BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040156-TP

In the Matter of

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.

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VOLUME 1

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PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER RUDOLPH "RUDY" BRADLEY COMMISSIONER CHARLES M. DAVIDSON COMMISSIONER LISA POLAK EDGAR
DATE:	Wednesday, May 4, 2005
TIME:	Commenced at 9:30 a.m. Concluded at 10:26 a.m.
PLACE:	Betty Easley Conference Center Hearing Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official Commission Reporter (850)413-6732

APPEARANCES:

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GENEVIEVE MORELLI, ESQUIRE, and BRETT FREEDSON, ESQUIRE, Competitive Carrier Group, c/o Kelley Drye Law Firm, 1200 Nineteenth Street, N.W., Suite 50, Washington, DC 20036, appearing on behalf of Competitive Carrier Group.

NORMAN H. HORTON, JR., ESQUIRE, c/o Messer Law Firm, Competitive Carrier Group, P.O. Box 1876, Tallahassee, Florida 32302-1876, appearing on behalf of Competitive Carrier Group.

DONNA C. MCNULTY, ESQUIRE, 1203 Governors Square Boulevard, Suite 201, Tallahassee, Florida 32301, appearing on behalf of MCI WorldCom, MCImetro Access, MFS and Intermedia.

SUSAN MASTERTON, ESQUIRE, Sprint Communications Company Limited Partnership, P.O. Box 2214, Tallahassee, Florida 32316-2214, appearing on behalf of Sprint Communications Company Limited Partnership.

APPEARANCES (continued):

KIM CASWELL, ESQUIRE, Verizon Florida Inc., P.O. Box 110, Tampa, Florida 33601-0110, appearing on behalf of Verizon Florida Inc.

MATTHEW FEIL, ESQUIRE, 2301 Lucien Way, Suite 200, Maitland, Florida 32751, appearing on behalf of Florida Digital Network, Inc.

LEE FORDHAM, ESQUIRE and FELICIA BANKS, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

I N D E X

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
1	Exhibit List - Stip 1	7	7
2	ECN-D	7	7
3	EJC/JCF/ALS-D	7	7
4	GJD-D	7	7
5	AFC-D	7	7
6	Verizon Stip-1	7	7
7	AT&T Stip-1	7	7
8	CCG Stip-1	7	7
9	MCI Stip-1	7	7
10	AFC-1	7	7
11	WR-1	7	7
12	ECN-1	7	7
13	ECN-R1	7	7
14	ECN-R2	7	7
15	ECN-R3	7	7
16	EJC-1/JCF-1/ALS-1	7	7
17	GJD-1	7	7
18	GJD-2	7	7
19	GJD-3	7	7
20	GJD-4	7	7
21	GJD-5	7	7

P R O C E E D I N G S

COMMISSIONER BRADLEY: I would like to call this meeting to order.

Counsel, can I have the notice read, please.

MR. FORDHAM: Pursuant to notice published April 5th, 2005, this time and place has been set for a hearing in Docket Number 040156-TP for the purpose as set forth in the notice.

COMMISSIONER BRADLEY: Let's take appearances.

MS. CASWELL: Kim Caswell for Verizon.

MS. MASTERTON: Susan Masterton representing Sprint Communications Company Limited Partnership.

MR. HENRY: Mickey Henry with AT&T.

MR. HATCH: Tracy Hatch also on behalf of AT&T.

MS. McNULTY: Donna McNulty with MCI.

MR. HORTON: Norman H. Horton, Jr., of Messer Caparello & Self on behalf of the Competitive Carrier Group. And I would like to also enter an appearance for Ms. Genevieve Morelli and Brett Freedson of Kelley Drye & Warren for the same group. And I believe Ms. Freedson is on the phone.

MR. FORDHAM: Lee Fordham and Felicia Banks on behalf of the Commission.

COMMISSIONER BRADLEY: Thank you.

Are there any preliminary matters?

MR. FORDHAM: Commissioner, we might inquire whether

anyone on the phone, since we have a telephone hook-up, may wish to make an appearance for purposes of participation.

MR. FEIL: Yes, Commissioner, if I may, this is Matthew Feil with FDN Communications.

COMMISSIONER BRADLEY: Okay. Anyone else? Anyone else? Okay.

I think the first thing that we have to do today is move the prefiled testimony of the witnesses into the record. It is my understanding that the parties have agreed that all of the prefiled testimony is to be inserted into the record, that cross-examination of the witnesses is waived, and the witnesses have been excused.

Is this correct?

MR. FORDHAM: Commissioner, as one preliminary matter, very minor, there was a minor error in the prehearing order. On Page 54 of the order, the very last sentence in Section XI(A), it names the two companies, MCI and Verizon, that should have been MCI and Sprint. That correction has been made by an administrative order, but the parties were not aware of it because it just happened. So I would like to make that announcement as a preliminary matter.

And, I'm sorry, but back to your question, whether it was correct on the testimony, staff has presented the stipulated exhibit list which contains all of the testimony. And that should be acceptable as presented and as the

Commission has in front of them, also, the exhibit list with one minor correction that Verizon has discovered just this morning. So with the Chairman's permission, maybe Verizon could announce that correction.

COMMISSIONER BRADLEY: Verizon.

MS. CASWELL: Thank you. In our panel rebuttal testimony of Thomas Church, William Loughridge and Willett Richter, on Page 6, Lines 7 to 8, the sentence that reads, "Second, Mr. Nurse assumes without any support that building new loops or UDLC systems is uniformly cheaper than hairpinning solutions," it should read, "uniformly more expensive," rather than "cheaper."

MR. FORDHAM: And with that correction, Commissioner, I believe that the rest of the exhibit list is acceptable to the parties, and it contains the testimony also, each exhibit being numbered consecutively.

So at this point staff would move that exhibit list into the record.

COMMISSIONER BRADLEY: Thank you. Any other comments?

MR. HORTON: Mr. Chairman, just a question. Mr. Fordham said that the testimony is listed in that comprehensive list. I must have an outdated list, or something. I don't see the testimony.

MR. FORDHAM: I apologize, Commissioner, the exhibits

to the testimony are listed on the exhibit list.

MR. HORTON: Thank you.

COMMISSIONER BRADLEY: Okay. Any other questions or comments?

With that, show the prefiled direct and rebuttal testimony of the witnesses as so stated is inserted into the record as though read. Also show, for the record, that the witnesses are excused from attendance at this hearing.

(REPORTER NOTE: For the convenience of the record, the prefiled testimony is inserted after opening statements.)

COMMISSIONER BRADLEY: Next, I understand that there is an agreement as to the exhibits. It is my understanding that the parties have a stipulated comprehensive exhibit list, and that the parties' hearing exhibits and the exhibits attached to the prefiled testimony are identified as listed. Are there any other changes or corrections to the comprehensive exhibit list? Any other changes?

Hearing none, without objection, I'm going to move the hearing exhibits and the prefiled testimony and exhibits into the record.

Staff, does the court reporter have a copy of all that we have discussed, all exhibits for the record?

MR. FORDHAM: Yes, Commissioner.

(Hearing Exhibit 1 through 21 marked for identification and admitted into the record.)

COMMISSIONER BRADLEY: Are there any other matters to be addressed before we move to opening statements?

MR. FORDHAM: None by Staff, Commissioner.

COMMISSIONER DAVIDSON: Chairman, I would just like to say, as the prehearing officer, the parties did a great job in streamlining this and freeing up some of the Commission time, and expediting, sort of, the hearing today.

COMMISSIONER BRADLEY: Thank you. And it always helps to have an efficient and effective prehearing officer.

COMMISSIONER DAVIDSON: I can take no credit for this, it is all the parties.

COMMISSIONER BRADLEY: Well, you deserve some credit.

It is my understanding that the parties have agreed to 20 minutes for Verizon and 25 minutes for the CLECs, is that correct, as part of the prehearing process? Is that correct?

MS. CASWELL: Yes.

COMMISSIONER BRADLEY: Okay. So Verizon is going to get 20 minutes and the CLECs are going to divide up 25. Okay.

Verizon.

MS. CASWELL: Since the issues were identified in this case, a number of them have been resolved either by the parties, the Commission, or the FCC. So I'm going to try and give you some perspective on what you still need to decide. This case involves implementation of the FCC's decisions in the TRO and TRO remand. The TRO, which took effect 19 months ago,

eliminated certain UNEs including, among others, OCN loops and transport, enterprise switching, and line sharing. The FCC also ruled that ILECs do not have to unbundle fiber loops or the broadband capabilities of hybrid copper/fiber loops.

The TRO imposed new obligations on ILECs, as well, including the requirement to perform routine network modifications to allow commingling of UNEs with wholesale services, and to convert non-UNE services to UNEs in defined circumstances. In the TRO remand, which took effect on March 11th, the FCC did not impose any new obligations, but only delisted additional elements. Specifically mass market switching, which also eliminated mass market UNE-P, dark fiber loops, and in some cases, DS-1 and DS-3 loops and transport.

So there are two major themes in this case; how to implement the delistings and how to implement the affirmative obligations. Let's start with the delistings. In the TRO, the FCC told carriers to negotiate amendments, where necessary, to give effect to the TRO delistings. In the TRO remand, the FCC took a different approach. It made the delistings self-effectuating rather than requiring negotiation. It imposed a nationwide bar on new orders for the delisted UNEs as of March 11th, 2005.

AT&T seems to understand this FCC mandate, but MCI and CCG still argue that Verizon must negotiate to implement the FCC's no new ads directive. But the Commission already

resolved that issue last month when it denied the CLEC petitions arguing the very same thing. So you should disregard any suggestion that implementation of the FCC's no new ads mandate is still an open issue. You should also reject any argument that would create exceptions to the FCC's absolute bar on new orders. Some CLECs argue that they can still order new UNE-P lines for existing customers, but that is not what the FCC said.

It would have made no sense for the FCC to have allowed CLECs to order new UNE-P arrangements at the same time existing arrangements were supposed to be phased out. With regard to the TRO delistings, Verizon has also discontinued most of those UNEs. Verizon has about 109 active interconnection agreements, but it named only 18 parties to this arbitration. Since then one signed Verizon's TRO amendment, and three other contracts have been retired.

So there are just a handful of contracts that might be construed to require amendment before UNEs may be discontinued. At least 92 of those 109 contracts clearly do not require such amendments. The parties Verizon did not name to this arbitration, including the intervenors, have such contracts. And even several of the parties Verizon did name to the arbitration now have automatic discontinuation provisions for some or all delisted UNEs.

Even though the CLECs don't disagree about the items

delisted in the TRO and TRO remand, their proposed amendments do not clearly specify the delisted elements. This problem relates largely to a disagreement about whether the Commission may reimpose unbundling obligations the FCC eliminated. Of course, this Commission can't preempt the FCC, but there is no longer any need to argue about that point, because the CLECs have agreed to withdraw their request for amendment terms that would purport to allow unbundling under state law, merger conditions, or anything other than the FCC's rules. With this issue gone from the case, there is no question that the arbitrated amendment must clearly specify the UNEs that are no longer available under the FCC's orders.

To the extent Verizon is still providing any UNEs delisted in the TRO under a few contracts, it should be permitted to discontinue them as soon as the amendment takes effect. These UNEs were discontinued for most CLECs many months ago pursuant to notices Verizon sent to all CLECs in October 2003 and May 2004. So by the time this arbitration concludes, CLECs will have had up to two years notice that the TRO UNEs will be discontinued.

The CLECs cannot seriously argue that two years is not enough time to have prepared themselves for transition to replacement services. The Commission should reject any CLEC proposals that would give them months more notice before Verizon may discontinue the TRO UNEs. The notice issue is

relevant only to the TRO delistings and not to the TRO remand delistings. That is because the FCC has required carriers to work out the details of transition of the omitted base, and has given them a strict deadline to do so. The CLECs will know when their embedded lines will be converted because they will have worked out that detail with Verizon beforehand.

Verizon has reminded CLECs now twice that they must give Verizon their transition plans by May 15. The CLECs cannot delay the transition by failing to cooperate with Verizon, nor can they wait until the last minute to start their conversions. Under the TRO remand, the transition to UNE replacements must be completed by March 11th, 2006. And you should reject any proposals that suggest you may set a different time line.

It is important to understand that when a UNE is discontinued, Verizon will not disconnect the CLEC's service unless that is what the CLEC wants. The CLEC can enter a commercial agreement under which it will continue receiving UNE-like services. As the FCC has ruled, these contracts are not negotiated or arbitrated under Section 252 of the act, so the Commission should reject any CLEC suggestions that it is appropriate to include commercial terms in the arbitrated amendment here.

Verizon already has many commercial agreements with carriers around the country. For mass market UNE-P, Verizon

offered a special interim agreement to allow carriers to continue ordering new UNE-P after March 11th. More than 40 carriers nationwide signed this agreement, including the four MCI affiliates here in Florida. These agreements repriced the embedded base of UNE-P and set commercial terms under which companies can continue to order UNE-P until the end of May. In light of these agreements, I can't understand why MCI continues to argue that the FCC's transition plan doesn't kick in until amendments are concluded. These arguments are at odds with MCI's own actions.

If CLECS do not execute a commercial agreement, Verizon could just cut off their service. But to avoid service disruptions, Verizon is willing to reprice the former UNEs to analogous services. For UNE-P, for example, to the resale equivalent rate. That is what Verizon has already done for most CLECs for the items delisted in the TRO.

The amendment should recognize its right to do so for the few remaining contracts that might appear to require amendment. As to the UNEs delisted in the TRO remand, of course Verizon will comply with the FCC's transitional pricing, absent a different agreement by the carriers.

One dispute relating to implementation of the TRO remand deserves special mention. The remand did not eliminate unbundling for DS-1 and DS-3 loops and transport completely. Instead, it set forth objective criteria to establish where

unbundling would no longer be required. These criteria used the number of business lines and the number of fiber-based collocators in a wire center to determine impairment.

The FCC required the ILECs to file a list of non-impaired offices by February 18th. For Florida, there are no loops on the non-impaired list. So DS-1 and DS-3 loops will, for the time being, remain available in Verizon's territory everywhere they are today. As to DS-1 and DS-3 transport, out of Verizon's 87 wire centers, nine are Tier 1 wire centers and four are Tier 2 under the FCC's criteria, so only routes between those offices will be restricted from unbundling for either DS-1 or DS-3 transport.

The FCC established a system through which CLECs may order loops and transport under its new rules. That system requires the CLECs to do a reasonably diligent inquiry before it submits an order. Verizon must provide the service even if the office is on the exempt list, then Verizon may challenge the CLEC's certification that it was entitled to the facilities. The CLECs, however, ask you to conduct a precertification that would short-circuit the case-by-case procedures the FCC ordered. The Commission can't replace the FCC's process with its own. Even if it could, it would be a huge waste of time.

As I said, Verizon is not claiming any unbundling exceptions for DS-1 and DS-3 loops, and no CLEC has asked for

any transport out of the few exempt wire centers. So at this point there is no dispute for the Commission to decide, and the Commission has enough to do without trying to address hypothetical disputes.

The CLECs also insist upon including the exempt wire center list in the TRO Amendment. If the Commission does that, the contract must recognize that the list is subject to change if a wire center meets the FCC's criteria later. This is an important point, because the CLECs are trying to freeze the wire center list in their contracts in order to retain delisted UNEs. So if AT&T signs a contract today, and a wire center becomes exempt from DS-3 loop unbundling tomorrow, AT&T would claim that it is entitled to DS-3 loops out of that office for the entire term of the contract. But another CLEC who signed the amendment a day later would not be able to get those loops out of the same wire center. The FCC did not sanction this discriminatory result, and neither should you.

There's one more delisting issue that has taken up a lot of space in the parties' filings, and that's Verizon's approach to implementing delistings. Verizon's amendment would implement not only the TRO delistings, but any future delistings as well. That's because the amendment recognizes that Verizon's unbundling obligations under its contracts are the same as its unbundling obligations under federal law.

Specifically, Verizon proposes to discontinue a

delisted UNE upon 90-days notice. The CLECs say the Commission can't adopt this approach because it is unconscionable, unlawful, and unreasonable. They say that negotiations are necessary to eliminate unbundling obligations under the contracts. The best rebuttal to that argument is that actions speak louder than words. Most of the CLECs arguing against Verizon's discontinuation upon notice provision agreed to such provisions in their own existing contracts for some or all delisted UNEs. Most allow discontinuation upon 30 days notice or even no notice at all, which either way is more favorable to the CLECs -- is less favorable to the CLECs than the 90 days notice Verizon is proposing here.

So, contrary to the CLECs' arguments, there is nothing new about automatic discontinuation provisions. They are the norm in Verizon's contracts, and this Commission has approved every one of them in negotiated, arbitrated, or adopted agreements. In fact, the Commission specifically approved Verizon's 30-day notice provision in an earlier arbitration, holding that a change of law should be implemented when it takes effect, not at some indefinite future point, and the Commission has approved Verizon's entire TRO delisting amendment nine times now after CLECs signed that amendment.

There aren't many services left to be delisted, in any event. But if and when that occurs, Verizon's approach would avoid the lengthy and inefficient process that has cost

the parties millions of dollars in legal fees over the last 19 months. As I said earlier, aside from eliminating UNEs, the TRO made clear that ILECs have no obligation to unbundle fiber loops. To the extent that CLECs argue that a fiber-only loop must be unbundled if it is not used to serve a mass market customer, they are wrong, because they are ignoring clarifications the FCC made after the TRO issued. But, you, Commission, cannot ignore those clarifications.

Now let's talk about the affirmative obligations imposed in the TRO; routine network modifications, commingling and conversions. The principal issue relating to these activities was how they should be priced. You no longer have to decide that issue, because Verizon has agreed not to seek rates for these new services in this arbitration. It has reserved its right to do so later, however, so nothing in the amendment should foreclose Verizon from coming in later with a cost case. You still need to decide the terms and conditions under which the new services will be provided.

The details of each of these issues will be addressed in detail in the brief, but I will try and hit some of the key points in the few minutes I have left. First let's talk about routine network modifications, which are activities that the incumbent LEC regularly undertakes to provide service to its own customers. The FCC ruled that this obligation does not include new construction. Verizon's amendment clearly states

this restriction and lists the activities the TRO described as routine network modifications.

In contrast, the CLECs would impose no meaningful limitations on Verizon's network modification obligations. They all fail to recognize the no new construction limitation and use the most expansive possible language to impose obligations the FCC never did. The Commission should reject these proposals under which the CLECs could claim that just about anything is a routine network modification that they should get from Verizon for free.

The second new obligation, commingling, arises because the TRO eliminated the FCC's previous commingling restriction. Consistent with the FCC's rule, Verizon's proposal provides that Verizon will not prohibit commingling of UNEs with wholesale services to the extent required by federal law, and that Verizon will perform the functions necessary to allow CLECs to commingle UNEs with wholesale services.

The CLECs' proposals, however, include terms the FCC did not approve. CCG, for example, would require Verizon to commingle even elements the FCC has delisted, and would allow CLECs to veto any operational change that might affect any commingled arrangement in any way. The Commission should reject such anticompetitive proposals that expand upon Verizon's obligations under federal law.

Conversions are the third major type of obligation

addressed in the TRO. The FCC in certain cases allows CLECs to convert non-UNE services to UNEs, which means that they get the same functionality for a cheaper price. The debate here concerns mostly conversions from special access services to the loop transport combination known as an EEL. In the TRO, the FCC established new criteria to determine when a special access circuit qualifies for conversion to an EEL. **The FCC requires** certification on a circuit-by-circuit basis and does not allow any exceptions for existing EELs.

The FCC also gave ILECs the right to one EEL audit per year by an independent auditor to verify a CLECs compliance with the FCC criteria. If the auditor finds that the CLEC complied in all material respects with the service eligibility criteria, then the ILEC must reimburse the CLEC for its cost of complying with the audit request. The CLECs, however, would require Verizon to justify the need for an audit as to each circuit.

Any provision requiring Verizon to show cause for an audit would be unlawful. The FCC gave ILECs an unconditional right to one audit per year. It specifically found that its reimbursement requirement would prevent illegitimate audit requests, and rejected the same proof requirement the CLECs propose here. **The Commission cannot make a conflicting** decision. It cannot deny Verizon the right to an annual audit by conditioning that right upon a showing that was not required

by the FCC.

Another important issue concerns the effective date of the contract terms implementing EEL conversions and commingling. Although all parties agree that the amendment should take effect when it is approved, the CLECs propose to retroactively price EELs back to the October 2003 effective date of the TRO. The CLECs' rationale for this unique carve-out from the amendment effective date is solely to receive the benefit of more favorable pricing back to before when the amendment was signed. But the FCC, in the TRO, declined to override existing contracts, and, instead, required carriers to use the Section 252 process to amend their agreements. That process applies to all rulings, both good and bad, from the CLECs' perspective.

If the Commission is going to consider retroactive pricing for some services, it should consider retroactive pricing for all services, including those the FCC delisted two years before the amendments will be completed.

One last critical dispute concerns packet switching. The CLECs' amendments in the definition sections and elsewhere would impose unbundling obligations on Verizon's packet switches to the extent they are used to provide circuit switching functionality. But packet switching is not and never has been a UNE. The FCC expressly rejected the argument made by CLECs here that packet switching should be unbundled if

Verizon uses it to provide circuit switching functionality.

In fact, the FCC explicitly held that replacing a circuit switch with a packet switch eliminates any unbundling requirement, even if the sole purpose of such deployment is to avoid having to continue to provide unbundled switching. In any event, because the FCC has eliminated the obligation to unbundle even circuit switching, the CLECs' arguments about unbundling circuit switching functionality of packet switches are largely moot.

Finally, I would remind the Commission that it is not choosing amendment language at this stage, it is only resolving issues. So Verizon is confident that with the Commission's guidance on these issues the parties will be able to finally agree on language for a TRO amendment.

Thank you.

COMMISSIONER BRADLEY: Who wants to go first among the CLEC group?

MS. MASTERTON: Sprint is going to waive its time for opening statement.

COMMISSIONER BRADLEY: Okay. Sprint waives its time.

MR. HENRY: Commissioner, my name is Mickey Henry. I'm with AT&T. We had agreed to basically try and divvy up the CLEC time within the 25 minutes. I was the one, I think, who -- the disembodied voice out of the ceiling that suggested the 25 minutes. And as I understand, Commissioner Davidson,

there was a collective gasp in the room as to what I was thinking about. So, in any event, I have drawn the short straw, and I will try and address some of the major concerns of the CLEC side. I won't address in detail some of the things Ms. Caswell went into.

The parties basically, you know, came to an agreement, after we looked at the testimony that had been filed, that it was largely relying on arguments about what the TRO meant and decided, in large part, that could be done by briefs. That's the reason you have the stipulation here where we are agreeing to put the testimony in without cross, and then we are going to come to you with a brief in which we will probably more fully explore our arguments regarding what the TRO means. And a lot of the things that Ms. Caswell discussed will be addressed in our brief, as well.

