Leigh A. Hyer
Vice President -- General Counsel, Southeast Region
Legal Department

FLTC0007
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-1256
Fax 813 204-8870
leigh.a.hyer@verizon.com

June 13, 2005

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

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

Dear Ms. Bayo:

Enclosed for filing are an original and 15 copies of Verizon Florida Inc.'s Post-Hearing Statement and Brief in the above matter. Also enclosed is a diskette with a copy of the Post-Hearing Statement and Brief in Word format. Service has been made as indicated on the Certificate of Service. If there are any questions concerning this filing, please contact me at 813-483-1256.

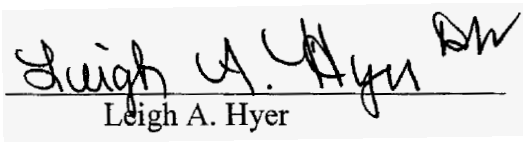
Sincerely,

Leigh A. Hyer

LAH:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Post-Hearing Statement and Brief in Docket No. 040156-TP were sent via U.S. mail on June 13, 2005 to the parties on the attached list.



Leigh A. Hyer

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ALEC, Inc.
3640 Valley Hill Road
Kennesaw, GA 30152-3238

Sonia Daniels
AT&T
1230 Peachtree St. N.E.
Suite 400
Atlanta, GA 30309

LecStar Telecom, Inc.
Michael E. Britt
4501 Circle 75 Parkway
Suite D-4200
Atlanta, GA 30339-3025

American Dial Tone
Larry Wright
2323 Curlew Road, Suite 7C
Dunedin, FL 34683

MCI WorldCom Comm.
Dulaney O'Roark, III
6 Concourse Parkway
Suite 600
Atlanta, GA 30328

MCI WorldCom Comm./
Intermedia Comm./MCImetro
Access/Metropolitan Fiber
Donna C. McNulty
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301-2960

Director-Interconnection Services
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021-8869

NewSouth Comm. Corp.
Keiki Hendrix
Two N. Main Street
Greenville, SC 29601-2719

Supra Telecommunications
and Information Systems Inc.
Ann H. Shelfer
1311 Executive Center Drive
Suite 220
Tallahassee, FL 32301-5067

Eric Larsen
Tallahassee Telephone Exchange Inc.
1367 Mahan Drive
Tallahassee, FL 32308

The Ultimate Connection L.C.
d/b/a DayStar Comm.
18215 Paulson Drive
Port Charlotte, FL 33954

USA Telephone Inc.
d/b/a CHOICE ONE Telecom
1510 NE 162nd Street
North Miami Beach, FL 33162

Kellogg Huber Law Firm
A. Panner/S. Angstreich
1615 M Street, NW, Suite 400
Washington, DC 20036

James C. Falvey
Xspedius Comm. LLC
14405 Laurel Place
Suite 200
Laurel, MD 20707

Tracy Hatch
AT&T Communications
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301

Norman Horton/E. Gary Early
Messer, Caparello & Self
215 S. Monroe Street
Suite 701
Tallahassee, FL 32302

Competitive Carrier Group
c/o Kelley Drye & Warren LLP
1200 19th Street NW, 5th Floor
Washington, DC 20036

Mario J. Yerak, President
Saluda Networks Incorporated
782 NW 42nd Avenue, Suite 210
Miami, FL 33126

Patricia S. Lee
Florida Public Svc. Comm.
Div. of Comp. Markets &
Enforcement
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Sprint Comm. Company
Susan Masterton
P. O. Box 2214
Tallahassee, FL 32316-2214

Swidler Law Firm
Russell M. Blau
3000 K Street NW, Suite 300
Washington, DC 20007-5116

Time Warner Telecom
Carolyn Marek
233 Bramerton Court
Franklin, TN 37069-4002

Genevieve Morelli
Brett H. Freedson
Kelley Drye & Warren LLP
1200 19th Street, NW
Washington, DC 20036

Matthew Feil
FDN Communications
2301 Lucien Way, Suite 200
Maitland, FL 32751

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers in Florida by Verizon Florida Inc.	)))))	Docket No. 040156-TP Filed: June 13, 2005

VERIZON FLORIDA INC.'S POST-HEARING STATEMENT AND BRIEF

Aaron M. Panner
Scott H. Angstreich
Stuart Buck
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Leigh A. Hyer
Vice President-General Counsel
Verizon Florida Inc.
201 N. Franklin Street
Tampa, FL 33602
(813) 483-1256
(813) 204-8870 (fax)

Kimberly Caswell
Associate General Counsel
Verizon Corporation
201 N. Franklin Street
Tampa, FL 33602

TABLE OF CONTENTS

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers in Florida by Verizon Florida Inc.	)))))	Docket No. 040156-TP Filed: June 13, 2005

VERIZON FLORIDA INC.'S
POST-HEARING STATEMENT AND BRIEF

Verizon Florida Inc. ("Verizon") files its Post-hearing Statement and Brief, in accordance with Commission Rule 28-106.215 and the Prehearing Order in this case (Order No. PSC-05-0463-PHO-TP (April 29, 2005)).

I. INTRODUCTION

The purpose of this arbitration is to conform Verizon's interconnection agreements ("ICAs") with certain CLECs to changes in federal law arising from the Federal Communications Commission's ("FCC") rules adopted in its *Triennial Review Order*[1] and *Triennial Review Remand Order*.[2] The *TRO* and the *TRRO* eliminate (or confirm the elimination of) any obligation on Verizon to provide unbundled access for the following network elements:

- local circuit switching
- OCn-level loops and transport
- certain DS1 and DS3 loops and transport

---

[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*") *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) *("USTA II"), cert. denied, NARUC v. United States Telecom Ass'n,* Nos. 04-12, 04-15 & 04-18 (U.S. Oct. 12, 2004).

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

- the feeder portion of a loop
- packet switching
- fiber-to-the-premises ("FTTP") loops
- hybrid copper-fiber for broadband purposes
- entrance facilities
- line sharing
- dark fiber loops
- certain dark fiber transport
- signaling networks and virtually all call-related databases

To the extent existing ICAs did not already authorize incumbent local exchange carriers ("ILECs") to cease providing the items "de-listed" in the *TRO*, the FCC anticipated that its rulings there would be implemented through amendment of ICAs under the process set forth in section 252 of the Act, within nine months of the effective date of the *TRO*, October 2, 2003. That deadline, however, passed almost a year ago. Although most of Verizon's ICAs permit discontinuation of de-listed UNEs, there are a few in this arbitration that still arguably need to be modified to reflect the *TRO*.

In the *TRRO*, the FCC took a much different approach to implementation than it did in the *TRO*. Instead of requiring contract amendments before ILECs could discontinue the UNEs eliminated in the *TRRO* (*i.e.*, mass market switching, dark fiber loops, and certain DS1 and DS3 loops and DS1, DS3 and dark fiber transport), it expressly prohibited CLECs from obtaining new arrangements for these UNEs as of March 11, 2005, the effective date of the Order. For each of these UNEs, the new federal rules state that "*requesting carriers may not obtain* new [UNE arrangements] as unbundled network elements" where ILECs are no longer required to provide such UNEs

under the rules.[3] The *TRRO* also established a transition period of 12 months (18 months for dark fiber), from March 11, 2005, for moving the embedded base of de-listed elements to alternative arrangements and it established transitional rates for embedded base UNEs effective as of March 11, 2005.[4]

In accordance with the FCC's directive, this Commission (like virtually all others facing the issue) rejected CLEC efforts to suspend implementation of the *TRRO*, confirming that the UNE-P "no-new-adds" directive took effect on March 11, 2005.[5] Like the FCC and the courts, the Commission recognized that overbroad unbundling obligations have hindered sustainable competition: "further prolonging the availability of UNE-P and other delisted UNEs could cause competitive carriers to further defer investment in their own facilities, a result that would be clearly contrary to the FCC's intent, as well as the Court's decision in USTA II." *Id.* at 6-7.

Because the mandatory transition plan the FCC adopted in the *TRRO* does not depend on the terms of any particular contract terms, none of Verizon's interconnection agreements had to be amended before implementation of the FCC's prohibition on new orders for de-listed UNEs as of March 11, 2005, and nothing in any CLEC's contract can change the FCC's deadlines for transition of the embedded base of de-listed UNEs.

Proper implementation of *all* of the FCC's limitations on unbundling is of critical public policy importance. Therefore, to the extent existing ICAs perpetuate obligations

---

[3] *See* 47 C.F.R. § 51.319(a)(4)(iii), (5)(iii) and (6)(ii) (loops); 47 C.F.R. § 51.319(d)(2)(iii) (switching) and **47 C.F.R. § 51.319(e)(2) (ii)(C), (iii)(C) and (iv)(B) (transport) (emphasis added).**

[4] *Id.*

[5] *Emergency Petition of Ganoco Inc. d/b/a American Dial Tone, Inc. for a Commission Order Directing Verizon Florida Inc. To Continue To Accept New Unbundled Network Element Orders,* Order No. PSC-05-0492-FOF-TP (Fl. PSC May 5, 2005) ("May 5 Order").

eliminated in the *TRO*, those agreements must be revised--finally--to reflect federal law. To that end, Verizon has proposed contract Amendments that accurately implement the requirements of Section 251 of the 1996 Act and the FCC's implementing rules adopted in the *TRO*, as well as making clear that carriers must comply with the *TRRO*'s transitional plan.

Verizon's Amendments guarantee that the parties' contractual rights will remain coextensive with the rights established under federal law–the preemptive and only source of Verizon's unbundling obligations. Thus, Verizon's proposal is, by its express terms, consistent with its obligations under section 251(c)(3) and the FCC's implementing rules.

There is no lawful basis for imposing any different unbundling obligations in those agreements: the FCC's regulations establish not only Verizon's unbundling obligations, but also the *limits* on those obligations. By limiting Verizon's obligations under its ICAs to the obligations imposed under section 251(c)(3) and the FCC's implementing rules, Verizon's Amendments will implement any subsequent reductions in unbundling obligations without the wasteful and prolonged procedure underway here.

Contrary to some CLEC suggestions, this is not a novel or extraordinary approach. The overwhelming majority of Verizon's existing ICAs--including many of those in this proceeding--already make clear that Verizon, without amending the agreements, may cease providing UNEs that it has no section 251 obligation to unbundle. To the extent these CLECs were purchasing UNEs de-listed by the TRO, they have already been discontinued.

Verizon submitted two Amendments in this arbitration. Amendment 1, which was Verizon's affirmative offer for arbitration, addresses discontinuation of UNEs

Verizon has no obligation to provide under section 251(c)(3) of the Act and the FCC's implementing rules. Amendment 2 addresses certain obligations imposed upon Verizon by the TRO, including routine network modifications, commingling of UNEs with non-UNE wholesale services, and conversion of special access services to UNEs. Although Verizon did not submit Amendment 2 as part of its arbitration offer, it filed the Amendment later, after CLECs raised issues covered in Amendment 2.[6]

Three other groups of CLECs submitted Amendments in this proceeding—the AT&T Companies (AT&T Communications of the Southern States, LLC and TCG South Florida, Inc., collectively, "AT&T"); the MCI Companies (Intermedia Communications Inc.; MCI WorldCom Communications, Inc.; MCImetro Access Transmission Services, LLC; and Metropolitan Fiber Systems of Florida, Inc.; collectively, "MCI") and the "Competitive Carrier Group" ("CCG") (consisting of The Ultimate Connection, Inc., d/b/a DayStar Communications; New South Communications Corp. (now NuVox) and Xspedius Management Co. of Jacksonville, L.L.C., d/b/a Xspedius Communications).

In contrast to Verizon's Amendments, the CLECs' amendments were drafted to evade, rather than implement, the FCC's unbundling rules, primarily by purporting to allow this Commission to re-impose unbundling obligations the FCC eliminated. However, on April 26, 2005, the parties signed a stipulation dropping from the arbitration Issue 1 ("Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger

[6] Verizon's Reply to Answers to its Petition for Arbitration, Ex. 1, filed October 18, 2004.

Conditions").[7] With this stipulation, the CLECs agreed to "withdraw from this arbitration their request for this Commission to adopt in their arbitrated amendments rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger Conditions."[8] Therefore, the language in the CLECs' amendments that would impose unbundling obligations under state law or the Merger Conditions is now moot—and, in any event, the Commission is only resolving issues at this point, not determining contract language.

Given the parties' stipulation that the arbitrated *TRO* Amendment will not include unbundling terms and conditions beyond those imposed by relevant federal law, there should not be much disagreement about what the Amendment should say. Indeed, the parties appear to have similar positions on at least some disputed issues, although they have not been able to agree on specific contract language relating to those issues. In many respects, though, Verizon expects the CLECs will still try to convince the Commission to circumvent federal law, if not directly, then by adopting their misinterpretations of FCC regulations. In particular, the CLECs may urge contract terms that deviate from the self-effectuating transition plan established in the *TRRO*, even though the Commission has already rejected the CLECs' attempts to override that plan. *See* May 5 Order, at 6-7. The Commission should again confirm that it cannot modify the terms of the FCC's transition plan, including the deadlines for conversion of the embedded base of de-listed UNEs to replacement arrangements. In this regard, it should

---

[7] Letter from the Parties to Ms. Blanca Bayo, Commission Clerk, in this Docket, dated April 26, 2005 ("Issue Stipulation").

[8] **Issue Stipulation, at 2.** ***See also*** **Prehearing Order, at 11.** **The** stipulation included all active participants in the arbitration, not just those that had submitted amendments.

specifically order the CLECs to cooperate with Verizon to convert any embedded, de-listed UNE arrangements by March 11, 2006 (or, for dark fiber loops and transport, by September 11, 2006).

II. STATUS OF CLECs

Verizon filed for arbitration against 18 CLECs. As Verizon explained in its Petition for Arbitration, Verizon included these CLECs because their ICAs might be misconstrued to call for amendment before Verizon may cease providing UNEs eliminated by the TRO.[9] (Petition for Arbitration, at 2.) Verizon's agreements with all other CLECs already contain clear and specific terms permitting Verizon to providing de-listed UNEs without an amendment, so there was no need to seek arbitration with these CLECs.

The Commission, nevertheless, allowed a few parties to intervene (without interpreting their existing ICAs' change-of-law or other provisions). Other parties are no longer in the arbitration because they no longer have ICAs with Verizon. In still other cases, parties with which Verizon sought arbitration later signed amendments allowing discontinuation of the UNEs de-listed in the *TRO* or that otherwise effectively resolve particular issues in dispute. It is thus useful to summarize these changes in parties and contracts since the arbitration began.

