UNEs to which the CLECs have no right. Verizon cannot be penalized for following the law.

Q. DID THE FCC PROVIDE ANY GUIDANCE ON THIS ISSUE, AS MR. NURSE SUGGESTS?

A. No, and Mr. Nurse admits that the FCC said nothing in the *TRRO* that would prohibit ILECs from recovering the costs they incur to transition UNEs to replacement services. (Nurse DT, at 35.) He simply suggests that Verizon should not be permitted to impose any charges for conversion of UNEs to non-UNEs because the FCC has constrained the ILECs' ability to impose charges for converting wholesale services to UNEs. (*Id.* at 35-36, citing 47 U.S.C. § 51.316(b) & (c).) Mr. Nurse does not attempt to explain his logic behind applying the limitations on wholesale-to-UNE conversion charges to exactly the *opposite* situation of converting from UNEs to commercial, wholesale alternatives,

because there is none. There is no reason for Verizon to pay for converting a CLEC from a UNE to which it has no legal right.

Q. MR. NURSE CONTENDS THAT IT IS UNLIKELY VERIZON WOULD INCUDE ANY COSTS FOR CONVERTING UNES TO REPLACEMENT ARRANGEMENTS. (NURSE DT, AT 36.) IS THERE ANY EVIDENCE TO SUPPORT THIS STATEMENT?

A. No. Mr. Nurse is simply speculating, without any support, that there is no work involved in any instance where Verizon moves a CLEC to any UNE replacement service. The Commission cannot decide to deny Verizon recovery of any costs it might seek to charge in the future on the basis of Mr. Nurse's speculation that there are no costs associated with any of the activities Verizon might undertake to convert UNEs to UNE replacement services. There is no need to address, in this arbitration, Mr. Nurse's guess about what those costs might or might not be, and no basis for including language in the Amendment prohibiting Verizon from seeking to recover any costs it may incur.

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

Q. HOW DO THE CLECS ADDRESS THIS ISSUE?

A. Mr. Nurse does not address Issue 9, and Mr. Darnell and the CCG panel simply testify that the definitions section of the amendment should track federal law. (Darnell DT, at 4, ST, at 11.)

Q. DO YOU AGREE?

A. I agree that the Amendment's definitions should be consistent with the *TRO* and *TRRO*, but Verizon disagrees that the CLECs' proposed definitions do, in fact, track federal law. But this is a legal issue, so Verizon will explain in its brief why its proposed definitions correctly implement federal law and why the CLECs' proposals do not.

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

Q. DO THE CLECS CONTEND THAT VERIZON HAS NOT FOLLOWED THE CHANGE-OF-LAW OR DISPUTE RESOLUTION PROVISIONS OF ITS EXISTING CONTRACTS?

A. I don't think so, but it's hard to tell what they're trying to get the Commission to do in resolving this issue. They all say Verizon must follow existing change-of-law and dispute resolution provisions, and AT&T correctly notes that the *TRRO* referred to the section 252 negotiation and arbitration process. (Nurse DT, at 36-37; Darnell DT, at 11; CCG DT, at 29-30.) All the CLECs claim their contracts require Verizon to negotiate amendments to implement changes in its unbundling obligations. (Nurse DT, at 37; Darnell DT, at 11; CCG DT, at 30.)

I have not reviewed all of the change-of-law and dispute resolution

language in the contracts at issue in this case, and, to the extent interpretation of that language might become necessary, I will leave it to Verizon's lawyers. But I understand that Verizon has and will continue to follow its existing contracts to implement changes in unbundling obligations, unless they are inconsistent with FCC mandates or the process the FCC established to change agreements, where necessary. In particular, no amendments are necessary to implement the FCC's mandatory transition plan, including the no-new-adds directive, contrary to the CCG's erroneous view (CCG DT, at 30). The bottom line is that Verizon *has* negotiated—for 18 months in the case of the *TRO* delistings—and *has* initiated the section 252 arbitrations the FCC advised carriers to use in both the *TRO* and the *TRRO* (as to the embedded base of UNEs discontinued under the *TRRO*). The parties' disputes about implementation will be resolved through this arbitration, and none of the CLECs have invoked any other dispute resolution process. Amendments *must* be completed and the resulting conversions finished by March 11, 2006. If any CLECs believe they can rely on their change-of-law provisions or anything else in their contracts to override the FCC's deadline for transition of their embedded base of de-listed UNEs to replacement arrangements, they are wrong, as Verizon will discuss further in its brief.

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

Q. DO THE CLECS RECOGNIZE THAT THE *TRRO* GOVERNS IMPLEMENTATION OF THE RATE INCREASES PRESCRIBED IN THE FCC'S NEW UNBUNDLING RULES?

A. AT&T, at least, seems to recognize that the effective date for the FCC's transition rates is non-negotiable: "The *TRRO* provides that the transition rates apply starting the effective date of the order (March 11, 2005)." (Nurse DT, at 38.) Mr. Nurse also acknowledges that Verizon is entitled to a true-up to the transitional rates once contracts are amended. (*Id.* at 38.) As I noted earlier, the CLECs agree that the FCC gave carriers only until the end of the 12-month transition period to amend their contracts (or 18 months, for dark fiber facilities) and dispose of the embedded base of UNEs de-listed under the *TRRO*.

For rate increases, in general, Verizon's Amendment provides that it may implement any rate increases or new charges by issuing a schedule of those new rates to take effect on the same terms that the FCC may require. Verizon Amendment 1, § 3.5. In response to CLEC proposals in negotiations, Verizon has agreed to add language recognizing that Verizon may use a true-up mechanism as contemplated in the *TRRO*.

Q. DO CCG AND MCI RECOGNIZE VERIZON'S RIGHT TO THE FCC'S TRANSITIONAL RATES AS OF MARCH 1, 2005?

A. It's hard to tell. They recognize that the FCC has imposed transitional rates, but suggest that they may attempt to use the change-of-law

process in existing agreements to avoid the March 1, 2005 effective date, and maybe even the rates themselves. (CCG DT, at 31-32; Darnell DT, at 12.) MCI, for example, says that if Verizon does not give notice of rate changes to MCI's satisfaction, then it may seek dispute resolution "before the new rates go into effect." (Darnell DT, at 12.) Again, as Verizon will explain in the brief, the effective date of the FCC's transition rates and the rates themselves are not negotiable, but are part of the FCC's mandatory transition plan that does not depend on any particular contract language for implementation.

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

Q. DOES VERIZON AGREE WITH MR. NURSE THAT THE *TRO* ELIMINATED PREVIOUS COMMINGLING RESTRICTIONS?

A. Yes. In the *TRO*, the FCC removed its commingling restrictions to permit CLECs to commingle UNEs and combinations of UNEs with other wholesale services, subject to eligibility criteria that apply for commingled EELs. (*See* Nurse DT, at 39; *TRO* ¶ 579.) Therefore, Verizon's proposed language provides that Verizon will not prohibit commingling of UNEs with wholesale services (to the extent it is required under federal law to permit commingling) (Verizon Amendment 2, § 3.4.1.1.) As Mr. Nurse recognizes, the elimination of the commingling prohibition was a rule change (Nurse DT, at 39), not

merely a "clarification" of any existing requirements, as the CCG panel incorrectly suggests (CCG DT, at 32).

Q. MR. NURSE CONTENDS THAT VERIZON WAS REQUIRED TO PERFORM COMMINGLING IMMEDIATELY UPON THE *TRO*'S EFFECTIVE DATE, APPARENTLY WITHOUT AN AMENDMENT. IS THAT WHAT THE FCC SAID?