Having said that, and one of the reasons I suggested an initial argument or an argument in front of the Commission, is that you are going to have this dry record that is going to be put in at some point hence, a month or a couple of weeks you are going to get a staff recommendation on what is in the record, and we wanted to put a voice and a face to the various competing sides on this.

This arbitration was initiated by Verizon in February of 2004. At that time we had, if the Commission will recall, the TRO had been released, I think in August of '03, and was

effective in October of 2003. Also, in February of 2004, the Commissioners may recall that we were down here doing the job that the FCC gave the states, and that was to make findings of impairment. Of course, all of that was halted by the D.C. Circuit Court of Appeals.

Since that time, we have had a court decision in USTA II; we have had a subsequent issuance of interim rules by the FCC; and now we have had the TRO remand order and the issuance of permanent rules by the FCC. Verizon, after having their petition dismissed in, I believe, July of 2004, refiled in September of 2004. And if you look at that petition and a lot of the arguments that were made at the time, it was on the basis that the interim rules were out, the permanent rules were to be issued. And this brings me to a point of contention that the CLECs have with Verizon, and Ms. Caswell discussed it briefly; and, that is, Verizon has a proposal in front of you that basically says when federal rules change, we should be permitted to self-implement, self-effectuate those changes without the need for a contract amendment. The CLECs' side has a fundamental disagreement with that.

As an initial matter, it basically violates what we all know to be a contract to be, which is a written document which lays out the obligations of the parties. Typically, these contracts will indicate in it that it is the entire agreement between the parties, and the obligations back and

forth are contained in that document, and that those obligations cannot be changed without a written amendment agreed to by the parties and, under the federal act, filed with this Commission.

Verizon would basically ask the Commission to permit it to determine what its obligations are under the contract and under federal law, and to proceed to take actions based on what it viewed its obligations were. Basically, that nullifies the contract, because neither party knows what the other side's obligations are. It is not enforceable. How can I enforce an obligation against Verizon if I don't know what they think their obligation is.

So that is the fundamental disagreement that we have with Verizon, is that we believe that the change of law, that when there are changes in law, the Commission, we should have a provision in the contract that is typically contained in most contracts that says the parties will get together, make a determination as to whether there has been a change in law, what that change of law has been, and what contract language to put into the contract to implement that change of law.

In addition, we are also in front of this Commission, basically, at the insistence of Verizon in these arbitrations to implement the TRO. There was nothing in the TRO or the TRRO which suggested or mandated that the change of law provisions in the parties' contracts should be changed. I think if you

look at Verizon's arguments throughout the time from February through September, it is borne out of their frustration, I believe, that they could not get the parties to sign a contract amendment with them based on the TRO.

As this Commission is aware, and as I briefly explained a moment ago, the TRO and the unbundling obligations of Verizon has had a very unstable history since February of '04, and the parties were reluctant to enter into a contract when they didn't know what the obligations were. When we had the USTA II decision, right after that you had -- the decision was being made as to whether the FCC was going to appeal that to the Supreme Court. When that decision was made not to appeal it, the FCC then came out with interim rules, so we had interim rules in place with a promise that we would have permanent rules.

And during this time Verizon proffered to the CLECs amendment one, what I described earlier, which is their self-effectuating. It basically says we will determine what our obligations are and we'll implement those. And as you can well imagine, parties were reluctant. You know, it is kind of Verizon saying trust me. I will make sure, you know, I will meet my obligations.

So, basically, you have Verizon in this case, and I think as I had indicated, they don't step over the line and accuse the CLECs of engaging in bad faith conduct, but they do

express a frustration that it has been, I think they say, 17 months since October of 2003 when the TRO came out. But I think that is explainable, and I think it is perfectly logical for the parties, the CLECs to, A, want to have a contract that contains the parties' obligations in it and not leave it up to Verizon to determine what those obligations are, and also to determine -- and also to have a contract amendment to reflect that.

I noticed that Verizon originally in their September filings were basically asking the Commission to conclude these proceedings and get to a contract amendment by February of 2005, which would have been prior to the permanent rules coming out. I now notice from reading the prehearing order that Verizon now indicates the Commission should reject any further efforts to delay this proceeding which must conclude within 12 months from March 11th, 2005. So I believe they now recognize we have the TRRO out there, we have permanent rules, we have issues in this docket that are teed up so that this Commission can make a decision and a determination as to what the obligations of Verizon are under the permanent federal rules that we now have in place.

The other three areas that I will touch on briefly address -- and Ms. Caswell touched on them briefly -- basically the provisioning of facilities so as to encourage facilities-based competition in the Tampa MSA, which is where

So the three things that basically will impact the CLECs' ability to compete in Tampa with Verizon involved the ability to order those loops to their own switches. And the FCC has basically imposed the obligation on Verizon that they are to do conversions so that whereas CLECs may have ordered special access circuits and are now able to order those as either UNE loops or EELs, which are the loop and transport piece, and also where the CLECs cannot use UNE transport to be able to take a UNE loop and commingle it onto an access facility that they are already buying from Verizon. And then, also, to be able to order EELs, which, again, is basically a way to connect the customer to the CLEC's switch, which is basically the loop portion and the transport portion.

I think you will hear the argument, or you will see the arguments of the parties in their briefs about what the FCC intended with respect to each one of those, but let me leave

you with this. The FCC when basically taking away CLECs' ability to get mass market switching, expressing a preference for facilities-based switching, also expressed a preference for the ability of CLECs to use those switches by being able to get to the loops of the end users and recognize that CLECs just simply cannot duplicate, in most instances, the loops. Verizon has had a, whatever, 65-year protected monopoly down there. They had the ability to go dig up the streets, to lay wires, have an exclusive franchise.

CLECs don't come in with that. CLECs can't basically build wires out to houses, because they don't know whether they are going to get the customer or not. When Verizon built those wires out to the customers, they had an exclusive franchise. In fact, they had this Commission setting the rates that they could charge and making sure that the customer paid those rates. CLECs simply can't do that. So we have to rely on that connection to the customer that Verizon basically built, and the FCC has found that we are entitled to do that.

So with respect to being able to convert our special access circuits to UNEs, being able to take a UNE loop that connects the customer and have it delivered to our switch from a loop and transport, which is the EEL, or the enhanced extended link, I believe is the proper name for it, those things should be made seamless and the process should be made basically so that it is not customer impacting.

The provisions that Verizon has in their proposed contract amendment throw up several obstacles to the CLECs in that regard. For example, for EELs the FCC set up a program whereby they said you can use these, but you have to have -- basically be using it for local services. And they set up a test of about five or six criteria, and we both agree on what the test is, it's in the rule.

What Verizon would have us do, though, is prior to ordering that circuit we would have to go to them and show that we had met every test. And the tests are, like, that you have the telephone number set up in the 911 data base, that you have interconnection trunks that match up with the traffic that you are going to be pulling off of that, and so forth.

Verizon would basically have us submit to them all this paperwork before they would provision the circuit, provision the link from the customer to our switch. The FCC, however, set up a system whereby the CLECs would self-certify, basically would say we meet these criteria, and we are entitled to this circuit, and you should provision it.

Now, Verizon has the right to audit that. And if we have not got our ducks in a row, if we did not meet the criteria, that auditor will basically find that, and we are going to have to, basically, pay for the circuit that we should not have gotten at UNE rates.

So there is the ability to audit once a year as to

whether or not when we self-certified we met all the criteria that we said we did. Verizon would set up a pre-circuit provisioning criteria, what the FCC called an undue and discriminatory gating mechanism. And we will argue about this in the brief, but those are the types of things that we will be talking about in the brief as to now that we are going to facilities-based competition, we need to be able to get to that customer's loop, and we need a seamless process and something that is not customer impacting. Those are the things that we will be discussing more in our brief.

You know, the problem with competition out there is that --

COMMISSIONER BRADLEY: I'm going to --

MR. HENRY: I'm sorry, am I through?

COMMISSIONER BRADLEY: Yes, you got the short straw.

MR. HENRY: Okay.

COMMISSIONER BRADLEY: I'm going to have to ask you to wrap up your discussion so that we can --

MR. HENRY: I will, Commissioner. I apologize if I have run over my time.

I just wanted to say, you know, it is the old story of a death by a thousand cuts. You know, nothing big. They don't do anything big to you, but they put all of these little hurdles in front of you, basically to prevent you from getting to your customer and getting your customer's linked to your

switch.

And I will conclude with that, Commissioner. Thank you for your time, and I apologize if I went over.

COMMISSIONER BRADLEY: Do we still have -- who is it, FDN?

MR. FEIL: Yes, sir.

COMMISSIONER BRADLEY: Would you like to go next?

MR. FEIL: No, sir. I was assuming that Mr. Henry or AT&T would represent the CLEC side, so I don't have anything to present. Thank you.

COMMISSIONER BRADLEY: Okay. Who was next?

Ms. McNulty.

MS. McNULTY: Commissioner Bradley, Mr. Henry is arguing on behalf of all of the CLECs. The time was --

COMMISSIONER BRADLEY: Oh, okay. I thought that we were going to apportion the 25 minutes among everyone. So basically Mr. Henry --

MS. McNULTY: He gets the full 25 minutes.

COMMISSIONER BRADLEY: Okay. Well, anything else?

MR. HENRY: Yes, Commissioner, like I said, I got the short straw. I've got to talk for everybody.

The one last thing I will mention, and I know it's a particular item with Mr. Feil and FDN, and that is Verizon's proposal to provision loops where they have what is called integrated digital loop carrier system, which is a technical

term, but basically it means the loop is kind of hardwired into the switch, and you really can't pull it off and give it to a CLEC without doing something special. These are analog loops, these are DS-0 loops. This is, you know, for the mass market, if you will, being served out of a CLEC switch. The FCC, basically, said you have got to make that loop available to the CLECs. We realize that it is hardwired into the switch, but you have got to find a way to do it.

And there is, basically, a couple of ways to do it. One is if you have spare copper out there, you can provide that. If you have some spare, what is called universal digital loop carrier, UDLC, you can provide it off of that. When Verizon was at the FCC in the original TRO, and that became a problem because Verizon was up there saying, you know, you shouldn't let them have UNE-P because they have their switches, and they can serve mass market.

And the problem came up, well, what about this IDLC? When it is hardwired in, how are you going to get them a loop. And up there Verizon said, oh, you know, we will take care of it, we have got engineering ways to do that. We can do a side door, or a hairpin, or that type of thing where you basically take the loop out and make an engineering solution to it, and told the FCC that. Gave them representations that that could be done, that there was no problem with provisioning an analog loop off of an integrated system.

We now get their amendment, and what Verizon basically says that they will do is if you want an analog loop to serve a mass market type customer, and it is served by an integrated digital system, we'll either give you the spare copper, if we have it, or we will give you the other universal carrier, or if we don't have either of those, we will trench you a loop and you pay for it.

Now, we are suggesting that BellSouth, for example, who you will rarely hear me holdup as an example, BellSouth basically says, if we have an IDLC system and you need a loop, we will do the engineering solution and we will deliver it to you. We find it hard to believe that Verizon's engineers aren't as smart as BellSouth's and that a similar solution is not available from Verizon. And you will hear more about that in our brief.

And, Commissioner, that does conclude my remarks.

COMMISSIONER BRADLEY: Thank you. Any other remarks? Okay.

With the conclusion of the opening statements, I believe that takes care of our business for today.

Staff, is that correct?

MR. FORDHAM: That's correct, Commissioner.

(REPORTER NOTE: Prefiled testimony inserted into the record.)

Q. PLEASE STATE YOUR NAME, POSITION WITH VERIZON, AND BUSINESS ADDRESS.

A. My name is Alan F. Ciamporcero. I am employed by Verizon Communications Inc. as President – Southeast Region. I am testifying on behalf of Verizon Florida Inc. ("Verizon"). My business address is 201 N. Franklin Street, Tampa, Florida 33602.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. Prior to becoming President of Verizon's Southeast Region in January of 2003, I was Vice President – State Regulatory Affairs for Verizon Corporation in Washington, D.C. From the time I was hired in 1998 until the GTE/Bell Atlantic merger was finalized in 2001, I oversaw GTE's relations with the Federal Communications Commission. Before joining GTE, I spent ten years with Pacific Telesis Corporation, first as an attorney in the marketing group, then focusing on antitrust and Modified Final Judgment (divestiture) compliance issues, and finally overseeing the company's relations with the FCC. Earlier in my career, I worked as an attorney in private practice in California and Washington, as a law clerk for the United States Court of Appeals for the Ninth Circuit, and on the staff of the United States House of Representatives.

I received my J.D. degree from the University of California, Davis in 1983, my Ph.D. in political science from the State University of New

York at Albany in 1980, and my undergraduate degree in political science from the University of Pittsburgh in 1970.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. I will explain why Verizon initiated this proceeding, why it must conclude promptly, and, in general terms, what Verizon's *Triennial Review Order* ("*TRO*") Amendments are designed to do. My testimony addresses, at a high level, Issues 2 (how changes in unbundling obligations should be reflected in the amendment), 6 (repricing of arrangements no longer subject to unbundling), 7 (notice of discontinuance before the effective date of elimination of unbundling obligations), 8 (Verizon's entitlement to charge for conversion of UNEs to non-UNE alternatives), 11 (implementation of rate increases and new charges), 14 (whether the Amendment should address certain items unrelated to the *TRO*), 17 (whether existing performance measures should apply to new *TRO* services and activities), and 26 (interim adoption of Verizon's proposed rates for new *TRO* services). However, my primary purpose is to provide helpful background for the Commission, rather than to explain how specific provisions in Verizon's proposed amendments implement the legal rulings in the *TRO* or the *Triennial Review Remand Order* ("TRRO"). I am not testifying here as a lawyer. As Verizon has consistently maintained, issues concerning implementation of the *TRO* and *TRRO* rulings are legal, not fact, issues, and are properly addressed in legal briefs, rather than through testimony and hearings. I understand, however, that the CLECs insisted on direct testimony and

hearings here in Florida, although even they agree that a number of issues can be addressed solely through briefing. If any CLEC presents fact or policy testimony that merits rebuttal, Verizon will address it through rebuttal witnesses.

Q. WHY DID VERIZON INITIATE THIS PROCEEDING?

A. Verizon initiated this proceeding because the FCC told carriers to promptly amend their interconnection agreements to the extent necessary to implement the *TRO* rulings. The FCC found that even a months-long delay in implementing the *TRO* rulings "will have an adverse impact on investment and sustainable competition in the telecommunications industry." (*TRO*, ¶ 703.) The FCC warned that refusal to negotiate a *TRO* amendment, or unreasonably delaying the amendment process, "could be considered a failure to negotiate in good faith and a violation of section 251(c)(1)" of the Act. (*Id.* ¶ 704.) To prevent foot-dragging, the FCC told carriers to use the timetable for interconnection negotiations and arbitrations in section 252(b) of the Act. Thus, if carriers could not agree to an amendment, the FCC expected state Commissions to resolve disputes over contract language no later than nine months from the date of the *TRO*. (*Id.* ¶¶ 703-04.)

Q. WHEN DID THE *TRO* TAKE EFFECT?

A. Almost 17 months ago, on October 2, 2003. The FCC deemed October 2, 2003 to be the start of negotiations for a TRO amendment (*id.* ¶ 703). On that same day, Verizon sent a notice to all carriers with which it had

interconnection agreements, making available its *TRO* Amendment for negotiation. Although some CLECs eventually executed Verizon's *TRO* Amendment, Verizon's negotiation request produced little response from most CLECs. When negotiations proved unsuccessful, Verizon filed for arbitration here on February 20, 2003, within the window the FCC had established.

Q. DID THE CLECS COOPERATE WITH THE ARBITRATION PROCESS THE FCC HAD PRESCRIBED?

A. No. They did everything they could to delay the arbitration, and, thus, implementation of federal law. Even though the FCC specifically rejected the CLECs' contentions that negotiation of a *TRO* amendment should be delayed until all appeals of the *TRO* were final and nonappealable (*TRO,* ¶ 705), the CLECs claimed that Verizon's Petition for Arbitration was premature while the *TRO* was under appeal. The CLECs also raised various procedural challenges to Verizon's Petition. On July 12, 2004, the Commission granted Sprint's motion to dismiss Verizon's Petition because the Commission found that the filing did not provide enough information for the Commission to efficiently proceed with arbitration. In this regard, the Commission recognized that "those CLECs that have failed to respond to Verizon have contributed greatly to the lack of information available and have likely increased the burden on Verizon to meet the requirements of Section 252(b)(2)." (Order Granting Sprint's Motion to Dismiss, July 12, 2004, at 6.) The Commission thus granted Verizon leave to file a corrected Petition for Arbitration that

included the information specified in the July 12 Order. Verizon filed its new Petition for Arbitration and updated *TRO* Amendment on September 9, 2004, and that Petition is the basis for this proceeding.

Q. HOW MANY CLECS ARE INCLUDED IN THE ARBITRATION?

A. Nineteen. Verizon named 18 CLECs to the arbitration (a third of which are AT&T and MCI affiliates). Sprint was later permitted to intervene in the arbitration when it decided that it wanted to participate after all, despite its request for dismissal from the original arbitration.

In accordance with the Commission's July 12 Order, Verizon thoroughly reviewed the change-of-law provisions in its agreements to specify which carriers should be included in the arbitration. As Verizon explained in its Petition for Arbitration, most of Verizon's interconnection agreements already contain clear and specific terms permitting Verizon, upon designated notice (or no specified notice), to stop providing unbundled access to facilities that are no longer subject to an unbundling obligation under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. (Petition for Arbitration at 2.) There was no need to include CLECs with these self-effectuating agreements in the arbitration because Verizon could lawfully discontinue the UNEs delisted in the TRO without amending these agreements.

Even as to the 18 carriers Verizon named in its Petition, Verizon made clear that it sought to proceed with arbitration only because their

contracts might be *mis*construed to call for an amendment to permit Verizon to discontinue the UNEs delisted in the *TRO*. Verizon does not concede that it can be required under *any* of its interconnection agreements to provide UNEs eliminated by the FCC or federal courts. In addition, some CLEC contracts in this arbitration clearly specify that Verizon may discontinue particular UNEs upon notice.

Finally, amending contracts to incorporate the *TRO* and *TRRO* permanent unbundling rules is a separate matter from implementing the *TRRO*'s mandatory plan to transition CLECs from UNE-P and high-capacity facilities no longer subject to section 251 unbundling obligations. I understand from Verizon's lawyers that no amendments are necessary to implement the FCC's specific transition directives, which take effect on March 11, 2005, (TRRO, ¶ 235), but that issue is more appropriately addressed through legal briefs.

Q. DOES VERIZON PLAN TO REVISE ITS PETITION OR AMENDMENT IN LIGHT OF THE *TRRO*?

A. The *TRRO*, released on February 4, 2005, memorialized the FCC's final unbundling rules adopted on December 15, 2004. There is no need for Verizon to revise its Petition or to rewrite its Amendment in response to the *TRRO*, because Verizon's Amendment was designed to accommodate future changes in unbundling obligations. Therefore, the Amendment will incorporate the *TRRO*'s no-impairment rulings for UNE-P and for the high-capacity facilities that meet the FCC's criteria, and

any future no-impairment findings the FCC may make. The amendment establishes clearly that Verizon's unbundling obligations under its interconnection agreements are the same as its obligations under section 251(c)(3) and the FCC's implementing rules. (See Amendment 1 ("Am. 1"), §§ 2, 3.1, 4.7.3, 4.7.6.) Under the Amendment, Verizon may cease providing unbundled access to "Discontinued Facilities," meaning facilities that Verizon no longer has any obligation to provide under section 251(c)(3) of the Act and the FCC's implementing rules. (Am. 1, § 4.7.3.) By tying Verizon's obligations under its agreements to the obligations imposed under federal law, Verizon's Amendment provides for automatic implementation of any subsequent reductions in unbundling obligations without the wasteful and prolonged procedure that has been underway here for a year. When the FCC eliminates an unbundling obligation, that decision can be and should be implemented through the parties' interconnection agreements as well, without the need for any amendment to the agreement's language.

Verizon's Amendment, in addition, specifically identifies as Discontinued Facilities certain items that were eliminated in *TRO* decisions that are final and unappealable. (Am. 1, § 4.7.3.) In their efforts to delay this proceeding, the CLECs focused solely on the UNEs at issue in the FCC's permanent unbundling rules. But there are a number of *TRO* rulings that the CLECs refused to implement, even though they became binding months ago. These rulings, which were either upheld by the D.C. Circuit or not challenged in the first place, include, among others,

the elimination of unbundling requirements enterprise switching, OCn loops, OCn transport, the feeder portion of the loop on a stand-alone basis, signaling networks and virtually all call-related databases; and the determination that the broadband capabilities of hybrid copper-fiber loops and fiber-to-the-premises facilities are not subject to unbundling. The FCC's permanent unbundling rules do not affect these rulings *at all*, yet the CLECs have never offered any excuse for failing to reflect them in their contracts in the 17 months that have passed since the *TRO* took effect. Quick resolution of this proceeding is critical for this reason, and to meet the FCC's deadline for *TRRO* amendments.

Q. IS VERIZON WILLING TO CONTINUE NEGOTIATING ITS TRO AMENDMENT AS THE ARBITRATION PROCEEDS?

A. Yes. Although Verizon does not intend to overhaul its Amendment in light of the *TRRO*, it is open to discussing revisions put forward by other parties. Parties to section 252 arbitrations typically continue to negotiate disputed issues after the proceedings are underway, and this case is no different. Verizon remains willing to engage in (or continue) good-faith negotiations over its *TRO* Amendment as this arbitration progresses. In fact, in a notice sent on February 14, 2005, Verizon made clear to the CLECs in this arbitration that its previously released TRO Amendment was suited for implementing the *TRRO*'s no-impairment findings, and that Verizon was prepared to continue negotiation of that Amendment. Verizon also reminded CLECs that the FCC had given carriers a firm deadline for completion of amendments incorporating its no-impairment

findings—twelve months from March 11, 2005 for local circuit switching (*i.e.*, mass-market UNE-P), dedicated DS1 and DS3 transport, and DS1 and DS3 loops; and eighteen months for dark fiber loops and transport. These amendment deadlines are not subject to change, because they are linked to the FCC's transition periods for the delisted UNEs. Given the need to proceed promptly, Verizon's notice asked CLECs to notify their assigned Verizon negotiator within 30 days if they intended to continue negotiations or add terms to any contract language they had previously proposed.