The Commission allowed the following parties to intervene: Sprint Communications Limited Partnership ("Sprint"); Covad Communications Company

[9] Petition for Arbitration, at 2. Verizon made clear, however, that, by initiating arbitration, it did not waive its argument that it cannot be required, under any ICA, to continue to provide de-listed UNEs. It also noted that some of the ICAs in the arbitration specified that Verizon may discontinue particular UNEs upon notice. *Id.* n. 4. *See also* Ex. 6, at 7-10 (identifying CLECs in the arbitration with ICAs specifying that Verizon may discontinue particular UNEs without an amendment).

("Covad"); XO Florida, Inc.; Allegiance Telecom of Florida, Inc.; KMC Telecom II, LLC; KMC Telecom V, Inc.; KMC Data LLC; IDT America Corporation; and Florida Digital Network, Inc./ d/b/a FDN Communications. As noted, these parties' ICAs need not be amended before Verizon may discontinue de-listed UNEs and Verizon has, in fact, ceased providing these CLECs any UNEs that were de-listed under the TRO.[10] Nevertheless, if they wish to execute a discontinuation amendment (Verizon's Amendment 1), then there is probably no harm done.

The following companies originally named to the arbitration no longer have interconnection agreements with Verizon: Saluda Networks Incorporated and USA Telephone Inc., d/b/a Choice One Telecom.

The ICA of NewSouth Communications Corp. has been assigned to NuVox Communications, Inc.

Tallahassee Telephone Exchange Inc. already signed Verizon *TRO* Amendment 1, so it is not arbitrating that Amendment here.

AT&T Communications of the Southern States Inc. and TCG South Florida each signed an ICA amendment, effective October 18, 2004, allowing Verizon to discontinue, upon 30 days notice, UNEs that are no longer subject to an unbundling requirement under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.[11] Ganoco Inc., d/b/a American Dial Tone, adopted AT&T's ICA, including this amendment, effective March 29, 2005.[12]

---

[10] Verizon understands that some of these parties may disagree with Verizon's interpretation of their existing agreements, but that question is not before the Commission in this arbitration of new amendments. In any event, no CLEC filed any enforcement action challenging Verizon's interpretation that its contract permits discontinuation of de-listed UNEs without an amendment.

[11] *See* Ex. 6, at 286-87, 290, 298-99.

[12] Ganoco's ICA also includes language allowing Verizon to terminate combinations (which would include UNE-P) with no notice. *See id.* at 9.

Intermedia Communications Inc.; MCI WorldCom Communications, Inc.; MCImetro Access Transmission Services, LLC; and Metropolitan Fiber Systems of Florida, Inc. each signed an ICA amendment, effective March 11, 2005, to increase the charges for embedded mass-market UNE-P arrangements by $2.75 between March 11, 2005 and May 31, 2005; and $1.00 between June 1, 2005 and March 10, 2006. [13]

Supra Telecommunications & Information Systems Inc. ("Supra") has signed a commercial agreement to obtain UNE-P replacement arrangements.

In addition, Local Line America, Inc.'s February 11, 2004 adoption of AT&T's ICA states that adoption of the contract does not include any provision imposing an unbundling obligation on Verizon that no longer applies under the *TRO*.[14]

Of the remaining parties named to the arbitration (ALEC, Inc., LecStar, Level 3, DayStar, and Xspedius), only Xspedius and DayStar have actively participated in the arbitration (as members of the "Competitive Carriers Group" ("CCG")). Level 3 and Verizon signed a stipulation on December 14, 2004 under which Level 3 will not actively participate in the arbitration, but will be bound by its results.

III. ISSUE-BY-ISSUE ANALYSIS

In the following sections, Verizon explains its positions on each of the issues remaining for resolution in this proceeding. Although the Commission will not determine amendment language at this stage of the proceeding (instead leaving the parties to negotiate language embodying the Commission's decisions on the disputed issues),

---

[13] *See id.* at 287, 305-12.

[14] *See Id.*, Ex. 6, at 8-9.

Verizon will discuss amendment language to the extent necessary to describe a party's position.

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

**** This issue was withdrawn from the arbitration by agreement of the parties.****

As noted, on April 26, 2005, the Parties executed a stipulation deleting this Issue from the case. In that Stipulation, the CLECs agreed to "withdraw from this arbitration their request for this Commission to adopt in their arbitrated amendments rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger Conditions." (Issue Stipulation at 2.) Thus, the amendments resulting from this proceeding will include only terms related to the FCC's unbundling regulations adopted pursuant to sections 251 and 252 of the Act.

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

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

A. De-listed UNEs. The parties' dispute with respect to this issue is whether contracts should include a mechanism to implement reductions in unbundling obligations, or whether the CLECs should be permitted to continue to receive "de-listed" UNEs for as

long as they can drag out negotiation and dispute resolution processes. (Ciamporcero Rebuttal Testimony ("RT") 14.)

Verizon's proposed Amendments make clear that its unbundling obligations under the ICAs are co-extensive with its unbundling obligations under section 251(c)(3) and the FCC's implementing rules in 47 C.F.R. Part 51. (Ciamporcero Direct Testimony ("DT") 14; VZ Amendment ("Am.") 1, §§ 2.1, 4.7.12; VZ Am. 2, §§ 2.1,) In the event Verizon's obligation to provide access to a particular unbundled network element is eliminated – by the FCC or by a court of competent jurisdiction – Verizon has no further obligation to provide that element under its ICAs, either. Therefore, Verizon's Amendment would allow it to discontinue a "de-listed" UNE upon 90 days written notice (unless the FCC has specified a different transition period), to the extent that Verizon has not already ceased providing the element. (VZ Am. 1, § 3.1.1, 3.1.2.) This approach would automatically implement reductions in unbundling obligations without prolonged or expensive proceedings, like this one. When the FCC eliminates an unbundling obligation, that change should be implemented through the ICAs, as well, without the need for any amendment. (Ciamporcero RT 4.)

The CLECs call this approach unworkable, unconscionable, and unlawful, arguing that Verizon cannot be permitted to "unilaterally" decide that an element should be discontinued. (See, e.g., Nurse DT 11; Darnell DT 5; Ex. 3, at 15.). They claim that Verizon is needlessly trying to change the change-of-law provisions in their ICAs, and that Verizon's proposal would be "wasteful of the Commission's and the parties' time and resources. (Nurse DT at 14.)

These criticisms are demonstrably false. In fact, ***discontinuation of de-listed services without first requiring a contract amendment is the norm in Verizon's existing contracts, including those in this proceeding,*** and TRO rulings have been implemented in an orderly way under those contracts. The overwhelming number of Verizon's ICAs here in Florida and around the country contain automatic discontinuation provisions for services Verizon no longer has to provide. At least 92 Verizon's 109 effective Florida ICAs have such provisions for all de-listed items—and this figure does not include the additional automatic discontinuation provisions that apply to particular UNEs in even the contracts of the CLECs Verizon named to this arbitration. (*See* Ex. 6 at 7-10 for examples of these provisions.)

Fifty-five of the 92 agreements (including AT&T's Agreements)[15] permit Verizon to discontinue de-listed items upon notice (usually, 30 days' notice).[16] Thirty-seven do not require any notice at all before Verizon discontinues a de-listed element, but instead specify, for example, that the changes in the law governing the contract "will be deemed to automatically supersede any conflicting terms and conditions of this Agreement."[17] The Commission, of course, has approved all of these provisions.

---

[15] *See* AT&T Oct. 18, 2004 Amendments, Ex. 6, at 290 (§§ 3.3.1, 3.3.2), 298-99 (§§ 3.3.1, 3.3.2) ("Notwithstanding Section 3.3 preceding or otherwise, upon thirty (30) days written notice to AT&T, Verizon may decline to provide (or may decline to continue to provide) access to unbundled network elements ("UNEs") or combinations of UNEs ("Combinations") to AT&T to the extent that provision of access to such UNEs or Combinations has ceased or ceases to be subject to an unbundling requirement under the Federal Unbundling Rules [defined as 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51]. For the avoidance of any doubt, the Parties acknowledge that Verizon's right to cease providing the subject UNEs or Combinations shall take effect immediately on March 14, 2005 if Verizon issues (or has issued at any time after the Effective Date of the Amendment) the written notice at least thirty (30) days prior to March 14, 2005."

[16] *See* Ex. 6, at 147-48.

[17] *Id.*; *see, e.g.*, Verizon's interconnection agreements with KMC Data LCC, KMC Telecom III LLC, and KMC Telecom V Inc., Art. I, § 1.2 , Ex. 6, at 288-304.

The Commission has, in addition, approved Verizon's entire *TRO* Amendment nine times now for CLECs that voluntarily signed the Amendment, including the provision allowing discontinuation of de-listed UNEs upon 90 days' notice. This provision is more favorable to the CLECs than the 30-day notice or no-notice provisions most CLECs agreed to in their existing contracts. (Ex. 6, at 148.)

Furthermore, this Commission has specifically approved the discontinuation-upon-notice approach Verizon is proposing in this proceeding. In Verizon's arbitration with GNAPs in 2003, the Commission agreed with Verizon that "a change-in-law should be implemented when it takes effect," and found that "Verizon's position has been consistently upheld in various other states."[18] The Verizon/GNAPs contract permits Verizon to discontinue, upon 30 days written notice, services (including UNEs) that it is no longer legally required to provide.[19]

The CLECs' position that carriers should negotiate to implement UNE de-listings rests on the mistaken notion that section 252 interconnection agreements are commercial contracts that Verizon has voluntarily entered. They are not. Rather, they implement Verizon's obligations under section 251 of the Act and the FCC's implementing regulations. Therefore, once Verizon no longer has any obligation to provide an element under section 251 of the Act and the FCC's implementing rules, the interconnection agreement should reflect that fact. This is the same principle this Commission upheld in the GNAPs/Verizon arbitration. As the Commission recognized there, a change of law

---

[18] *Petition by Global NAPs, Inc. for Arbitration*, Order No. PSC-03-0805-FOF-TP, at 51 (July 9, 2003) (citing GNAPs/Verizon arbitration decisions in Delaware, Vermont, Massachusetts, Rhode Island, New Hampshire, Ohio, Illinois, New York, and California).

[19] Ex. 6, at 147, citing GNAPs/Verizon Interconnection Agreement, General Terms and Conditions, § 4.7.

should be implemented when it takes effect, rather than at some indefinite point in the future.

Indeed, when a UNE is de-listed, there is nothing to negotiate. A federal district court in the Mississippi expressly recognized this self-evident fact just weeks ago: "the notion that [an ILEC] should be made to negotiate over something which the FCC has determined it has no obligation to offer on an unbundled basis and which [the ILEC] has no intention of offering simply makes no sense." *BellSouth Telecomm., Inc. v. Mississippi Pub. Serv. Comm'n*, Memorandum Opinion and Order, No. 3:05CV173LN, slip op., at 11 (S.D. Miss. April 13, 2005), *quoting* Order Adopting Verizon's Proposed Rhode Island Tariff Filing, Dkt. 3662 (R.I. P.U.C. March 8, 2005) ("*Mississippi Order*")

Contrary to the CLECs' arguments, Verizon's discontinuation-upon-notice proposal does not define the change-of-law process the parties must follow; it defines the scope of Verizon's unbundling obligations, and it does so in a manner that is precisely consistent with federal law. Indeed, to the extent that any agreements do not appropriately limit Verizon's unbundling obligations to the requirements imposed under federal law, they confer an unfair advantage on those CLECs, contrary to the non-discrimination principle that animates the 1996 Act.[20]

Even if Verizon's proposal could be considered a change-of-law provision, the Commission should adopt it. Neither the FCC nor Congress has barred Verizon from ever proposing a new change-in-law provision for its interconnection agreements, as some CLECs may suggest. Although the *TRO* contemplated that agreements might need to be amended to reflect current unbundling obligations (*TRO*, ¶ 701), the FCC never

[20] In this regard, by the time the arbitrated Amendment is executed, the few CLECs whose contracts appear to require amendment before discontinuation will have had the UNEs de-listed in the TRO available for well over a year longer than all other CLECs.

prohibited adoption of provisions that appropriately provide for incorporation of current requirements of federal law. Indeed, as noted, the Commission has already approved such provisions in virtually all of Verizon's ICAs.

Not only is the prevailing approach efficient, it reflects the important policy considerations underlying the FCC's unbundling rules. As the FCC has held and reconfirmed, and as the Supreme Court and the D.C. Circuit have likewise determined, limitations on unbundling are critical to promote meaningful telecommunications competition.[21] Verizon's proposed language ensures not only that the interconnection agreements reflect current unbundling obligations, but also that they will continue to do so in the future. This is precisely what federal law requires. *See* 47 U.S.C. § 252(c)(1) (requiring state commissions to ensure that interconnection agreements "meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251"). Verizon cannot be required to continue to provide de-listed UNEs that are not required under section 251.

Verizon is not trying to "usurp this Commission's oversight authority," as AT&T argues. (Nurse DT 7.) In the event that parties cannot agree that a particular element is no longer subject to unbundling, CLECs will have notice of Verizon's intent to discontinue provision of service, and can bring any dispute to the appropriate regulator (as American Dial Tone did when Verizon notified CLECs it would comply with the FCC's "no-new-adds" directive for UNE-P as of March 11, 2005).

In any event, the debate about the discontinuation-upon-notice approach is, for the most part, a tempest in a teapot--even aside from the fact that carriers are complaining

[21] *See e.g.*, *TRO*, ¶¶ 3, 5; *TRRO*, ¶ 2; *BellSouth Tel., Inc. Request for Declaratory Ruling*, WC Docket No. 03-251, FCC 05-78, ¶¶ 26-29 (Mar. 25, 2005) ("BellSouth Preemption Ruling") (Ex. 6, at 198-221); AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

about a mechanism already in most of Verizon's ICAs. This is because the CLECs' claimed concern that Verizon's Amendment would allow it to incorrectly interpret the law to discontinue UNEs when it has no right to do so is moot with respect to the *TRO* and *TRRO* rulings.