A. No. Verizon will deal with this legal issue in more detail in its briefs, but I don't see anything in the *TRO* or in the rule Mr. Nurse cites, section 51.318, that required Verizon to provide commingling immediately upon the October 2, 2003 effective date of the *TRO*. Commingling was one of the new requirements imposed in the *TRO*, and the FCC expected carriers to amend their contracts to reflect those new requirements. By blocking implementation of the UNE delistings in the *TRO* for the past year and a half, the CLECs have also blocked implementation of the elimination of commingling restrictions. The CLECs have no basis to claim entitlement to any retroactive pricing adjustments for commingled arrangements, unless they are also willing to agree to retroactive pricing adjustments for the UNEs that were eliminated in the *TRO*.

Q. DOES MR. NURSE AGREE WITH VERIZON'S PRICING TREATMENT FOR COMMINGLED FACILITIES?

A. He appears to agree with Verizon's proposal to apply the tariffed access rate or the rate from a separate non-section-251 agreement, as applicable, to the non-UNE portion of the commingled arrangement, and

to apply the established UNE rate to the UNE portion of the commingled arrangement. (*See* Nurse DT, at 42; Verizon Amendment 2, § 3.4.1.1.) He takes issue, however, with Verizon's proposal to recover its costs for performing the commingling. In its pricing attachment to Amendment 2, Verizon proposes service order, installation, and manual intervention charges in connection with commingling. Verizon's Amendment 2, section 4.1.1 specifies that these non-recurring charges "offset Verizon's costs of implementing and managing commingled arrangements."

Although Mr. Nurse testifies that commingling-related charges are not appropriate under the *TRO* (Nurse DT, at 43), he doesn't cite any authority that prohibits Verizon from recovering its costs of commingling. Where Verizon incurs costs for performing an activity for a CLEC, it is entitled to recover those costs, and the Amendment should recognize this principle. As I explained in my Direct Testimony, Verizon does not seek to litigate a cost study in this time-constrained arbitration, but rather asks the Commission to approve Verizon's proposed prices on an interim basis, pending conclusion of a pricing proceeding.

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

Q. DOES VERIZON AGREE WITH THE CLECS THAT THE INERCONNECTION AGREEMENT SHOULD BE AMENDED TO

ALLOW CARRIERS TO CONVERT TARIFFED SERVICE TO UNES, PROVIDED THAT THE FCC'S SERVICE ELIGIBILITY CRITERIA ARE MET? (NURSE DT, AT 44; CCG DT, AT 33.)

A. Verizon does not object to reflecting the FCC's new conversions requirements in its contracts, and it has done so in its Amendment 2. The CLECs have discussed conversions primarily in the context of issue 21, which addresses several aspects of EELs conversions, so I will also discuss conversion in more detail under that Issue.

Issue 14(a): *Should the ICAs be amended to address changes, if any, arising from the TRO with respect to line splitting?*

Q. DO ANY OF THE CLECS CITE ANY CHANGES MADE IN THE *TRO* WITH RESPECT TO LINE SPLITTING?

A. No. The FCC did not impose a line splitting requirement in the *TRO*, but reaffirmed that ILECs were already required to perform line splitting. (*TRO* ¶ 251.) Although it adopted line-splitting-specific rules for purposes of regulatory certainty, there is no need for Verizon's *TRO* Amendment to address line splitting, because its underlying contracts typically do so already. The CLECs have not claimed otherwise. To the extent any CLEC in this proceeding does not already have line-splitting provisions in its contract, Verizon has a standard line-splitting amendment that it has offered to provide upon request.

Issues 14(b) and 14(c): *Should the ICAs be amended to address changes, if any, arising from the TRO with respect to newly built and overbuilt FTTP loops?*

Q. DO THE CLECS IDENTIFY ANY SPECIFIC DISPUTES WITH RESPECT TO VERIZON'S TREATMENT OF FTTP IN ITS AMENDMENT?

A. Only one. Mr. Nurse says the "primary disagreement" between AT&T and Verizon with regard to these issues is that Verizon uses the acronym FTTP (fiber-to-the-premises) in its amendment, while AT&T uses FTTH (fiber-to-the-home). (Nurse DT, at 45-46.) Mr. Nurse asserts that Verizon's use of FTTP is inconsistent with FCC rules and intended to unlawfully limit its unbundling obligations. (*Id.* at 46.)

To put this dispute in context, in the *TRO*, the FCC found that CLECs are not impaired without unbundled access to "loops consisting of fiber from the central office to the customer premises." (*TRO* ¶ 211.) Thus, the FCC held that "[i]ncumbent LECs do not have to offer unbundled access to newly deployed or 'greenfield' fiber loops." (*Id.* at ¶ 273.) In overbuild situations—that is, that is, where Verizon builds a new FTTP loop to serve a customer currently served by a copper loop and then retires the existing copper loop—Verizon's unbundling obligation is limited to providing nondiscriminatory access to a voice-grade transmission path. (See Verizon Amendment 2, § 3.1; *TRRO* ¶ 277.) To the extent that AT&T can limit the FCC's unbundling relief to only the

"home," rather than "premises," it can expand Verizon's unbundling obligations.

Whether Verizon's FTTP proposal complies with the FCC's rules is a legal issue that is more appropriately addressed in the briefs. But I understand that Verizon's FTTP terminology is consistent with the FCC's own use of "premises" in the *TRRO*, and that AT&T fails to fully implement two orders, released after the *TRO*, that clarify the scope of the FCC's rules and confirm that the FCC's restriction of unbundling obligations is not limited to just the "home."

Issues 14(d), (e) & (f): *Should the ICAs be amended to address changes, if any, arising from the TRO with respect to access to hybrid loops for the provision of broadband services; access to hybrid loops for the provision of narrowband services; and/or retirement of copper loops?*

Q. DO THE PARTIES RAISE ANY SPECIFIC DISPUTES AS TO THESE ISSUES?

A. No. Because there is nothing specific to rebut, Verizon will leave to its legal brief its explanation as to why its proposals on these issues will properly implement the FCC's rules, while the CLECs' proposals will not.

Issue 14(g): *Should the ICAs be amended to address changes, if any, arising from the TRO with respect to line conditioning?*

Q. DO THE CLECS IDENTIFY ANY CHANGES THE *TRO* MADE IN VERIZON'S LINE CONDITIONING OBLIGATIONS?

A. No, because the FCC did not impose any new line conditioning obligations in the *TRO*. Instead, it simply "readopt[ed] the [FCC's] previous line and loop conditioning rules" set forth in the *UNE Remand Order*." (*TRO* ¶ 642.) Therefore, contrary to Mr. Nurse's testimony, there is no need for the *TRO* Amendment to "contain provisions spelling out its obligations to perform line conditioning." (Nurse DT, at 47.) Those obligations are, in most cases, already spelled out in the underlying interconnection agreements. As in the case of line-splitting, Verizon has offered line conditioning terms in its standard contract for years. If a particular CLEC lacks line conditioning terms in its agreement, Verizon will provide its standard amendment. But there is no need to waste time, in this consolidated arbitration to consider *changes* in unbundling obligations, restating pre-existing rules that are already reflected in most (if not all) of Verizon's interconnection agreements.

Q. MR. NURSE SAYS THAT VERIZON'S NON-RECURRING CHARGES FOR LINE CONDITIONING ARE UNLAWFUL. (NURSE DT, AT 48.) IS THAT TRUE?

A. No, and Verizon will more fully answer this legal question in its brief. But I would point out that the charges for removal of load coils and bridged taps that Mr. Nurse calls unlawful were already approved by this Commission in its November 2002 UNE rate-setting order, and Verizon

is not seeking to change these currently effective rates. (*See* Verizon Amendment 2, Pricing Attachment.)