Q. DOES VERIZON PLAN TO DISCONNECT CLEC SERVICES THAT ARE NO LONGER SUBJECT TO AN UNBUNDLING OBLIGATION?

A. No. No CLEC will be dropped from Verizon's network unless the CLEC asks for its services to be disconnected. Under Verizon's Amendment, Verizon would give a CLEC 90 days' written notice before discontinuing a UNE that is no longer subject to a section 251 unbundling obligation. (Am. 1, § 3.1) If the CLEC has not requested disconnection or negotiated an agreement for replacement arrangements before the end of the 90-day notice period, then Verizon would reprice the service by applying a new rate equivalent to resale, access, or other analogous arrangement that Verizon will identify in a written notice to the CLEC. (Am. 1, § 3.2.) The Amendment makes clear that any negotiations regarding non-UNE replacement arrangements are deemed *not* to have been conducted under section 252 or the FCC's unbundling rules, so these arrangements are not subject to arbitration under the Act. (Am. 1,

§ 3.3.) It also specifies that nothing in the Amendment affects any pre-existing or independent right Verizon may have to cease providing Discontinued Facilities. (Am. 1, § 3.4.)

The Amendment provides that Verizon may issue a discontinuation notice in advance of the date on which a delisting ruling will take effect, to give effect to Verizon's right to reject orders on that date. The Amendment also recognizes that before it took effect, Verizon had provided written notices to the CLECs, identifying arrangements that would replace certain delisted facilities, so Verizon can implement those arrangements without further notice once the Amendment takes effect. (Am. 1, §§ 3.1, 3.2.)

Q. WHY IS IT REASONABLE FOR VERIZON TO RELY ON NOTICES OF DISCONTINUATION SENT BEFORE THE AMENDMENT'S EFFECTIVE DATE?

A. Because the CLECs have already had more than ample notice of the *TRO* rulings and time to transition delisted services to non-UNE replacements. For example, in the *TRO*, the FCC determined that CLECs are not impaired without access to enterprise switching. This ruling took effect on December 31, 2003. On May 18, 2004, Verizon gave all CLECs 90 days' written notice that Verizon would not provide enterprise switching as of August 22, 2004, and invited CLECs to negotiate replacement arrangements. Verizon did, in fact, discontinue enterprise switching for most carriers (and transitioned them to

alternative arrangements), because their contracts clearly permitted Verizon to do so without an amendment. However, Verizon has continued to provide unbundled enterprise switching to the CLECs in this proceeding, because, as I explained above, their contracts may be misconstrued to require an amendment before discontinuing delisted UNEs. Therefore, by resisting Verizon's efforts to arbitrate contract amendments incorporating the *TRO* delistings, these CLECs have retained access to an element that was discontinued by the FCC well over a year ago. Under the current schedule, which calls for briefs on June 20, 2005, it is unlikely that amendments will be executed before late summer, at the earliest. By that time, two years will have passed since release of the *TRO* and well over a year will have passed since Verizon formally notified carriers of discontinuation of enterprise switching. Given the unduly long period of time these CLECs have had to prepare themselves for discontinuation of enterprise switching, there is no legitimate reason for CLECs to insist on *another* notice that allows them to keep enterprise switching for *another* three months after the Amendment takes effect.

The same logic holds true for other services delisted in the *TRO*, but which CLECs in this arbitration may still attempt to retain on an unbundled basis (*e.g.*, OCn loops and transport; dark fiber channel terminations and entrance facilities; dark fiber feeder subloop; and hybrid loops). Those rulings took effect on October 2, 2003 (even before the enterprise switching ruling did), and Verizon gave notice of

discontinuation that same day. As with enterprise switching, these services were discontinued for all carries but those Verizon named in its arbitration petition.

Q. HOW DOES VERIZON PROPOSE TO ADDRESS RATE CHANGES?

A. Under the Amendment, Verizon may implement any rate increases or new charges established by the FCC for UNEs or related services by issuing a schedule of such rate changes. The rate increases or new changes would take effect on the date indicated in the schedule, unless the FCC specified a different date. (Am. 1, § 3.5.) The Amendment recognizes that such rate increases or new charges would be in addition to any approved by this Commission or that Verizon otherwise has the right to implement. *Id.* Of course, regardless of any provisions in the Amendment or underlying contracts, all carriers must comply with specific FCC directives regarding rate increases or changes, such as those established in its *TRRO* transition plan. Again, however, explanations about implementation of the transition plan, including its rate increase provisions, are more appropriately handled by Verizon's lawyers.

Q. DOES THE AMENDMENT RECOGNIZE THAT VERIZON MIGHT BE REQUIRED TO OFFER NEW UNES?

A. Yes. In the unlikely event that the FCC designates new UNEs after the effective date of the Amendment, the rates, terms, and conditions will be established in Verizon's tariffs, if applicable, or through negotiation of an

amendment to the interconnection agreement. (Am. 1, § 2.3.)

Q. HAS VERIZON ALSO PROPOSED LANGUAGE TO IMPLEMENT NEW OBLIGATIONS IMPOSED IN THE *TRO*?

A. Yes. Although my discussion so far has focused on the *TRO* Amendment Verizon proposed for arbitration ("Amendment 1"), Verizon made available in negotiations a second amendment ("Amendment 2") in response to CLEC proposals and requests. Verizon filed Amendment 2 in this proceeding on October 18, 2004, after the CLECs had put its subject matter at issue in the arbitration. Whereas Amendment 1 primarily addresses discontinuation of delisted UNEs, Amendment 2 fleshes out Verizon's obligations as to certain *TRO* requirements, including those relating to commingling, conversions of non-UNE services to UNEs, routine network modifications, overbuilt fiber-to-the-premises loops and hybrid loops. Like Amendment 1, Amendment 2 ties Verizon's obligations to federal law, but establishes specific terms and conditions to govern provision of the new services required by the FCC in the *TRO* (to the extent that underlying facilities still need to be made available under the FCC's permanent unbundling rules). If CLECs wish to obtain these new services, they must execute an amendment to do so.

The specifics of how the Amendment 2 provisions incorporate the TRO's legal rulings is a matter for the legal briefs but, to the extent CLECs raise fact issues in their testimony, Verizon will respond to them in

rebuttal.

Q. IS VERIZON PROPOSING PRICES FOR THE NEW SERVICES REQUIRED BY THE *TRO*?

A. Yes. Amendment 2 includes a pricing attachment setting forth Verizon's proposed rates for activities relating to commingling, conversions, and routine network modifications. The Commission has already set rates for some elements in the pricing schedule, and Verizon is not seeking to change those here. As to the rates that have not been set by the Commission, Verizon proposes to charge them on an interim basis, pending completion of a cost case. Verizon did not submit a cost study in this phase of the case because, until the FCC released its new rules, Verizon could not determine the precise parameters of such a study. Therefore, there was insufficient time to prepare thorough studies for the numerous jurisdictions in which arbitration proceedings are underway. In addition, cost proceedings are typically protracted and raise complicated fact issues. Given the FCC's directive to promptly conclude proceedings to implement the no-impairment rulings in the *TRO* and the *TRRO*, and the number of non-cost issues the Commission must consider, it is not reasonable to litigate and resolve costing and pricing issues in this phase of the proceeding. Therefore, Verizon recommends that the Commission adopt the rates specified in Verizon's pricing attachment to Amendment 2 on an interim basis, pending completion of a pricing proceeding to be held later. To the extent Verizon is required to provide the services covered in Amendment 2, it is also entitled to

payment for them. The interim rates will assure cost recovery until the Commission can set permanent rates.

Q. WHY DOES VERIZON OPPOSE ADDING LANGUAGE TO THE *TRO* AMENDMENT TO ADDRESS LINE SPLITTING, RETIREMENT OF COPPER LOOPS, LINE CONDITIONING, PACKET SWITCHING, AND NETWORK INTERFACE DEVICES?

A. The purpose of this arbitration is to amend agreements to implement the permanent unbundling rules in *TRO* and *TRRO*. These Orders did not change Verizon's obligations (or lack thereof) with regard to the items listed in the question. These matters are already addressed in the underlying agreements, so there is no reason to address them in the *TRO* Amendment. This proceeding is not a free-for-all for parties to revise any terms in their underlying agreements that they may not like. Introduction of these extraneous issues will unduly and unnecessarily complicate this proceeding, because it would require consideration of extensive new language that has nothing to do with obligations imposed in the *TRO*. The Commission has enough *TRO*-related items to consider in the coming months, without trying to evaluate contract proposals for non-*TRO* issues. If the Commission were to determine that these or other non-*TRO* items should be addressed in the *TRO* Amendment, then Verizon must have the opportunity to propose language during negotiations to conform the amendment to the Commission's decision.

Q. IS THERE ANY NEED FOR THE COMMISSION TO CONSIDER PERFORMANCE MEASURES AND REMEDIES IN THIS DOCKET, AS THE CLECS HAVE ASKED IT TO?

A. No. Issue 17 asks: "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; [and] d) loops or transport (including dark fiber transport and loops) for which routine network modifications are required." (Emphasis added.)

The question concerns only potential application of already existing measures. Verizon has not determined the full extent to which its Florida contracts might be construed to require intervals, performance measurements or potential remedy payments, but such provisions, if they do exist, would likely be rare. In any event, whatever intervals, measurements, or remedy payments that may exist were not designed to account for any extra time and activities associated with the new *TRO* requirements. These requirements did not exist when the contracts were executed.

In addition, the Commission should not consider any performance measurement proposals in this arbitration, because such proposals must be addressed according to the provisions of the Stipulation on

Verizon Florida Inc. Performance Measurement Plan, adopted by Order No. PSC-03-0761-PAA-TP in Docket No. 000121C-TP. As the Commission correctly stated in that Order, the stipulation adopts the performance metrics set forth in the California Joint Partial Settlement Agreement and identifies a process for the flow-through of changes ordered by the California Public Utilities Commission to the measures in effect in Florida:

> [T]he stipulation identifies a process for the flow through of changes ordered by the California Public Utilities Commission to the measures in effect in Florida. The parties agree that the review process in California will consider and satisfactorily resolve such issues. In the event that it does not, any party can apply to the Florida Public Service Commission for resolution, as defined in the stipulation.

Order No. PSC-03-0761-PAA-TP at 4. In particular, the Stipulation requires written notice of performance measurement plan changes to the Commission and all CLECs, a formal opportunity for parties to challenge any noticed changes, issuance of a Proposed Agency Action adopting the changes, and implementation within a designated timeframe. (Stipulation, at 4-5.) The stipulation also allows for consideration of "issues that have neither been raised nor resolved in the California process." For such issues, a party is to request, in writing, negotiation, and if no resolution is reached within thirty calendar days, the parties can either extend the negotiations period or petition the

FPSC to resolve the issue. (*Id.* at 5.)

Therefore, there is already a specific procedure to present proposals for additions or changes to Verizon's performance plan in Florida. The CLECs should be required to follow the procedures they agreed to, rather than raising performance plan issues in this forum. Even aside from the existence of the stipulation, consideration of performance plan issues is not appropriate here, because nothing in the *TRO* requires implementation of performance plans, and performance plan issues should be considered in a generic forum in which all CLECs can participate, rather than in this arbitration with particular CLECs.

Q. HAS ONE PERFORMANCE PLAN ISSUE ALREADY BEEN DROPPED FROM THIS CASE?

A. Yes. When the parties were negotiating the list of issues to be resolved in this arbitration, certain CLECs insisted on including the issue of hot cut performance metrics and remedies. Verizon challenged the inclusion of this issue, and it was deleted from the case in an Order issued February 24, 2005. (Order Denying CLECs' Motion for Modification of Order Establishing Procedure, Order No. PSC-05-0221-PCO-TP, at 8 (Feb. 24, 2005).) .

The rationale for excluding hot cut performance metrics from this arbitration applies with equal force to all of the other items in Issue 17. There is no need to consider performance measures relating to any of

these new services or activities, because there is already an ongoing performance measures docket, including agreed-upon procedures to raise such issues. In fact, the Order removing the hot cuts issue from this case advises "[a]ll parties...to make a concerted effort to negotiate in good faith regarding performance measures issues in the future, as specifically called for in the 'Continuing Best Efforts' section of the stipulation." Id. The Order emphasizes that: "From the Commission's standpoint, such communication is expected before matters are escalated to the extent they have been in this proceeding." In addition, development of performance metrics and remedies is an extremely complex, fact-intensive, technical undertaking that does not lend itself to litigation. That is why such metrics are typically developed in industry collaboratives, rather than through adversary processes. It is highly unlikely that the Commission will be able to evaluate performance metric and remedy proposals—in addition to all the other issues in this case—within the few months remaining for decision. Any evaluation of remedy proposals would be further complicated by the need to address the fundamental legal issue of whether the Commission has the authority to adopt any remedy plan at all. As Verizon's lawyers made clear at the outset of Verizon's performance measures docket, the Commission cannot award damages, so it cannot impose any enforcement mechanism that includes monetary payments.

In accordance with the Commission's expectation that parties will try to negotiate performance issues before raising them in litigation, the

Commission should make clear at this point that it will not consider proposals for any new performance measures or remedies in this case, before parties waste time trying to litigate any such proposals.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION TITLE.

A. My name is E. Christopher Nurse, and my business address is 1120 20TH NW, Washington, DC 20036. I am employed by AT&T as a District Manager, Law and Government Affairs. I am currently responsible for presenting AT&T's regulatory advocacy on a broad range of issues, particularly focusing on issues supporting AT&T's efforts to enter and compete in Verizon's local exchange markets. I have focused on the fourteen state jurisdictions in AT&T's Eastern Region, from Virginia to Maine, and recently expanded my responsibilities to include AT&T interconnection issues nationally.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I received a B.A. in Economics from the University of Massachusetts at Amherst. In 1996, I received a Masters in Business Administration from Southern New Hampshire University in Manchester, New Hampshire. I have twenty-four years experience in the telecommunications industry, including nearly eight years with AT&T through its acquisition of Teleport Communications Group, Inc. ("TCG"). Prior to my time at TCG, I was a telecommunications analyst with the New Hampshire Public Utilities Commission from 1991 until 1997, where I held a broad range of responsibilities. Assigned to the Engineering Department, I was the lead analyst or a contributing analyst to nearly all telecommunications matters before the

New Hampshire Commission.

Since joining AT&T I have appeared regularly on behalf of the company in regulatory proceedings, industry workshops and collaborative proceedings. These have included the New York Carrier Working Group, the Pennsylvania Global Settlement, the New Jersey Technical Solutions Facilitation Team, and the New York DSL collaborative. Also, I was AT&T's principal negotiator in developing performance metrics and the Performance Assurance Plan across the Verizon East footprint. I was extensively involved in several of the KPMG OSS tests including those in Pennsylvania, New Jersey, Virginia, Maryland, and the District of Columbia. Recently, I have been engaged in the commission-ordered audits of Verizon's metrics performance in a multi-state collaborative, the Joint State Committee meeting in New York; in a case against BellSouth's anticompetitive tying of DSL and POTS in Georgia; and in a case challenging Verizon's proposal for the deregulation of small business services in New Jersey.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY COMMISSIONS AND IN OTHER REGULATORY PROCEEDINGS?

A. Yes. I have testified on behalf of AT&T in proceedings before the state commissions in Connecticut, Delaware, District of Columbia, Georgia, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Virginia and West Virginia. I also have made numerous *ex parte* presentations to the FCC staff and commissioners. Recently, I filed a declaration in the U.S. District Court, Eastern District of Pennsylvania, in Case No. 04-27091. I have testified on a wide variety of policy and operational subjects, including issues involving rates and terms for obtaining access to unbundled network elements ("UNEs"), carrier access charge

reform, incumbent providers' plans for alternative regulation and network modernization, Section 271 checklist compliance, collocation, reciprocal compensation, and interconnection agreement arbitrations. I also was a witness for AT&T in the state commission impairment proceedings conducted under the FCC's *Triennial Review Order.*[1]

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?

A. The purpose of my testimony is to provide AT&T's position on a number of the disputed arbitration issues that have been identified in the Pre-hearing Order. These issues have arisen as a result of Verizon's effort to amend its current interconnection agreement with AT&T in the wake of the *Triennial Review Order,* the *USTA II* decision,[2] and the FCC's *Interim Order.*[3] Further, since this proceeding began, the FCC has issued its latest order and rules that address many of these issues. Specifically, I will describe why the Commission should adopt both AT&T's position for resolving those disputes and the contractual language AT&T has submitted for purposes of amending its ICA with Verizon in order to properly implement those decisions and the *TRO and TRRO.*

Q. WHAT ISSUES DOES YOUR TESTIMONY ADDRESS?

A. My testimony provides information related to the Commission's consideration of Issues addresses Issues 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14(b), (c), (g), (h), (i), 15, 16, 17, 18, 19, 20, 21, 21(a), 21(b), 21(b)(2), 21(c), 22, 24, 25, and 26. In my testimony, I also note in several instances that the resolution of the Issue, and Verizon's obligations under federal law to provide unbundled network elements and interconnection, is affected by the FCC's *Triennial Review Remand Order* ("*TRRO*")

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[1] In the Matter of Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers, CC Docket No. 01-338, Further Report and Order on Remand and Further Notice of Proposed Rulemaking, Aug. 21, 2003 ("Triennial Review Order" or "TRO").

[2] United States Telecom Association v. Federal Communications Commission, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II").

[3] Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements*, WC Docket No. 04-313, ¶ 21 (August 20, 2004) ("*Interim Order*").

and the new network unbundling rules issued by the FCC on February 4, 2005.[4] Because the FCC's Order was release only three weeks ago and is not yet effective, the parties have not had an opportunity to fully negotiate language for those issues affected by the FCC's rules. Therefore, in the case of those issues, I will discuss the FCC's new requirements and make recommendations as to the principles that need to be reflected in our agreement.

Q. BEFORE ADDRESSING THE SPECIFIC ISSUES SET FORTH IN THE PRE-HEARING ORDER, DO YOU HAVE ANY GENERAL OBSERVATIONS CONCERNING THE APPROACH VERIZON HAS TAKEN CONCERNING THE PROCESS OF AMENDING THE INTERCONNECTION AGREEMENT WITH AT&T?

A. Yes. Verizon's approach has been flawed both procedurally and substantively. As a matter of process, rather than dealing with **all** of the issues raised by the *TRO*, the *USTA II* decision, and subsequent FCC rulings[5] in a unified, comprehensive manner, Verizon has advocated for a scattershot approach in which Verizon's favorable issues, would be segregated from, and considered before, other *TRO*-related issues – specifically those that impose unfavorable obligations on Verizon.[6]

Q. IS VERIZON'S PICK AND CHOOSE APPROACH TO THE ICA NEGOTIATING PROCESS REASONABLE?

A. Although I am not an attorney, it is my understanding that this attempt to bifurcate the arbitration issues is contrary to governing law. Just as important, it is antithetical to

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[4] Order on Remand, *Unbundled Access to Network Elements*, WC Docket No. 04-313, February 4, 2005.
[5] *MDU Reconsideration Order*, 19 FCC Rcd 15856 (2004); *FTTC Reconsideration Order*, FCC 04-248, issued October 18, 2004.
[6] It would be equally unreasonable to segregate and expedite all the issues favorable to AT&T. Fundamental fairness compels that the good be taken with the bad, rather than Verizon's "pick and choose" approach.

the goals of the good-faith negotiation process. The fundamental principle of good faith negotiations certainly does not confer on Verizon the ability to unilaterally determine those issues it will and will not negotiate and arbitrate. It is critical to a comprehensive and equitable resolution of the important issues presented in this case that *all* of those issues be negotiated in good faith, and failing agreement, all of the issues be simultaneously arbitrated. AT&T and Verizon are each obligated to negotiate the entirety of issues raised by change of law.

Q. IS VERIZON'S APPROACH SUBSTANTIVELY CORRECT?

A. No. Verizon fares no better on the substance of its proposals. In fact, both of Verizon's proposed amendments to the interconnection agreement fail to faithfully reflect all of the directives of the even the *TRO*. For example, Verizon's Amendment 1 seeks to vest in Verizon the right to unilaterally discontinue provisioning of unbundled network elements and other facilities without prior negotiation with AT&T or consideration by the Commission. Verizon's Amendment 2, in turn, attempts to saddle AT&T with obligations not grounded in the *TRO*, ignores obligations placed on Verizon by the *TRO*, and fails to grapple at all with critical issues discussed in the *TRO* such as batch hot cuts, line splitting and line conditioning. In addition, it seeks to impose rates for conversions and routine network modifications that are both unsupported and which the *TRO* indicates generally are already included in the rates Verizon is already charging AT&T for those UNEs. Despite the explicit directive in the *TRO*, and the FCC's finding that Verizon's policy was anticompetitive and "discriminatory on its face," Verizon has not come forward with a showing that its unsubstantiated rates are not double recovery. [7] As a result of all of this, Verizon's proposed amendments should be rejected. Further, now that the FCC has issued the *TRRO*, there should no longer be disputes regarding Verizon's obligations or the appropriate transition for those facilities no longer subject to unbundling.

Q. HOW SHOULD THE COMMISSION IMPLEMENT THE AMENDMENTS TO THE INTERCONNECTIONS AGREEMENT?

Triennial Review Order at ¶39, n. 1940.

A. The Commission should reject both of Verizon's proposed amendments and approve and implement AT&T's comprehensive single amendment. Given the pervasive procedural and substantive flaws in Verizon's current approach, AT&T formulated a single comprehensive Amendment incorporating both the favorable and the unfavorable outcomes, which it submitted to Verizon on September 15, 2004. Unlike Verizon's separate proposals, AT&T's Amendment, which is attached my testimony as ***Exhibit ECN-1***, reflects **all** of the provisions of the *TRO, USTA II* and the FCC's *Interim Order* that require incorporation into AT&T's interconnection agreement with Verizon. Of course, a single Amendment, by definition would implement al the issues simultaneously, without gaming the implementation to wrangle an improper advantage.

In the wake of the FCC's recent action, the disputed issues fall into two categories: those that are impacted by the *TRRO* and those that are not. AT&T respectfully requests that the Commission adopt AT&T's previously proposed comprehensive amendment, modified to reflect the *TRRO* as I discuss below.

Q. THE PREHEARING ORDER LISTED A NUMBER OF SPECIFIC ISSUES IN DISPUTE BETWEEN THE PARTIES. IS THERE ANY COMMON THEME TO THOSE ISSUES?

A. Yes. There is one overarching dispute between the parties that pervades Verizon's proposed Amendments – namely, Verizon's effort to place itself in the position of unilaterally interpreting and then implementing any further regulatory decisions concerning AT&T's access to unbundled network elements, without consultation with AT&T or recourse to the Commission.