As noted, this Commission has already recognized that no ICA amendments are required to implement the FCC's mandatory transition plan in the *TRRO*: "as of March 11, 2005, requesting carriers may not obtain local switching as a UNE." (May 5 Order at 6.) Likewise, for high-capacity loops and dedicated transport, the Commission has confirmed that carriers must comply with the process set forth in the *TRRO*: a CLEC will certify that it is entitled to order particular facilities, the ILEC will provision them, and then may choose to dispute the certification—again, without the need for any contract amendment. *Id.*

Consistent with the Commission's interpretation of the *TRRO*, Verizon did not propose Amendment language to implement the FCC's transition plan. Rather, its TRRO-related revisions memorialize the FCC's non-impairment rulings, making clear that the UNEs de-listed in the TRRO are not available under the ICAs.[22] Verizon's proposal also recognizes that Verizon will continue to provide, during the transition period specified in the TRRO, a CLEC's embedded base of UNEs that, as of March 11, 2005, were de-listed by operation of the TRRO. (Am. 1, § 3.1.1.)

Although CCG recognizes that the TRRO's transition plan is "FCC-mandated" (CCG DT, at 12), much of its Direct and Rebuttal Testimony focused on arguing that ICAs must be amended before the parties must comply with that plan. Of course, the

---

[22] *See* VZ Am. 1, § 4.7.5, including in the "Discontinued Facility" definition mass-market switching and the high-capacity loop and dedicated transport facilities de-listed in the TRRO.

Commission subsequently rejected that argument in its May 5 Order, so any such testimony by any CLEC is moot and deserves no further consideration.

The Commission should also reject out of hand any CLEC proposals to override implementation of federal law by adopting lengthy and cumbersome "transition" processes, or by attaching conditions to implementation of the FCC's mandatory transition plan. AT&T and CCG, for example, would postpone discontinuation of UNEs de-listed in the TRRO indefinitely while the parties negotiate replacement terms or arbitrate this issue a second time. (AT&T Am. §§ 3.11 and 3.11.1; CCG Am., §§ 3.9.) AT&T also proposes that it need not submit its orders to convert its embedded base UNEs to alternative arrangements until AT&T chooses to agree on conversion terms – even if that does not occur until after the close of the FCC's transition periods. (AT&T Am., § 3.10.2.)

CCG would introduce the opportunity for even more delays by referring disputes about the "operational plan" required to convert the embedded UNE-P base to the dispute resolution terms of the ICA, which in turn would send the dispute to the Commission. (*See* CCG Amendment §§ 3.2.2.1 and 3.3.1.3(a).) **The CCG, moreover,** would apparently impose no end-date at all on the FCC's transitional rates. (*See, e.g., id.* §§ 3.2.2.2, 3.2.2.3 and 3.3.1.4.) CCG would also require Verizon to re-notify it of the discontinuation of these UNEs, with outrageous notice periods – *ten months* for local switching UNEs and *sixteen months* for dark fiber loops or transport – that have no relation to the FCC's mandatory transition rules. (CCG Am., §§ 3.9.4, 3.9.5.)

MCI's Amendment would require Verizon to continue to provision new orders for UNE-P and UNE loops, transport and dark fiber through the date the new

Amendment is executed, despite the FCC's "no-new-adds" mandate that this Commission recognized took effect on March 11, 2005.[23]

All of these proposals (which the CLECs did not support in their testimony) are unlawful.[24] As explained above, the FCC's "nationwide bar" on new UNE-P arrangements and its prohibition on ordering of qualifying high-capacity facilities and dark fiber facilities has already taken effect; its transition period – which expires on March 11, 2006 for all facilities except for dark fiber – does not depend on provision of notice, either. 25 The FCC gave CLECs a defined period to work out any operational issues, and replacement arrangements--including resale, special access, and Verizon's Wholesale Advantage offering--are readily available. The FCC's mandatory transition periods (including its transitional rates) cannot be extended for any reason, including allowing CLECs to manufacture disputes about conversion terms, as they surely will if the Commission adopts their proposals designed to delay implementation of federal law.

As to the UNEs de-listed in the *Triennial Review Order*, for the handful of CLECs that may still be receiving these UNEs, the Commission should confirm Verizon's right to discontinue them as soon as the Amendment is executed. The CLECs have already had outrageously long advance notice of discontinuation. On October 2, 2003, the effective date of the TRO, Verizon sent all CLECs a notice that it would discontinue most of the UNEs de-listed in the TRO within 30 days or any longer notice

---

[23] MCI Amendment §§8.1, 9.1.2.1, 9.2.2.1, 9.4.1, 10.1.3.1, 10.2.3.1 and 10.3.2.1.

[24] The CCG would also include packet switching within the scope of its transitional rules. *See* CCG Amendment § 3.9.2. Packet switching, however, has never even been a UNE, so it could not be included in any regime designed to transition CLECs off of an embedded base of UNE arrangements.

[25] *See TRRO* ¶ 227; 47 C.F.R. § 51.319(a)(4)(iii), (5)(iii) and (6)(ii); 47 C.F.R. § 51.319(d)(2)(iii) and 47 C.F.R. § 51.319(e)(2) (ii)(C), (iii)(C) and (iv)(B), all of which provide outside limits for the transition rates of either 12 or 18 months form the effective date of the *TRRO*, March 11, 2005.

period required by the CLEC's ICA.[26] On May 18, 2004, Verizon sent another notice informing CLECs that unbundled enterprise switching (and thus, enterprise UNE-P) and shared transport used in connection with enterprise switching, would no longer be available from Verizon after August 22, 2004. (*See* Ex. 6, at 73-77.) Verizon's Amendment correctly recognizes that Verizon has already given notice of discontinuation for these items (*see* VZ Am. 1, § 3.1.3).

This proceeding is the best proof that requiring an elaborate process simply to reflect the elimination of unbundling obligations is contrary to public policy, unfair, and inefficient. The *TRO* rulings took over 20 months ago, and Verizon first filed for arbitration here well over a year ago. After all this time, this proceeding has achieved little other than to generate expense for the parties and burden the Board's resources. This process thus frustrates the FCC's determination that "it would be unreasonable and contrary to public policy to preserve our prior rules for months or even years" after they have been eliminated. *TRO*, ¶ 705. The Commission should thus approve Verizon's discontinuation-upon-notice approach to promptly implement the *TRO* de-listings, and to avoid future wasteful proceedings in the event additional UNEs are de-listed.

B. New UNEs. In light of the dramatic expansion of local telecommunications competition – including intermodal competition from cable and wireless providers – it is unlikely that the FCC will ever *expand* the list of UNEs that incumbents must provide to their rivals. Nevertheless, Verizon's Amendment addresses the possibility of such new elements by providing that the rates, terms, and conditions for such "shall be as provided

[26] Verizon's October 2, 2003, Notice of Discontinuation covered OCn transport; OCn loops; dark fiber transport between Verizon switches or wire centers and CLEC switches or wire centers; dark fiber feeder subloop; newly built fiber to the home; overbuilt fiber to the home; hybrid loops, subject to exceptions for time division multiplexing and narrowband applications; and line sharing. In addition, on May 18, 2004, Verizon sent a notice of discontinuation of enterprise switching. *See* Ex. 6, at 71.

in an applicable Verizon tariff that Verizon . . . establishes or revises to provide for such rates, terms, and conditions, or . . . as mutually agreed by the Parties in a written amendment to the Amended Agreement." (Verizon Am. 1, § 2.3.)

Verizon's proposed language recognizes that there is a fundamental difference between rules that *eliminate* an unbundling obligation and those that *create* a new unbundling obligation. When an incumbent's obligation to provide access to an element under section 251(c)(3) is eliminated, the details of any subsequent arrangements are no longer within the scope of interconnection agreements, as the FCC has held.[27] As such, the parties must negotiate separate arrangements for the discontinued services.

By contrast, if a new unbundling obligation arises under section 251, the parties need to negotiate (and to arbitrate, if necessary) the rates, terms, and conditions governing Verizon's provision of the new service in the context of their interconnection agreements (in the absence of an applicable tariff). In other words, new obligations cannot be automatically implemented the way the elimination of UNEs can (and typically are in Verizon's ICAs). Nevertheless, Verizon's proposal provides for prompt implementation of any new interconnection obligations and should be adopted.

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?**

---

[27] *See, e.g.*, Memorandum Opinion and Order, *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty To File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, 17 FCC Rcd 19337, at 19341, ¶ 8 n.26 (2002) ("*Qwest Declaratory Ruling*") (holding that the provisions of section 252 apply to "only those agreements that contain an ongoing obligation relating to section 251(b) or (c)"); *see also Coserv Ltd. Liab. Corp. v. Southwestern Bell Tel. Co.*, 350 F.3d 482, 488 (5th Cir. 2003). ("An ILEC is clearly free to refuse to negotiate any issues other than those it has a duty to negotiate under the Act when a CLEC requests negotiation pursuant to §§ 251 and 252."). .

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

In the *TRRO*, the FCC eliminated mass-market switching as a UNE: "we impose no section 251 unbundling requirement for mass market local circuit switching nationwide." *TRRO* ¶ 199. It found that "the continued availability of unbundled mass market switching would impose significant costs in the form of decreased investment incentives, and we therefore determine not to unbundle that network element." *Id.* ¶ 210. Hence, the FCC held that "we bar unbundling . . . where – as here – unbundling would seriously undermine infrastructure investment and hinder the development of genuine, facilities-based competition." *Id.* ¶ 218. The new rules confirm that "[a]n incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops," 47 C.F.R. § 51.319(d)(2)(i), and that "[r]equesting carriers may not obtain new local switching as an unbundled network element," *id.* § 51.319(d)(2)(iii).

As noted, the FCC established a mandatory transition plan beginning March 11, 2005: "We require competitive LECs to submit the necessary orders to convert their mass market customers to an alternative service arrangement within twelve months of the effective date of this Order." *Id.* ¶ 227. It emphasized that "[t]his transition period shall apply *only* to the embedded customer base, and does *not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching*." *Id.* (emphasis added). The FCC found that a year-long period "provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly

transition, which could include deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut-overs or other conversions." *Id.*

The FCC also prescribed the rates for delisted UNEs during that transition period. Specifically, it required that "unbundled access to local circuit switching during the transition period be priced at the higher of (1) the rate at which the requesting carrier leased UNE-P on June 15, 2004 plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of [the *TRRO*], for UNE-P plus one dollar." *Id.* ¶ 228.

As the Commission has confirmed, the FCC's nationwide bar on new UNE orders took effect on March 11, 2005 for all carriers, and did not depend on any contract amendments. (*See* May 5 Order.) As for UNE arrangements in service on that date, Verizon's Amendment 1 accommodates the *TRRO* transition requirements. It provides that "Verizon shall not be obligated to offer or provide access on an unbundled basis at rates prescribed under Section 251 of the Act to any facility that is or becomes a Discontinued Facility, whether as a stand-alone UNE, as part of a Combination, or otherwise." (Verizon Am. 1, § 3.1.1.) In turn, "Discontinued Facility" is defined to include "Any facility that Verizon, at any time, has provided or offered to provide to [the CLEC] on an unbundled basis pursuant to the Federal Unbundling Rules (whether under the Agreement, a Verizon tariff, or a Verizon SGAT), but which by operation of law has ceased or ceases to be subject to an unbundling requirement under the Federal Unbundling Rules." *Id.* § 4.7.5. Switching is, therefore, a "Discontinued Facility" under

Verizon's Amendment, which makes clear that Verizon's contractual unbundling obligations are the same as its unbundling obligations under federal law.

In response to CLEC comments during negotiations, Verizon revised its Amendment to explicitly recognize its obligation to continue providing the embedded base UNE-P arrangements and delisted high-capacity loops and transport during the TRRO's transition period. (Verizon Am. 1, §3.1.1.) Verizon's proposal thus efficiently implements the non-impairment findings in the *TRRO* (as well as the *TRO*) and correctly recognizes the FCC's mandatory transition plan. There is no need for any more detailed provisions on that plan. In this regard, Verizon agrees with Mr. Nurse that the actual transition procedures for conversion of the embedded base are best addressed through individual, business-to-business operational negotiations. (Ciamporcero RT, at 23; Nurse DT, at 16.)

The CLECs appear to acknowledge that Verizon no longer has any obligation to unbundle switching under federal law. Mr. Nurse most explicitly recognizes that the FCC has ordered "the nationwide elimination of unbundled switching and UNE-P." (Nurse DT, at 12.) The CCG Panel mentions that mass market switching is "no longer available under section 251 of the 1996 Act." (CCG DT, at 13.) Mr. Darnell just states that MCI's position on Issue 3 is reflected in section 8 of its amendment, which provides that Verizon is not required to provide unbundled access to mass-market switching, "unless Verizon is required to do so under the applicable Federal Unbundling Rules or State law." (Darnell DT, at 6; MCI Am., § 8.1.) Of course, MCI has stipulated that it will not seek terms contemplating unbundling obligations under state law, so the "State law" part of its proposal is moot—as are all of the CLECs' original amendment proposals

suggesting that the Commission may re-impose unbundling obligations the FCC has eliminated.

The CLECs, for the most part, ignore enterprise switching, which was de-listed in the *TRO*. Only AT&T's witness Nurse mentions it in a footnote. (Nurse DT, at 13 n. 20.) As Mr. Ciamporcero testified, that footnote appeared to suggest that the FCC's 12-month transition period for embedded mass-market switching applies to enterprise switching. In his deposition, however, Mr. Nurse explained that that was not, in fact, AT&T's position, and that the *TRRO*'s transition period applies only to DS0 (not DS1) customers. (Ex.2 , at 21.)

Because the CLECs are no longer pressing their state law arguments, and they seem to agree that there is no longer any section 251(c)(3) obligation to unbundle either mass-market or enterprise switching, there should be no dispute that the Amendment should clearly state (in the way Verizon's does) that Verizon is not obligated to provide any local circuit switching UNE to the CLECs other than as required by the FCC's transition plan. (*See* VZ Am. 1, § 4.7.5, listing "Mass Market Switching" and "Enterprise Switching" as "Discontinued Facilities.") And to the extent MCI or CCG attempt to maintain their position that Verizon must keep providing new UNE-P arrangements until its ICAs are amended (CCG DT, at 14; MCI Am., §8.1.1), those argument are moot, because the Commission already rejected them in its May 5 Order.

Although Mr. Nurse recognizes that the *TRRO* requires CLECs to convert their embedded base of delisted UNEs to alternative service arrangements within 12 months, and that the FCC has prescribed rate increases to apply to the embedded UNE-P arrangements until conversion (Nurse DT, at 12-14), AT&T's Amendment purports to

impose constraints on AT&T's obligation to pay these rates. AT&T proposes that "Verizon shall not assess any of the transition rates [in the *TRRO*] for mass market local circuit switching and associated shared transport and correlated databases, DS1 Loops, DS3 Loops and Dark Fiber Loops, or for DS1 Dedicated Transport, DS3 Dedicated Transport and Dark Fiber Transport unless it has fully complied with Section 3.7 herein, and permits AT&T to commingle UNEs and UNE Combinations without restriction." (AT&T Am. § 3.1. The Commission cannot approve this unlawful approach. The FCC's rules governing de-listed UNEs, including the transitional rates, are not conditional. The FCC ruled that ILECs are *entitled* to the transitional rates as of the March 11, 2005 effective date of the *TRRO*. This Commission cannot modify this or any other aspect of the FCC's mandatory transition plan by imposing any conditions precedent to its implementation—let alone AT&T's proposal to allow unconstrained commingling and conversions, which the FCC did *not* require.