Issue 14(h): *Should the ICAs be amended to address changes, if any, arising from the TRO with respect to packet switching?*

Q. DO THE CLECS IDENTIFY ANY SPECIFIC DISPUTES RELATING TO THIS ISSUE?

A. Mr. Nurse identifies one. Although he grudgingly admits that Verizon has no unbundling obligation with respect to packet switching (Nurse DT, at 49), he nevertheless proposes to require Verizon to "provide AT&T with 12 months notice for any switch change that would eliminate the availability of circuit switching prior to March 11, 2006, and ensuring that regardless of Verizon's decision to deploy packet switching, it is obligated to continue to provide local circuit switching functionality to AT&T for its UNE-P customers until such time as Verizon is not longer required to provide UNE-P, i.e., the FCC-mandated transition period." (Nurse DT, at 50.) In other words, AT&T asks the Commission to apply the FCC's transition period to packet switching, even though the FCC did not do so, and even though packet switching is not a UNE.

Verizon will address this issue in detail in its legal brief, but it should be obvious that this Commission cannot impose a packet switching unbundling obligation where the FCC has consistently and explicitly declined to do so. (*See, e.g.*, *TRO* ¶ 537. ("on a national basis...

competitors are not impaired without access to packet switching"); ¶ 539 ("there do not appear to be any barriers to deployment of packet switches that would cause us to conclude that requesting carriers are impaired with respect to packet switching").)

In fact, in the *TRO*, the FCC expressly encouraged carriers to replace circuit switches with packet switches, even while recognizing that the result of such replacement would be the elimination of the incumbent's unbundling obligations. As the FCC explained, "to the extent there are significant disincentives caused by unbundling of circuit switching, incumbents can *avoid* them by deploying more advanced packet switching." (*Id.* at ¶ 447 n.1365 (emphasis added).) As Verizon will discuss more fully in its brief, neither this Commission nor any others (including the Washington and California Commissions Mr. Nurse mentions) has any authority to contradict the FCC's binding judgment in this regard.

Aside from any legal issues, this is another case of CLECs creating disputes that are purely hypothetical. Verizon has not replaced or announced that it will replace any circuit switches with packet switches in Florida anytime soon, so there is no need for the Commission to consider AT&T's amendment language imposing packet switching obligations on Verizon. In the event that Verizon replaces any circuit switches with packet switches in Florida in the next year, AT&T can bring any purported concerns about customer disruption to the

Commission at that point—which AT&T would, no doubt, do even if the Commission were to approve its amendment language.

Issue 14(i): *Should the ICAs be amended to address changes, if any, arising from the TRO with respect to network interface devices (NIDs)?*

Q. DOES ANY CLEC RAISE ANY SPECIFIC DISPUTES WITH REGARD TO THIS ISSUE?

A. Only Mr. Nurse, and he admits that, in fact, there may not be a dispute between Verizon and AT&T about Verizon's NID unbundling obligations. He nevertheless argues that the Amendment must address NIDs to "insure the avoidance of doubt" about Verizon's obligation to access the NID on a stand-alone basis, as well as part of a full loop. (Nurse DT, at 51.) But there is no doubt about NID unbundling. NIDs (which connect loop distribution facilities to customer premises wiring) have been on the list of UNEs since the FCC's first Order implementing the Act in 1996. The FCC did not change its NID rules in the *TRO*, but merely reaffirmed its previous rules: "We conclude that the NID should remain available as an UNE as the means to enable a competitive LEC to connect its loop to customer premises inside wiring." (Id. at ¶ 356.)

Mr. Nurse does not appear to know that Verizon's contracts, including the AT&T contract, already address the FCC's current NID requirements. (*See* AT&T/Verizon Interconnection Agreement, Att. 2, at 1, § 2.1, stating, among other things, that "[the NID may be ordered as a

Network Element independently from the Loop Distribution".) In addition, this Commission in its 2002 UNE rate-setting proceeding set rates for both stand-alone NIDs and for loops including NIDs. (*Investigation into Pricing of Unbundled Network Elements*, Order No. PSC-02-1574-FOF-TP, at 306-07 (App. A-1) (Nov. 15, 2002).) Because the FCC's NID unbundling requirements did not change with the *TRO*, and because the Commission has already addressed NID unbundling in the way Mr. Nurse contemplates, there is no reason to revisit this issue in this arbitration.

Issue 14(j): *Should the ICAs be amended to address changes, if any, arising from the TRO with respect to line sharing?*

Q. DO ANY OF THE CLECS RAISE SPECIFIC DISPUTES REGARDING THIS ISSUE?

A. No, so Verizon will explain in its brief why its treatment of line sharing in the Amendment properly implements federal law, while the CLECs' proposals do not.

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

Q. DO THE PARTIES DISAGREE ON THIS ISSUE?

A. All of the parties seem to agree on the general principle that the effective date of the Amendment should be the date of execution of an

amendment that conforms to the Commission's rulings. (*See* Darnell DT, at 15; CCG DT, at 35; Nurse DT, at 52.) The CLECs, however, try to carve out certain exceptions to the effective date that are unacceptable. CCG argues that the commingling and conversions rates should be retroactive to the effective date of the *TRO* (CCG DT, at 35). Based on Mr. Nurse's testimony on the more specific conversions and commingling issues, I believe AT&T takes this position as well. The Commission should reject CLEC attempts to pick and choose certain provisions to exempt from the contract effective date in order to get a retroactive benefit. If the CLECs want retroactive pricing, then the Commission should approve retroactive prices for everything, including the UNEs that the CLECs in this arbitration retained for two years after they were eliminated as a matter of federal law.

CCG also seems to suggest that the FCC's transition rates for de-listed elements would take effect as of the date stated in the controlling FCC rule or order, rather than at execution of the contract. (CCG DT, at 35.) If this is what CCG means, then Verizon agrees. As noted, the FCC's mandatory transition plan includes a true-up, back to March 11, 2005, to the transition rates upon amendment of the relevant contracts to the extent the contracts do not already give effect to FCC-ordered rate increases.

Issue 17: *Should Verizon be subject to standard provisioning intervals or performance measurements and potential remedy payments, if any, in the*

underlying Agreement or elsewhere, in connection with its provision of:

a) unbundled loops in response to CLEC requests for access to IDLC-served hybrid loops;

b) Commingled arrangements;

c) Conversion of access circuits to UNEs;

d) Loops or Transport (including Dark Fiber Transport and Loops) for which Routine Network Modifications are required?

Q. THE CLECS ARGUE THAT ALL OF THESE *TRO*-RELATED ITEMS SHOULD BE SUBJECT TO EXISTING PERFORMANCE MEASURES AND INTERVALS. DOES THAT MAKE SENSE?

A. No. These are new activities the *TRO* required Verizon to perform, so it makes no sense to try to apply performance measure and intervals that were not developed for these activities. For example, the CLECs would apparently apply loop provisioning metrics to unbundled loops to loops provided in response to requests for access to IDLC-served loops. As explained in Verizon's panel testimony, new loop construction may be necessary in instances where there are no spare copper loops or UDLC systems available. It is plainly unreasonable to expect Verizon to complete new construction in the same time it would take to furnish unbundled access to an already existing loop.

To take another example, Verizon did not have to perform commingling before the *TRO* removed commingling restrictions. Providing and managing a UNE service in conjunction a non-UNE wholesale service is

necessarily more complex than providing and managing the standalone UNE.

Q. MR. NURSE ASSERTS THAT VERIZON IS TRYING TO "EXEMPT ITSELF FROM THE REQUIREMENTS OF THE COMMISSION'S PLAN FOR ROUTINE NETWORK MODFICIATIONS." (NURSE DT, AT 58.) WHAT IS HE TALKING ABOUT?