Q. HOW IS VERIZON ATTEMPTING TO DO THIS?

A. Verizon proposes in its draft amendments that all further orders and rules removing an obligation on Verizon to make unbundled elements available to AT&T somehow be automatically incorporated into the interconnection agreement without negotiation or discussion as to the interpretation of the future changes, nor of the transition involving implementation of any such changes. As experience has shown, the nature of these regulatory changes is that they are anything but ministerial, and usually lead to disputes over their interpretation. Accordingly, it is inherently not a matter that can be delegated as if some mere compliance issue. Under Verizon's proposition, Verizon would place itself in the position of being the sole interpreter and arbiter of all of these decisions, as if it were the Commission, rather than a party to the ICA.[8] In addition to Verizon's obvious bias, and harm to AT&T, Verizon's proposal seeks to usurp this Commission's oversight authority.

Q. IS THAT APPROACH CONSISTENT WITH EITHER THE *TRO* OR THE *TRRO?*

A. No. The transition provisions in both the *TRO* and the *TRRO* specifically require the parties to follow the Section 252 process to implement the *TRO*'s changes.[9] The FCC insisted upon the Section 252 process even in the face of several RBOCs' requests that that process be overridden "to permit unilateral change to all interconnection

[8] It would be equally unreasonable for AT&T to be placed in a position to unilaterally interpret future regulatory changes and then arbitrarily and unilaterally impose its disputed interpretation onto VZ, a party to the contract, without consent or Commission approval.

[9] *TRO*, ¶ 701. TRRO ¶¶ 143,196 & 227.

agreements to avoid any delay associated with negotiation of contract provisions."[10]

Q. ARE THERE ANY OTHER PROBLEMS WITH VERIZON'S UNILATERAL APPROACH?

A. Yes, it is inconsistent with common sense and Verizon's own practice. In the *TRRO*, the FCC recognized the §252 process as the appropriate mechanism for ILECs and CLECs to reconcile existing agreements with its new rules. Under the terms of §252, the parties are compelled to negotiate the meaning of those rules and how they can be implemented through the interconnection agreement. To the extent the parties are unable to reach consensus, disputes are to be resolved by this Commission through arbitration. Indeed, Verizon is pursuing the instant arbitration petition to implement the *TRO* (and now that the FCC has acted, the *TRRO*) precisely because the parties have vastly different views on the plain meaning of those provisions in the FCC's order – such as routine network modifications -- that do not require further Commission, FCC, or judicial action. In particular, given the FCC's finding that Verizon's routine network modification interpretation was anticompetitive and "discriminatory on its face" [11][it would be unconscionable to then turn around and vest Verizon with authority to unilaterally interpret and implement regulatory changes. Verizon is certainly not a competent, neutral third-party arbitrator.[12] Accordingly, the Commission should reject Verizon's Amendments, and adopt

[10] *TRO. id.*

instead the transitional approach specified in AT&T's proposed Amendment.

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 ISSUE IN DISPUTE BETWEEN VERIZON AND AT&T ON THIS ISSUE?

A. Essentially, Verizon is trying to hijack the process of amending its current interconnection agreement with AT&T (to reflect the changes in law that resulted from the *TRO* and *USTA II*) and divert it into a fundamental change to the actual change-of-law provision itself. These are two very different matters, although Verizon is wrong on both.

The first one involves amending the current agreement to reflect the specific changes in unbundling requirements that resulted from the FCC's rules and orders and the D.C Circuit's decision; this should be straightforward. The second involves a revision to the ***process*** that the parties have already agreed to – and that the Commission has already approved – for reflecting these and other changes in the law. Thus, the changes that Verizon is seeking are beyond the scope of the *TRO* and *USTA II*, and are outside the scope of this docket.[13]

Q. IS VERIZON COMPETENT TO INTERPRET THE FCC RULES IN PLACE OF THIS COMMISSION?

A. No. Verizon seeks blanket pre-approval to take unilateral action to instantaneously implement all future, as yet unknown, rules based solely on its interpretation of those rules. While Verizon objected to the FCC's sub-delegation of authority to the state

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[11] *TRO*, paragraph 639, fn 1940

[12] Likewise, intellectual honest compels the concession that AT&T is likewise not a competent, neutral third-party arbiter.

[13] Further as to the merits, Verizon presumably would bear the burden of proving the current process is inadequate; and Verizon has made no such supportable claim.

commissions, it now seeks this Commission's sub-delegation of authority to Verizon. To the extent there was any doubt that the existing process was the appropriate one to address these changes, the *TRRO*, by expressly reaffirming the use of the §252 process, has eliminated that doubt. [14]

Q. GIVEN THAT, WHAT GENERAL CHANGES IN UNBUNDLING OBLIGATIONS SHOULD THE COMMISSION AUTHORIZE AS PART OF AN AMENDMENT TO AT&T'S INTERCONNECTION AGREEMENT WITH VERIZON?

A. The Amendment should only address those changes in unbundling or interconnection obligations, i.e. the changes of law brought about by: the *TRO*, the *USTA II* decision, and the FCC's *TRRO*. For all future cases, the parties' existing interconnection agreement's change-in-law provisions will continue as the process to be followed when there is a change of law. The Amendment should not change—and need not reach--the parties' change of law clauses themselves. There was no issue in the FCC's *Triennial Review Order*, or in *USTA II* or *the TRRO* relating to *changing* the change-of-law clauses in the parties' interconnection agreements, and therefore nothing in the amendment should alter those clauses.[15]

Q. DOES VERIZON'S PROPOSED AMENDMENT REFLECT THESE LIMITS?

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[15] I would note that Issue 2 is stated so broadly that it necessarily encompasses, and is duplicative of, several others Issues dealing with specific unbundled elements. Accordingly, my testimony on this issue is limited to the question of what general changes are necessary to reflect the changes in law that have occurred since the execution of the ICA. Issues regarding unbundling requirements for specific UNE will be addressed later in my testimony.

A. No. As I noted above, Verizon's proposal essentially seeks to rewrite the existing change of law provisions in the ICA to vest in Verizon alone the ability to interpret and then implement future unbundling rulings by the FCC. Such revisions, however, are outside the scope of this proceeding. Indeed, any future rules or orders concerning the scope of Verizon's unbundling obligations should be handled pursuant to the existing change of law provisions in the ICA and the terms of those future rules and orders. Verizon's effort to bootstrap into this proceeding a change to the existing change of law provision in its ICA with AT&T thus should be rejected.

Q. WHAT IS THE PROBLEM WITH VERIZON'S APPROACH?

A. One obvious problem is that because this dispute is clearly beyond the proper scope of this proceeding, it is wasteful of the Commission's and the parties' time and resources. Second, I am advised by counsel that the issue is beyond the order of notice and therefore is unlawfully beyond the scope of this proceeding. Thirdly, Verizon is seeking to obfuscate processing changes-in-law through the ICA terms, with *changing* the change-in-law terms of the ICA. Even if Verizon's proposal were within the scope, it is patently unreasonable, and I am advised fundamentally unlawful. Parties cannot contract for all un-envisioned circumstances, and certainly the Commission is not going to approve a blank check.

Q. IS AT&T'S PROPOSED AMENDMENT WITHIN THE SCOPE OF THE *TRO* AND OTHER RULINGS APPLICABLE TO THIS CASE?

A. Yes. AT&T's proposed amendment has not sought to change the change-in-law provision in the ICA with Verizon. Instead, AT&T has sought only to properly

reflect in the ICA the changes in unbundling and other obligations that emanate from the *TRO*, *USTA II*, the *TRRO* and other applicable decisions.

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?

Q. WHAT ACTIONS DID THE FCC TAKE IN THE *TRIENNIAL REVIEW REMAND ORDER* THAT AFFECT THE STATUS OF UNBUNDLED SWITCHING AND UNE-P?

A. Clearly the most significant change that the FCC ordered in the *TRRO* was the nationwide elimination of unbundled switching and UNE-P. Specifically, the FCC found that incumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching. In imposing this decision, the FCC recognized that eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass-market customers, and therefore adopted a 12-month plan for competing carriers to transition away from the use of unbundled mass-market local circuit switching. Therefore, the contract language AT&T previously proposed no longer is consistent with Verizon's reduced obligations, and AT&T recognizes that it needs to be accordingly modified.[16]

Q. WHAT ARE THE TERMS OF THE FCC'S TRANSITION PLAN?

A. The FCC's plan requires CLECs to submit the necessary orders to convert mass market customers to an alternative service arrangement within twelve months of the March 11, 2005, effective date of the *TRRO*.[17] The plan allows CLECs to continue to serve their embedded customer base, including the use of signaling, call related databases and shared transport for grandfathered UNE-P arrangements prior to conversion to an alternative arrangement,[18] but it prohibits CLECs from adding new UNE-P arrangements.[19] Therefore, carriers have twelve months from the effective date of the Order to modify their interconnection agreements and transition UNE-P customers. [20]

Q. DOES THE FCC'S TRANSITION PLAN ADDRESS THE RATES VERIZON MAY CHARGE FOR UNE-P DURING THE TRANSITION PERIOD?

A. Yes. The transition price for embedded customers is the higher of: the UNE-P rate as of June 16, 2004 (the effective date of the *TRO*) plus one dollar, or a rate set by the PSC between that date and March 11, 2005 (if higher) plus one dollar.[21] Additionally, the FCC found that a true up shall apply to the rates for UNE-P

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17 TRRO ¶227.

18 *TRRO* at footnote 627.

19 *TRRO* ¶226.

20 Of course, as I discuss later in my testimony, 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 those facilities and permit the FCC prescribed 12-month transition for the CLEC to find alternative arrangements.

21 TRRO ¶228. Additionally, the Commission provided that: "[t]o the extent that a state public utility commission order raises some rates and lowers others for the aggregate combination of loops, shared transport, and switching (i.e., UNE-P), the incumbent LEC may adopt either all or none of these UNE platform rate changes. Id. at footnote 630.

arrangements no longer subject to unbundling upon the completion of relevant interconnection agreements.[22]

Q. WHAT IS THE "FOUR LINE CARVE OUT" RULE AND HOW IS IT IMPACTED BY THE *TRRO* ON FINAL UNBUNDLING RULES?

A. The "four line carve out" was largely un-enforced and now is superseded. It was a policy announced by the FCC in its 1999 UNE Remand Order. In its UNE Remand Order, the FCC concluded that incumbent LECs like Verizon that make Enhanced Extended Links combinations (EELs) available were not required to provided unbundled local circuit switching available to CLECs serving customers with four or more DS0 loops in Density Zone one of the top fifty MSAs.

Having determined that unbundled switching would no longer be available after the 12-month transition period, the FCC chose not to establish a cut-off between mass market and enterprise customers, thereby applying the transition period to all UNE-P arrangements used to serve customers at a single location, as long as they do not exceed 24 lines (a DS1 equivalent).[23]

Q. DOES AT&T HAVE AN ALTERNATIVE PROPOSAL TO ADDRESS THE CHANGE IN VERIZON'S OBLIGATION TO PROVIDE UNBUNDLED SWITCHING AND PROVIDE THE TRANSITION FOR EXISTING CUSTOMERS ESTABLISHED BY THE FCC?

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22 *Id.*

23 *TRRO* at footnote 625 "The transition period we adopt here thus applies to all unbundled local circuit switching arrangements used to serve customers at less than the DS1 capacity level as of the effective date of this Order [March 11, 20-05]. The transition for local circuit switching for the DS1 enterprise market was established in the Triennial Review Order, 18 FCC Rcd at 17318, para. 532.."

A. Yes, AT&T proposes that we follow the intervening Order. Given the short time frame since the *TRRO* was issued and the fact that AT&T has not had an opportunity to negotiate terms consistent with the FCC's order with Verizon, I cannot in fairness provide a full, formal proposal here. However, AT&T has identified some concerns and possible solutions that we believe are necessary to appropriately implement the FCC's Order and rules.

Q. PLEASE ELABORATE AT&T's PROPOSAL FOR UNE-P, GIVEN THE INTERVENING ISSUANE OF THE *TRRO*.

A. Overall, AT&T's concerns relate to ensuring that our customers currently served by UNE-P continue to enjoy quality service without interruption.

Maintenance and Repair. For example, AT&T needs to be able to continue to use existing systems to submit repair orders and to place maintenance orders e.g. requesting vertical feature changes for existing arrangements.

Premature/Unilateral Conversion. Further, while the ability to place orders to migrate a customer to another arrangement such as Resale or UNE-P-Like should be available immediately, it is essential that Verizon not be able to unilaterally change any UNE-P arrangement prior to the end of the transition period, as such would be clearly inconsistent with FCC rules and the *TRRO*, which *expressly* identifies that the CLEC will initiate the conversion orders.

Efficient & Transparent conversion. Additionally, it is important to adopt procedures that make the transition to alternative service arrangements both efficient for AT&T—that is mechanized--and as transparent as possible for our customers

Q. IS IT ESSENTIAL THAT THE ICA CONTAIN SPECIFIC DETAIL ON TRANSITION PROCEDURES?

A. It depends. To a great extent the concerns I have identified above can be addressed through business-to-business negotiations. However, it is essential that the ICA is sufficiently detailed to remove the possibility of misunderstandings and or avoidable disputes. Given the relatively short time frame for the transition, there is simply no room for delays caused by competing 'understandings' of the parties' rights and obligations or ineffectively lengthy dispute resolutions processes.

Q. HAS VERIZON PROVIDED AT&T WITH ANY INFORMATION ON HOW IT PLANS TO IMPLEMENT THE *TRRO*?

A. Yes. On February 10, 2005, Verizon sent AT&T two letters that purportedly explain Verizon's interpretation of the *TRRO* and the process to be used to implement the terms of the Order. AT&T has begun to review this information, but is not yet prepared to comment on whether we believe the processes and limitations outlined by Verizon are consistent with the FCC's Order.

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

Q. TO BEGIN WITH THE EASYONE, WHAT HAS THE FCC RULED WITH REGARDS TO DARK FIBER LOOPS?

A. In the *TRRO*, the FCC ruled that CLECs are not impaired without access to dark fiber loops. AT&T recognizes that the contract language needs to be updated to reflect Verizon's more narrow unbundling obligation.

Q. WHY IS IT IMPORTANT FOR COMPETITORS LIKE AT&T TO HAVE UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AT THE DS1 AND DS3 LEVELS?

A. Because, as the FCC found in the *TRO*, there are still substantial barriers to the ability of CLECs to self-deploy these types of facilities. The FCC found that the "cost to self-deploy local loops at any capacity is great," and that the cost to deploy fiber does not vary based on capacity."[24] Indeed, the FCC noted the record evidence showing the significant time required to construct local loops, a process fraught with delays attributable to such issues as securing rights of way from local authorities, permitting processes, and even construction moratoria.[25] The FCC also cited the additional barriers to entry associated with serving multiunit premises, particularly in those cases where the entity controlling access to the premises does not permit a competitor to reach customers there.[26]

Given the costs associated with all of these obstacles, the FCC found a competitor planning to deploy its own high capacity facilities would target those locations where

[24] *TRO*, ¶303.
[25] *TRO*, ¶304.
[26] *TRO*, ¶305.

there was sufficient demand to generate a revenue stream that could recover the sunk costs of construction, including laying the fiber and attaching the necessary optronics for lighting it.[27] Even then, the CLEC would have to convince the prospective customer to accept the delays and uncertainty associated with this self-deployment – and the enterprise business customers usually involved in these situations are not characterized by their patience with delay and uncertainty in the provision of their telecommunications services. Thus, the ability of CLECs to obtain unbundled access to the incumbent's high capacity loops is still necessary in many – if not most – locations to facilitate competitive choice for these customers.

Q. DO THE FCC'S RULES PROVIDE FOR CLECS TO CONTINUE TO OBTAIN ACCESS TO VERIZON'S HIGH CAPACITY LOOPS?

A. Yes. Although the FCC's new rules do limit access to high capacity loops under certain conditions, the availability of the remaining types of loops as UNEs is clearly preserved.

Q. WHAT TYPES OF LOOPS DOES AT&T SEEK TO UNBUNDLE?

A. AT&T seeks cost-based, unbundled access to all loop types that the FCC has require Verizon to unbundle. Specifically, AT&T seeks access to all loops that Verizon employs, with the express exception of:

- "Greenfield" fiber-to-the-home ("FTTH") loops, where the premises have not previously been served by any Verizon loop facility;

[27] *TRO*, ¶303.

- "Brownfield" FTTH loops, except where copper is not otherwise available;[28]
- Certain loops to Multiple Dwelling Units (MDU), pursuant to the FCC's *MDU Reconsideration Order*;[29]
- DS1 loops in wire centers containing both 60,000 or more business lines *and* 4 or more fiber-based collocators;
- DS3 loops in wire centers containing both 38,000 business lines *and* 4 or more fiber-based collocators;
- dark fiber loops; and
- OC-n loops.

The unbundling requirements proposed by AT&T generally are technology-neutral, and must include all of the features, functions, and capabilities of the loop.

Q. SHOULD UNBUNDLED ACCES TO HIGH CAPACITY LOOPS BE RESTRICTED IN THE ICA IN ANY OTHER WAY?

A. . The only restrictions[30] that the ICA should impose on a CLEC's access to unbundled loops are:

- that it be technically feasible to unbundle the loop at the point desired by the CLEC (i.e., at any point ordinarily accessible by a technician without having to open a splice case or remove a cable sheath);

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[28] The term "Brownfield," refers to those situations in which the original copper plant has been overlaid with new fiber facilities, but the original plant remains.

[29] "The Commission held that fiber loops deployed to the minimum point of entry (MPOE) of multiple dwelling units (MDUs) that are predominantly residential should be treated as fiber-to-the home loops (FTTH) for unbundling purposes, irrespective of the ownership of inside wiring." *TRRO* footnote 49, summarizing its *MDU Reconsideration Order*, 19 FCC Rcd 15856 (2004).

[30] These are in addition to the seven exceptions enumerated above.

- that the CLECs' use of the loop does not interfere with another carrier's ability to utilize, in a non-discriminatory manner, the full functions and capabilities of neighboring loops (e.g., binder group separation between analog and digital signals);
- that unbundled loops may not be used for the *exclusive* provision of mobile wireless services or interexchange service; and
- that Verizon is not obligated to unbundle more than one DS-3 and 10 DS-1s per CLEC, per building.[31]

Q. YOU HAVE MENTIONED THAT THE FCC ADOPTED SOME LIMITATIONS ON THE AVAILABILITY OF HIGH-CAPACITY LOOPS IN THE *TRRO*. PLEASE EXPLAIN THOSE LIMITATIONS.

A. The FCC's new rules impose four new types of limitations on the use of unbundled high-capacity loops: exclusive use, geographic market, quantity and type.

Exclusive Use. First, the FCC revised its rules to specifically prohibit the use of all UNEs for the ***exclusive*** provision of mobile wireless services or interexchange services. See § 51.309(b). In applying this prohibition, the FCC found that competition evolved in both of these markets without access to UNEs, and relying on its "at a minimum' authority, determined that "whatever incremental benefits could be achieved . . . by requiring unbundling in these service markets would be outweighed by the costs of such unbundling.[32]

Geographic market. After evaluating a requesting carrier's ability to use alternatives to the unbundled high-capacity loops and the best method for determining the

[31] *TRRO*, ¶¶177, 181.

[32] *TRRO* ¶36. In adopting this standard, the FCC discarded the "qualifying service" requirement established in the *TRO*.

appropriate geographic market for determining impairment, the FCC adopted a wire center-based analysis. Specifically, the Commission determined that the combination of two criteria – the number of fiber-based collocators located at the wire center *and* the number of business lines within the wire center's service area at both ends– provided the best evidence of impairment. Significantly, the FCC found in the *TRRO* that in the vast majority of wire centers, CLECs are impaired without access to unbundled DS-1 and DS-3 loops.[33]

Dark Fiber. Relying on economic criteria, the Commission determined that requesting carriers are not impaired without access to unbundled dark fiber loops.

Quantity. In addition, the new rules impose a limit on the number of DS1 and DS3 loops available to an individual CLEC, to any single building.

Q. WHAT OBLIGATIONS DOES VERIZON HAVE UNDER THE *TRRO* WITH RESPECT TO DS1 LOOPS?

A. Verizon is required to provide unbundled access to all DS1 loops except those that terminate in wire centers with both at least *60,000* business lines *and* at least 4 fiber-based collocators.[34] Additionally, as noted above, each requesting carrier will be limited to 10 DS1s to any single building.[35]

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[33] The FCC estimates that its new criteria will only limit UNE availability of high-capacity DS3 loops in wire centers accounting for about 14% of BOC business lines (fn 477), and of high-capacity DS1 loops in wire centers accounting for approximately 8% of BOC business lines (¶179)

[34] *TRRO* ¶ 146.

[35] *TRRO* ¶, 179.

Q. WHAT OBLIGATIONS DOES VERIZON HAVE UNDER THE *TRRO* WITH RESPECT TO DS3 LOOPS?

A. Verizon is required to provide unbundled access to all DS3 loops except to those that terminate in wire centers with both at least *38,000* business lines *and* at least 4 fiber-based collocators.[36] Additionally, as noted above, each requesting carrier will be limited to 1 DS3 to any single building. [37]

Q. HOW WILL THESE DETERMINATIONS APPLY TO VERIZON'S FACILITIES IN FLORIDA?

A. On February 4, 2005, FCC's Wire Line Competition Bureau Chief requested that all of the BOCs, including Verizon, provide data by February 18, 2005, to identify

" . . . by CLLI code the wire centers that satisfy the non-impairment thresholds for DS1 and DS3 loops.[38] In its filing, Verizon indicated that it continues to have the obligation to provide access to unbundled DS1 and DS3 loops at all of its wire centers in Florida.[39]

Q. SINCE VERIZON HAS INDICATED THAT IT STILL HAS AN OBLIGATION TO PROVIDE UNBUNDLED ACCESS TO DS1 AND DS3 LOOPS IN ALL OF ITS FLORIDA WIRE CENTERS, DOES THE

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36 *TRRO* ¶174.
37 *TRRO* ¶177.
38 February 4, 2005 Letter to James C. Smith, Senior Vice President, SBC from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau.
39 February 18, 2005, letter to Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, FCC, from Suzanne A. Guyer, Senior Vice President Federal Regulatory Affairs, Verizon.

COMMISSION NEED TO TAKE ANY FURTHER STEPS TO VERIFY THIS CERTIFICATION?

A. Not with regard to loops since at this point CLECs will continue to have access to unbundled DS1 and DS3 loops. However, as Verizon noted in its letter, the *TRRO* recognizes that some certain wire centers may meet the thresholds for non-impairment in the future.[40] Therefore, since the information regarding the number of fiber-based collocators and business lines served in any particular wire center resides only with Verizon, it is appropriate for Verizon to provide the Commission, AT&T and other CLECs the wire-center specific information on which it relied in making its certifications. Verizon did not provide verifiable information in its February 18th listing; there simply is no verifiable trail to even track Verizon's adjustments to its FCC filings that purportedly produce the submitted listing.