Just as groundless and unreasonable is AT&T's proposal in its section on Mass Market Switching to force Verizon to allow it to place resale orders for local service using the existing process for ordering UNE-P, for up to a year after the effective date of the *TRRO*. (AT&T Am., §3.5.1.1.) To the extent AT&T chooses to order local service at resale pursuant to section 251(c)(4) in lieu of UNE-P, it may do so, but there is nothing new about Verizon's obligation to provide service at a wholesale discount for resale. There is no basis in the *TRRO* for imposing any additional or different operational requirements on ILECs. Moreover, AT&T is fully capable of complying with Verizon's resale ordering process, as it has demonstrated by ordering resale services in the past.

The Commission should order the Amendment to reflect Verizon's approach of including enterprise switching and mass-market switching in the "Discontinued Facility" definition.

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

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

In the *TRRO*, the FCC eliminated any obligation to unbundle dark fiber loops. *TRRO* ¶ 146 (finding that "requesting carriers are not impaired without access to unbundled dark fiber loops in any instance"). Hence, its new rule states that "[a]n incumbent LEC is not required to provide requesting telecommunications carriers with access to a dark fiber loop on an unbundled basis," and that "[r]equesting carriers may not obtain new dark fiber loops as unbundled network elements." 47 C.F.R. § 51.319(a)(6). The FCC also established tests for determining impairment as to DS1 and DS3 loops in any given market. Specifically, it held that "requesting carriers are not impaired without access to DS3-capacity loops at any location within the service area of a wire center containing 38,000 or more business lines and four or more fiber-based collocators," and that "requesting carriers are not impaired without access to DS1-capacity loops at any location within the service area of a wire center containing 60,000 or more business lines and four or more fiber-based collocators." *TRRO* ¶ 146.

In addition, even where CLECs are permitted to obtain high capacity loops as UNEs, they are subject to specific FCC-imposed caps on the total number of these facilities a CLEC may obtain along a given route. A CLEC "may obtain a maximum of

ten unbundled DS1 loops to any single building in which DS1 loops are available as unbundled loops."[28] In the case of DS3 dedicated transport, a CLEC "may obtain a maximum of a single unbundled DS3 loop to any single building in which DS3 loops are available as unbundled loops."[29]

As with switching, the FCC adopted a mandatory transition plan that applies to delisted high-capacity loops. Specifically, CLECs have 12 months (from March 11, 2005) to transition to alternative facilities or arrangements as to DS1 and DS3 loops, and 18 months to transition away from dark fiber loops. *TRRO*, ¶ 195. These transition plans explicitly apply only to the embedded base, and do not permit competitive LECs to add new, delisted high-capacity loop UNEs after March 11, 2005. *Id.* ¶ 195. During that transition period, the delisted high-capacity loops shall be available "at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of [*the TRRO*], for that loop element." *Id.* ¶ 198.

The Amendment should accurately reflect the FCC's non-impairment rulings for dark fiber loops and DS1 and DS3 loops. It should state, as Verizon's Amendment does, that Verizon has no unbundling obligations for "Dark Fiber Loops" and "DS1 Loops or DS3 Loops out of any wire center at which the Federal Unbundling Rules do not require Verizon to provide [the CLEC] with unbundled access to such Loops" (VZ Am. 1, § 4.7.5.) Verizon does not believe any CLECs disagree with the principles reflected in Verizon's language—that is, that the FCC eliminated unbundling obligations for dark

[28] 51.319(a)(4)(ii).

[29] 51.319(a)(5)(ii).

fiber, and for DS1 and DS3 loops under the criteria set forth in the *TRRO*. Indeed, Mr. Nurse acknowledges that "the FCC ruled that CLECs are not impaired without access to dark fiber loops," (Nurse DT, at 17, 21), and he and the CCG Panel correctly recite the *TRRO* criteria for determining whether particular wire centers are exempt from unbundling for DS1 or DS3 loops (Nurse DT, at 18-19; CCG DT, at 15-16.) Mr. Nurse also correctly recognizes (as the *TRO* Amendment should), that a CLEC cannot obtain more than one unbundled DS3 loop or 10 unbundled DS1 loops per building. (*See* Nurse DT, at 20-22.)

Both Mr. Nurse and the CCG panel understand that the FCC established a 12-month period, from March 11, 2005, for transition of the embedded base of DS1 and DS3 loops where no impairment exists, and an 18-month transition for dark fiber loops. (CCG DT, at 17-18; Nurse DT, at 25.) The CLECs agree that the transition rates the FCC established for non-impaired DS1 and DS3 loops are 115% of the rate as of June 15, 2004. (*See* Nurse DT, at 25 n. 45; CCG DT, at 18.) And Mr. Nurse correctly observes that these transition periods "only apply to a CLEC's embedded customer base, and do[] not permit CLECs to add new high-capacity loop UNEs where an unbundling obligation no longer exists." (Nurse DT, at 25.)

To the extent CCG, MCI, or others still advance the erroneous view that Verizon cannot stop providing new UNE-P arrangements until the ICAs are amended, the Commission should remind them that that it already rejected this argument in its May 5 Order. The Commission should, likewise, reject the CCG's suggestion that the Amendment should "establish a process for review and investigation of future claims that wire centers meet the FCC's criteria for unbundling relief." (CCG DT, at 16.)

Specifically, CCG states that the Amendment should require Verizon to submit to CLECs any information supporting a non-impairment claim for a specified wire center; permit either party to submit disputes about wire center classification to the Commission for resolution; and provide for an annual review of exempt wire centers using the same procedures that CCG proposes for individual non-impairment claims. (CCG DT, at 16-17.) In other words, CCG would have the Amendment require Verizon to show which wire centers meet the FCC's loop non-impairment criteria, not once, but twice—first, when the wire center is certified, and then in the annual review—and then CCG could challenge the non-impairment showing at either or both the initial and annual review processes.

This process is completely at odds with the one the FCC set forth in paragraph 234 of the *TRRO*, and which the Commission already told carriers they must use. In its May 5 Order, the Commission ruled that the process "delineated in Paragraph 234 of the TRRO, shall remain in place pending any appeals by BellSouth or Verizon of the FCC's decision on this aspect of the TRRO." (May 5 Order, at 6.) In accordance with paragraph 234 of the *TRRO*, the Commission ruled:

> As for high capacity loops and dedicated transport, we find that a requesting CLEC shall self-certify its order for high-capacity loops or dedicated transport. Thereafter, the ILEC shall provision the high capacity loops or dedicated transport pursuant to the CLEC's certification. The ILEC may subsequently dispute whether the CLEC is entitled to such loop or transport, pursuant to the parties' existing dispute resolution provisions.

Id. The Commission must, therefore, reject any alternative ordering and provisioning process the CLECs might propose for the amendment.

As Mr. Ciamporcero explained, at the request of the FCC's Wireline Competition Bureau Chief, on February 18, 2005, Verizon filed with the FCC a list of its wire centers

qualifying for relief from loop and transport unbundling under the *TRRO* criteria. *See* Ex. 10. This list has also been published on Verizon's website. (Ciamporcero RT, at 27-28.) It shows that none of Verizon Florida's wire centers qualify for relief from DS1 or DS3 loop unbundling. So there is no need to consider CCG's proposal for the Amendment to include "a comprehensive list of the Verizon wire centers that satisfy the non-impairment criteria for DS1 and DS3 loops set forth in the *Triennial Review Remand Order*." (CCG DT, at 16.) Obviously, there is no need for the Amendment to list offices that meet the FCC's criteria for loop unbundling relief when there aren't any.

The Commission should reject Mr. Nurse's suggestion that Verizon's wire center designations for loops (and transport) in its February 18 FCC filing should apply for the term of a carrier's ICA, thus preventing Verizon from changing wire centers from impaired to non-impaired once an office meets the FCC's criteria for relief from unbundling for either loops or transport. *See* Nurse DT, at 31. The FCC did not rule that a wire center that did not meet the FCC's non-impairment criteria when a contract was executed could not meet those criteria during the term of the contract. On the contrary, all of the *TRRO* text and rule cites Mr. Nurse uses prove only that loop and transport unbundling obligations cannot be *re-imposed* once they are eliminated for a particular wire center—not that unbundling obligations should persist for potentially years after the FCC's non-impairment criteria are met. (Ciamporcero RT, at 31, citing Nurse DT, at 24, citing *TRRO* n. 466; 47 U.S.C. §§ 51.319(a)(4) & (5), (e)(3)(1) & (2).) Aside from having no grounding in the FCC's rules, Mr. Nurse's proposal is anticompetitive. Under AT&T's discriminatory approach, some carriers would be able to obtain unbundled DS1 and DS3 loops out of particular wire centers, while others would not, solely because they

signed their contracts after the wire centers had met the FCC's criteria. (Ciamporcero RT, at 31.)

Mr. Nurse is, moreover, incorrect that the FCC's 12-month transition for the embedded base of high-capacity loops applies to future reclassification of wire centers. (Nurse DT, at 25.) There is no legal support for this belief, and Mr. Nurse does not cite any. **(Ciamporcero RT, at 32.)** This Commission cannot impose conditions on unbundling relief that the FCC did not.

Although they did not support this position in testimony, the CCG and AT&T amendments propose to apply the FCC's transition rates to the full transition period, even if the CLECs' UNE arrangements are converted to other facilities before that time. *See, e.g.*, CCG Amendment § 3.3.1.3 and AT&T Amendment § §3.2.1.3 and 3.2.5.2. Of course, the *TRRO* does not require Verizon to provide replacement services at transitional rates. Indeed, such an approach would frustrate the FCC's design for gradually transitioning CLECs to lawful arrangements and rates, so the Commission should reject it.

The Commission should also reject any suggestion that CLECs may continue to order UNE-P arrangements for existing customers, despite the FCC's holding that "[i]ncumbent LECS have ***no*** obligation to provide competitive LECs with unbundled access to mass market local circuit switching." (TRRO, ¶ 5 (emphasis added).) CCG, for example, would give itself the right to order new, delisted DS1 and DS3 UNE loops during the transition period where used to serve "all end-user customers of CLEC who were customers as of the effective date of the *TRRO*." CCG Amendment §3.3.1.3. But the FCC's rules contain no such exception to the bar on new orders for delisted facilities,

nor did this Commission recognize any when it denied the CLECs' Petitions to effectively stay the FCC's no-new-adds directive. On the contrary, this Commission confirmed that the FCC did not intend the embedded base to be a moving target:

> Any other conclusion would render the TRRO language regarding no new adds a nullity, would, consequently, render the prescribed 12-month transition period a confusing morass ripe for further dispute. Thus, we find that, as of March 11, 2005, requesting carriers may not obtain new local switching as a UNE.
>
> May 5 Order, at 6.

It certainly would cause "a confusing morass" if CLECs were permitted to add new UNE-P arrangements—whether for new or existing customers--at the same time they are supposed to be transitioning to alternative arrangements. It would make no sense for the FCC to have adopted a national bar on unbundling, and then granted—without saying so—an exception for new arrangements for existing customers. *See* Ex. 6, at 14-15. The transition period for high-capacity loops and transport applies *only* to those *UNE arrangements* that were in place as of the effective date of the rules.[30] As the California Commission held, review of the entire FCC Order confirms that "'new arrangements' refers to any new UNE-P arrangement, whether to provide service for new customers or to provide a new arrangement to existing services. The TRRO clearly bars both."[31] That is exactly how Verizon has already implemented the no-new-adds directive in Florida, consistent with the Commission's May 5 Order.

---

[30] *See, e.g.*, 47 C.F.R. § 51.319(a)(4)(iii), applying the transition period to "any DS1 loop UNEs that a competitive LEC leases from the incumbent LEC as of that date."

[31] ***Petition of Verizon California for Amendment to Interconnection Agreements***, Application 04-03-014, Assigned Commissioner's Ruling, at 7 (March 10, 2005) ("California Order").

Finally, the Commission cannot approve any CLEC suggestions that they may force Verizon to maintain de-listed UNEs until Verizon complies with arbitrary conditions imposed by the CLEC. For instance, AT&T proposes that Verizon must provide it with de-listed loop and transport facilities at TELRIC rates, where Verizon either denies a CLEC request for conduit space or fails to respond to such a request within 45 days. (AT&T Am., § 3.9.6.) The FCC's rules, however, impose no such condition on unbundling relief, and the Commission has no independent jurisdiction to do so.

The Commission should reject the CLECs' unlawful proposals to expand Verizon's unbundling obligations for high-capacity loops.

Issue 5: What obligations, 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?

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

In the *TRRO*, the FCC again refused (as it had in the *TRO*) to require unbundling of "entrance facilities" (transmission facilities between CLEC and ILEC networks), finding that CLECs are not impaired without access to them. *TRRO* ¶¶ 136-38. It noted that "entrance facilities are less costly to build, are more widely available from alternative providers, and have greater revenue potential than dedicated transport between incumbent LEC central offices." *Id.* ¶ 138. And just as with loops and switching, the new rules "do not permit competitive LECs to add new dedicated transport UNEs pursuant to section

251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists." *Id.* ¶ 142. The FCC, however, required no transition period for entrance facilities, because it had already decided they should not be unbundled in the *TRO*. *Id.*, ¶ 141 n. 395.

For other high-capacity transport elements, the FCC held that CLECs may not obtain DS1 transport for routes connecting two wire centers "each of which contains at least four fiber-based collocators *or* 38,000 or more business lines," *Id.* ¶ 66 (emphasis in original), and that CLECs may not obtain DS3 or dark fiber transport on routes connecting two wire centers "each of which contains at least three fiber-based collocators *or* at least 24,000 business lines." *Id.* (emphasis in original). It found that "the thresholds we choose are designed to capture areas that have or are likely to have significant competitive transport." *Id.* ¶ 111. In addition, even where CLECs are permitted to obtain high capacity transport as UNEs, they are subject to specific FCC-imposed caps on the total number of these facilities a CLEC may obtain along a given route. Unbundled DS1 dedicated transport circuits are capped at 10 on each route[32] and unbundled DS3 dedicated transport circuits are capped at 12 per route.[33]

As with loops, the FCC adopted a 12-month transition plan for DS1 and DS3 transport, and an 18-month transition for dark fiber transport. *See id.* ¶ 142. It reiterated that "[t]hese transition plans shall apply only to the embedded customer base, and do not permit competitive LECs to add new dedicated transport UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists." *Id.* During that transition period, eliminated UNEs "shall be

[32] 51.319(e)(2)(ii)(B).