A. I have no idea. I am not aware of any "plan" this Commission has for routine network modifications. To the extent Mr. Nurse's comment is related to his unsupported assumption that Verizon's existing loop rates already recover routine network modification charges (Nurse DT, at 58-59), I would just emphasize that this Commission has never found that the costs for routine network modifications are included in Verizon's existing loop rates.

Q. DOES MR. NURSE ACKNOWLEDGE THAT THIS PROCEEDING IS NOT THE PLACE TO CONSIDER PERFORMANCE MEASURES AND REMEDIES?

A. Yes. In my Direct Testimony, I pointed out that performance measurement proposals are governed by the Stipulation on Verizon Florida Inc. Performance Measurement Plan that the Commission adopted in Docket No. 000121C-TP. (Ciamporcero DT, at 17.) Despite his testimony about application of performance metrics, remedies, and intervals to the new *TRO* items, Mr. Nurse states in a footnote that it would be "an administrative nightmare" to apply different standards to

different CLECs, and that "[a]ny modifications or exceptions to the Commission's metrics and remedies program should be addressed in the docket established for that purpose, after notice to all carriers." (Nurse DT, at 59 n. 84.) That is exactly my point. As Mr. Nurse recognizes, there is already a docket open to address performance measures, and the parties have agreed on very specific procedures to consider new performance plan issues. Issues of industry-wide interest—such as the application of performance standards to the new activities required in the *TRO*—belong in the generic docket, not in this arbitration with individual carriers. That is why the hot cuts issue was dropped from the case, and the same rationale applies here.

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

Q. IS THERE ANY EXISTING DISPUTE ABOUT REVERSE COLLOCATION REQUIREMENTS?

A. I don't think so. Mr. Nurse (the only CLEC to address this issue) observes that the FCC, in a footnote in the *TRO* noted that if an ILEC "has local switching equipment . . . 'reverse collocated' in a non-incumbent LEC premises, the transmission path from this point back to

the incumbent LEC wire center shall be unbundled as transport." (*See* Nurse DT, at 64-65; *TRO* ¶ 369 n.1126.) Verizon will comply with the FCC's requirements in this regard, but this issue is moot, because to the best of Verizon's knowledge, the situation described in this issue does not exist anywhere in the real world, and in particular, in Florida. I am told that there is no instance where Verizon owns "local switching equipment" installed at a CLEC premise, nor does Verizon intend to establish any such arrangement in Florida. It is therefore unnecessary for the Commission to consider language to address this hypothetical issue.

To the extent the Commission does order language in the contract to address the *TRO*'s "reverse collocation" statement, it should closely track the FCC's language, rather than trying to add the reverse collocation issue to the definition of dedicated transport, as Mr. Nurse suggests. (Nurse DT, at 65.)

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

Q. DOES MR. NURSE ACKNOWLEDGE THAT NEITHER THE *TRO* NOR THE *TRRO* IMPOSED ANY NEW REQUIREMENTS WITH REGARD TO TELRIC PRICING OF INTERCONNECTION TRUNKS BETWEEN A VERIZON WIRE CENTER AND A CLEC WIRE CENTER?

A. Yes. As Mr. Nurse observes, when the FCC excluded entrance facilities from the definition of dedicated transport in the *TRO*, it stated that this exclusion "did not alter" any obligations ILECs had to provide interconnection trunks at TELRIC prices pursuant to section 251(c)(2). He, likewise, quotes the *TRRO* statement making clear that the FCC's non-impairment finding for entrance facilities "does not alter" CLECs' right to obtain interconnection facilities pursuant to section 251(c)(2) at TELRIC rates. (Nurse DT, at 66-67.) Thus, Mr. Nurse (the only CLEC to have provided testimony on this issue) plainly understands that neither the *TRO* nor the *TRRO* modified any pre-existing rights or obligations relating to the use of interconnection facilities under section 251(c)(2). Therefore, it is unclear why the CLECs think that it would be proper to litigate it in this proceeding to address *changes* in unbundling rules.

Parties' existing interconnection agreements already contain terms regarding interconnection architecture, and there has been no change in unbundling obligations that would justify renegotiation or arbitration of such issues. The network architecture attachments of interconnection agreements address not only the parties' financial responsibility for interconnection facilities under 251(c)(2), but also a host of related provisions that typically reflect the outcome of bargaining and mutual concessions on related issues such as the number and location of points of interconnection the CLEC must establish in a LATA and the per-minute rate of compensation for the exchange of traffic. CLECs

should not be permitted to seek new contract language on one aspect of interconnection—where *no* rules have changed—without regard to how their new (and unnecessary) language might affect architecture provisions in their underlying agreements. There is no reason—and indeed, it would be wholly inappropriate-- for the Commission to undertake such complex inquiries here.

Issue 21: *What obligations under federal law, if any, with respect to EELs should be included in the Amendment to the parties' interconnection agreements?*

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

Q. MR. NURSE COMPLAINS THAT CLECS SHOULD BE ABLE TO CERTIFY OR RE-CERTIFY COMPLIANCE WITH THE ELIGIBILITY REQUIREMENTS FOR HIGH-CAPACITY EELS ON A "BATCH" BASIS. (NURSE DT, AT 41.) WHAT IS WRONG WITH ATT'S PROPOSAL?

A. AT&T's proposal for "batch" certifications is at odds with the certification requirements, which are circuit-specific. The *TRO's* EEL service eligibility criteria require information on a DS1 or DS1 equivalent basis. For example, each DS1 or DS1-equivalent circuit must have its own local number assignment. This obligation alone requires the CLEC to

provide information that is specific to each DS1 or DS-1 equivalent circuit. A batch certification, as Mr. Nurse proposes, could not accommodate providing specific local phone numbers for each equivalent circuit.

Moreover, Mr. Nurse misleads the Commission by claiming "AT&T's eligibility for these circuits has already been established" (DT 41). AT&T never certified to the *TRO* EEL service eligibility for its prior conversions. These pre-TRO EELs were certified under very different criteria. For example, the *TRO* criteria require collocation, a relationship of the DS1 or DS1-equivalent EEL circuits to interconnection trunks, and a relationship to DS1 interconnection facilities, all of which had not been required before the TRO. . Therefore, eligibility under other EEL criteria does not prove an existing EEL qualifies under the *TRO* criteria.

Q. MR. NURSE ALSO CRITICIZES VERIZON'S PROPOSAL FOR THE CLEC TO REIMBURSE VERIZON FOR THE COST OF AN AUDIT WHEN AN AUDITOR FINDS THAT THE CLEC HAS FAILED TO COMPLY WITH THE SERVICE ELIGIBILITY CRITERIA FOR DS1 OR DS1-EQUIVALENT CIRCUITS. (NURSE DT, AT 43-44, 78.) WHY IS VERIZON'S PROPOSAL REASONABLE?

A. Because it requires the CLEC to reimburse Verizon for the cost of an audit in the same manner as the *TRO* does, when the independent auditor's report concludes that the CLEC failed to comply with the service eligibility criteria. (*See TRO*, ¶ 627)

The CLEC must reimburse Verizon "for the cost of the independent auditor,"not just a portion of the costs, when the CLEC does not comply with the service eligibility criteria. Since the service eligibility criteria are on a DS1 or DS1-equivalent basis (for example, a local telephone number for each DS1 or DS1-equivalent circuit), the CLEC must comply with the service eligibility criteria for any DS1 or DS1-equivalent circuit in order to be in material compliance, just as Verizon's proposal requires.

Q. AT&T CONTENDS THAT THERE SHOULD BE NO CHARGE FOR SPECIAL ACCESS-TO-EEL CONVERSIONS. (NURSE DT, AT 43, 75-76.) IS THAT POSITION JUSTIFIED?