For the hard task of factual verification, the responsibility falls to the state commissions in their role overseeing §252 arbitrations. This information needs to include the identity of each collocator, in each wire center, and the three relevant categories of lines: ARMIS business lines, business UNE-P lines, and UNE-L business lines in each wire centers where non-impairment is asserted.[41] This information is essential to ensure that both the Commission and CLECs are able to

[40] *TRRO* footnote 519.

[41] To the extent such an inquiry would involve proprietary information, the parties could enter into appropriate non-disclosure agreements.

properly determine if future classification changes meet the *TRRO* requirements.[42] There can be no burdensome claim in producing this information, since its calculation was necessarily the basis for the proffered listing by Verizon.

Q DOES AT&T HAVE ANY OTHER RECOMMENDATIONS REGARDING THE DESIGNATION OF WIRE CENTERS?

A. These designations should apply for the term of the carriers' agreements, avoiding market disruption and allowing for the certainty needed for business planning. Such an approach would be consistent with the FCC's rationale behind establishing a permanent wire center classification.[43]

Q. DOES THE ICA NEED SPECIFIC PROVISIONS TO ADDRESS SITUATIONS WHERE CONDITIONS IN A PARTICULAR WIRE CENTER CHANGE SO AS TO AFFECT THE AVAILABILITY OF HIGH-CAPACITY LOOPS?

A. Not if the above process is implemented. AT&T believes a periodic designation of wire centers for the term of the interconnection agreement would prevent disputes and

[42] This principle is also consistent with ¶ 100 of the *TRRO*, which clearly affirms a CLEC's right to verify and challenge Verizon's identification of fiber-based collocation arrangements in the listed Tier 1 and Tier 2 wire centers.

[43] The FCC determined that, in order to protect against the possible disruption to the market if modest changes could result in the re-imposition of unbundling obligations, once a wire center satisfies the criteria to eliminate the obligation of the ILEC to provide either certain high capacity loops or dedicated transport, the wire center will not be subject to reclassification. *TRRO* at fn 466; 47 C.F.R. §§ 51.319(a)(4); 51.319(a)(5); 51.319(e)(3)(i).(ii).

result in the best use of both the Commission's and parties' resources. In the absence of such a provision, parties should rely on the ICA dispute resolution processes.[44]

Q. WILL VERIZON HAVE ANY OBLIGATION TO PROVIDE CONTINUED ACCESS TO HIGH CAPACITY LOOPS IN THOSE WIRE CENTERS WHERE CLECS ULTIMATELY ARE FOUND NOT TO BE IMPAIRED?

A. Yes. Based on Verizon's own designations, it will continue to be obligated to provide high-capacity loops in all of its wire centers in the current term. If such designations change in the future, Verizon is obligated to provide for a transition. Recognizing that it would be imprudent to remove significant unbundling obligations without a transition period, the FCC established a plan for competing carriers to transition of high-capacity loops no longer subject to unbundling, by establishing a 12-month plan for the conversion of DS1 and DS3 loops, and an 18-month transition for dark fiber loops.[45] The transition plans only apply to a CLEC's embedded customer base, and does not permit CLECs to add new high-capacity loops UNEs where an unbundling obligation no longer exists.[46] AT&T believes that the terms outlined by the FCC apply to any future reclassifications of wire-centers that require CLECs to seek alternate arrangements.

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[44] The FCC concluded that "[i]n such cases, we expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms through the section 252 process." *TRRO* at footnote 519.

[45] The *TRRO* establishes a plan that is consistent with both the FCC's *Interim Order* and *NPRM* and the pricing scheme established for the transition of dedicated transport UNEs. During the transition period, any high-capacity loop UNEs that a CLEC leases as of the effective date of the Order, but for which there is no longer an unbundling obligation, shall be available at the higher of (1) 115 % of the rate the requesting carrier paid for the high-capacity loop on June15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16 2004 and the effective date of the Order.

[46] *TRRO* ¶ 195.

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. WHY IS IT IMPORTANT FOR COMPETITORS LIKE AT&T TO HAVE UNBUNDLED ACCESS TO DEDICATED INTEROFFICE TRANSPORT, INCLUDING DARK FIBER TRANSPORT?

A. There are at least two reasons why dedicated transport remains important to CLECs like AT&T.

First, where AT&T has a collocation presence in a Verizon central office, dedicated transport availability is necessary for AT&T to be able to cost-effectively transmit traffic from one wire center collocation to another.[47] Ultimately, AT&T will route the traffic back to its own switch in a pure facilities-based scenario.

- Second, UNE transport is a scalable means for AT&T to connect customers to its network, when AT&T is not collocated in the wire center serving that customer, by aggregating and extending the customer's loop to a wire center where AT&T does have a collocation presence. That requires using Dedicated Transport facilities such as EELs (see discussion below). As access to unbundled switching will no longer be available from Verizon, AT&T's access to UNE loops (UNE-L) will be of increased importance. Accordingly,

[47] As the FCC expressly recognized in the *TRRO* UNE transport and Special Access are cross elastic, and the price and availability of UNEs bears directly on, and benefits purchasers of special access. TRRO fn 187.

AT&T's need to be able to extend a customer's loop to an AT&T switch via Dedicated Transport increases considerably.

Q. DO THE FCC'S RULES PROVIDE FOR CLECS TO CONTINUE TO BE ABLE TO OBTAIN ACCESS DEDICATED INTEROFFICE TRANSPORT FROM VERIZON?

A. Yes. The FCC found in the *TRRO* that CLECs were impaired without access to UNE transport except in limited, specific circumstances, which primarily involve only the most urban markets. In its *TRRO* decision, the FCC adopted a route-specific and capacity-specific approach to unbundling dedicated transport. This approach establishes categories of routes, defined by the economic characteristics of the end-points. The issue of impairment is determined by both the actual deployment of competitive facilities and by the probability of future deployment, based on inferences drawn from the existing correlations between the number of business lines and fiber-based collocations in a given ILEC wire center.[48]

Q. UNDER WHAT TERMS AND CONDITIONS IS VERIZON REQUIRED TO PROVIDE UNBUNDLED ACCESS TO DEDICATED TRANSPORT?

A. The FCC articulated very clear "administrable and verifiable" criteria for determining where CLECs will have access to unbundled transport. Although the presumption is that unbundled dedicated transport is available under most circumstances, the FCC did identify circumstances in which ILECs are not required to provide dedicated access. The first circumstance is consistent with the FCC's finding that carriers are

[48] TRRO, ¶44.

not impaired without access to UNEs for the ***exclusive*** provision of mobile wireless services or long distance service. Therefore, Verizon is not required to provide unbundled dedicated access for the provisioning of those services. Second, the FCC found that ILECs are not required to provide unbundled dedicated transport for the purpose of entrance facilities. [49]

Q. DID THE FCC APPLY OTHER RESTRICTIONS TO A CLEC'S ABILITY TO ACCESS DEDICATED TRANSPORT?

A. Yes. As I noted previously, the FCC adopted rules to determine the availability of dedicated transport based on the characteristics of the wire centers forming a route[50] and the capacity of the facility being sought by the CLEC. First, the Commission rules identified three categories of ILEC wire centers.

- Tier 1 wire centers are those that have either at least *4* fiber-based collocators *or* at least 38,000 business lines *or* both. Tier 1 also includes ILEC tandem switching locations that have no line switching but are used as a point of traffic aggregation accessible by CLECs.[51]
- Tier 2 wire centers are those wire centers that are not Tier 1 wire centers and have either at least *3* fiber-based collocators *or* at least *24,000* business lines *or* both.
- Tier 3 wire centers include all of the ILEC wire centers that do not fall within the first two categories.

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[49] While an ILEC is not obligated to provide access to entrance facilities as UNEs, the FCC was clear that CLECs will have continue to have access to these facilities at cost-based rates. TRRO ¶140. See also discussion re: Issue 20 below.

[50] A route is defined as a transmission path between one of the ILEC's wire centers or switches and another of its wire centers or switches. Transmission paths between identical endpoints are the same route, regardless of whether they pass through the same intermediate points or switches. TRRO ¶ 80.

[51] TRRO ¶ 112.

Q. HOW ARE WIRE CENTERS CLASSIFIED AS TIER 1, 2 OR 3?

A. Although the FCC noted that the information needed to make these determinations was readily available to ILECs, the Commission did not elaborate on the process to be used to categorize wire centers. However, the Commission did adopt new definitions of the terms *business lines,*[52] *fiber-based collocator*[53] and *wire center*[54] to be used in making the determination. Additionally, as noted above, all BOCs were asked by the Chief of the Wireline Competition Bureau to submit a list identifying the wire centers in its operating areas that satisfy the Tier 1, 2 and 3 criteria for dedicated transport.

Q. ONCE A WIRE CENTER IS CATEGORIZED AS TIER 1, 2 OR 3, HOW DOES THIS AFFECT THE AVAILABILITY OF UNBUNDLED DEDICATED TRANSPORT?

A. Using the Tier 1, 2 and 3 designations, the FCC then established criteria based on the size of the facility sought by the requesting carrier. The rules establish that DS1 dedicated transport is available between any pair of ILEC wire centers, *except* if both the wire centers at the ends of the route are Tier 1.[55] Additionally, each CLEC is

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[52] "Business Line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. include ILEC-owned switched access lines used to serve a business customer, including lines used to provide retail service and lines leased as UNEs by CLECs, including UNE-P loops. 47 C.F.R. §51.5 (Terms and Conditions).

[53] "Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in the paragraph.. . ." *Id.*

[54] Wire center. A wire center is the location of an incumbent LEC local switching facility containing one or more central offices, as defined in Appendix to Part 36 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located. *Id.*

[55] TRRO ¶ 126.

limited to a maximum of 10 DS1 circuits on a single route.[56] DS3 dedicated transport circuits are available between any pair of ILEC wire centers, *except* if both ends are categorized as Tier 1 or Tier 2.[57] In the case of DS3 circuits, each CLEC is limited to a maximum of 12 DS3 circuits on a single route.[58] Dark fiber transport facilities will continue to be available as a UNE only on routes where one end of the route is in a Tier 3 wire center.[59]

Q. SHOULD THE ICA INCLUDE ANY DEDICATED TRANSPORT USE RESTRICTIONS OTHER THAN WHAT IS MANDATED BY THE FCC?

A. No. The FCC specifically abandoned the "qualifying service" approach it set forth in the *TRO* that limited access to UNEs only for the provision of services competing with "core" incumbent LEC offerings.[60] With its most recent order, the FCC has established the criteria by which ILECs may restrict access[61] and no further restrictions are permissible.

Q. HOW WILL THESE DETERMINATIONS APPLY TO VERIZON'S FACILITIES IN FLORIDA?

A. As noted above, all BOCs were asked by the Chief of the Wireline Competition Bureau to submit a list identifying the wire centers in its operating areas that satisfy the Tier 1, 2 and 3 criteria for dedicated transport. Verizon has classified nine (9) of its wire centers as Tier 1, and the remaining four (4) wire centers as Tier 2.

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56 TRRO ¶ 128.
57 TRRO ¶129.
58 TRRO ¶ 131.
59 TRRO ¶ 133.
60 TRRO ¶29.
61 As provided in previous FCC Orders, Verizon is only obligated to unbundle Dedicated Transport over existing facilities (i.e., Verizon is not obligated to construct new plant).

Q. DOES THE COMMISSION NEED TO TAKE ANY FURTHER STEPS TO VERIFY THIS CERTIFICATION?

A. Yes. Because of the nature of the Wire Center information, unless a specific verification process is adopted, it will be extremely difficult for AT&T or other CLECs to engage in a comprehensive and accurate verification of the data, and its application. As noted by the FCC, the information regarding the number of fiber-based collocators and business lines served in any particular wire center resides only with the ILEC. Although the FCC called these data "administrable and verifiable," the ability to accurately verify the data is dependent on further regulatory action as I will explain below."[62]

Verizon's letter identifying Tier 1 and 2 wire centers provides no information regarding the basis of its classifications. Further, under the *TRRO* requirements, once these wire centers are verified, Verizon will not be required in the future to unbundle those elements.[63] Given the significance of such identification, it is very important that AT&T, as well as other CLECs, and this Commission be assured that the ILECs have properly applied the FCC's criteria.[64]

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[62] *TRRO* at footnote 466.

[63] *TRRO* at fn 466.

[64] This principle is also consistent with ¶ 100 of the *TRRO*, which clearly affirms a CLEC's right to verify and challenge Verizon's identification of fiber-based collocation arrangements in the listed Tier 1 and Tier 2 wire centers.

Q. DOES AT&T HAVE A RECOMMENDATION FOR HOW VERIZON'S IDENTIFICATION OF RELEVANT WIRE CENTERS SHOULD BE CONFIRMED?

A. Yes. Although the FCC suggests that carriers could resolve disputes regarding wire center designations that are tied to UNE availability through the Section 252 negotiation and arbitration process, this process could be a huge burden on the Commission's resources and could produce inconsistent outcomes.[65] Instead, AT&T believes that it would be more efficient for the Commission to conduct a generic inquiry into the wire centers identified by Verizon as part of this proceeding. Verizon should be required to provide both the Commission and participating CLECs the wire-center specific information on which it relied in making its assertions. Disputes regarding Verizon's conclusions could then be resolved and the Commission could certify the list of wire center designations to be incorporated into all ICAs, thereby making those designations both identifiable and no longer subject to dispute. These designations should apply for the term of the carriers' agreements, avoiding market disruption and allowing for the certainty needed for business planning. Such an approach would be consistent with the FCC's rationale behind establishing a permanent wire center classification.[66]

[65] If the question of verifying the list of wire centers were addressed in an uncoordinated fashion, it is possible that the outcome of two different arbitrations could arrive at inconsistent outcomes based on the underlying records.

[66] The FCC determined that, in order to protect against the possible disruption to the market if modest changes could result in the re-imposition of unbundling obligations, once a wire center satisfies the criteria to eliminate the obligation of the ILEC to provide either certain high capacity loops or dedicated transport, the wire center will not be subject to reclassification. *TRRO* at fn 466; 47 C.F.R. §§ 51.319(a)(4); 51.319(a)(5); 51.319(e)(3)(i), (ii).

Q. PLEASE DESCRIBE THE *TRRO* REQUIREMENTS FOR THE TRANSITION FROM UNES TO ALTERNATIVE TRANSPORT OPTIONS.

A. The FCC adopted a similar twelve-month plan for competing carriers to transition DS1 and DS3 dedicated transport to alternative facilities or arrangements. Recognizing the unique characteristics of dark fiber, the Commission adopted a longer, eighteen-month transition period.[67] Although the FCC had suggested in its *Interim Order and NPRM* [68] that a six-month transition may be appropriate, ultimately the FCC determined that the longer time periods were necessary to ensure an orderly transition for CLECs, including providing sufficient time for CLECs to make decisions concerning where to deploy, purchase or lease facilities. The transition plan only applies to a CLEC's embedded customer base and CLECs are prohibited from ordering new transport UNEs not permitted under the *TRRO*'s new rules.[69]

Q. DOES THE *TRRO* SET FORTH TRANSITION PRICING FOR FACILITIES AFFECTED BY THE CHANGE?

A. Yes. The Commission adopted the proposal outlined in the *Interim Order*. The rate for any dedicated transport UNE that a competitive LEC leases as of the effective date of the *TRRO*, but for which there is no future unbundling requirement, shall be the higher of (1) 115 % of the rate the requesting carrier paid for the transport element

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67 *TRRO* ¶142.

68 Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, FCC 04-179 (*Interim Order and NPRM*), released August 20, 2004

69 *TRRO* ¶143.

on June15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of the Order.[70]

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?***

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

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

Q. WHAT IS THE DISPUTE BETWEEN AT&T AND VERIZON OVER THIS ISSUE?

A. As I have been discussing in this testimony, prior to the issuance of the *TRO* and the FCC's decision on remand from the *USTA II* decision, CLECs had been authorized access to certain facilities as unbundled network elements, and in fact had been purchasing those UNEs from Verizon at TELRIC rates. When that happens, Verizon is insisting on the right to assess non-recurring charges on AT&T for the discontinuation of the eliminated UNE, or for the transition of that UNE to an

[70] *TRRO* ¶145; 47 C.F.R. §51.319(e)(2)(ii)(C) and (iii)(C).

"alternative arrangement," such as changing a UNE-P arrangement to resale.

Q. SHOULD VERIZON BE PERMITTED TO ASSESS NON-RECURRING CHARGES UNDER THESE CIRCUMSTANCES?

A. No. If anything, that is only adding insult to the injury of the loss of access to the UNE. This is not a situation in which AT&T has imposed any non-recurring costs on Verizon. If anything, this is a situation in which Verizon is the cost-causer. Indeed, the disconnection of a UNE arrangement utilized by AT&T that occurs as a result of the elimination of Verizon's obligation to provide that arrangement as a UNE is an activity that Verizon has initiated. It is certainly not AT&T's decision to disconnect the UNE. To the contrary, AT&T would still utilize the UNE arrangement if Verizon agreed to make it available. As a result, in the unlikely event that there is even any cost incurred at all – or one that has not already been recovered through the non-recurring charges that Verizon assessed when AT&T first ordered the UNE -- it should be borne by the cost causer. In this case, that is Verizon.

Q. DOES THE FCC PROVIDE ANY GUIDANCE ON THIS ISSUE?

A. Although the FCC did not specifically address this issue in the *TRRO*, AT&T believes that the transition from UNEs to alternative arrangements should be governed by the same principles articulated by the FCC in rule 51.316(b) and (c) for the conversion of wholesales services to UNEs. Verizon should be required to perform the conversions without adversely affecting the service quality enjoyed by the requesting telecommunications carrier's end-user. Further, Verizon should not be able to impose any termination charges, disconnect fees, reconnect fees, or charges associated with

establishing a service for the first time, in connection with the conversion between existing arrangements and new arrangements.

Q. YOU NOTED THAT IT IS UNLIKELY THAT VERIZON WOULD INCUR ANY COST IN THIS CIRCUMSTANCE. WHY IS THAT THE CASE?

A. Because it is not likely that any physical work involved. For example, take the case in which Verizon is switching the CLEC's UNE-P customers over to an "alternative" resale arrangement. There is no technical work involved – the same loop, transport and switching facilities that were being used to provide UNE-P also would be used in this alternative arrangement. At most, the only "work" would simply involve a billing change. As the FCC found with respect to EELs conversions, "Converting between wholesale services and UNEs (or UNE combinations) is largely a billing function."[71]

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

Q. SHOULD VERIZON BE REQUIRED TO FOLLOW THE CHANGE OF LAW AND/OR DISPUTE RESOLUTION PROVISIONS OF ITS EXISTING INTERCONNECTION AGREEMENTS IF IT SEEKS TO DISCONTINUE THE PROVISIONING OF UNBUNDLED NETWORK ELEMENTS?

A. Yes. As I noted previously, in the *TRRO*, the FCC repeatedly referred to the process for negotiation and arbitration established by §252, including the requirement to amend ICAs to reflect changes occasioned by the FCC's Order. [72] If Verizon has a contractual obligation to provision a particular unbundled network element, then it

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71 *TRO*, ¶588.

72 See footnote 8 above.

should be required to adhere to the provisions of that contract to amend the agreement. To the extent the FCC relieves Verizon of its obligation under federal law to provide a particular unbundled network element, then Verizon should invoke the change of law provisions of the contract and notify the other party that it seeks to negotiate an amendment to the contract to change its obligations to provide that particular UNE.

Where the parties cannot reach an agreement as to either the effect of the change of law or contract language to implement this change of law, the parties should be required to follow the dispute resolution provisions contained in the contract.

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

Q. DOES THE *TRRO* SET FORTH TRANSITION PRICING FOR FACILITIES AFFECTED BY THE CHANGE?

A. Yes. As I described above, the FCC allows ILECs to increase the price for UNE-P by $1 over the higher of the UNE-P rate as of June 16, 2004 (the effective date of the *TRO*), or a rate set by the PSC between that date and March 11, 2005. For dedicated transport and high-capacity loops, the Commission adopted the proposal outlined in the *Interim Order*. The rate for any dedicated transport UNE that a competitive LEC leases as of the effective date of the *TRRO*, but for which there is no future unbundling requirement, shall be the higher of (1) 115 % of the rate the requesting carrier paid for the transport element on June15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of the Order. Similarly, during the transition period, any high-capacity

loop UNEs that a CLEC leases as of the effective date of the Order, but for which there is no longer an unbundling obligation, shall be available at the higher of (1) 115 % of the rate the requesting carrier paid for the high-capacity loop on June15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16 2004 and the effective date of the Order.

Q. IN THE CASE OF THOSE ELEMENTS FOR WHICH THE NEW FCC RULES WILL AFFECT RATES, HOW SHOULD ANY NEW RATES BE IMPLEMENTED?

A. The *TRRO* provides that the transition rates apply starting the effective date of the order (March 11, 2005). Further, the FCC found that a true up shall apply to the rates no longer subject to unbundling upon the completion of relevant interconnection agreements.[73]

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. HOW DID THE *TRO* AFFECT THE RULES CONCERNING "COMMINGLING" OF UNES AND OTHER WHOLESALE SERVICES?

A. Prior to the issuance of the *TRO*, the FCC placed certain restrictions on when competitive carriers could "commingle" or combine "loops or loop-transport

[73] *TRRO* footnote 630.

combinations with tariffed special access services."[74] The *TRO* eliminated these restrictions. Instead the FCC modified the rules to "affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g. switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request."[75] Verizon is now required to permit CLECs like AT&T to commingle UNEs or UNE combinations it obtains from Verizon with other wholesale facilities.

Q. WHY IS IT IMPORTANT FOR CLECS TO BE ABLE TO COMMINGLE UNES WITH OTHER WHOLESALE FACILITIES?

A. Commingling helps level the playing field for CLECs to compete with Verizon in the local exchange market. The FCC agreed with several state commissions "that the commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks – one network dedicated to local services and one dedicated to long distance and other services – or to chose between using UNEs and using more expensive special access services to serve their customers."[76] Because Verizon and the other incumbents place no such restrictions on themselves, the FCC found that restricting commingling by the CLECs was unjust, unreasonable, and discriminatory.[77]

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74 Supplemental Order Clarification, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,June 2, 2000, paragraph 22..

75 *TRO*, ¶ 579.

76 *TRO*, ¶ 581.

77 *Id.*

Q. AS OF WHAT DATE SHOULD THE AMENDMENT TO THE ICA REFLECT VERIZON'S OBLIGATIONS TO PROVISION ORDERS FOR COMMINGLED ARRANGEMENTS?