[33] 51.319(e)(2)(iii)(B).

available for lease from the incumbent LEC at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of [the *TRRO*], for that transport element." *Id.* ¶ 145.

As with loops and switching, the FCC's ban on new orders for delisted transport facilities took effect on March 11, 2005, without the need for any contract amendments. Verizon's Amendment 1 appropriately reflects the FCC's elimination of transport facilities that meet the FCC's non-impairment criteria. (Verizon Am. 1, § 4.7.5.)

Again, AT&T and the CCG do not disagree that the FCC has eliminated unbundling obligations for DS1 and DS3 transport under the criteria established in the *TRRO*. They also recognize that CLECs are not impaired without access to entrance facilities. (CCG DT, at 19-20; Nurse DT, at 27-28; *see also* Ciampocero RT, at 32-34.) Once again, the CLECs should have no reason to oppose clearly stating these restrictions in the *TRO* Amendment, and explicitly recognizing that Verizon's unbundling obligations are tied to section 251(c)(3) and the FCC's Rules, as Verizon's Amendment does.

The CLECs also acknowledge that the FCC prescribed a 12-month transition period for DS1 and DS3 dedicated transport, and 18 months for dark fiber transport. (Nurse DT, at 33; CCG DT, at 22; *TRRO* ¶¶ 142-44.) Mr. Nurse correctly observes that these transition periods "only appl[y] to a CLEC's embedded customer base and CLECs are prohibited from ordering new transport UNEs not permitted under the *TRRO*'s new rules." (Nurse DT, at 33; *TRRO*, ¶ 142), and he and the CCG Panel recognize that the

transitional rates for dedicated transport where no impairment exists are 115% of the rates in effect as of June 15, 2004. (Nurse DT, at 33-34; CCG DT, at 22; *TRRO*, ¶145.) As with high-capacity loops, however, the principal areas of disagreement are (1) the effectiveness of the FCC's no-new-adds directive and (2) the administrative procedures for identifying wire centers that meet the FCC's non-impairment criteria (*see id.* at 12-13; AT&T Br. at 28-29).

As to the first issue, the *TRRO* is clear: the FCC's rules "do not permit competitive LECs to add new dedicated transport UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists." *TRRO* ¶ 142. The Commission correctly interpreted the law in its May 5 Order, so it should make clear that the arbitrated Amendment will not include any terms modifying the FCC's absolute bar on new orders for de-listed dedicated transport.[34]

As to the second issue, the Commission has settled that, as well. As Verizon explained above, the May 5 Order ruled that carriers must comply with *TRRO* paragraph 234 for ordering and provisioning dedicated transport (May 5 Order, at 6), so, the extent CLECs have suggested different procedures, the Commission has already rejected them. The Commission, likewise, denied CCG's motion to compel discovery seeking to initiate an investigation into Verizon's exempt wire center designations.[35]

As Mr. Ciamporcero testified (RT at 37-38), there is no basis for CLECs' suggestions that Commission intervention is necessary for them to obtain the information

---

[34] As discussed above with respect to loops, the Commission should make clear that the CLECs are not entitled to the FCC's transition rates for de-listed transport facilities for the full transition period if their de-listed arrangements are converted before that time. *See, e.g.*, CCG Amendment § 3.6.1.1 and AT&T Amendment §3.6.2.4. The FCC does not require Verizon to provide replacement services at transitional rates, and the Commission cannot require it to do so, either.

[35] **Verizon classified 9 of its** wire centers as Tier 1 and 4 as Tier 2 for purposes of unbundling relief for dedicated transport. *See* Ex. 10.

underlying Verizon's wire center classifications. Verizon sent the CLECs a letter, also published on its website, informing them that Verizon will provide back-up data for its wire center designations on request, upon execution of an appropriate non-disclosure agreement. (Ciamporcero RT, at 37-38.) As CCG's own documents produced in discovery show, Verizon offered to provide CCG's members the backup data for Verizon's wire center designations weeks before they asked for it here in discovery.[36] At least three of CCG's members (XO, The Ultimate Connection, and Covad) did, in fact, sign the non-disclosure agreement necessary for Verizon to make this confidential information available, and received the backup data prior to CCG's request for back-up information in this arbitration. So even if the CLECs' "investigative" procedures were permissible (and they are not), they would not be necessary, because Verizon is already providing the supporting data for its non-impairment conclusions.

As Verizon explained above with respect to de-listed loops, the Commission should reject any CLEC proposals to freeze in place Verizon's existing wire center designations for the term of the ICAs by including it in the Amendment. Presumably, the CLECs would then seek to prohibit any changes in that list outside of a lengthy negotiation and arbitration process. Verizon is not obligated to agree to the CLECs' alternative arrangement, and the CLECs have no right to force it upon Verizon in this arbitration. (Ciamporcero RT, at 36-37.) If the Commission orders the parties to include Verizon's existing wire center list in their contracts, then it must also make clear that Verizon is not prevented from adding wire centers to that list if and when they meet the FCC's criteria for unbundling relief.

[36] *See, e.g.*, Ex. 8, CCG's responses to Third Request for Production of Documents, nos. 7 and 10, Letters from Anthony Black, Verizon, to XO Communications Services, Inc., IDT America, and Covad.

Finally, CCG proposes to improperly limit the application of the FCC's cap on DS1 dedicated transport circuits only to routes on which Verizon is not required to unbundle DS3 dedicated transport. (CCG Am. §3.6.1.1(a).) But the FCC's rule makes clear that the cap applies to all DS1 routes, not just those where Verizon need not unbundle DS3 facilities. It states, in its entirety, as follows:

> Cap on unbundled DS1 Transport circuits. A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

47 C.F.R. §51.319(e)(2)(ii)(B). Although CCG may point to discussion in text of the *TRRO* in an attempt to support its proposed limitation, the rule itself contains no limitation on the applicability of the cap. The FCC's Rule must be applied as written, and the Commission must reject CCG's alternate formulation.

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?

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

Verizon's right to re-price UNE arrangements that are no longer subject to unbundling is limited only by the FCC's transitional rules applicable to mass market switching and high-capacity loops and transport facilities. Where a particular network element or arrangement is no longer subject to unbundling under § 251(c)(3), the FCC has held that the rates, terms, and conditions for such elements are not subject to the

standards set forth in sections 251 and 252.[37] To the extent Verizon continues to provide such facilities to CLECs, it will do so under commercial arrangements. If the CLEC has not executed a commercial agreement before the UNE is to be discontinued, Verizon proposes to reprice it by applying a new rate equivalent to access, resale, or other analogous arrangement that Verizon will identify in a written notice to the CLEC. (Verizon Am. 1, § 3.2.) Verizon already used this approach when it discontinued the UNEs de-listed in the TRO for the vast majority of contracts that permit automatic discontinuation. *See* Ex. 6, at 71-77.

Nothing in the 1996 Act authorizes state commissions to review the rates, terms, and conditions in such separate, non-§ 252 arrangements, a number of which Verizon has already negotiated.[38] While the Amendment may properly refer to the fact that Verizon is entitled to establish separate commercial arrangements for non-§ 251 elements (*see* Verizon Am. 1, § 3.3), it should do no more than that. In particular, the Amendment should not contain any provisions purporting to govern the specific terms on which Verizon continues to provide access to facilities that no longer need to be provided as UNEs under § 251(c)(3). Section 252 arbitrations are not the place to investigate unrelated matters.

None of the CLEC witnesses directly addressed the repricing issue in their testimony. Mr. Nurse did not answer the question at all. Mr. Darnell took the non-substantive position he did on all the issues—that is, the parties must negotiate changes,

---

[37] *See, e.g., Qwest Declaratory Ruling, supra,* 17 FCC Rcd at 19341, ¶ 8 n.26 (holding that the various provisions of § 252 apply to "only those agreements that contain an ongoing obligation relating to section 251(b) or (c)".

[38] As noted *supra,* section II, Supra signed a commercial agreement.

including pricing changes. And the CCG stated that Verizon may re-price in accordance with the *TRRO*'s transitional rate increases, but did not offer any opinion as to what happens after the transition period is over. (CCG DT, at 24-25.)

The CCG is correct that Verizon must re-price de-listed UNEs at the FCC-prescribed transitional rates, but those rates last only until the end of the transition on March 11, 2006 (or, for dark fiber, September 11, 2006). Once a service is no longer a UNE and the transition period has ended, Verizon is entitled to discontinue that UNE. However, if by then the CLEC has failed to order a different arrangement or to self-provision its own facilities, Verizon has voluntarily proposed to allow the CLEC to continue de-listed facilities under separate arrangements, with repricing equivalent to access, resale, or other analogous arrangements, as Verizon deems appropriate (unless, of course, the CLEC requests disconnection). (*See* Verizon Am. 1, § 3.2; Ciamporcero RT, at 39.) Verizon's Amendment appropriately specifies that any negotiations for replacement arrangements shall be deemed not to have been conducted pursuant to section 252 of the Act or the FCC's rules, and shall not be subject to arbitration. (Verizon Am. 1, § 3.3.) Contrary to Mr. Darnell's suggestion (Darnell DT, at 7-8), the rates for new commercial arrangements do *not* need to be negotiated or filed in an interconnection agreement with the Commission.

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

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

Verizon has proposed that it may provide notice to CLECs that it will cease providing access to a network element as a UNE "in advance of the date on which the facility shall become a Discontinued Facility as to new orders that [the CLECs] may place, so as to give effect to Verizon's right to reject such new orders immediately on that date." (Verizon Am. 1, § 3.1.2) Verizon's language makes clear that Verizon cannot implement a rule before its effective date, nor can Verizon implement it if the rule is stayed either by the FCC or a court of competent jurisdiction.

Verizon's approach is necessary to avoid undue delays in implementing binding federal law—and in particular, to confirm that Verizon may implement, immediately upon approval of the *TRO* Amendment, the *TRO* de-listings that took effect **over 20 months ago.**

Verizon has proposed to discontinue de-listed UNEs with 90 days advance notice. It would be unreasonable to forbid Verizon from issuing this notice until after the order de-listing the UNE had taken effect. When the FCC adopts new unbundling rules, it generally does so by releasing an order detailing those new rules. But the order — which often is preceded by a press release weeks or months earlier summarizing the content of the new rules — is not effective on release. Instead, the FCC sometimes first publishes a summary of the new rules in the Federal Register; and ordinarily, the rules take effect 30 days after Federal Register publication.[39] Accordingly, all parties will typically have notice of the elimination of a particular unbundling requirement *at the very least* several weeks before the regulation becomes effective. In the context of the *Triennial Review Order*, more than seven *months* passed between the FCC's press release (February 20,

[39] *See, e.g.*, 47 C.F.R. § 1.427(a) (2003); *Triennial Review Order*, 18 FCC Rcd at 17460, ¶ 830 (establishing effective date).

2003) and the effective date of its Order (October 2, 2003), which was released on August 21, 2003.

There is thus nothing unfair about Verizon providing notice that it intends to implement a new rule after the rule has been adopted but before it has become effective. On the contrary, prompt implementation of de-listings once they take effect is essential to promoting the pro-competitive goals of the Act. As the FCC has observed, allowing CLECs to retain elements for even months when there is no impairment under section 251(c)(3) is "unreasonable and contrary to public policy." (*TRO*, ¶ 705.)

The Commission should specifically recognize that no additional notice period is necessary before Verizon may discontinue any UNEs de-listed in the *TRO*. The purpose of a notice requirement is to give parties time to prepare for the transition away from a particular UNE. There should be no question about Verizon's ability to rely on the October 2, 2003 and May 18, 2004 notices it already sent regarding discontinuation of the *TRO* elements. As Mr. Ciamporcero explained, by the time this arbitration concludes, the CLECs will have had over a year's advance notice of discontinuation of enterprise switching, and closer to two years' advance notice of discontinuation of the *TRO* elements covered by the October 2, 2003 notice. (Ciamporcero DT, at 10-12, RT, at 41.) Given the outrageously long period these CLECs have kept delisted elements, there is certainly no reason to reward their refusal to amend their contracts to by giving them yet more notice of discontinuation after the amendments take effect. No CLEC can claim that it has not had enough time to prepare for the transition to replacement arrangements for the UNEs delisted in the *TRO*.

In fact, no party disputes that the notice that Verizon has already provided of discontinuance of elements de-listed in the *TRO* is adequate. Mr. Nurse took no position on the advance notice issue at all. Mr. Darnell agrees that Verizon's proposed 90-day advance notice of discontinuation of delisted UNEs is acceptable (Darnell DT, at 9) and its latest mark-up Verizon's Amendment indicates it agrees with Verizon's advance notice provision.[40]

The CCG argues that the "*the Triennial Review Remand Order* expressly precludes any effort by Verizon to circumvent the change in law process . . . by providing notice of discontinuance of any network element in advance of the date on which such agreements are properly amended." (CCG DT, at 26-27.) But the ***TRRO*** did not address what notice might be required before discontinuance of UNEs that had already been eliminated by the ***TRO***. With regard to UNEs de-listed by the *TRRO*, the FCC established both a firm no-new-add rule effective on March 11, 2005, and a specific transition rule requiring CLECs to work out the operational details necessary to convert existing arrangements by March 11, 2006. So there is no notice issue with respect to the UNEs de-listed in the *TRRO*. The CLECs will know when their embedded lines will be transitioned to replacement services because they will have worked out that detail with

[40] *See* MCI Am., § 3.1. In his earlier, Direct Testimony, Mr. Darnell seemed to propose deletion of Verizon's language allowing advance notice, because of MCI's general position that the amendment should not cover future de-listings. (Darnell DT, at 9-10.) This deletion would mean that Verizon would have to wait another 90 days after the amendment was executed to discontinue the items de-listed two years earlier in the *TRO*—a plainly unreasonable position that MCI apparently dropped, because it is not reflected in MCI's amendment attached to Mr. Darnell's Supplemental Direct Testimony.

Verizon (and they cannot, in any event, delay the mandatory end of the transition by failing to cooperate with Verizon).[41]

The only conceivable purpose of any CLEC proposals for lengthy notice of discontinuation of de-listed UNEs is to delay implementation of federal law. The Commission should reject all such proposals.