A. No. Mr. Nurse used an excerpt from the TRO (paragraph 587) to try to mislead the Commission into believing that the FCC found that any conversion-related charge is "discriminatory." In fact, the only charges the FCC listed as potentially discriminatory were "untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time." (TRO, §51.316(b).)

Verizon's proposed conversion fees, including retag charges, do not fall within any of these categories. Instead, Verizon's proposed charges are strictly for activities related to processing the conversion request itself. At a high level, as part of a conversion, Verizon must:

1. Process the orders that will identify the service the existing circuit is converting from and the service the existing circuit is converting to.

2. Change the circuit identification to the appropriate format for the service converting to.

3. Move the circuit from the special access billing account to an unbundled billing account with the updated circuit identification and appropriate billing codes and rates.

4. Update the design and inventory records in the maintenance and engineering databases with the new circuit Identification and account.

None of these activities are associated with disconnecting a circuit, re-connecting a circuit, or establishing a circuit for the first time. However, Verizon does incur a cost associated for all of these activities and should be entitled to recover such costs. Verizon's proposed conversion fees, including retag charges, do not fall within any of these categories. Instead, Verizon's proposed charges are strictly for the recovery of actual costs Verizon incurs in processing the conversion. Thus, Verizon's charges would not "unjustly enrich" Verizon for activities that Verizon does not actually perform, as Mr. Nurse indicates. Mr. Nurse would have this Commission believe that Verizon, or any other ILEC for that matter, is capable of converting a circuit without incurring any costs whatsoever.

In short, Mr. Nurse has produced no factual support for his theory that Verizon incurs no costs for conversions, so the Commission should not approve any language for the *TRO* Amendment that would prohibit recovery for those costs. It should, instead, approve Verizon's proposed

rates on an interim basis, pending conclusion of a cost proceeding.

Q. DO YOU AGREE WITH MR. NURSE THAT THE *TRRO* DID NOT CHANGE THE EELS ELIGIBILITY CRITERIA IMPOSED IN THE *TRO*? (NURSE AT 69.)

A. Yes. The TRRO did not alter the EEL eligibility criteria, but just confirmed Verizon's obligation to provide EELs where the underlying UNEs are available.

Q. MR. NURSE COMPLAINS THAT VERIZON'S PROPOSED REQUIREMENTS FOR CERTIFICATION OF EEL ELIGIBILITY ARE TOO ONEROUS. (NURSE DT, AT 71-74). IS HE RIGHT?

A. No. Mr. Nurse appears to believe that the decision to allow the CLECs to self-certify their compliance with the EEL eligibility forecloses anything more than a mere letter stating that the CLEC complies with the criteria without any substantiation whatsoever. That is not what the FCC said. In fact, it explicitly "[did] not specify the form for such a self-certification," (*TRO,* ¶ 624), and also required requesting carriers to "maintain the appropriate documentation to support their certifications." (*Id.*, ¶ 629.) It is, therefore, reasonable to expect the CLEC to support its certification with the information Verizon has designated. Doing so at the outset will minimize the need for the parties to later undertake the time-consuming, burdensome, and expensive process for auditing of EELs, and will help prevent disputes about EEL eligibility.

In order for a CLEC to legitimately certify its compliance with the TRO's EEL criteria, the CLECs must have available the same information Verizon requires for certification. Mr. Nurse acknowledges, for example, that for every 24-DS1 EEL, the CLEC must have at least one active DS1 local service interconnection trunk that meets the *TRO* eligibility requirements. (Nurse DT, at 71.) A CLEC cannot determine whether its EEL request meets this criterion without it identifying the requisite local interconnection trunks. A CLEC must, likewise, know the specific telephone number(s) assigned to the requested circuit in order to be able to certify compliance. Without the kind of information Verizon would require, the CLEC could not know whether it is eligible for any particular circuit prior to placing the order. Since the CLEC is required to maintain this information, anyway, it would not be unduly burdensome to provide it to Verizon.

Contrary to Mr. Nurse's assertions, Verizon's proposal is not tantamount to a pre-audit. Mr. Nurse attempts to justify this assertion by simply stating the FCC requires verification of the eligibility at a later date, but that is beside the point. Verizon is entitled to some meaningful certification at the outset, not just remedial measures after the fact, and nothing in the *TRO* says otherwise.

Q. DOES VERIZON PROPOSE TO PHYSICALLY DISCONNECT OR OTHERWISE ALTER EXISTING FACILITIES WHEN THEY ARE CONVERTED TO EELS, UNLESS THE CLEC REQUESTS

OTHERWISE?

A. No. Verizon does not propose to physically disconnect or otherwise alter existing facilities when they are converted to EELs. More importantly, the CLEC should not be able to request to request alteration of the existing facilities when they are converted to EELs, as Mr. Nurse proposes. Nothing in the TRO gives the CLEC that right. In fact, if the CLEC asked Verizon to physically disconnect or alter the existing facility in conjunction with a conversion request, then it would not be converting the circuit to the "equivalent" unbundled network element or combination of unbundled network elements.

Q. DOES AT&T'S LANGUAGE PROPERLY IMPLEMENT THE FCC RULES REGARDING CONVERSIONS, AS MR. NURSE ASSERTS?

A. **No, but** Verizon will address this legal issue in its brief.

Issue 23: *Should the parties retain their pre-Amendment rights arising under the Agreement, tariffs, and SGATs?*

Q. DO THE CLECS RAISE ANY DISPUTES WITH RESPECT TO THIS ISSUE?

A. Only MCI's witness Darnell does. Mr. Nurse does not state a position on this issue, while the CCG agrees that "the parties should retain their pre-Amendment rights under the Agreement, tariffs, and SGATs." (CCG

DT, at 45.)

Q. WHAT IS MCI'S POSITION?

A. Mr. Darnell testifies that once the amendment is executed, it should override all other provisions addressing discontinuation of de-listed facilities. (Darnell DT, at 17.)

Q. CAN YOU RESPOND TO THE CCG AND MR. DARNELL?

A. Again, this is a legal issue that will be addressed in Verizon's brief. But as a general matter, it does not make sense to say the CLECs retain their pre-amendment rights as to UNEs that the FCC has eliminated. Indeed, the central purpose of this proceeding is to implement discontinuation of those UNEs. By the same token, to the extent Verizon was already entitled to cease providing a particular de-listed UNE, the purpose of this proceeding, of course, is not to bring those discontinued UNEs back to life. Similarly, to the extent the amendment alters the parties' rights and obligations as to UNEs that Verizon must continue to provide, those parties obviously do not retain those rights and obligations to the extent they have been altered. Accordingly, the Amendment makes clear that the limitations on Verizon's unbundling obligations reflected in the Amendment are "[n]otwithstanding any other provision of this Agreement, this Amendment, or any Verizon tariff." (Verizon Amendment 1, §§ 2.1, 3.1.1; *see also* Verizon Amendment 2, §§ 2.4, 3.5.3.). The CLECs seem to view this issue as a means of retaining UNEs under pre-existing rights they allege exist under state

law, but as already noted, state law cannot replace UNEs that the FCC has eliminated.

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

Q. DOES MR. NURSE RECOGNIZE THAT THE FCC HAS ESTABLISHED THE PROCESS THAT WILL APPLY FOR ELEMENTS DE-LISTED IN THE *TRRO*?

A. Yes. He recognizes that "the *TRRO* established specific time frames and rates associated with the provision of UNEs during the FCC determined transition plan." (Nurse DT, at 87.) AT&T thus appears to understand that the Commission cannot order transition procedures different from the FCC's. However, he proposes that the transition from UNEs to non-UNE replacements should be governed by the same rules that apply to conversion of non-UNE wholesale services to UNEs. (Id. at 87-88.) As I discussed above, the FCC did not impose this condition, so, as Verizon will explain more fully in its brief, this Commission cannot do so, either. In any event, the proper place for a CLEC to raise its particular concerns about impact on end user service quality is in its individual negotiations with Verizon over the operational details of the transition.