A. According to the *TRO*, Verizon must permit commingling and conversion *upon the TRO's effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria.[78] In light of this new rule, AT&T's proposed amendment makes clear that (1) as of October 2, 2003, Verizon is required to provide commingling and conversions unencumbered by additional processes or requirements (e.g., requests for unessential information) not specified in *TRO*;[79] (2) AT&T is required to self-certify its compliance with any applicable eligibility criteria for high capacity EELs (and may do so by written or electronic request) and to permit an annual audit by Verizon to confirm its compliance;[80] (3) Verizon's performance in connection with commingled facilities must be subject to standard provisioning intervals and performance measures;[81] and (4) there will be no charges for conversion from wholesale to UNEs or UNE combinations.[82]

Q. DO VERIZON'S PROPOSALS FOR AMENDING THE ICA PROPERLY REFLECT THE REQUIREMENTS OF THE *TRO*?

A. No. The manner in which Verizon is seeking to implement that change does not

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78 *Id.*, ¶ 589; Rule 51.318.

79 *Id.*, ¶ 586, 588, 623-624.

80 *Id* ¶¶ 623-624.

81 *Id.*, ¶ 586; Rule 51.316(b).

82 *Id.*, ¶ 587; Rule 51.316 (c) ("Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges or any disconnect, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled elements").

comply with the *TRO*, and in fact seeks to impose new and onerous obligations on the CLECs that will act to impede the competitor's ability to provide services through commingled facilities. In particular, Verizon contends that: (1) AT&T should be required to re-certify that it meets the *TRO*'s eligibility requirements for DS1 and DS1 equivalent circuits on a circuit-by-circuit basis rather than through the use of a single written or electronic request; (2) Verizon's performance in connection with commingled facilities should not be subject to standard provisioning intervals and performance measures; and (3) it is entitled to apply a non-recurring charge for each circuit that AT&T requests to convert from a wholesale service to UNE or UNE combination, as well as other fees not contemplated by the *TRO* (for example, "retag fees"). Verizon also would require AT&T to reimburse Verizon for the entire cost of an audit where an auditor finds no AT&T material failure to comply with the service eligibility criteria for any DS1 circuit. However, none of these contrived requirements finds any support in the *TRO*.

Q. SHOULD AT&T BE REQUIRED TO RE-CERTIFY ITS ELIGIBILITY TO OBTAIN DS1 AND DS1-EQUIVALENT CIRCUITS ON A CIRCUIT-BY-CIRCUIT BASIS, AS VERIZON CONTENDS?

A. No. AT&T's eligibility for these circuits has already been established, and forcing AT&T – or any other CLEC – to go through this process will unnecessarily increase costs. The Commission thus should permit competitors to re-certify all prior conversions in one batch. Moreover, for future conversions requests, rather than requiring competitors to certify individual requests on a circuit-by-circuit basis, the Commission should permit competitors to submit orders for these as a batch.

Verizon proffers no *bona fide* purpose to voluminous stacks of circuit-by-circuit certifications.

Q. SHOULD VERIZON'S PROVISIONING OF REQUESTS FOR COMMINGLED SERVICES BE SUBJECT TO ORDER AND PROVISIONING METRICS AND PERFORMANCE MEASURES AND REMEDIES?

A. Absolutely. At a minimum the commingled arrangements that CLECs are ordering include UNEs that already are subject to metrics and remedies. There is no reason why Verizon's provisioning of these UNEs should be excluded from appropriate provisioning intervals and performance incentives simply because they are being provided in combination with other wholesale services. This is especially true in view of Verizon's history of antagonism towards commingling. Without metrics and remedies Verizon would have little incentive to ensuring that the CLECs orders for these arrangements are provisioned in a timely and efficient manner.

Q. HOW SHOULD NON-RECURRING CHARGES APPLY TO THESE ARRANGEMENTS?

A. The amendment should provide that the recurring and non-recurring charges contained in the Verizon access tariff will apply to the access portion of the "commingled" arrangement, and that the recurring and non-recurring charges contained in the interconnection agreement will apply to the UNE portion of the commingled arrangement, prorated as appropriate.

Q. DOES VERIZON AGREE WITH THIS APPROACH?

A. To an extent. However, Verizon also seeks to impose additional non-recurring charges "to each UNE that is a part of the commingled arrangement." For example, it appears that Verizon would insist on charging CLECs for the "expense" of retagging circuits to reflect their status as UNEs rather than access facilities. Such retagging fees are not forward-looking costs, and are not compensate.

Q. ARE VERIZON'S PROPOSED ADDITIONAL CHARGES APPROPRIATE?

A. No. For conversions of special access facilities to commingled UNE EELs, there should be no order charge. As the FCC concluded in the *Triennial Review Order* at ¶ 587,

> [b]ecause incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions.

Moreover, as a legacy of Verizon's refusal to previously make these arrangements available as UNEs, imposing charges for retagging these circuits now would be blatantly discriminatory. Accordingly, they should be rejected.

Q. SHOULD AT&T BE LIABLE FOR THE ENTIRE COST OF A SERVICE ELIGIBILITY AUDIT, AS VERIZON PROPOSES?

A. No. Verizon should be able to pass along the total cost of an audit only if the independent auditor concludes that AT&T failed to comply with the service eligibility criteria "in material respects." AT&T certainly should not be required to bear the

entire cost of an audit in the event of a few inadvertent mistakes, or something less than a material misrepresentation that affects more than a *de minimis* number of circuits. On the other hand, if the auditor finds AT&T materially in compliance with the service eligibility criteria, then Verizon should have to pay AT&T's costs of complying with any requests of the independent auditor.

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

Q. WHAT DOES AT&T NEED REGARDING CONVERSIONS TO UNES?

A. With the FCC's reaffirmation of the elimination of commingling restrictions and the elimination of qualifying services criteria in the *TRRO*, AT&T needs to have Verizon convert high-priced special access and wholesale services to UNEs, unless precluded by service eligibility criteria, so that AT&T can be cost competitive with Verizon. Therefore, the parties' ICA needs to be amended to reflect this requirement. Such conversions should be done as requested by AT&T in the future, as well as retroactively as allowed by the *TRO*. Since conversions are essentially a mere billing change, Verizon should make the conversions to UNEs and UNE rates effective with the next month's billing.

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

Q. SHOULD THE INTERCONNECTION AGREEMENT BE AMENDED TO ADDRESS CHANGES ARISING FROM THE *TRO* WITH RESPECT TO NEWLY BUILT AND OVERBUILT FIBER TO THE HOME (FTTH) LOOPS?

A. Yes. The Commission should adopt AT&T's proposed contract amendment language at Paragraphs 3.2.2 through 3.2.2.6 contained in Attachment X. These provisions properly implement the FCC's Rules regarding Verizon's obligation to provide access to a narrowband transmission path in newly built FTTH and certain overbuild FTTH situations.

Q. WHAT IS THE PRIMARY DISAGREEMENT BETWEEN AT&T AND VERIZON WITH REGARD TO VERIZON'S OBLIGATIONS TO PROVIDE A NARROWBAND TRANSMISSION PATH IN NEWLY BUILT FTTH AND OVERBUILD FTTH SITUATIONS?

A. The primary disagreement between AT&T's proposed language and Verizon's proposed language is that AT&T uses the acronym "FTTH", while Verizon uses the acronym "FTTP". AT&T's proposed language, with the acronym FTTH, should be adopted because it is consistent with the FCC's rules. The FCC, in its rules (51.319(a)(3) uses the term of art: "Fiber-to-the-home" or FTTH, as proposed by AT&T, and not the term "Fiber to the premises" or FTTP, as proposed by Verizon. With regards to new builds, the FCC rules specifically provide that Verizon is "not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC deploys such a loop to an end user's customer premises that previously has not been served by any loop facility." As the FCC noted (TRO 275) with respect to newly built FTTH, "the entry barriers

appear to be largely the same for both the incumbent and competitive LEC – that is, both incumbent and competitive carriers must negotiate rights-of-way, respond to bid requests for new housing developments, obtain fiber optic cabling and other materials, develop deployment plans and implement construction programs". With regard to overbuilds, where Verizon presently has facilities in place to residential subdivisions, but retires the copper facilities, Verizon is obligated to provide AT&T with a 64 kilobit transmission path capable of voice grade service. By attempting to define this fiber deployment as Fiber to the Premises or FTTP, rather than Fiber to the Home, as the FCC has defined it, Verizon seeks to unlawfully limit its unbundling obligations under federal law. If Verizon has a substantive change to make then it should make its case on the merits for being inconsistent with the FCC orders, rather than seek to sneak the change through in obscure terminology in proposed contract language.

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

Q. SHOULD THE INTERCONNECTION AGREEMENT BE AMENDED TO ADDRESS CHANGES ARISING FROM THE *TRO* WITH RESPECT TO LINE CONDITIONING?

A. Yes. The Commission should adopt AT&T's proposed contract amendment language at Paragraphs 3.3(B) in Attachment X. These provisions properly implement the FCC's Rule 319(a)(1)(iii) regarding Verizon's obligation to perform line

conditioning. Verizon's proposed contract language does not contain provisions spelling out its obligations to perform line conditioning.

Q. WHAT IS LINE CONDITIONING?

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

Q. DOES VERIZON HAVE AN OBLIGATION UNDER FEDERAL RULES TO PROVIDE LINE CONDITIONING?

A. Yes. In the *TRO* (642), the FCC concluded that Verizon is obligated to provide access to "xDSL-capable stand alone copper loops because competitive carriers are impaired without such loops." In order to provide such xDSL-capable loops, "line conditioning is necessary because of the characteristics of xDSL service – that is certain devices added to the local loop in order to facilitate the provision of voice services disrupt the capability of the loop in the provision of xDSL services. In particular, bridge taps; load coils and other equipment disrupt xDSL transmissions. Because providing a local loop without conditioning the loop for xDSL services would fail to address the impairment competitive carriers face, we require incumbent LECs to provide line conditioning to requesting carriers."

Verizon had argued at the FCC that it should not be required to perform line

conditioning because such action amounted to providing the competitive carriers with "superior quality access". The FCC, however, rejected Verizon's argument, noting that line conditioning and the other routine network modifications being required by the FCC rules were similar to the same modifications that Verizon makes to its network to serve its own customers. *TRO* 639.

Q. IS VERIZON AUTHORIZED BY FEDERAL LAW TO IMPOSE A SEPARATE CHARGE FOR LINE CONDITIONING OVER AND ABOVE THE NON-RECURRING CHARGES THAT CLECS PAY FOR A XDSL-CAPABLE UNBUNDLED LOOP?

A. No. Verizon is not authorized to impose a specific charge for line conditioning over and above the TELRIC- based nonrecurring and recurring charges that CLECs pay for an xDSL capable unbundled loop. The FCC rules at 47 CFR 51.319(a)(1)(iii)(B) are quite specific that Verizon is required to "recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in § 51.507(e)".

Verizon's proposal in this case is to require CLECs to pay additional charges for line conditioning, including charges for the removal of load coils and bridged taps that are contained in the unsupported Pricing Attachment to its proposed contract amendment in addition to the non-recurring rates that CLECs pay for an xDSL capable loop. Verizon's proposal is not authorized by federal law and should be rejected.

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

Q. SHOULD THE INTERCONNECTION AGREEMENT BE AMENDED TO ADDRESS CHANGES ARISING FROM THE *TRO* WITH RESPECT TO PACKET SWITCHING?

A. Yes. It appears that Verizon will no longer have an obligation to provide AT&T with packet switching functionality as an unbundled network element. The main disagreement between AT&T and Verizon involves the situation where AT&T's UNE-P customers are served off of a Verizon switch that has both packet switching and circuit switching capability. Verizon should be required to continue to provide AT&T with circuit switching capability to serve its UNE-P customers during the 12-month transition, until such time as Verizon is no longer required to provide UNE-P.

Q. HAS AT&T ENCOUNTERED ANY SITUTATIONS IN WHICH AT&T'S UNE-P CUSTOMERS COULD HAVE BEEN IMPACTED BY VERIZON'S DECISION TO INSTALL PACKET SWITCHING CAPABILITY?

A. Yes. In California Verizon notified carriers of its intent to replace circuit switches with packet switches in five central offices and, as a result, claimed that it was no longer obligated to provide unbundled local switching through those offices. In order to protect its customers from the significant disruption that would occur if Verizon implemented its plans, AT&T filed a complaint against Verizon (C.04-08-026) and filed a Motion for a Temporary Restraining Order. Specifically, AT&T did not seek to limit Verizon's ability to install packet switch capability. Rather, AT&T sought to

ensure the continuation of its customers' service under the terms of the parties' ICA. The Commission granted AT&T's motion, partially because AT&T established that its customers would be harmed if Verizon went ahead with its plans. The bottom line is that there need to be realistic parameters placed around any such radical change in the relationship between AT&T and Verizon when that change might affect the relationship between AT&T and its customers.[83]

Q. WHAT CONTRACT LANGUAGE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT TO ADDRESS THIS SITUATION?

A. The interconnection agreement should contain a provision regarding Packet Switching requiring that Verizon 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 no longer required to provide UNE-P, i.e. the FCC-mandated transition period.

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. SHOULD THE INTERCONNECTION AGREEMENT BE AMENDED TO ADDRESS CHANGES ARISING FROM THE *TRO* WITH RESPECT TO NETWORK INTERFACE DEVICES (NIDS)?

A. Yes. The Commission should adopt provisions that accurately reflect Verizon's

[83] The Washington Utilities and Transportation Commission recently entered a similar order prohibiting Verizon from taking similar action in that state.

obligations pursuant to FCC orders and rules. In this case, AT&T's proposed contract amendment language at Paragraphs 3.2.6 and 3.4.9 in Attachment X, properly reflect the FCC's Rules regarding Verizon's obligation to provide access to Network Interface Devices (NIDs) and to provide the NID functionality with unbundled local loops ordered by AT&T.

Q. IS THERE A DISAGREEMENT BETWEEN AT&T AND VERIZON REGARDING ACCESS TO THE NID AND THE INCLUSION OF NID FUCTIONALITY WITH UNBUNDLED LOCAL LOOPS?

A. I don't know. Verizon's proposed contract amendment does not address either issue. In the *TRO* (Par.356, footnote 1083) the FCC stated that the "NID and subloop unbundling rules we adopt herein ensure that competitive LECs obtain a full loop, including the network termination [NID] portion of that loop or subloop, if required, yet preserves the ability of facilities-based LECs to obtain access to only the NID on a stand-alone basis when required."

In order to insure the avoidance of doubt about Verizon's obligations, AT&T would prefer that the issues be clearly addressed in the interconnection agreement to reflect the above FCC ruling.

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

Q. WHAT SHOULD BE THE EFFECTIVE DATE OF THE AMENDMENT TO THE PARTIES INTERCONNECTION AGREEMENT?

A. The effective date of the parties' amendment to the interconnection agreement should be on the date the amendment is executed by the parties and filed with the Commission. This should occur expeditiously after the Commission has ruled on the various issues in this arbitration proceeding and the parties have agreed to language that implements the Arbitrators decision. The Commission should be watchful of parties' efforts to try to take a proverbial "second bite at the apple" by proposing compliance language that does not genuinely conform to the Commission's order.

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

Q. PLEASE DESCRIBE WHAT ANINTEGRATED DIGITAL LOOP CARRIER ("IDLC") SYSTEM IS?

A. An Integrated Digital Loop Carrier (IDLC) system is a type of "pair gain" or loop concentration system that permits carriers to more efficiently utilize their loop and switching plant. IDLC systems are the integration of the integrated digital terminal (IDT) and remote digital terminal (RDT). The IDT is a part of and integrated directly into the digital switch. Unlike Universal Digital Loop Carrier (UDLC) systems, with IDLC, there is often not a one-for-one transmission path or appearance in the central office for each line. As a result, incumbent LECs like Verizon must implement different practices and procedures to provide CLECs with unbundled loops where the customer is served by a Verizon IDLC system. A remote terminal may contain and

often contains a mixture of both IDLC and UDLC whenever IDLC is present at the remote terminal.

Q. DOES VERIZON HAVE AN OBLIGATION UNDER FEDERAL LAW TO PROVIDE AT&T AND OTHER CLECS WITH ACCESS TO UNBUNDLED LOOPS WHERE THE CUSTOMER IS SERVED BY A VERIZON IDLC SYSTEM?

A. Yes. The FCC found in the *TRO* (Par 297) that Verizon has an obligation to provide AT&T and other CLECs access to unbundled loops where the customer is served by an IDLC system. As the FCC recognized, providing this transmission path "may require incumbent LECs to implement policies, practices, and procedures different from those used to provide access to loops served by Universal DLC systems." The FCC further recognized that "in most cases, this will be either through a spare copper facility or through the availability of Universal DLC systems. Nonetheless *even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access.*" [emphasis added].

Q. HAS VERIZON PROPOSED TO PROVIDE AT&T AND OTHER CLECS WITH ACCESS TO UNBUNDLED LOOPS WHERE THE CUSTOMER IS SERVED BY A VERIZON IDLC SYSTEM?

A. Not genuinely. Instead, Verizon has proposed a costly, time consuming and discriminatory process for providing AT&T and other CLECs with access to unbundled loops served by IDLC systems. This undermines Verizon's express

obligation to unbundled IDLC loops, and is particularly critical when compounded by the sunsetting of unbundled switching, or UNE-P. Verizon's proposal should be rejected, and Verizon should be compelled to genuinely comply with the FCC requirement.

Q. PLEASE DESCRIBE VERIZON'S PROPOSAL.

A. At Paragraph 3.2.4.1 of its proposed Amendment, Verizon states that when AT&T requests an unbundled loop to serve a customer location that is served by an IDLC system, it will "endeavor" to provide AT&T with an unbundled loop over either existing copper or a loop served by Universal DLC. However, if neither of these options is available, Verizon's proposal at Paragraph 3.2.4.2 is that it will construct either a copper loop or Universal DLC system at AT&T's expense. In addition to the whopping special construction NRC for the unbundled loop, Verizon proposes to charge AT&T an additional charge whenever a line and station transfer is performed; "an engineering query charge of $183.99 for the preparation of a price quote"; "an engineering work order charge" of $94.40; plus "all construction charges as set forth in the price quote". These additional charges are contained in the Exhibit A Rate Proposal attached to Verizon's Proposed Interconnection Agreement language.

This process and these charges are both discriminatory – in that Verizon does not have to incur these charges to serve that customer at the same location – and unnecessary. Verizon's proposal to fulfill its obligation to offer CLEC's a technically feasible method to unbundled a loop is disingenuously larded up with costs so as to avoid its obligation. The FCC requirement is intended to facilitate service to end-

users; Verizon's proposal converts it to a regulatory sham.

Q. WHY DO YOU SAY THAT VERIZON'S PROPOSED PROCESS AND THESE CHARGES ARE UNNECCESSARY?

A. Other than possibly to inflate the costs and delay the provisioning of a loop ordered by AT&T, there is no reason why Verizon should construct loop plant or a UDLC system to provide AT&T with access to an unbundled loop served by an IDLC system. There are several engineering solutions that are available – as Verizon recognized when it was providing information to the FCC during the *TRO* proceedings – and could be implemented by Verizon.

As the FCC noted in Paragraph 297, footnote 855, the ILECs "can provide unbundled access to hybrid loops served by integrated DLC systems by configuring existing equipment, adding new equipment, or both." In fact, during the course of the *TRO* proceedings, when Verizon was advocating at the FCC that CLECs could use their own switching equipment and unbundled loops from Verizon to serve mass-market customers, Verizon apparently saw no impediments to providing loops served by IDLC systems. As noted by the FCC, "Frequently, unbundled access to Integrated DLC-fed hybrid loops can be provided through the use of cross-connect equipment, which is equipment incumbent LECs typically use to assist in managing their DLC systems", citing a July 19, 2002 Ex Parte Letter from Verizon "showing that Verizon typically uses central office terminations and cross-connects".

Furthermore, apparently, BellSouth has no problems reconfiguring existing equipment to provide CLECs with access to an unbundled loops served by IDLC systems. In its filing with this Commission on November 1, 2004 requesting a generic docket to consider interconnection agreement amendments to implement the changes required by the *TRO*, BellSouth submitted a draft interconnection agreement

amendment as Exhibit B to that filing. At Paragraphs 2.6 through 2.6.2, BellSouth's proposed contract offer provides that where a CLEC seeks access to an unbundled loop served by an IDLC system and where "an alternative facility is not available, then to the extent technically feasible, BellSouth will implement one of the following arrangements (e.g. hairpinning): 1. Roll the circuits from the IDLC to any spare copper that exists to the End User premises; 2. Roll the circuits from the IDLC to an existing [UDLC] DLC that is not integrated; 3. If capacity exists, provide "side door" porting through the switch; 4. If capacity exists, provide Digital Access Cross-Connect System (DACS) – door" porting (if the IDLC routes through a DACS prior to integration into the switch)."

I find it difficult to believe that Verizon, which uses much of the same equipment and abides by the same engineering standards as BellSouth, cannot implement an engineered solution similar to the one offered by BellSouth. The Commission should reject Verizon's costly, time consuming and discriminatory proposal to require that AT&T pay to construct facilities to obtain access to an unbundled loop to its customer presently served by a Verizon IDLC system. The Commission should direct Verizon to provide a solution involving the rearrangement of existing equipment as it told the FCC it could do and apparently its peers (BellSouth) do on a routine basis. Further Verizon's proposal present Verizon with the wrong incentives; rather than a motivation to find the most expeditious, least cost method, Verizon's proposal provides the incentive for Verizon to offer a fatally expensive, uneconomic method which effective undermines its unbundling obligation.

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

- ***a. unbundled loops in response to CLEC requests for access to IDLC-served hybrid loops;***
- ***b. Commingled arrangements;***
- ***c. Conversion of access circuits to UNEs;***
- ***d. Loops or Transport (including Dark Fiber Transport and Loops) for which Routine Network Modifications are required;***
- ***e. Batch hot cut, large job hot cut, and individual hot cut processes***

Q. SHOULD VERIZON BE REQUIRED TO MEET THE STANDARD PROVISIONING INTERVALS OR PERFORMANCE MEASUREMENTS AND BE SUBJECT TO POTENTIAL REMEDY PAYMENTS FOR FAILURE TO MEET THOSE REQUIREMENTS FOR IDLC-SERVED LOOPS; COMMINGLED ARRANGEMENTS; CONVERSION OF ACCESS CIRCUITS TO EELS; PROVISIONING OF HIGH CAPACITY LOOPS AND TRANSPORT; AND HOT CUTS?

A. Yes. Verizon should be required to meet the standard provisioning intervals or performance measurements that are contained in the current plan adopted and approved by this Commission. Furthermore, Verizon should be subject to the potential remedy payments for failure to meet those requirements that are contained in the current plan adopted and approved by this Commission.