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?

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

If Verizon incurs costs to set up an alternative service – such as a service order – Verizon is entitled to recover those costs. Verizon has not proposed new rates for setting up alternative services at this point, but it reserves the right to do so in the future. Therefore, the Amendment should not foreclose recovery for any costs Verizon incurs to provide service to CLECs. In any event, the Commission cannot lawfully constrain the parties' rights to negotiate prices in the context of non-section-251 commercial agreements, which are not subject to section 252's negotiation and arbitration requirements. *See* Verizon's Response to Issue 6, *supra*.

Mr. Darnell suggests that Verizon should not be permitted to charge even existing, Commission-approved loop disconnect charges, because he alleges that these

[41] To the extent AT&T argues that Verizon should be required to identify the specific circuits being discontinued in any notice, the Commission should reject this proposal, as individual parties can work out any details of implementation with regard to particular facilities, as directed by the FCC.

existing rates "do not recover costs associated with mass disconnections on conversions to alternative offerings." (Darnell DT, at 10.) Mr. Darnell does not address any particular rates, let alone indicate that he has reviewed the cost studies underlying any existing rates. He is just assuming, without any support, that existing, Commission-approved charges are inappropriate for group disconnections, or "batch hot cuts." But as long as any Commission-approved rates apply to the activity Verizon is performing, Verizon is entitled to recover them. If Verizon charges any Commission-approved loop disconnection rate in the future and MCI claims Verizon is not entitled to do so, it can seek dispute resolution. But there is no need to resolve purely hypothetical disputes about rate application in this arbitration.

AT&T and CCG argue that if Verizon incurs costs to convert UNEs to replacement services, Verizon is the "cost causer" and should bear those costs. (Nurse DT, at 35; CCG DT, at 28.) Although there is no need for the Commission to rule on the CLECs' position (because Verizon is not proposing any new rates here), Mr. Ciamporcero made clear that their novel theory is wrong. Any disconnect or other costs of moving UNEs to replacement services are not the "result of Verizon's decision to forego unbundling," as CCG asserts. (Ciamporcero RT, at 43-44; CCG DT, at 28.) They are instead the result of the CLEC's decision to order unbundled services to which they were never entitled in the first place. In the years following adoption of the 1996 Act, the FCC repeatedly adopted unbundling rules that were unlawfully overbroad. In the *TRO*, the FCC finally began the process of placing meaningful limitations on incumbents' unbundling obligations under section 251(c)(3), a process that it continued in the *TRRO*. Verizon never voluntarily provided the UNEs that have been discontinued, so it is not

simply deciding now to "forego unbundling." It is implementing the FCC's rules, under which it is entitled to discontinue UNEs to which the CLECs have no right. Verizon cannot be penalized for following the law. (Ciamporcero RT, at 43-44.)

Indeed, Mr. Nurse admits that nothing in the *TRRO* (or elsewhere) prohibits ILECs from recovering the costs they incur to transition UNEs to replacement services. (Nurse DT, at 35.) Rather, he suggests that Verizon should not be permitted to impose any charges for conversion of UNEs to non-UNEs because the FCC has constrained the ILECs' ability to impose charges for converting wholesale services to UNEs. *Id.* at 35-36, citing 47 U.S.C. § 51.316(b) & (c). Mr. Nurse does not attempt to explain his logic behind applying the limitations on wholesale-to-UNE conversion charges to exactly the *opposite* situation of converting from UNEs to commercial, wholesale alternatives, because there is none. There is no reason for Verizon to pay for converting a CLEC from a UNE to which it has no legal right. (Ciamporcero RT, at 44-45.)

Further, Mr. Nurse is simply speculating that there is no work involved in any instance where Verizon moves a CLEC to any UNE replacement service. (Ciamporcero DT, at 45, citing Nurse DT, at 36.) The Commission cannot preemptively deny Verizon recovery of any costs it might seek to charge in the future just because Mr. Nurse speculates that there are no costs associated with any of the activities Verizon might undertake to convert UNEs to replacement services. If and when Verizon proposes specific charges for the Commission's approval, the CLECs will have the opportunity, at that time, to challenge Verizon's costs. But there is no need to address, in this arbitration, Mr. Nurse's guess about what those costs might or might not be, and no basis for including language in the Amendment prohibiting Verizon from seeking to recover any

costs it may incur. (Ciamporcero RT, at 45.) Indeed, the Issue Stipulation the parties signed specifically reserves Verizon's right to initiate such a cost proceeding at any time. *See* Issue Stipulation, at 2.

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

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

Verizon's definitions are appropriate and reflect governing federal law, so they should be adopted. Most of the CLECs' definitions, on the other hand, are part of their unlawful scheme to perpetuate unbundling obligations that the FCC has eliminated (or that never existed in the first place).

Mr. Nurse did not address the definitions issue, and Mr. Darnell and the CCG Panel simply testified that the definitions section of the Amendment should track federal law. (Darnell DT, at 11; CCG DT, at 29.) Verizon agrees that the Amendment's definitions should be consistent with the *TRO* and *TRRO*, but Verizon disagrees that the CLECs' proposed definitions do, in fact, track federal law. (Ciamporcero RT, at 45-46.)

Below, Verizon explains its position on its own definitions that the CLECs have proposed to revise through their amendments, then Verizon discusses additional definitions that CLECs have proposed.

A. CLEC Disagreements With Verizon's Proposed Definitions

1. "Dark Fiber Loop"

As noted, the FCC has ruled that ILECs have no obligation to provide dark fiber loops, and has established an 18-month period for CLECs to transition away from these

facilities. Therefore, a definition of dark fiber loop is still appropriate for the time being in the *TRO* Amendment. Verizon's definition provides that a dark fiber loop "[c]onsists of fiber optic strand(s) in a Verizon fiber optic cable between Verizon's accessible terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon wire center, and Verizon's accessible terminal located in Verizon's main termination point at an end user customer premises, such as a fiber patch panel, and that Verizon has not activated through connection to electronics that 'light' it and render it capable of carrying telecommunications services." (Verizon Am. 1 § 4.7.2; Verizon Am. 2, § 4.7.2.). This definition combines the FCC's definition of "loop" in 47 C.F.R. § 51.319(a)(1) ("The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises."), with its definition for "dark fiber" in *id.* § 51.319(a)(6)(i) ("Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.").

The principal problem with the CLECs' treatment of dark fiber loops is that they do not clearly recognize that Verizon no longer has any obligation to unbundle these facilities (except for the FCC-prescribed transition obligations that apply to the embedded base). Neither AT&T nor MCI includes dark fiber loops within its definition of de-listed facilities. (AT&T Am., § 2.8; MCI Am., § 12.7.5.) In addition, AT&T's "Dark Fiber Loop" definition suggests that Verizon still has a dark fiber loop unbundling obligation, because it requires it to make dark fiber loops available when fibers "can be made spare and continuous via routine network modifications." (AT&T Am., § 2.6.) But under the

TRRO, CLECs have *no* right to new dark fiber loops at all (*see TRRO*, ¶ 195), let alone a right to force Verizon to make free, unlimited network modifications to make new fiber loops available.

CCG defines Dark Fiber Loop only as: "A local fiber loop that has not been activated through optronics to render it capable of carrying telecommunications services." (CCG Am., §2.7.) MCI, likewise, defines dark fiber loop as "fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services." (MCI Am., § 9.4.) These definitions are deliberately vague and ambiguous. By refusing to incorporate the FCC's specification that a loop is limited to the facility between the ILEC's main distribution frame (or the equivalent) and the demarcation point at the end user's premises, the CLECs' definitions leave them room to argue that a "local fiber loop" or "fiber" encompasses more than the FCC said a dark fiber loop does.

The Commission should approve Verizon's approach to defining Dark Fiber, which, unlike the CLECs' definitions, tracks the FCC's Rules.

2. "Dark Fiber Transport"

Verizon defines "Dark Fiber Transport" as an "optical transmission facility within a LATA, that Verizon has not activated by attaching multiplexing, aggregation or other electronics, between Verizon switches (as identified in the LERG) or wire centers." (Verizon Am. 2, § 4.7.3.) In accordance with the FCC's definition of dedicated transport to include only "facilities between incumbent LEC wire centers or switches" (*see TRRO*, ¶ 67), Verizon's dark fiber transport definition clarifies that: "Dark fiber facilities

between (i) a Verizon wire center or switch and (ii) a switch or wire center of [the CLEC] or a third party are not Dark Fiber Transport." *Id.*

AT&T's definition expressly and impermissibly contradicts the FCC's express limitation of UNE dedicated transport to transmission facilities between LEC wire centers or switches (*see supra*, Verizon's response to Issue 5), instead proposing to expand Verizon's unbundling obligations to facilities "between Verizon wire centers or switches and requesting telecommunications carriers' switches or wire centers, including DS1, DS3, and OCn-capacity level services as well as dark fiber, dedicated to a particular customer or carrier." *See* AT&T Am., §§ 2.7, 2.9.

The CCG's and MCI's dark fiber transport definitions appear to correctly recognize that facilities are only available between Verizon wire centers or switches (CCG Am. § 2.8; MCI Am., § 10.3.1), but both CCG and AT&T add language stating that a Verizon wire center or switch would include "Verizon switching equipment located at CLEC's premises." (CCG Am., § 2.8; AT&T Am., § 2.9.) This language is not in the FCC's definition and there is, in any event, no need to waste time debating whether it belongs in the amendment, because Verizon has no switching equipment located at CLEC's premises, and does not intend to place any there. *See* Verizon's response to Issue 19, *infra*, and Ex. 6, at 117.) There is no need for language addressing a purely hypothetical situation.

In addition, CCG's definition of "Declassified Network Elements" does not include any dark fiber transport, thus failing to clearly recognize that its availability is limited to offices that meet the *TRRO*'s impairment criteria (CCG Am., § 2.9).

In short, the CLECs' definitions are unacceptable, because none plainly recognizes the unbundling limitations the FCC has imposed on dark fiber transport.

3. "Dedicated Transport"

Verizon defines "Dedicated Transport" in its Amendments as a "DS1 or DS3 transmission facility between Verizon switches (as identified in the LERG) or wire centers, within a LATA, that is dedicated to a particular end user or carrier." (Verizon Am.1, § 4.7.4; Verizon Am. 2, § 4.7.4.)

Both AT&T's and MCI's dedicated transport definitions are unlawful because they would allow the CLEC to obtain UNE dedicated transport between a Verizon wire center and a CLEC wire center (that, is de-listed entrance facilities) (AT&T Am. § 2.9; MCI Am. § 10.) In addition, both AT&T's and MCI's amendments would impermissibly require Verizon to "OCn-capacity level services," even though the FCC in the *TRO* eliminated all unbundling of OCn transport. (*Id. See TRO*, ¶ 389 ("requesting carriers are not impaired without OCn or SONET interface transport.").

4. "Discontinued Facility"

Under Verizon's Amendments, a "Discontinued Facility" is one that Verizon has provided as a UNE, but that is no longer subject to an unbundling requirement under section 251(c)(3) and 47 C.F.R. Part 51 (the "Federal Unbundling Rules"). (Verizon Am., § 4.7.5) As examples, Verizon lists the specific UNEs that the FCC held in the *TRO* and *TRRO* are not required to be unbundled. In addition, Verizon concludes its list by including any other facility as to which the FCC "makes or has made a finding of nonimpairment". Thus, Verizon's definition of "Discontinued Facility" captures the effect of federal law, both as it stands now and as it may be modified in the future. As noted, tying Verizon's unbundling obligations to federal law ensures that Verizon's

contracts implement federal law, without the need for protracted and expensive multi-party proceedings like this one. As Verizon has pointed out, most of its contracts (including a number in this arbitration) already permit automatic implementation of delisted UNEs. Verizon's TRO Amendment will bring the relatively small number of remaining contracts—those that may appear to require negotiation and arbitration of amendments to discontinue delisted UNEs—in line with the others.

None of the CLECs' proposed amendments include all of the *TRRO*-delisted elements in their definitions of Discontinued Facilities ("Discontinued Element" in MCI's amendment (§ 12.7.5); "Declassified Network Elements" in AT&T's (§ 2.8) and CCG's (§ 2.9) amendments). MCI and AT&T include only elements de-listed in the *TRO*. CCG includes some, but not all, of the elements de-listed in the *TRRO* (as noted above, it left out dark fiber transport).

The Commission should make clear that the *TRO* Amendment must plainly recognize the items for which Verizon's unbundling obligations have been eliminated.

5. "DS1 Loop" and "DS3 Loop"

Verizon defines DS1 Loop as a "digital transmission channel, between the main distribution frame (or its equivalent) in an end user's serving wire center and the demarcation point at the end user customer's premises, suitable for the transport of 1.544 Mbps digital signals." (Verizon Am. 1, § 4.7.8 , Verizon Am. 2, § 4.7.9.) Verizon's language further specifies, as does Verizon's standard interconnection agreement, that "[t]his loop type is more fully described in Verizon TR 72575, as revised from time to time," and that "[a] DS1 Loop requires the electronics necessary to provide the DS1 transmission rate." *Id.*

Similarly, Verizon defines DS3 Loop as a "digital transmission channel, between the main distribution frame (or its equivalent) in an end user's serving wire center and the demarcation point at the end user customer's premises, suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS1 channels)." (Verizon Am. 1, § 4.7.9; Verizon Am. 2, § 4.7.9.) Verizon's language further specifies that "[t]his loop type is more fully described in Verizon TR 72575, as revised from time to time," and that "[a] DS3 Loop requires the electronics necessary to provide the DS3 transmission rate." *Id.*

AT&T's definitions of these terms are similar to Verizon's, but with two important differences. AT&T defines both DS1 and DS3 loops as "including any necessary Routine Network Modifications." (AT&T Am., §§ 2.12 & 2.13.) This language may be construed to require Verizon to perform *any* modifications necessary to make available a DS1 or DS3, particularly because AT&T's definition of "Routine Network Modifications" fails to recognize the FCC's constraints on Verizon's obligation to modify its network to permit unbundled access. (*See infra*, discussion of "Routine Network Modifications" definitions.)