Q. DO MCI AND THE CCG UNDERSTAND THAT THE PARTIES MUST COMPLY WITH THE FCC'S TRANSITION PLAN?

A. No. MCI's proposal contemplates that this Commission may establish its own transition process, and transition of the embedded UNE-P base "would use the timelines in the *TRO*, and would be triggered by Verizon's implementation of both a batch hot cut process and an individual hot cut process." (Darnell DT, at 18.)

The problems with MCI's approach should be obvious. As I indicated, and as Verizon will explain in its legal brief, this Commission cannot override the FCC's mandatory plan for transitioning the embedded base of de-listed UNEs. Nor can it condition unbundling relief upon implementation of hot cut processes or anything else. Mr. Darnell refers to the *TRO*, rather than the *TRRO*, as governing the transition away from mass-market switching. MCI's proposal is thus based on the erroneous proposition that *USTA II* never happened, and that the FCC's subdelegation scheme in the *TRO*—including the directive to start a hot cut investigation –is still good law. Of course, it is not, and this Commission cannot ignore the FCC's mandates in the *TRRO.*

Q. WHAT'S WRONG WITH CCG'S PROPOSAL?

A. CCG proposes that the Amendment should include a process "to ensure that loss of service to a CLEC's customers does not result from Verizon's discontinuance of [a] particular UNE." (CCG DT, at 46.) But the *TRRO* does not condition unbundling relief on assurances that no CLEC's customer will lose service, so this Commission cannot do so, either. The impact of elimination of particular UNEs on a CLEC's

customers depends totally on the CLEC's own actions. The CLECs know that the transition of UNE-P and de-listed high-capacity facilities must be completed within the next year, because that is what the *TRRO* says. If the CLECs wish to control the potential effects of the transition on their customers, they must cooperate with Verizon on transitional procedures. In this regard, as I noted, Verizon has asked the CLECs to provide their transition plans by May 15.

The CLECs cannot extend the mandatory transition period by failing to cooperate to convert the embedded base. If CCG fails to work with Verizon to make appropriate arrangements that will ensure continued service to CCG's customers, then CCG's customers' services might well be affected. But Verizon cannot be held responsible for a CLEC's lack of concern for its customers. If the Commission wishes to ensure that CLEC customers do not lose service because of discontinuation of the UNEs de-listed in the *TRRO*, the best way to do so is to order the CLECs to promptly produce their transition plans so that there is plenty of time to work out the operational details before the end of the transition period.

As to the UNEs that were de-listed in the *TRO* (and others that may be de-listed in the future), Verizon's Amendment 1 sets out a clear and fair transition process. As I discussed in my Direct Testimony, Verizon will provide (if it has not already provided) at least ninety days' notice that a given UNE has been discontinued, at which point Verizon will stop

accepting new orders for the UNE in question. During the 90-day notice period, a CLEC that wishes to continue to obtain access to the facilities used to provide the discontinued UNE arrangement can make an alternative arrangement (whether through a separate, commercial agreement, an applicable Verizon special access tariff, or resale). (Of course, when this proceeding concludes, the CLECs will have had two years to arrange for UNE alternatives.) If the CLEC has not selected any of those options, Verizon will not disconnect the CLEC, but will reprice de-listed elements at a rate equivalent to the applicable special access or resale rate. (*See* Verizon Amendment 1, § 3.2.)

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

Q. MR. NURSE SUGGESTS THAT VERIZON HAS PROPOSED TO DEVIATE FROM THE TRANSITIONAL RATES THE FCC HAS SET. (NURSE DT, AT 88.) IS THAT RIGHT?

A. No, and Mr. Nurse has no basis for this mischaracterization of Verizon's position. Verizon has consistently emphasized that it will comply with the FCC's mandatory transition plan. Verizon agrees with Mr. Nurse that "[t]he *TRRO* has clearly established the transition rates that Verizon may use, and Verizon is prohibited from imposing different rates." (Nurse DT, at 88.) The rates in Verizon's pricing attachment to Amendment 2 pertain to Verizon's new obligations under the *TRO* (that is, routine network modifications, commingling, and conversions), not

the elements that were de-listed in the *TRRO*.

Q. MR. NURSE STATES THAT THE FCC HAS FOUND THAT ROUTINE NETWORK MODIFICATION COSTS ARE ALREADY RECOVERED IN THE CHARGES FOR THE UNDERLYING UNES. (NURSE DT, AT 88.) IS THAT TRUE?

A. No. Verizon will fully address this legal issue in its brief.

Q. MR. DARNELL CONTENDS THAT VERIZON SHOULD HAVE TO PROVIDE THE NEW *TRO* ACTIVITIES FOR FREE IF COSTS CANNOT BE FULLY LITIGATED IN THIS PROCEEDING. (DARNELL DT, AT 19.) IS THAT POSITION REASONABLE?

A. No. The *TRO* requires Verizon to provide services to requesting CLECs for which no terms or prices have yet been established under existing interconnection agreements. Verizon has the right to be compensated for performing such services. Accordingly, Verizon should be permitted to charge the rates listed in the Amendment 2 Pricing Attachment on at least an interim basis, pending completion of a later cost proceeding. As I explained in my Direct Testimony (at 14-15), it is unlikely that complex costing and pricing issues could be resolved in the course of this time-constrained arbitration.

Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

Susanne A. Guyer
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verizon

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February 18, 2005

Ex Parte

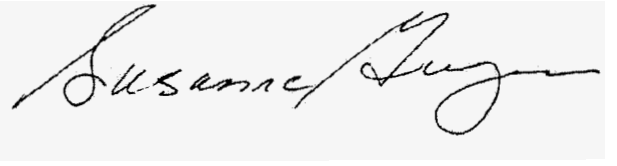
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Unbundled Access to Network Elements, WC Docket No. 04-313; Review of Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket. No. 01-338**

Dear Ms. Dortch:

Please file the attached in the record for the above-referenced proceedings. Please contact me if you have any questions.

Sincerely,



Attachment

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February 18, 2005

Ex Parte

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: **Unbundled Access to Network Elements, WC Docket No. 04-313; Review of Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket. No. 01-338**

Dear Mr. Carlisle:

In response to your February 4 letter, attached is a list, identifying by CLLI code the Verizon wire centers that satisfy the Tier 1 and Tier 2 criteria for dedicated transport[1] and the wire centers that satisfy the non-impairment thresholds for DS1 and DS3 loops. Consistent with the Commission's Order, as of March 11, 2005, new high-capacity UNEs will no longer be available at the wire centers listed the in attachment for elements excluded under the terms of the Order.

In making these determinations, Verizon calculated its business line count by adding the business lines in its 2003 ARMIS 43-08 report associated with each wire center with UNE loops and EELs (on a DSO equivalent basis) that were not included in that report. The fiber-based collocation count was based on data submitted with Verizon's December 7, 2004 *ex parte* submission; however, Verizon has amended its count, per the Commission's Order, to reflect the number of providers rather than the number of collocation arrangements. Verizon also reduced the number of fiber-based collocators to reflect those offices where collocation service has been terminated.

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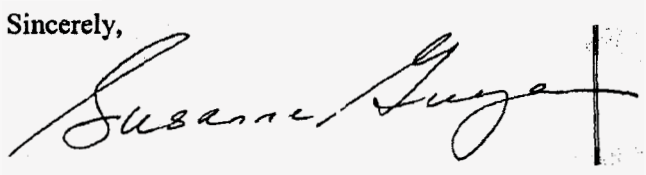
[1] Under the FCC's order, the remaining Verizon wire centers are Tier 3.