In its proposed amendment, Verizon proposes to specifically exempt itself from these requirements for the provision of IDLC loops at Paragraph 3.2.4.3 and for the provision of Commingled arrangements at Paragraph 3.4.1.1. In addition, Verizon seeks to exempt itself from the requirements of the Commission's plan for Routine Network Modifications at Paragraph 3.5.2. As my testimony discusses, Routine Network Modifications are already contemplated in the activities in the Verizon cost

study that establish the non-recurring and recurring charges for High Capacity Loops and Transport.

As a result, the provisioning of High Capacity Loops and Transport, which require Routine Network Modifications, should adhere to the Commission's approved provisioning intervals and performance measurements. Verizon's proposal to exempt itself from the Commission's approved plan should be rejected.[84]

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

Q. WHAT OBLIGATIONS DOES THE *TRO* IMPOSE ON VERIZON FOR PROVIDING UNBUNDLED ACCESS TO SUBLOOPS?

A. The *TRO* requires Verizon to provide AT&T with unbundled access to Verizon's copper subloops and Verizon's network interface devices ("NIDs"). These requirements encompass any means of interconnection of the Verizon distribution plant to customer premises wiring.[85] In addition, the FCC found that AT&T and other CLECs are impaired on a nationwide basis "without access to unbundled subloops used to access customers in multiunit premises."[86] As a result, the *TRO* requires Verizon to provide AT&T with access to any technically feasible access point located near a Verizon remote terminal for these subloop facilities.[87]

Q. WHY IS IT IMPORTANT FOR COMPETITORS TO OBTAIN ACCESS TO SUBLOOPS AS AN UNBUNDLED ELEMENT?

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[84] Further, it would seem to make the Commission's metrics and remedies program an administrative nightmare if different standards were applicable to some CLECs relative to others, based on their currently effective ICAs. Instead AT&T proposes here to adhere to the uniform standards applicable to all CLECs. Any modifications or exceptions to the Commission's metrics and remedies program should be addressed in the docket established for that purpose, after notice to all carriers.

[85] *TRO*, ¶ 205.

[86] *Id.*, ¶ 348.

[87] *Id.*, ¶ 343.

A. Because as the FCC found, for example in the case of multiunit premises CLEC face significant barriers to obtaining access to provide service to customers there. This is particularly true in view of the exclusive access to these premises that the incumbent providers previously have enjoyed. Given the substantial costs and risks associated with self-deployment to these multiunit premises, "the ability to access subloops at, or near, the customer's premises in order to reach the infrastructure in those premises where they otherwise would not be able to take their loop the full way to the customer, is critical."[88]

Q. DOES VERIZON'S PROPOSED AMENDMENT PROPERLY REFLECT ITS OBLIGATIONS UNDER THE *TRO* CONCERNING SUBLOOPS?

A. No. In many critical respects Verizon's amendment does not fully reflect the requirements of the *TRO*, and leaves issues unresolved that could subsequently result in new disputes that will require Commission intervention. In contrast, AT&T's Amendment is consistent with and faithful to the *TRO*'s requirements on subloops.[89]

Q. DOES VERIZON'S AMENDMENT EVEN DEFINE SUBLOOPS?

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88 *Id.*, ¶ 348.

89 For example, AT&T's proposed amendment comprehensively addresses issues concerning the Single Point of Interconnection (SPOI), collocation, access to multiunit premises wiring, technical feasibility, best practices, and NID access that are either dealt with cursorily by Verizon or not at all. Because, in contrast to Verizon's language, AT&T's proposal is both complete and tracks the *TRO* faithfully, it should be adopted.

A. No. AT&T's Amendment, on the other hand, defines the Inside Wire Subloop, in both paragraphs 2.17 and in 3.4, as set forth in the *TRO*.[90]

Q. WHY ARE THESE DEFINITIONS IMPORTANT?

A. The definitions help to make clear just what Verizon is providing and what it is not providing. Ensuring that the parties are in agreement as to the meaning of these terms should prevent unnecessary threshold disputes in the future.

Q. DOES VERIZON'S PROPOSAL COMPLY WITH THE *TRO*'S REQUIREMENT TO PROVIDE ACCESS "AT, OR NEAR" THE CUSTOMER'S PREMISES?

A. No. Verizon proposal seeks to limit access to "any technically feasible point" located near a Verizon remote terminal. While this minor language difference may appear insignificant, experience indicates that minor differences can result in not-so-minor disputes. AT&T simply seeks to have the language of the ICA track the requirements of the FCC's order to avoid such disputes.

Q. VERIZON'S PROPOSAL ALSO INDICATES THAT ACCESS WOULD BE SUBJECT TO CERTAIN RATES AND CHARGES TO BE REFLECTED IN THE AMENDDED ICA. HAS VERIZON PROPOSED SUCH CHARGES?

A. It is my understanding that Verizon has yet to submit any proposed charges for review or negotiation by the parties. Of course, proposed rates when submitted

[90] For example, AT&T 3.4.4 provides that Verizon is required to provide AT&T with non-discriminatory access to Inside Wire Subloops for access to multiunit premises wiring on an unbundled basis regardless of the capacity or type of media (including, but not limited to copper, coax, radio and fiber) employed for the Inside Wire Subloop. Although, in the MDU Reconsideration Order, the FCC extended the terms of its FTTH rules to include multiple dwelling units that are predominantly residential, the FCC specifically stated that it was retaining CLEC's rights under the TRO to unbundled access to inside wiring, NIDs, and other subloops for multi-tenant premises. MDU Reconsideration Order ¶9.

would have to be forward looking, not involve double recovery, and be supported.

Q. DOES AT&T AGREE WITH VERIZON'S REFUSAL TO RESERVE HOUSE AND RISER CABLE FOR COMPETITORS?

A. AT&T is willing to accept this limitation if and only if Verizon is expressly willing to contract to abide by the same limitation.[91]

Q. DOES VERIZON'S PROPOSAL SEEK TO IMPROPERLY RESTRICT ACCESS TO UNBUNDLED SUBLOOPS?

A. Yes, Verizon seeks to impose a variety of restrictions on AT&T's access to Inside Wire Subloops. These are found in paragraph 3.3.1.1.1.3 of Verizon's proposal. For example, Verizon contends that AT&T's facilities cannot be attached, otherwise affixed or adjacent to Verizon's facilities or equipment, cannot pass through or otherwise penetrate Verizon's facilities or equipment and cannot be installed so that AT&T's facilities or equipment are located in a space where Verizon plans to locate its facilities or equipment. Verizon also asserts that it shall perform any cutover of a customer to AT&T service by means of a House and Riser Cable subject to a negotiated interval, that Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to AT&T's facilities, and that Verizon shall determine how to perform such installation. Finally, under its proposal Verizon would perform all installation work on Verizon equipment in connection with AT&T's use of Verizon's House and Riser Cable.

91 That is, if Verizon will not reserve House and Riser cable for its competitors, it also should forego reserving those facilities for its own retail operations. Otherwise this limitation would discriminate against the CLECs.

Q. ARE THESE RESTRICTIONS PERMITTED UNDER THE *TRO*?

A. No. Verizon's effort to force AT&T to use only Verizon's technicians to enable access to subloops is not authorized by the *TRO*. Indeed, this restriction would result in unnecessary delays and increased costs in providing service to customers. Thus, AT&T's proposed amendment, at Paragraph 3.4.8, makes it clear that connections to subloops (including the NID), including but not limited to directly accessing the cross-connection device owned or controlled by Verizon, may be performed by AT&T technicians or its duly authorized agents, at its option, (i) without the presence of Verizon technicians, and (ii) at no additional charge by Verizon. AT&T's language also makes clear that, "Such connecting work performed by AT&T may include but is not limited to lifting and re-terminating of cross connection or cross-connecting new terminations at accessible terminals used for subloop access. No supervision or oversight by Verizon personnel shall be required but Verizon may monitor the work, at its sole expense, provided Verizon does not delay or otherwise interfere with the work being performed by AT&T or its duly authorized agents."

Q. IS AT&T SEEKING UNLIMITED ACCESS TO THE VERIZON'S EQUIPMENT, LIKE THE SPLICE CASE?

A. No. But AT&T should be entitled to non-discriminatory access. [92]

Q. HOW DOES VERIZON PROPOSE TO DEAL WITH THE ISSUES CONCERNING SINGLE POINT OF INTERCONNECTION?

[92] I.e., AT&T should be entitled to access the wiring inside the splice case when Verizon itself has opened it, and a Verizon technician is present.

A. It doesn't. Verizon's proposal language would require the parties to negotiate yet an other amendment to the ICA at a future date to memorialize the terms conditions and rates under which Verizon would provide a SPOI at a multiunit premises. However, there is no reason to wait for some indeterminate date to come to terms on this issue. Rather, the Commission should resolve it in this proceeding, under the terms AT&T has proposed in its Paragraph 3.4.5 of its proposed Amendment.

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

Q. WHERE VERIZON COLOCATES LOCAL CIRCUIT SWITCHING EQUIPMENT IN AT&T'S PREMISES, SHOULD THE TRANSMISSION PATH BETWEEN VERIZON'S LOCAL CIRCUIT SWITCHING EQUIPMENT AND THE VERIZON SERVING WIRE CENTER BE TREATED AS UNBUNDLED TRANSPORT?

A. Yes. The transmission path between the Verizon's local circuit switching equipment located in AT&T facilities and the Verizon serving wire center should be treated as unbundled transport, as required by the FCC. In the *TRO* (Par. 369, footnote 1126), the FCC recognized that "incumbent LECs may 'reverse collocate' in some instances by collocating equipment at a competing carrier's premises, or may place equipment in a common location, for purposes of interconnection … to the extent that an incumbent LEC has local switching equipment, as defined by the Commission's rules, "reverse collocated" in a non-incumbent LEC premises, the transmission path

from this point back to the incumbent LEC wire center shall be unbundled as transport between incumbent LEC switches or wire centers...".In making this finding, the FCC distinguished a "reverse collocation" arrangement from an "entrance facility." Therefore, Verizon continues to be obligated to provide such unbundled dedicated transport under the terms set forth in the *TRRO*.

AT&T's proposed contract language contains a definition of Dedicated Transport at Paragraph 2.7 that reflects the FCC's findings, as follows: "Dedicated Transport - A transmission facility between Verizon switches or wire centers, (including Verizon switching equipment located at AT&T's premises), within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law

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. ARE INTERCONNECTION TRUNKS BETWEEN A VERIZON WIRE CENTER AND A CLEC WIRE CENTER INTERCONNECTION FACILITIES THAT MUST BE PROVIDED AT TELRIC PRICING?

A. Yes. Interconnection trunks between a Verizon wire center and a CLEC wire center established for the transmission and routing of telephone exchange service and exchange access are interconnection facilities under section 251(c)(2) that must be provided at TELRIC.

Section 251(c)(2) of the federal Act specifically provides that Verizon has an obligation to interconnect with the CLEC's network via interconnection trunks "for the transmission and routing of telephone exchange service and exchange access ... on rates, terms and conditions ... in accordance with ... Section 252" (251(c)(2)(A) and (D). Section 252(d)(1), in turn, contains the TELRIC standard.

Although, in the *TRO*, the FCC revised the definition of dedicated transport to exclude entrance facilities, finding that they "exist outside the incumbent LEC's local network," the FCC was very clear that this conclusion did not alter the obligations of Verizon to continue to provide interconnection trunks, pursuant to Section 251(c)(2), at TELRIC prices. Specifically, the FCC (TRO 365) observed that, "Competitive LECs use these transmission connections between incumbent LEC networks and their own networks both for interconnection and to backhaul traffic. Unlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection, we find that the Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC

networks for the purpose of backhauling traffic."[93] To be clear, however, the FCC (TRO 366) noted, "In reaching this determination we note that, to the extent that requesting carriers need facilities in order to "interconnect [] with the [incumbent LEC's] network," section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation."

In the *TRRO*, the FCC, relying on guidance from the D.C. Circuit in the *USTA II* decision, reinstated the *Local Competition Order* definition of dedicated transport.[94] However, after applying an impairment analysis to dedicated transport, the Commission found that CLEC carriers are not impaired without access to entrance facilities as an unbundled network element. The FCC did not, however, retreat from its finding regarding the availability of interconnection facilities at TELRIC prices. Rather, the FCC stated that while an ILEC is not obligated to provide access to entrance facilities as UNEs, CLECs continue to have access to these facilities at cost-based rates, stating:

> [o]ur finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain ***interconnection facilities*** pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities *at **cost-based rates*** to the extent that they require them to interconnect with the incumbent LEC's network.[95]

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[93] On this basis, the FCC (TRO 366) found that "the transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LECs' local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network. Accordingly, such transmission facilities are not appropriately included in the definition of dedicated transport."

[94] ¶¶136-141.

[95] TRRO, ¶140 (emphasis added).

Therefore, it is clear that interconnection trunks between a Verizon wire center and a CLEC wire center established for the transmission and routing of telephone exchange service and exchange access, and not for the purpose of "backhauling" traffic, are interconnection facilities under section 251(c)(2) that must be provided at TELRIC.

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

Q. WHAT IS AN "EEL" AND WHY IS IT IMPORTANT TO AT&T TO BE ABLE TO HAVE ACCESS TO EELS TO SERVE ITS CUSTOMERS IN FLORIDA?

A. An EEL is an Enhanced Extended Link. It is the combination of one or more segments of unbundled (DS-0, DS1 and DS3) loops with unbundled (typically DS1 and DS3) dedicated transport. At the option of the CLEC, an EEL may or may not include multiplexing and the loop portion is not limited to just DS1 loop types. EELs are essentially long loops -- loops that have been extended from the legacy ILEC wire center to a location where AT&T has a switch or some other network appearance. As such, EELs provide a natural bridge between resale or UNE-P to UNE-L, recognizing that it is not practical or prudent for AT&T to establish physical collocation in every Verizon wire center in Florida. If volumes of a CLEC's dedicated transport traffic (and the transport component of EELs) cross the economic break-even point to

warrant self-provision given a particular transport route's construction cost (driven by rights-of-way, distance, and other cost factors), a CLEC such as AT&T can then establish collocation in that end office, construct its own transport facilities or obtain third-party transport, and roll service from EELs to UNE-L (or completely off of UNEs if it has its own or controlled loop facilities). As the FCC concluded in the *TRO*, (Par 576) "EELs facilitate the growth of facilities-based competition in the local market.... The availability of EELs ... promotes innovation because competitive LECs can provide advanced switching capabilities in conjunction with loop-transport combinations."

Q. DOES VERIZON HAVE AN OBLIGATION UNDER FEDERAL LAW TO PROVIDE AT&T AND OTHER CLECS WITH ACCESS TO EELS?

A. Yes. In the *TRRO*, the FCC noted that the *USTA II* court affirmed the EELs eligibility criteria that were established in the *TRO*. Specifically, the Commission reiterated its previous finding in the *TRO* and stated that "to the extent that the loop and transport elements that comprise a requested EEL circuit are available as unbundled elements, then the incumbent LEC must provide the requested EEL."[96] Thus, the EEL's eligibility requirements have been in place since the effective date of the *TRO*, and they have not been changed by either the *USTA II* Court or the FCC in the *TRRO*.[97] This should be dispositive of the matter.

As discussed in my Testimony on Issues 4 and 5, the *TRRO* provides specific criteria

[96] *TRRO* ¶ 85.
[97] *TRRO* ¶ 85.

to determine in which wire centers Verizon will no longer have an obligation to provide unbundled DS1 and DS3 Loops and unbundled DS1 and DS3 dedicated transport. In locations where Verizon's obligation to provide unbundled DS1 and DS3 Loops and unbundled DS1 and DS3 dedicated transport has not been removed, Verizon is required to provide AT&T and other CLECs with EELs. This obligation exists in both the situation where AT&T is placing an order for a new EEL circuit or converting an existing circuit (for example a T-1 access circuit) to an EEL, so long as certain service criteria eligibility are met.

Verizon's obligation to provide EELs, as well as the criteria for ordering or converting existing circuits to EELs is contained in FCC Rule 51.318. As the FCC stated in the *TRO* (Par. 575), "Our rules currently require incumbent LECs to make UNE combinations, including loop-transport combinations, available in all areas where the underlying UNEs are available and in all instances where the requesting carrier meets the eligibility requirements."

Issue 21(a) ***What information should a CLEC be required to provide to Verizon as certification to satisfy the service eligibility criteria (47 C.F.R. Sec. 51.318) of the TRO in order to (1) convert existing circuits/services to EELs or (2) order new EELs?***

Q. WHAT INFORMATION SHOULD AT&T OR A CLEC BE REQUIRED TO PROVIDE IN ORDER TO SATISFY THE SERVICE ELIGIBILITY CRITERIA SPECIFIED BY THE FCC RULES?

A. The FCC established specific service eligibility criteria for a CLEC to self-certify when ordering either a new EEL or convert existing circuits to an EEL. That service eligibility criteria is provided in FCC Rule 51.318 and requires a CLEC to be

certificated by the state and provide self-certification that that each DS1 circuit and each DS1-equivalent circuit on a DS3 EEL meet the following criteria:

(i) Each circuit to be provided to each customer will be assigned a local number prior to the conversion of that circuit;

(ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;

(iii) Each circuit to be provided to each customer will have 911 or E911 capability prior to the conversion of that circuit;

(iv) Each circuit to be provided to each customer will terminate in a collocation arrangement that meets the requirements of paragraph (c) of this section;

(v) Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of section (d) of this section;

(vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section; and

(vii) Each circuit to be provided to each customer will be served by a switch capable of switching local voice traffic.

Q. DID THE FCC REQUIRE ANY FURTHER INFORMATION OTHER THAN A SELF-CERTIFICATION LETTER FROM THE CLEC CERTIFYING THAT THE ABOVE REQUIREMENTS HAVE BEEN SATISFIED?

A. No. In fact, the FCC rejected the proposals of the incumbent LECs such as Verizon that had sought to require other onerous conditions on the CLECs as a pre-condition to order an EEL or convert existing circuits to EELs, such as pre-audits and other requirements that the FCC described as constituting "unjust, unreasonable and discriminatory terms and conditions for obtaining access to UNE combinations."

(*TRO* 577). Regarding the certification process, the FCC prescribed that a requesting carrier's "self certification" that it satisfied the service eligibility criteria "is the appropriate mechanism to obtain promptly the requested circuit" and found that "a critical component of nondiscriminatory access is preventing the imposition of undue gating mechanisms that could delay the initiation of the ordering or conversion process". (*TRO* Para. 623).

The FCC further prescribed that this "self certification" process would be subject to "later verification based on cause" (*TRO* 622) in the limited annual audit process discussed by the FCC. The FCC found that a requesting carrier's self-certification of satisfying the qualifying service eligibility criteria for EELs "is the appropriate mechanism to obtain promptly the requested circuit". (*TRO* 623).

Q. PLEASE DESCRIBE THE PROPOSED REQUIREMENTS THAT VERIZON WOULD IMPOSE ON AT&T AND OTHER CLECS IN ORDER TO PLACE ORDERS FOR EELS.

A Verizon's contract amendment proposal regarding the information that AT&T and other CLECs would be required to provide in its "self certification" of satisfaction of the service eligibility criteria in order to (1) convert existing circuits/services to EELs or (2) order new EELs constitutes an "undue gating mechanism", is discriminatory and should be rejected. Verizon's proposal is much more onerous than required by the Rules and appears to be designed to impede AT&T and other CLECs from utilizing the EELs that Verizon is obligated to provide.

Paragraph 3.4.2.3 of the Verizon proposal would require AT&T to provide the

specific local telephone number assigned to each DS1 circuit or DS1-equivalent; the date each circuit was established in the 911/E911 database; the specific collocation termination facility assignment for each circuit and a "showing" that the particular collocation arrangement was established pursuant to the provisions of the federal Act dealing with local collocation and the interconnection trunk circuit identification number that serves each DS1 circuit. The specific information that Verizon proposes goes well beyond what is required by the FCC for a CLEC to "self certify" the satisfaction of the service eligibility criteria and receive "promptly the requested circuit." Verizon has no legal or persuasive basis for these extraordinary requirements that are not contained in the FCC rules.

For example, AT&T should only have to send a letter "self-certifying" that the DS1 EEL circuit or the 28 DS1-equivalent circuits of a DS3 EEL has a local telephone number assigned[98] and the date established in the 911 or E911 database[99] and should not be required to provide the specific telephone number or the date that the telephone number was established in the 911/E911 database. Likewise, AT&T should not be required to make a "showing" as to the nature of the collocation that it has established,[100] but rather should be permitted to self-certify that the collocation

[98] E.g. the particular, local telephone number assigned may change in the ordinary course of business, but a change in the local telephone number assigned continues to satisfy the FCC criteria, and should not trigger a pointless recertification obligation. Verizon's proposal is plainly designed to harass and be punitive in its wasteful burden.

[99] The requirement to establish the local number in the E911 database is a binary condition. Verizon's proposal seeks to expand the requirement, thereby converting a one-time certification into an ongoing certification contrary to the FCC rules. Of course, a change in telephone number could be associated with a new establishment of that number in the E911 database. Neither condition changes the CLEC's eligibility or triggers any bona fide need for a re-certification.

[100] E.g. the collocation arrangement may have originally been established for access traffic and now used for both access and local, interstate and intrastate purposes.

established for the termination of the circuit meets the requirements established in Rule 51 C.F.R. 318 (c). Furthermore, there is no requirement in the qualifying service eligibility requirements that AT&T provide the "interconnection trunk circuit identification number"[101] for each DS1 EEL or DS1-equivalent of a DS3 EEL. Rather, the eligibility criteria requires that AT&T self-certify that each DS1 or DS1-equivalent circuit will be served by an interconnection trunk that "will transmit the calling party's number in connection with calls exchanged over the trunk". Rule 51.318 (d).

Much of the information that Verizon's Amendment proposal would require is information that would be examined in an "after the fact" compliance audit should such an audit be initiated. Verizon's proposal effectively foists the burden of a "before the fact" and continuous audit upon the CLECs, contrary to the FCC rules, and without justification. Rule 51.318(b)(2). As a result, the information requested in Verizon's proposal amounts to an impermissible "pre-audit" and continuous audit requirement that was rejected by the FCC as being a discriminatory "gating mechanism," and should be rejected.

Issue 21(b)(1) ***Should Verizon be prohibited from physically disconnecting, separating or physically altering the existing facilities when a CLEC requests a conversion of existing circuits/services to an EEL unless the CLEC requests such facilities alteration?***

Q. SHOULD VERIZON BE PROHIBITED FROM PHYSICALLY DISCONNECTING, "BREAKING" OR PHYSICALLY ALTERING THE

[101] Individually and in total, Verizon extraneous requirements constitute a backdoor effort to rewrite the FCC eligibility rules. Such a naked attempt should be rejected outright. Given that Verizon has offered nothing of value in exchange for these extra-regulatory requirements, it is difficult to see how such a position constitutes required, good faith negotiation.