Second, AT&T, as well as CCG, omits from its definitions Verizon's reference to TR 72575, a Verizon technical publication that specifies how Verizon applies the industry standards for loop types, including DS1 and DS3 loops.[42] As this Commission ruled in Verizon's arbitration with Covad, "The agreement should reference Verizon's Technical Reference 72575," because "it acts as a blueprint applying the industry

[42] CCG's definition is even more incomplete than AT&T's, because it also leaves out the necessary qualification that DS1 and DS3 loops run between the main distribution frame in an end user's serving wire center and the demarcation point at the end user's premises. *See* CCG Am., §§ 2.13 & 2.14.

standards" to Verizon's loops.[43] The Commission noted that "[t]he FCC has found that 'referencing applicable standards is preferable to actually articulating the standards in a contract, because the standards may change over time.'"[44] The CLECs did not explain why the DS1 and DS3 loop definitions should not include a reference to TR 72575; the Commission should again approve this reference in Verizon's definition, based on its prior, sound logic.

MCI omits any definition of DS1 or DS3 loops, leaving the amendment unacceptably vague about the basic parameters of DS1 and DS3 loop UNEs, and inviting unnecessary disputes.

The Commission must ensure that the definitions of DS1 and DS3 loop facilities do not purport to expand Verizon's unbundling obligations, and that they completely and accurately reflect the basic technical specifications of these UNEs. Only Verizon's approach meets these criteria.

6. "Enterprise Switching"

Enterprise switching was de-listed in the *TRO*. (*See* TRO, ¶ 451 ("we establish a national finding that competitors are not impaired with respect to the DS1 enterprise customers that are served using loops at the DS1 capacity and above.") Enterprise switching (unlike mass-market switching) is not subject to a transition period. Verizon gave notice of the discontinuation of enterprise switching in May 2004, and this element was discontinued for most CLECs last August 2004 (that is, for the CLECs with clear

---

[43] *Petition for Arbitration of an Interconnection Agreement with Verizon by DIECA Comm., Inc. d/b/a Covad Comm. Co.*, Order No. PSC-03-1139-FOF-TP, 03 FPSC 10:246, at ¶¶ 90-91 (Oct. 13, 2003).

[44] *Id.*, ¶ 89, *citing Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Comm. Act for Preemption of the Jurisdiction of the Va. State Corp. Comm'n Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 & 00-259, Memorandum Opinion and Order, DA 02-1731, at 480.

contract language permitting discontinuation without an amendment). Verizon's Amendment defines enterprise switching as "Local Switching or Tandem Switching" that the CLEC would use to serve "customers using DS1 or above capacity Loops." (Verizon Am. 1, § 4.7.10; Verizon Am. 2, § 4.7.11.) AT&T and CCG use the same definition as Verizon does. (AT&T Am., § 2.15; CCG Am., § 2.15) MCI, however, omits tandem switching from the definition, which does not accurately reflect the law. Under the FCC's Rules, enterprise switching is a form of circuit switching (47 C.F.R. § 51.319((3)), and local circuit switching "*includ[es] tandem switching*" *id.* § 51.319(d) (emphasis added).)

The Commission should thus approve the definition proposed by Verizon, AT&T and CCG.

7. "Entrance Facility"

Verizon defines an entrance facility as a "transmission facility (lit or unlit) or service provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of [the CLEC] or a third party." (Verizon Am. 1, § 4.7.11; Verizon Am. 2, § 4.7.11.) This definition reflects the FCC's rule – as adopted in the *Triennial Review Order* and left in place in the *TRRO* -- which provides: "*Entrance facilities.* An incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers." 47 C.F.R. § 51.319(e)(2). The *TRO* eliminated all unbundling for entrance facilities, and the *TRRO* confirmed that CLECs had no right to such facilities. Verizon's definition effectuates the FCC's elimination of any unbundling obligation as to entrance facilities.

Neither CCG nor MCI define entrance facilities, although CCG correctly includes "Entrance Facilities" within its definition of de-listed network elements. (CCG Am., § 2.9.) However, CCG proposes to impermissibly subject entrance facilities to the TRRO's 12-month transition period and transition pricing for the embedded base of de-listed DS1 and DS3 transport facilities. (CCG Am., §§ 3.6.1(d) & (e)(i).) This would violate the *TRRO*, which explicitly excluded entrance facilities from the DS1 and DS3 transitional provisions: "We find no justification in the record for making entrance facilities available on a transitional basis." *TRRO*, ¶ 141 n. 395.

AT&T agrees with Verizon's definition, but then adds the limitation that entrance facilities do not include "facilities used for interconnection or reciprocal compensation purposes provided pursuant to 47 U.S.C. §251(c)(2)." (AT&T Am., § 2.16.) CCG takes the same approach in its substantive provision, proposing that "Verizon shall provide CLEC with Entrance Facilities pursuant to section 251(c)(2) for the transmission and routing of Telephone Exchange and Exchange Access services at cost-based rates." (CCG Am., § 3.6.1.1(d).) As a simple drafting matter, however, the interconnection agreements should not confuse the *definition* of entrance facilities with the *obligation* to provide interconnection facilities at cost-based rates. The CLECs' additions are, moreover, inappropriate in this proceeding, because neither the *TRO* nor the *TRRO* changed Verizon's obligations with respect to interconnection facilities. *See, e.g., TRO*, ¶ 366 ("we do not alter the Commission's interpretation of this obligation"). The underlying ICAs already address network architecture, typically in a number of interrelated provisions. It would be inappropriate to pick out one aspect of architecture to

address in the ICA amendment that has nothing to do with any rule changes in the *TRO* or the *TRRO*. Verizon discusses this issue further in its response to Issue 20, *infra*.

8. "FTTP Loop"

Verizon defines an "FTTP Loop" as a Loop "consisting entirely of fiber optic cable" that extends from a wire center to the demarcation point at an end user's premises or to a serving area interface at which the fiber optic cable connects to copper coaxial distribution facilities that are within 500 feet of the demarcation point. (Verizon Am. 1, § 4.7.15; Verizon Am. 2, § 4.7.14.) Verizon's definition adds that, for residential multiple dwelling units, an FTTP Loop extends from the wire center (a) to or beyond the minimum point of entry (MPOE) as defined in 47 C.F.R. § 68.105, or (b) to a serving area interface at which the fiber connects to copper or coaxial distribution facilities that are within 500 feet of the MPOE. *Id.*

AT&T and CCG seek to expand Verizon's fiber unbundling obligations by using the term, FTTH ("fiber-to-the-home"), rather than FTTP ("fiber-to-the-premises"). (*See, e.g.*, AT&T Am., § 2.19; CCG Am., § 2.18.) This approach ignores the law, particularly the clarifications the FCC made after the *TRO*.

The *TRO* provided that Verizon need not unbundle a loop consisting entirely of fiber in "greenfield" situations. 47 C.F.R. § 51.319(a)(3)(i).[45] Section 51.319(a)(3)(i) as originally attached to the *TRO* spoke in terms of fiber loops that are deployed to "a residential unit." This was a mistake, because in paragraph 201 of the *TRO* the FCC had made clear its loop unbundling rules were customer-neutral: "Thus, while we adopt loop unbundling rules specific to each loop type, our unbundling obligations and limitations

[45] If a fiber loop replaces an existing copper loop that Verizon has not retired, the *TRO* required Verizon to continue to make available the copper loop or, if it retires the copper loop, a voice grade transmission path capable of voice grade service. *Id.*, § 51.319(a)(3)(i).

for such loops do not vary based on the customer to be served." Accordingly, the FCC issued *errata* in which it substituted "residential unit" with the customer-neutral term "end user customer premises."[46] Thus, although the FCC continues to use the term "fiber-to-the-home", it is a misnomer that perpetuates the inaccurate notion that a fiber loop is exempt from unbundling only if it serves a residence. The correct term is "fiber-to-the-premises" or "FTTP."

On reconsideration, the FCC issued two orders that further limit Verizon's unbundling obligations as to fiber loops. First, on August 9, 2004, the FCC ruled that the above FTTP exemption applies to fiber loops serving multiple dwelling units that are "predominantly residential."[47] The *MDU Reconsideration Order* clarified that, in such situations, the FTTP exemption applies if the fiber loop extends to the minimum point of entry at the MDU, regardless of who owns the inside wire beyond that point.

Second, on October 18, 2004, the FCC issued an order in which it ruled a fiber loop need not reach all the way to the customer premises (or to the minimum point of entry ("MPOE") in the case of an MDU) to qualify for the FTTP exemption from unbundling.[48] The *FTTC Order* provides that the above FTTP exemption applies so long

---

[46] Errata, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 03-227, at ¶ 38 (Sep. 17, 2003).

[47] Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 04-191, at ¶ 38 (Aug. 9, 2004) ("*MDU Reconsideration Order*").

[48] Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 04-248 (Oct. 18, 2004) ("*FTTC Order*").The revised version of 47 C.F.R. § 51.319(a)(3)(ii) attached to the *FTTC Order* included the same typographical error that had previously been corrected in the errata to the *TRO*. To correct that error, the FCC issued another errata stating that "in rule section 51.319(a)(3)(ii), titled 'New builds,' we replace the words 'a residential unit' with the words 'an end user's customer premises.'" Errata,

as the fiber loop extends to a point within 500 of the demarcation point at the customer premises (or within 500 feet of the MPOE in the case of a predominantly residential MDU).[49] Fiber loops meeting this definition are sometimes referred to as "fiber-to-the-curb" or "FTTC."

For the sake of simplicity, Verizon's amendment uses only the term "FTTP Loop" and defines it to include any fiber loop falling within the above exemptions from unbundling.

In addition, while the *MDU Reconsideration Order* indicated that the FCC granted unbundling relief as to FTTP loops serving "MDUs that are predominantly residential in nature," 19 FCC Rcd at 15857-58, ¶ 4, the FCC's *FTTC Order* clarified that "incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability." *FTTC Order* ¶ 20. As to dark fiber loops, the *TRRO* found that "[c]ompetitive LECs are not impaired without access to dark fiber loops in any instance." *TRRO* ¶ 5. The combined result of these holdings is that FTTP loops – which are packet-based and contain no TDM capability – are not required to be unbundled to any type of location (regardless whether the location is characterized as mass market, enterprise, residential, business, or otherwise), whether dark or lit. Thus, CLECs are wrong to the extent their amendments

---

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, 2004 FCC LEXIS 6241, at ¶ 11 (Oct. 29, 2004). Thus, the current version of 47 C.F.R. § 51.319(a)(3)(ii) provides: "An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb 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." (emphasis added). Therefore, the FCC's exception for FTTP (including FTTC) does not apply just to residential units, but to all "customer premises."

[49] Although MCI uses the correct "FTTP" terms and accepts much of Verizon's FTTP definition, it fails to expressly recognize that the FTTP exemption applies so long as the fiber loop extends to a point within 500 of the demarcation point at the customer premises. MCI's incomplete definition is thus unacceptable.

suggest that a fiber-only loop must be unbundled if it is not used for purposes of serving a "mass-market customer."

Finally, AT&T and CCG propose a clause noting that "FTTH Loops do not include such intermediate fiber-in-the-loop architectures as fiber-to-the-curb (FTTC), fiber-to-the-node (FTTN), and fiber-to-the-building (FTTB)." (AT&T Am. §2.19; CCG Am., § 2.18). That is not the law. As noted above, the FCC has explicitly held that "fiber-to-the-curb" architectures are exempt from unbundling requirements, and the current version of rule 51.319 classifies "fiber-to-the-curb" alongside "fiber-to-the-home." The Board should therefore reject the CLECs' approach to defining FTTP loops.

9. "Hybrid Loop"

Verizon defines "Hybrid Loop" as a "local Loop composed of both fiber optic cable and copper wire or cable, and specifies that an "FTTP Loop is not a Hybrid Loop." (Verizon Am. 1, 4.7.16; Verizon Am. 2, § 4.7.16.)

AT&T and CCG, however, add language that is inconsistent with the law, because they would define a hybrid loop as "including such intermediate fiber-in-the-loop architectures as FTTN and FTTB," and, in CCG's proposal, FTTC, as well. (AT&T Am., § 2.21; CCG Am., § 2.20.) Similarly, CCG and MCI delete Verizon's specification that an "FTTP Loop is not a Hybrid Loop." (CCG Am., § 2.2.0; MCI Am. § 12.7.12.) As noted above, the FCC classifies FTTC-type architectures with FTTP, not with "Hybrid Loops," so the CLECs' definitions are unlawful.

10. "Local Switching"

Verizon defines "Local Switching" to include "[t]he line-side and trunk-side facilities associated with the line-side port, on a circuit switch in Verizon's network (as

identified in the LERG), plus the features, functions, and capabilities of that switch." (Verizon Am. 1, § 4.7.18; Verizon Am. 2, § 4.7.19.) Its definition then lists several "features" that are part of the Local Switching element. *Id.*

All the CLECs' amendments provide that local circuit switching may be provided by a packet switch. (AT&T Am., § 2.26; CCG Am., § 2.25; MCI Am., § 12.7.14.) Any such language relating to unbundling of packet switching is unlawful. The FCC has never required unbundling of packet switches, and the Commission cannot approve language that is contrary to the FCC's rules. *See* Verizon's discussion of packet switching definitions below, and its response to Issue 14, *infra*.

11. "Mass Market Switching"

Verizon's Amendment defines "Mass Market Switching" as "Local Switching or Tandem Switching that, if provided to [the CLEC], would be used for the purpose of serving a [CLEC] end user customer with DS0 Loops. Mass Market Switching does not include Four Line Carve Out Switching." (Verizon Am. 1, § 4.7.19; Verizon Am. 2, § 4.7.20.) This definition appropriately reflects federal law. The CLECs' definitions are similar to Verizon's, except that AT&T's definition states "*is* provided to AT&T" instead of "*if* provided to AT&T," thus incorrectly implying that Verizon still has an obligation to unbundle mass-market switching.

All the CLECs leave out Verizon's reference to the Four-Line Carve-Out. (AT&T Am., § 2.28; CCG Am., § 2.27; MCI Am., § 12.7.16). The FCC adopted its Four-Line Carve-Out in its 1999 *UNE Remand Order*, holding that competitors are not impaired without unbundled access to switching to serve customers with four or more DS0 lines in density zone one of the top 50 metropolitan statistical areas. It reaffirmed

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

Verizon's predecessor, GTE, fully implemented the Four-Line Carve-Out relatively soon after the *UNE Remand Order* issued. (Ciamporcero RT, at 24.) It appears that Mr. Nurse does not realize this, because he states that the Four-Line Carve-Out was "largely un-enforced" and assumes that customers subject to the Four-Line Carve-Out rule still need to be transitioned. (Nurse DT, at 14.) In any event, because the Four-Line Carve-Out was implemented in Florida years ago, there are no transition issues relating to the Four-Line Carve-Out and Verizon could agree to removing the Four-Line Carve-Out language in its Florida *TRO* Amendment.