Consistent with the terms of the Order, however, Verizon reserves the right to add additional wire centers to the excluded lists in the event that new information establishes that additional wire centers should be excluded. *See* Order, ¶142, n. 399; ¶ 196, n. 519.

Please call me if you have any questions.

Sincerely,



Attachment

Verizon's Wire Centers Qualifying for Relief from Unbundled Services

		Wire Center Qu		fied - Yes or No	
Operated State	Wire Center	Tier 1	Tier 2.	DS1 Loop	DS3 Loop
CA	BLPKCAXF	No	Yes	No	No
	CCMNCAXF	No	Yes	No	No
	LNBHCAXF	Yes	No	No	No
	LNBHCAXS	No	Yes	No	No
	SNBBCAXF	No	Yes	No	No
	SNMNCAXG	Yes	No	No	No
	SNMNCAXP	No	Yes	No	No
	THOKCAXF	No	Yes	No	No
	WLANCAXF	No	Yes	No	No
	WLANCAXH	Yes	No	No	No
	WMNSCAXF	Yes	No	No	Yes
CT	GNWCCTGN	Yes	No	No	No
DC	WASHDCDN	Yes	No	Yes	Yes
	WASHDCDP	Yes	No	No	No
	WASHDCMO	Yes	No	Yes	Yes
	WASHDCMT	Yes	No	Yes	Yes
	WASHDCSW	Yes	No	Yes	Yes
	WASHDCWL	No	Yes	No	No
DE	DOVRDEDV	No	Yes	No	No
	NWRKDENB	Yes	No	No	No
	WLMGDEWL	Yes	No	No	No
FL	BHPKFLXA	Yes	No	No	No
	CLWRFLXA	Yes	No	No	No
	CNSDFLXA	No	Yes	No	No
	FHSDFLXA	No	Yes	No	No
	PNLSFLXA	No	Yes	No	No
	SPBGFLXA	Yes	No	No	No
	SRSTFLXA	No	Yes	No	No
	SWTHFLXA	Yes	No	No	No
	TAMPFLXA	Yes	No	No	No
	TAMPFLXE	Yes	No	No	No
	TAMPFLXX	Yes	No	No	No
	WSSDFLXA	Yes	No	No	No
	YBCTFLXA	Yes	No	No	No
HI	HNLLHIMN	Yes	No	No	No
IN	FTWYINXA	No	Yes	No	No
MA	BKLIMAMA	No	Yes	No	No
	BLRCMAAN	No	Yes	No	No
	BRNTMAWA	Yes	No	No	No
	BRTNMACR	Yes	No	No	No
	BSTNMABE	Yes	No	Yes	Yes
	BSTNMABO	Yes	No	No	Yes
	BSTNMAFR	Yes	No	No	Yes
	BSTNMAHA	Yes	No	No	Yes
	BURLMABE	No	Yes	No	No
	CMBRMABE	Yes	No	No	No
	CMBRMAWA	Yes	No	Yes	Yes
	DNVSMAHI	Yes	No	No	No

Verizon's Wire Centers Qualifying for Relief from Unbundled Services

		Wire Center Qualified - Yes or No			
Operated State	Wire Center	Tier 1	Tier 2	DS1 Loop	DS3 Loop
	FRMNMAUN	Yes	No	No	No
	HLYKMAMA	No	Yes	No	No
	LWLLMAAP	Yes	No	No	No
	LWRNMACA	Yes	No	No	No
	LXTNMAWA	Yes	No	No	No
	MLDNMAEL	No	Yes	No	No
	MRBOMAMA	Yes	No	Yes	Yes
	NATNMAMA	No	Yes	No	No
	NWTNMAWA	Yes	No	No	No
	QNCYMAHA	Yes	No	No	No
	SALMMANO	Yes	No	No	No
	SOVLMACE	Yes	No	No	No
	SPFDMAWO	Yes	No	No	Yes
	WLHMMASP	Yes	No	No	No
	WLHMMAWE	Yes	No	No	No
	WRCSMACE	Yes	No	No	Yes
MD	BLTMMDCH	Yes	No	Yes	Yes
	BLTMMDWL	Yes	No	No	No
	BTHSMDRP	Yes	No	No	No
	BTHSMDWW	No	Yes	No	No
	CHCHMDBE	Yes	No	No	Yes
	CLMAMDCB	No	Yes	No	No
	CLPKMDBW	No	Yes	No	No
	FPATMDFR	No	Yes	No	No
	FRDRMDFR	Yes	No	No	No
	GMTWMDGN	No	Yes	No	No
	GTBGMDGB	Yes	No	No	No
	HGTWMDHG	No	Yes	No	No
	LARLMDLR	No	Yes	No	No
	RKVLMDMR	Yes	No	No	No
	RKVLMDRV	Yes	No	No	No
	SLBRMDSB	Yes	No	No	No
	SLSPMDSS	Yes	No	No	Yes
	TWSNMDTW	No	Yes	No	No
	WHTNMDWT	No	Yes	No	No
ME	AGSTMEST	No	Yes	No	No
	BNGRMEPA	No	Yes	No	No
	LSTNMEAS	No	Yes	No	No
	PTLDMEFO	Yes	No	No	Yes
NC	DRHMNCXE	Yes	No	No	No
	DRHMNCXM	Yes	No	No	No
NH	DOVRNHTH	No	Yes	No	No
	KEENNHWA	Yes	No	No	No
	MNCHNHCO	Yes	No	No	Yes
	NASHNHWP	Yes	No	No	No
	PTMONHIS	Yes	No	No	No
NJ	ATCYNJAC	No	Yes	No	No
	CMDNNJCE	Yes	No	No	No

Verizon's Wire Centers Qualifying for Relief from Unbundled Services

Operated State	Wire Center	Wire Center Qualified - Yes or No			
		Tier 1	Tier 2	DS1 Loop	DS3 Loop
	EDSNNJED	No	Yes	No	No
	ELZBNJEL	Yes	No	No	No
	ENWDNJEN	No	Yes	No	No
	EORNNJEO	No	Yes	No	No
	FRFDNJFA	No	Yes	No	No
	HCKNNJHK	Yes	No	No	Yes
	HOLMNJHO	No	Yes	No	No
	JRCYNJBR	Yes	No	No	Yes
	JRCYNJJO	Yes	No	No	Yes
	LRSPNJLS	No	Yes	No	No
	LVTNNJLI	No	Yes	No	No
	MRTWNJMR	Yes	No	No	Yes
	MSTWNJMO	No	Yes	No	No
	NBRGNJNB	No	Yes	No	No
	NBWKNJNB	Yes	No	No	Yes
	NWPVNJMH	No	Yes	No	No
	NWRKNJ02	Yes	No	Yes	Yes
	NWRKNJIR	Yes	No	No	No
	PLFDNJPF	No	Yes	No	No
	PNNKNJPN	No	Yes	No	No
	PSSCNJPS	Yes	No	No	No
	PSVLNJPL	No	Yes	No	No
	PSWYNJPI	No	Yes	No	No
	PTSNNJAR	No	Yes	No	No
	RCPKNJ02	Yes	No	No	No
	RDBKNJRB	No	Yes	No	No
	RTFRNJRU	Yes	No	No	No
	SOVLNJSM	No	Yes	No	No
	TMRVNJTR	No	Yes	No	No
	TRENNJTE	Yes	No	No	No
	UNCYNJ02	Yes	No	No	Yes
	WDBRNJWD	No	Yes	No	No
	WHPNJWH	Yes	No	No	No
NY	ALBYNYSS	Yes	No	No	No
	AMHRNYMP	Yes	No	No	No
	BFLONYEL	Yes	No	No	No
	BFLONYFR	Yes	No	No	Yes
	BFLONYHE	Yes	No	No	No
	BFLONYMA	No	Yes	No	No
	BRWDNYBW	Yes	No	No	No
	FLPKNYFP	No	Yes	No	No
	FRDLNYFM	No	Yes	No	No
	GRCYNYGC	Yes	No	Yes	Yes
	HCVLNYHV	No	Yes	No	No
	LYBRNYLB	Yes	No	No	No
	MINLNYMI	Yes	No	No	Yes
	NYCKNY77	No	Yes	No	No
	NYCKNYBR	Yes	No	Yes	Yes