EXISTING FACILITIES WHEN AT&T OR OTHER CLECS REQUESTS THAT AN EXISTING CIRCUIT BE CONVERTED TO AN EEL?

A. Yes. The FCC Rules do not permit Verizon to physically disconnect, separate or physically alter the existing facilities when AT&T requests the conversion of existing access circuits to an EEL unless AT&T specifically requests that such work be performed. Section 51.316(b) specifically provides that:

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

As discussed by the FCC in the *TRO* (Par 586) "Converting between wholesale services and UNEs or UNE combinations should be a *seamless* process that does not alter the customers perception of service quality" ...and is "largely a billing function". *TRO* 588, (emphasis added).

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

Q. IS VERIZON AUTHORIZED TO IMPOSE NON-RECURRING CHARGES ON AT&T AND OTHER CLECS WHEN ACCESS FACILITIES ARE BEING CONVERTED TO EELS?

A. Basically no. Verizon is not authorized to impose non-recurring charges (including, but not limited to termination charges, disconnect and reconnect fees) on a circuit-by-circuit basis when wholesale services (e.g. special access facilities) are being

converted to EELs. In fact, FCC Rules specifically prohibit such charges. FCC Rule 51.316(c) provides that:

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

In promulgating this Rule, the FCC recognized (*TRO* 587) that:

> [O] nce a competitive LEC starts serving customer, there exists a risk of ***wasteful and unnecessary*** charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could ***unjustly enrich*** an incumbent LEC. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LECs duty to provide nondiscriminatory access to UNEs and UNE combinations on just reasonable and nondiscriminatory rates, terms and conditions.[102]

Q. PLEASE DESCRIBE THE CHARGES THAT VERIZON WOULD PROPOSE TO IMPOSE ON AT&T AND OTHER CLECS IN ORDER TO PLACE ORDERS TO CONVERT EXISTING ACCESS SERVICES TO EELS.

A. Verizon's proposed Amendment contains several such charges, which are in violation of Rule 51.316(b), are unreasonable and discriminatory and therefore should be

[102] Emphasis supplied.

rejected. Verizon's proposed Amendment, at Paragraph 3.4.2.4 provides that the charges for conversions from access arrangements to EELs are contained in its Pricing Attachment (Exhibit A).

Verizon would propose to charge, on a per circuit basis - $19.33 for a service order and $7.27 for an installation (or $26.60 "per circuit"). Thus, for a DS1 EEL, which consists of 24 circuits, Verizon would propose to charge $638.40 (or 24 X $26.50). In addition, at Paragraph 3.4.2.5, of Verizon's proposed Amendment, Verizon would propose to add on an additional charge a for "re-tagging fee" of $59.43 per circuit or $1426.32 per DS1 EEL (24 X $59.43). Plainly, a retagging fee is a band-aid approach to Verizon's inventory systems, and is plainly not recoverable as a forward-looking cost. Verizon's proposed Amendment and its proposed charges of over $2000 for the simple conversion of an T-1 access circuit to a DS1 EEL is clearly in excess of the forward-looking costs incurred by Verizon to make the "simple billing change" as described by the FCC and should be rejected as discriminatory.

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

Q. WHAT RIGHTS DOES VERIZON HAVE TO CONDUCT AUDITS TO INSURE CLEC COMPLIANCE WITH THE SERVICE ELIGIBILITY CRITERIA FOR EELS?

A. AT&T does not object to the audit rights granted by the FCC; AT&T does object to the extra-regulatory audit burdens sought by Verizon. As discussed by the FCC, Verizon should have a limited right on an annual basis to audit the compliance of

CLECs with the service eligibility criteria for EELs. An independent auditor in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) should conduct the limited audit. Verizon should be required to pay for the audit unless the auditor finds that the CLEC failed to comply in all material respects with the service eligibility criteria. (TRO 626, 627). The FCC's requirement clearly functions as counterbalance to Verizon's invoking baseless, harassing audits on CLECs. Verizon has no basis for its unlimited auditing proposal.

Q. HAS AT&T PROPOSED CONTRACT AMENDMENT LANGUAGE THAT WOULD PROPERLY IMPLEMENT THE FCC RULES AND REQUIRMENTS REGARDING THE ORDERING OF NEW EELS AND THE CONVERSION OF EXISTING CIRCUITS TO EELS?

A. Yes. Paragraphs 3.7.2 through 3.7.2.8. " Service Eligibility Criteria for Certain Combinations, Conversions and Commingled Facilities and Services" in AT&T's proposed contract amendment, (Attachment X) would implement the FCC Rules and requirements regarding the ordering of new EELs and the conversion of existing circuits to EELs.

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

Q. IS VERIZON REQUIRED TO PERFORM ROUTINE NETWORK MODIFICATIONS NECESSARY TO PERMIT AT&T AND OTHER CLECS TO GAIN ACCESS TO UNBUNDLED ELEMENTS?

A. Yes. The FCC very clearly obligated Verizon to perform the routine network modifications necessary to permit AT&T access to loops and dedicated transport. The *TRO* requires ILECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed.[103] This obligation was made explicit in the FCC's Rules, §51.319(e)(5), which prescribes that,

> "Routine network modifications.
> (i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.
>
> (ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

Q. DOES THE ICA NEED TO BE AMENDED TO CREATE A NEW VERIZON OBLIGATION TO PERFORM ROUTINE NETWORK MODIFICAITONS?

A. No. Verizon's requirement to make routine network modifications ***pre-existed*** the

[103] *TRO*, ¶ 632.

TRO, and that order simply clarified that existing obligation, rejecting Verizon's bogus "no build" policy as anticompetitive and discriminatory on its face. Thus, there has been no "change in law" that would necessitate an amendment to the ICA, rather simply an enforcement of existing law. Nevertheless, for purposes of moving this case forward – and because Verizon has refused to comply with its obligations absent an amendment -- AT&T has proposed language that correctly reflects the FCC's rules. However, AT&T does not in any way concede by its response that there has been a "change in law." Likewise AT&T reserves it rights to peruse all remedies available for Verizon's unlawful "no build" practice.

Q. IF THERE IS TO BE AN AMENDMENT TO THE ICA ON THIS ISSUE, HOW SHOULD VERIZON'S OBLIGATIONS BE REFLECTED IN THE CONTRACT?

A. The contract Amendment should describe routine network modifications in the same manner and in the same detail as they are described by the FCC's Rules and in the *TRO*. For example, to clarify the extent of Verizon's obligations the *TRO* listed (illustrative but not exhaustive) examples of such necessary loop modifications as including "rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer."[104] Similarly, AT&T's proposed amendment, at Paragraph 3.8.1, specifies that routine network modifications "include but are not limited to": rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack;

[104] *Id.*, ¶ 634.

installing a repeater shelf; and deploying a new multiplexer or reconfiguring an existing multiplexer. Consistent with the FCC's approach, AT&T's proposed language also states that the determination of whether a modification is routine should be based on the nature of the tasks associated with the modification, not on the end-user service that the modification is intended to enable.

Q. IS VERIZON'S PROPOSED AMENDMENT CONSISTENT WITH THE *TRO?*

A. No. Verizon proposed contract amendment is simply a continuation of its thoroughly discredited and unlawful refusal to unbundled at forward-looking rates. Verizon's proposal falls short in several critical respects. First, unlike AT&T's proposal, Verizon's proposed Amendment does not describe all of the routine network modification activities specified in the FCC Rules and the *TRO*, and also attempts to weaken its obligation in certain areas. For this reason alone it should be rejected as inconsistent with The FCC rules, in favor of AT&T's proposal. In addition, and perhaps even more fatally, Verizon tries to condition its obligation by asserting that it will make routine network modifications subject to certain rates and charges that it has set forth in a Pricing Attachment.[105]

Q. HOW HAS VERIZON SOUGHT TO WEAKEN ITS OBLIGATION TO PROVIDE ROUTINE NETWORK MODIFICATIONS?

A. There are number of examples of this. For one, Verizon, in its proposed Paragraph

[105] This is simply a continuation of Verizon's anticompetitive and facially discriminatory "no build" policy. For several years, the FCC found, that ILECs such as Verizon collected rates that typically include forward-looking cost recovery for routine network modifications, although Verizon refused to perform the routine network modifications. Now Verizon reformulates its noncompliance by only agreeing to perform routine network modifications at an unsupported rate of $1,000 in addition to the costs embedded in the Commission's approved UNE rates, as found by the FCC.

3.5.1.1, describes routine network modification to include rearranging or splicing of "in-place" cable at "existing splice points." However, there is nothing in the *TRO* or the FCC Rules that limits modifications to "in-place" cable or to "existing splice points." Such modifications could involve new cable or old cable spliced in a new arrangement. It also may necessitate establishing a new splice point.

Q. VERIZON ALSO CONTENDS THAT THE PROVISION OF ROUTINE NETWORK MODIFICATIONS SHOULD BE EXCLUDED ALTOGETHER FROM STANDARD PROVISIONING INTERVALS AND PERFORMANCE MEASURES AND REMEDIES. IS THIS CONSISTENT WITH THE *TRO*?

A. No. There is nothing in the *TRO* that support the exclusion of routine network modifications from existing metrics and remedies plans. To the contrary, the FCC found that the extent modifications did affect loop-provisioning intervals it expected any such impact would be addressed by the state commissions in their recurring reviews of LEC performance.[106]

Q. WHY IS IT APPROPRIATE TO SUBJECT VERIZON'S PERFORMANCE OF ROUTINE NETWORK MODIFICATIONS TO PERFORMANCE MEASUREMENTS AND REMEDIES?

[106] *TRO*, ¶ 639.

A. As I have previously indicated, there is simply no reason to exclude these obligations from the performance metrics and remedies adopted by this Commission. This is consistent with the principle the FCC used to impose the obligation to provide routine network modifications in the first place – parity with its retail operations.

Q. IS VERIZON IS ENTITLED TO CHARGE COMPETITORS FOR ROUTINE NETWORK MODIFICATIONS?

A. Verizon is *already* is charging competitors for routine network modifications, although it has refused to perform them. Accordingly, Verizon has necessarily over recovered its forward-looking costs for what it the high capacity loops not needing modification that it has provided. This has been a windfall. Further to the extent that Verizon choked back competition for business customers and propped-up alternative special access prices, Verizon has enjoyed unjust enrichment.

The FCC noted that the costs of routine network modifications are most often already included in existing TELRIC rates.[107] This means that, in most instances, existing non-recurring and recurring UNE rates have been set at levels that fully recover an Verizon's forward-looking cost of performing routine network modifications and, as a consequence, no further cost recovery is justified. Certainly Verizon's unsupported and unsupportable $1000 rate is unjustified on its own. Thus, the *TRO* itself is quite clear that AT&T shall not be obligated to pay separate fees for routine network modifications to any UNE or UNE combination unless and until Verizon demonstrates that such costs are not already recovered from monthly recurring rates

[107] *TRO*. ¶ 640.

for the applicable UNE(s) or from another cost recovery mechanism. Verizon has not even bother to make a colorable effort at compiling with this express FCC requirement.

Q. HAS ANY STATE COMMISSION ALREADY RULED AGAINST VERIZON'S PROPOSED ADDITIONAL COMPENSATION FOR ROUTINE NETWORK MODIFICATIONS?

A. Yes. Maine, Virginia, and New York have each ruled against Verizon on this issue.

Maine In Docket 2004-135, the Maine Commission agreed with the FCC that the costs of routine network modifications are often reflected in existing TELRIC rates. The Maine Commission placed the burden of proof on the ILEC to demonstrate that additional charges are necessary.

New York Even more recently, the New York Public Service Commission issued a decision requiring Verizon New York Inc. to make any and all routine network modifications necessary without imposing any charge for such modifications. In making this finding, the NYPSC relied on the FCC's *TRO* and stated:

> As the FCC found, the failure to carry out activities for CLECs that are routinely performed for retail customers is discriminatory and therefore anticompetitive.[108]

Virginia: The Virginia State Corporation Commission ruled, "The costs for routine network modifications have been addressed in the TELRIC rates previously established by the Commission for high capacity UNE loops."[109]

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[108] Proceeding on Motion of the Commission to Examine the Provision of High-Capacity Facilities in by Verizon New York, Case 02-C-1233 (other cites excluded), Order Directing Routine Network Modifications, issued February 10, 2005.

[109] *Petition of Cavalier Telephone, LLC For Injunction Against Verizon Virginia Inc. for Violations of Interconnection Agreement and For Expedited Relief to Order Verizon Virginia Inc. to Provision Unbundled*

Q. HAS VERIZON MADE HERE THE SHOWING EXPRESSLY REQUIRED BY THE FCC?

A. No, Verizon hasn't even made a colorable effort to comply. Verizon has done no more than submit an unsupported and unsupportable Pricing Attachment and claim an entitlement to those rates. It has not made any good faith attempt to prove that the alleged costs of routine network modifications are not already captured in its existing recurring and nonrecurring rates. Verizon has not shown that it excluded these costs from the assumptions and inputs that were used to develop its current rates. Thus, Verizon should not be permitted to impose these charges on AT&T for routine network modifications without a prior determination by this Commission of whether the activities for which the rates have been proposed are already included in the non-recurring or recurring rates for the unbundled element in question and, if not, without a review and approval of underlying cost studies supporting the charges to be imposed. It is critical for this Commission to address this matter in the proper light of years of active non-compliance by Verizon, which the FCC found was anti-competitive and facially discriminatory. The Commission should give Verizon no quarter to spin new theories for its non-compliance, and the Commission should stand ready to engage all available enforcement mechanism in opposition to any continuation of this anticompetitive scheme.

Network Elements in Accordance with the Telecommunications Act of 1996, Case No. PUC-2002-00088, Final Order (January 28, 2004) at 8, *recon. denied* by Order on Reconsideration (March 5, 2004).

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. WHY ARE THE TRANSITION PROCESSES ESTABLISHED BY THE FCC IMPORTANT TO AT&T?

A. There are several reasons, including: service stability for our existing customers; protection against a tidal wave of maintenance issues and service rearrangements; and stability of prices/costs so that AT&T can properly analyze business decisions. By adopting these transition plans, the FCC provided CLECs with the tools to control to the greatest degree both its customers' experience and the firm's business needs. Any adverse modification to these time frames or rates would make an already difficult transition unworkable, and would be inconsistent with the FCC rules. In exchange the FCC granted the ILECs a 15% premium above their forward-looking loop and transport costs, and a one-dollar per line premium above their forward-looking UNE-P costs.

Q. SHOULD THE ICA BE AMENDED TO SET FORTH THE TRANSITION PROCESS?

A. Yes, this is not the area for ambiguity. As I noted earlier, it is essential that the ICA is sufficiently detailed to remove the possibility of avoidable misunderstandings and or disputes. Given the relatively short time frame for the transition, there is simply no room for delays caused by competing 'understandings' of the parties' rights and obligations or lengthy dispute resolutions processes.

Q. WHAT IS THE PRIMARY GOAL OF THE TRANSITION LANGUAGE PROPOSED BY AT&T?

A. AT&T seeks to ensure that services to AT&T's customers are not disrupted as a result of the changing obligations under the FCC's orders. As I discussed earlier with regard to the removal of the obligation to provide unbundled switching, the FCC is also sensitive to these issues, and as a result adopted specific parameters for the transition. Verizon also received additional compensation during this transition period.

Q. WHAT SHOULD BE THE PROCESS THAT APPLIES WHEN VERIZON IS NO LONGER OBLIGATED TO PROVIDE A PARTICULAR UNBUNDLED NETWORK ELEMENT?

A. As I have described above, the *TRRO* established specific time frames and rates associated with the provision of UNEs during the FCC determined transition plan.

Q. ARE THERE OTHER TRANSITION ISSUES THAT NEED TO BE ADDRESSED?

A. Yes. AT&T believes that the transition from UNEs to alternative arrangements should be governed by the same principles articulated by the FCC in Rule 51.316(b) and (d) for the conversion to UNEs. Verizon should be required to perform the conversions without adversely affecting the service quality enjoyed by the requesting telecommunications carrier's end-user. Further, Verizon should not be able to impose any termination charges, disconnect fees, reconnect fees, or charges associated with

establishing a service for the first time, in connection with the conversion between existing arrangements and new arrangements.

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©(3) and 47 C.F.R. Part 51? (See discussion of Issues 21)***

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

Q. SHOULD THE COMMISSION ADOPT THE RATES SPECIFIED IN VERIZON'S PRICING ATTACHMENT ON AN INTERIM BASIS?

A. No. The *TRRO* has clearly established the transition rates that Verizon may use, and, Verizon is prohibited from imposing different rates. Further, Verizon's Pricing Attachment, by its own terms, is not based on a Florida-specific cost study. Furthermore, even if Verizon had developed a Florida-specific cost study, that cost study has not been presented in this proceeding and the parties have not had an opportunity to examine and test the various inputs.

In addition, as my testimony demonstrates, Verizon is explicitly prohibited by federal Rules from charging the rates contained in its Pricing Attachment for EELs conversions. With regard to its proposed rates for Routine Network Modifications and Line Conditioning, the FCC and other Verizon State Commissions have already found that the costs are already recovered in the non-recurring and recurring charges for the underlying UNEs and Verizon should not be permitted to "double recover" its costs for performing these activities. This would simply move us from Verizon

charging one time and ***not*** doing the modification at all, to a scenario where Verizon double recovers to perform the modification once.

Similarly, Verizon has an obligation under federal rules to perform the functions necessary to permit AT&T to commingle unbundled network elements and combinations with access services. For this activity, Verizon should be permitted to charge AT&T the applicable charges for the UNE portion of the commingled arrangement at its UNE rates and the access portion of the commingled arrangement at the rates contained in its access tariff, each appropriately prorated. Verizon should not be permitted to charge AT&T the bogus additional charge contained in its Pricing Attachment for "Commingling Arrangements".

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.

PRELIMINARY STATEMENTS
WITNESS INTRODUCTION AND BACKGROUND

The Ultimate Connection, Inc. d/b/a DayStar Communications ("DayStar")

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

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

Q. PLEASE DESCRIBE YOUR POSITION AT DAYSTAR.

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

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

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

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

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

NewSouth Communications Corp. ("NewSouth")

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

A. My name is Edward J. Cadieux. I am employed by NuVox Communications, Inc. as Senior Regulatory Counsel.[1] My business address is 16090 Swingley Ridge Road, Suite 450, Chesterfield, Missouri 63017.

Q. PLEASE DESCRIBE YOUR POSITION AT NEWSOUTH.

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

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

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

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

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

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

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

The Xspedius Companies ("Xspedius")

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

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

Q. PLEASE DESCRIBE YOUR POSITION AT XSPEDIUS.

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

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

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

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

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

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

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

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

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

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

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

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3 47 U.S.C. § 251(d)(3).

4 47 U.S.C. § 252(c)(1).

5 47 U.S.C. § 252(e)(3).

6 *See* 47 U.S.C. § 252(c).

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

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

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

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7 47 U.S.C. § 251(d)(3).

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

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

Specifically, § 364.161(1) of the Florida Code[10] provides that local carriers such as Verizon "unbundle all of its network features, functionalities and capabilities." The aforementioned Florida statute gives the Commission authority, in order to promote telecommunications competition and the availability of quality services to Florida consumers, to require Verizon to unbundle certain of its network elements, notwithstanding whether such unbundling obligations also are imposed by federal law.

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

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

[10] Fla. Admin. Code § 364.161(1).

[11] Verizon Merger Order at ¶ 3.

interruption, until all legal challenges to the FCC's unbundling rules are finally resolved.[12] To reduce any uncertainty to CLECs that may have otherwise resulted from the Bell Atlantic/GTE merger, the Merger Order endeavored to maintain the regulatory status quo until the FCC's "final and non-appealable" unbundling rules were in place.[13] In that regard, the Merger Order states:

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

The Merger Order clearly affirms that Verizon's unbundling obligations are not subject to an expiration date. At this time, no "final and non-appealable" Order has been issued that would cause the unbundling obligations imposed by the Merger Order to be superseded.

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12 *Id.* at ¶ 316.

13 *Id.*

14 *Id.*

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

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?

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

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

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

The Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and/or the *Triennial Review Remand Order*, including, without limitation, the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Florida carriers may implement changes of law arising under the *Triennial Review Order* and the *Triennial Review Remand Order* **only** "as directed by section 252 of the Act,"[16] and consistent with the change of law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Florida carriers "negotiate in good faith regarding any rates, terms and conditions necessary to implement [the FCC's

16 *Triennial Review Remand Order* at ¶ 233.

rule changes."[17] At bottom, Verizon is bound by the unbundling obligations set forth in its existing interconnection agreements with Florida carriers until such time as those agreements are properly amended to incorporate the changes of law and FCC-mandated transition plans established under the *Triennial Review Order* and the *Triennial Review Remand Order*.

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?

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

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17 *Id.*

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

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

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

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

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

[18] *Triennial Review Remand Order* at n. 625.

INCLUDED IN THE AMENDMENT TO THE PARTIES' INTERCONNECTION AGREEMENTS?

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

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

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

Importantly, the Amendment must 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*. This list must be the result of a process whereby the parties to this proceeding are afforded access to and a reasonable opportunity to review and verify the data Verizon believes supports its initial identification of wire center locations where non-impairment exists for DS1 and DS3 loops. In addition, the Amendment must establish a process for review and investigation of any future claim by Verizon that an additional specified wire center location within Florida meets the FCC's criteria for unbundling relief. Specifically, the Amendment should require that Verizon submit to Florida carriers all documentation and other

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

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

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

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

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

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?

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

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

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

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

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

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

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

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

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

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

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?

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

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

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

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

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

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

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

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

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?

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

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

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

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

ISSUE 9: WHAT TERMS SHOULD BE INCLUDED IN THE AMENDMENTS' DEFINITIONS SECTION AND HOW SHOULD THOSE TERMS BE DEFINED?

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

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?

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

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

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

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

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

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

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

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

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?

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

19 *Triennial Review Order* at ¶ 581.

20 *Id.* at ¶ 579.

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

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?

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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 AGREEMENT ARE NEEDED?

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

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?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ISSUE 24: SHOULD THE AMENDMENT SET FORTH A PROCESS TO ADDRESS THE POTENTIAL EFFECT ON THE CLECS' CUSTOMERS' SERVICES WHEN A UNE IS DISCONTINUED?

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

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

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

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?

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

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

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

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

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

(Transcript continues in sequence with Volume 2.)

STATE OF FLORIDA)

CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 6th day of May, 2005.

JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732