Verizon's Wire Centers Qualifying for Relief from Unbundled Services

		Wire Center Qu	ied - Yes or No		
Operated State	Wire Center	Tier 1	Tier 2	DS1 Loop	DS3 Loop
	NYCKNYWM	Yes	No	No	No
	NYCMNY13	Yes	No	Yes	Yes
	NYCMNY16	Yes	No	Yes	Yes
	NYCMNY30	Yes	No	Yes	Yes
	NYCMNY36	Yes	No	Yes	Yes
	NYCMNY37	Yes	No	Yes	Yes
	NYCMNY42	Yes	No	Yes	Yes
	NYCMNY50	Yes	No	Yes	Yes
	NYCMNY56	Yes	No	Yes	Yes
	NYCMNY73	Yes	No	No	No
	NYCMNY79	Yes	No	No	Yes
	NYCMNY97	Yes	No	No	No
	NYCMNYBS	Yes	No	Yes	Yes
	NYCMNYVS	Yes	No	No	Yes
	NYCMNYWS	Yes	No	Yes	Yes
	NYCQNYFL	No	Yes	No	No
	NYCQNYJA	No	Yes	No	No
	NYCQNYLI	Yes	No	No	No
	NYCQNYNW	Yes	No	No	No
	NYCRNYNS	No	Yes	No	No
	NYCXNYTR	No	Yes	No	No
	SCHNNYSC	No	Yes	No	No
	SYRCNYSU	Yes	No	No	Yes
	WHPLNYWP	Yes	No	No	Yes
	WSNCNYUN	No	Yes	No	No
	WSVLNYNC	Yes	No	No	No
OR	BVTNORXB	Yes	No	No	No
	SMRWORXA	No	Yes	No	
	TGRDORXA	Yes	No	No	No
PA	ALTWPAAL	Yes	No	No	No
	AMBLPAAM	Yes	No	No	No
	ARMRPAAR	Yes	No	No	No
	BCYNPABC	Yes	No	No	No
	BHLHPABE	Yes	No	No	No
	BLLVPABE	No	Yes	No	No
	BRYMPABM	No	Yes	No	No
	CARNPACA	Yes	No	No	No
	CNSHPACN	Yes	No	No	No
	CPHLPACH	Yes	No	No	No
	CRAFPACR	Yes	No	No	No
	CRPLPACO	Yes	No	No	No
	DRMTPADO	Yes	No	No	No
	GLNSPAGL	No	Yes	No	No
	GNBGPAGR	No	Yes	No	No
	HRBGPAHA	Yes	No	No	No
	HTBOPAHB	Yes	No	No	No
	JENKPAJK	No	Yes	No	No
	KGPRPAKP	Yes	No	No	No

Verizon's Wire Centers Qualifying for Relief from Unbundled Services

		Wire Center Qualified - Yes or No			
Operated State	Wire Center	Tier 1	Tier 2	DS1 Loop	DS3 Loop
	LNCSPALA	Yes	No	No	No
	MBRGPAME	No	Yes	No	No
	MOVLPAMO	Yes	No	No	No
	NRTWPANR	Yes	No	No	No
	OKMTPAOA	Yes	No	No	No
	PAOLPAPA	Yes	No	No	No
	PEHLPAPH	Yes	No	No	No
	PHLAPAEV	Yes	No	No	Yes
	PHLAPAGE	No	Yes	No	No
	PHLAPAJE	No	Yes	No	No
	PHLAPALO	Yes	No	Yes	Yes
	PHLAPAMK	Yes	No	Yes	Yes
	PHLAPAPE	Yes	No	No	No
	PHLAPAPI	Yes	No	No	No
	PHLAPATR	Yes	No	No	No
	PHLAPAWV	No	Yes	No	No
	PITBPAAL	Yes	No	No	No
	PITBPACA	No	Yes	No	No
	PITBPADT	Yes	No	Yes	Yes
	PITBPAEL	No	Yes	No	No
	PITBPANS	Yes	No	No	No
	PITBPAOK	Yes	No	No	No
	PYVLPAPE	Yes	No	No	No
	RBTPPART	Yes	No	No	No
	RDNGPARE	No	Yes	No	No
	SCTNPASC	Yes	No	No	No
	SHSAPASH	Yes	No		No
	STCGPAES	Yes	No	No	No
	SWKYPASE	No	Yes	No	No
	TRCKPATC	Yes	No	No	No
	TRPRPATR	No	Yes	No	No
	WAYNPAWY	Yes	No	No	No
	WCHSPAWC	No	Yes	No	No
	WKBGPAWK	Yes	No	No	No
	WLBRPAWB	No	Yes	No	No
	WLPTPAWI	No	Yes	No	No
	YORKPAXM	No	Yes	No	No
RI	ASTNRIAN	No	Yes	No	No
	CNTNRIPH	No	Yes	No	No
	NPRVRIMS	No	Yes	No	No
	PRVDRIBR	Yes	No	No	No
	PRVDRIWA	Yes	No	No	Yes
	WNSCRICL	Yes	No	No	No
	WRWKRIWS	Yes	No	No	
TX	CLSTTXXA	No	Yes	No	
	DNTNTXXA	No	Yes	No	
	IRNGTXXA	Yes	No	No	
	IRNGTXXC	Yes	No	No	

Verizon's Wire Centers Qualifying for Relief from Unbundled Services

		Wire Center Qualified - Yes or No			
Operated State	Wire Center	Tier 1	Tier 2	DS1 Loop	DS3 Loop
	IRNGTXXD	No	Yes	No	No
	IRNGTXXG	Yes	No	No	No
	PLANTXXA	Yes	No	No	No
	PLANTXXB	No	Yes	No	No
	PLANTXXD	No	Yes	No	No
VA	ALXNVAAX	No	Yes	No	No
	ALXNVABA	Yes	No	No	No
	ARTNVAAR	Yes	No	No	Yes
	ARTNVACK	No	Yes	No	No
	ARTNVACY	No	Yes	No	No
	ARTNVAFC	No	Yes	No	No
	CNVIVACT	Yes	No	No	No
	FLCHVAMF	No	Yes	No	No
	FRFXVAFF	Yes	No	No	Yes
	HRNDVAHE	Yes	No	Yes	Yes
	MCLNVALV	Yes	No	Yes	Yes
	MNSSVAXA	No	Yes	No	No
	NRFLVABS	Yes	No	No	No
	PNTGVADF	No	Yes	No	No
	RCMDVAGR	Yes	No	No	No
	RCMDVAPE	Yes	No	No	No
	RCMDVAPS	No	Yes	No	No
	RCMDVASR	Yes	No	No	No
	RONKVALK	No	Yes	No	No
	VINNVAVN	Yes	No	No	No
	VRBHVACC	Yes	No	No	No
VT	BURLVTMA	No	Yes	No	No
WA	BOTHWAXB	No	Yes	No	No
	RDMDWAXA	Yes	No	No	No
WV	CHTNWVLE	Yes	No	No	No
Total Qualified Wire Centers		168	102	26	52