12. "Packet Switched"

Verizon's Amendment defines "Packet Switched" as the "[r]outing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, or functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper Loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the Loops; and the ability to combine data units from multiple Loops onto one or more trunks connecting to a packet switch or packet switches." (Verizon Am. 2, § 4.7.22.) This definition quotes from 47 C.F.R. § 51.319(a)(2)(i).

AT&T's Amendment, § 2.30 ("Packet Switching"), omits everything after the parenthetical phrase and adds a "Packet Switch" definition stating that a packet switch "performs functions primarily via packet technologies," but that "[s]uch a device may also provide other network functions (*e.g.*, Circuit Switching.)" *Id.* § 2.29. CCG keeps the language after the parenthetical in its "Packet Switching" definition (CCG Am., § 2.29), but also adds a "Packet Switch" definition (*id.* § 2.28) that states: "Circuit switching, even if performed by a Packet Switch, is a network element that Verizon is obligated to provide on an Unbundled Network Element basis."

All of these proposals are unlawful, and the Commission should make clear that the *TRO* Amendment cannot contain any language suggesting that Verizon has any unbundling obligation relating to packet switching. Packet switching is not and never has been a UNE. The Commission cannot impose a packet switching unbundling obligation, or burden Verizon's right to deploy packet switching, because the FCC has consistently and explicitly declined to do so. (*See, e.g.*, *TRO* ¶ 537. ("on a national basis... competitors are not impaired without access to packet switching"); ¶ 539 ("there do not appear to be any barriers to deployment of packet switches that would cause us to conclude that requesting carriers are impaired with respect to packet switching").)

In the *Triennial Review Order*, the FCC acknowledged that "using packet-switched technology, carriers can transmit voice, fax, data, video, and other over a single transmission path at the same time," 18 FCC Rcd at 17114, ¶ 220. Nonetheless, it explicitly held – without exception – that "we decline to unbundle packet switching as a stand-alone network element." *Id.* at 17321, ¶ 537. So the CLECs' theory that CLECs

must somehow unbundle packet switches that may perform circuit switching functions is wrong.

In fact, in the *TRO*, the FCC expressly encouraged carriers to replace circuit switches with packet switches, even while recognizing that the result of such replacement would be the elimination of the incumbent's unbundling obligations. As the FCC explained, "to the extent there are significant disincentives caused by unbundling of circuit switching, incumbents can *avoid* them by deploying more advanced packet switching." (*Id.* at ¶ 447 n.1365.) No state commission has authority to contradict the FCC's binding judgment in this regard.

In any event, because the FCC has ruled that incumbents have no obligation to unbundle all *circuit* switching and has required CLECs to convert UNE-P arrangements to lawful arrangements, there is no basis for requiring Verizon to provide unbundled access to packet switching under any circumstances.

13. "Sub-Loop for Multiunit Premises Access"

Verizon's definition provides that "Sub-Loop for Multiunit Premises Access" is any portion of a loop, other than an FTTP loop, that "is technically feasible to access at a terminal in Verizon's outside plant at or near a multiunit premises." (Verizon Am. 2, § 4.7.24.) Verizon adds that "[i]t is not technically feasible to access a portion of a Loop at a terminal in Verizon's outside plant at or near a multiunit premises if a technician must access the facility by removing a splice case to reach the wiring within the cable." *Id.* Verizon's definition tracks federal law: Rule 51.319 provides that "[t]he subloop for access to multiunit premises wiring is defined as any portion of the loop that it is technically feasible to access at a terminal in the incumbent LEC's outside plant at or

near a multiunit premises;" 47 C.F.R. § 51.319(b)(2), and that a "point of technically feasible access is any point in the incumbent LEC's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premises." *Id.* § 51.319(b)(2)(i).

AT&T and CCG delete the portion of Verizon's definition that excludes FTTP subloops (and MCI omits any subloop definition) (CCG Am., § 2.34; AT&T Am., § 2.35). But Verizon's definition reflects the FCC's determination that the "definition of FTTH loops includes fiber loops deployed to the minimum point of entry (MPOE) of MDUs, regardless of the ownership of the inside wiring." *MDU Reconsideration Order*, 19 FCC Rcd at 15856, ¶ 1; *see also id.* at 15857-58, ¶ 4 ("[T]o the extent fiber loops serve MDUs that are predominantly residential in nature, those loops should be governed by the FTTH rules."). Because such FTTP facilities to predominately residential multiunit premises are treated the same as other fiber facilities, Verizon's definition is appropriate and reflects federal law.

14. "Federal Unbundling Rules"

Verizon defines "Federal Unbundling Rules" as unbundling requirements "imposed upon Verizon by the FCC pursuant to both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51." (Verizon Am. 1, §4.7.12.) This definition and the references to Federal Unbundling Rules in the Amendment are necessary to make clear that the FCC has exclusive authority to make the impairment determinations that are required to impose unbundling obligations. Because the CLECs have agreed not to press their claims of independent state unbundling authority in this arbitration, there should be no dispute

about including this language in the Amendment (and excluding the CLECs' "applicable law" or other language suggesting that the Commission may rely on state law, the GTE/Bell Atlantic Merger Conditions, or anything else to impose its own unbundling obligations).

B. New CLEC-Proposed Definitions

1. "Business Line"

The CLECs' definitions of "Business Lines" (CCG Am., § 2.2; AT&T Am., § 2.1 ("Business Switched Access Line.") do not belong in the *TRO* Amendment. First, the FCC has already defined the term in 47 C.F.R. §51.5, and there is no need to repeat that definition in the amendment, let alone try to modify it, as the CLECs do. In this regard, they either fail to include the entire FCC definition (AT&T Amendment, §2.1) or seek to append to that definition additional, self-serving language (CCG Amendment, §2.2).

Second, the "Business Line" definition is relevant only for purposes of determining which wire centers satisfy the FCC's non-impairment criteria for high-capacity loops and dedicated transport. As discussed in response to Issue 5, however, the FCC has prescribed the mechanism for exempting wire centers from unbundling, and for ILEC challenges to CLEC orders on a case-by-case basis. The Commission cannot prescribe an alternate mechanism in this arbitration, so it would not be appropriate to include a "Business Line" definition in the Amendment.

3. "Combination"

Neither the *Triennial Review Order* nor the *TRRO* altered the definition of combinations, so there is no need for a new definition in the Amendment. In accordance with governing law, however, Verizon's Amendment explicitly allows only combinations

of UNEs obtained "pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51," (Verizon Am. 2, § 3.4.1.1.)

Even though no re-definition of combinations is necessary, the CLECs propose new ones in order to try to impose obligations on Verizon that the FCC has not. AT&T and CCG define "Combination" as "[t]he provision of UNEs in combination with each other, including, but not limited to, the loop and switching combinations and shared transport combination (also known as Network Element Platform or UNE-P) and the combination of loops and Dedicated Transport (also known as an EEL)." (AT&T Am., § 2.4; CCG Am., § 2.5; MCI Am., § 12.7.2.) CCG's amendment includes language explicitly requiring Verizon to allow the CLEC to "commingle a Network Element or Combination of *Declassified Network Elements* with wholesale services obtained from Verizon." (CCG Am., § 3.7.1.) Verizon has no obligation to provide "declassified" (*i.e.*, de-listed) elements as UNEs (except in accordance with the *TRRO*'s transition plan), so it certainly has no obligation to allow CLECs to be commingled or combined with other services.

5. "Fiber-Based Collocator"

As in the case of the CLECs' proposals to define "Business Lines," it is not appropriate to include a definition of "fiber-based collocator" in the ICAs. The CLECs include this term only to advance their position that the Commission should establish a process to identify Verizon wire centers that meet the FCC's non-impairment criteria. (AT&T Am, § 2.18; CCG Am., § 2.17.) As discussed in the context of the "business lines" dispute, the FCC has already established a process under which ILECs may provision and then, if necessary, dispute CLEC orders on a case-by-case basis, so the

Commission should not deviate from that process. In any event, "fiber-based collocator" is already defined in the FCC's rules, and the CLECs do not accurately restate that definition.

Moreover, CCG seeks to define the term "affiliate" for purposes of counting the number of collocators in a wire center to include "carriers that have entered into merger and/or other consolidation agreements, or otherwise announced their intention to enter into the same." (CCG Am., §2.17.) This attempt to count Verizon and MCI (and SBC and AT&T) as a single entity because of their announced merger is contrary to law. The relevant federal statute defines "affiliate" to mean "any person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." (47 U.S.C. §153(1), applicable here pursuant to 47 C.F.R. §51.5.) Unless and until the Verizon/MCI merger closes, they are independent companies, and are required by law to conduct themselves as such (as their advocacy in this arbitration proves). They do not own or control each other, nor are they owned or controlled in common. They are not affiliates under federal law, and the CLECs cannot override that law in their contracts. In any event, any wire center that, as of March 11, 2005, was a Tier 1 or Tier 2 wire center pursuant to the criteria for transport, or that was non-impaired pursuant to the criteria for high-capacity loops, may not later be "downgraded" to a lower tier or to impaired status. See 47 C.F.R. §§ 51.319(a)(4)(i), 51.319(a)(5)(i), 51.319(e)(3).

7. "Hot Cut"

CCG and AT&T define "Hot Cut" in their amendments and CCG includes a detailed hot cut performance and remedies proposal in its amendment. (CCG Am., §§

2.19, 3.11 & Exs. A&B.) CCG's scheme is like one AT&T originally proposed, but later dropped for Florida.

No hot cut definitions or other provisions are appropriate for consideration in this proceeding for at least two reasons. First, the hot cut performance metrics and remedies issues some CLECs proposed for inclusion in the case were rejected by the Prehearing Officer in Order No. PSC-05-0221-PCO-TP, issued February 24, 2005. Second, hot cut provisions have nothing to do with federal unbundling obligations. When the FCC eliminated switching as a UNE, it explicitly found that the ILECs'—in particular, Verizon's—hot cut processes were satisfactory and specifically rejected CLECs' "speculative" concerns about hot cut procedures. *See* Verizon's response to Issue 3 *supra*; *TRO,* ¶¶ 199, 210. CCG's hot cut definition is relevant only to its substantive hot cut provisions, which would guarantee the continued availability of unbundled mass market switching under the parties' agreement until such time as CCG's proposed performance metrics and remedies are implemented to the CLECs' satisfaction. *See* CCG Am., § 3.11 & Ex. A.) CCG's proposal is unlawful (and the hot cut definition pointless), because the FCC has unconditionally eliminated the requirement to unbundle mass market switching. State commissions have no authority to impose their own hot cut conditions before Verizon may cease providing UNE switching, or to override the FCC's mandatory transition plan for UNE-P.

8. "Line Conditioning"

AT&T and CCG add a new definition for "Line Conditioning": "The removal from a copper loop or copper Subloop of any device that could diminish the capability of the loop or Subloop to deliver 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." (AT&T Am., § 2.23; CCG Am., §2.22.) The FCC did not create any new line conditioning obligations in the *TRO* (*see* Verizon's response to Issue 14(g)), so there is no basis for inserting any new line conditioning definition into the ICAs.

9. "Line Splitting"

As discussed below in response to Issue 14(a), the FCC's line splitting rules pre-date the *Triennial Review Order,* and these obligations are already embodied in existing ICAs. Accordingly, there is no basis for inserting into the ICAs the CLECs' new provisions related to line splitting, including definitions. (AT&T Am., § 2.25; CCG Am., § 2.24.)

10. "Routine Network Modifications"

Verizon's definition of "Routine Network Modifications" tracks the FCC's rulings on this issue. In particular, Verizon's definition makes clear that its obligations to perform such modifications are limited to facilities that have already been constructed, and it lists the FCC's examples of routine network modifications from the *TRO.* (Verizon Am. 2, § 3.5.1.1; *TRO*, ¶¶ 632, 634.)

In contrast, the CLECs would impose no meaningful limitations on Verizon's network modification obligations. They fail to recognize the essential "no-new-construction" limitation, and use the most expansive possible language to impose obligations the FCC never did. CCG and AT&T define routine network modifications to include "those prospective or reactive activities that Verizon is required to perform for AT&T and that are of the type that Verizon regularly undertakes when establishing or

maintaining network connectivity for its own retail customers." (AT&T Am., § 2.32; CCG Amendment, § 2.32.) It is not clear what "prospective or reactive" might mean—which is, no doubt, just the effect the CLECs intended, because they could claim that just about anything is a routine network modification. Moreover, the CLECs attempt to expand Verizon's obligation beyond those activities Verizon would routinely undertake to activate service for its customers to activities it might undertake to "maintain[] network connectivity" for its customers. There is no basis in the *TRO* to require Verizon to perform network modifications beyond those required to provide access to a facility in the first instance.

11. "UNE-P"

AT&T and CCG include "UNE-P" definitions in the amendments (AT&T Am., § 2.38; CCG Am., § 2.39), but there is reason to do so, because the *TRO* and the *TRRO* did not change the definition of UNE-P. Indeed, the *TRRO* eliminated UNE-P. Including a UNE-P definition in the *TRO* Amendment is part of the CLECs' approach of avoiding plainly stating that UNE-P has been eliminated. The Commission should reject all proposals indicating that UNE-P remains available (except in accordance with the FCC's transition plan).

12. "Tier 1 Wire Center," "Tier 2 Wire Center," "Tier 3 Wire Center"

These terms in the CCG Amendment (at §§ 2.36, 2.37 and 2.38) are relevant only to the determination of the wire centers that satisfy the FCC's non-impairment criteria for high-capacity loops and transport. As Verizon has explained, terms relating to wire center determinations do not belong in the ICAs.

In addition, the CCG improperly seeks to use these definitions to impose onerous data-production requirements on Verizon that do not appear in the FCC's rules and that would unlawfully deviate from the process the FCC has established to address exemptions from unbundling requirements for high-capacity facilities.

21. "Wire Center"

AT&T would add a definition of "wire center" to its ICA by quoting the FCC's definition in 47 C.F.R. § 51.5. (AT&T Am., 2.39.) This addition is unacceptable for the same reasons discussed in connection with the CLECs' proposals to add definitions of "business lines" and "fiber-based collocator." In short, the "Wire Center" definition relates to determination of which ILEC offices qualify for unbundling relief, which is not an appropriate inquiry in this docket.

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 under federal law?

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

This issue is moot with respect to discontinuation of the UNEs de-listed in the *TRRO* and the *TRO*.

First, as this Commission already ruled in rejecting the CLECs' petitions to stay the FCC's no-new-adds mandate (May 5 Order), implementation of the FCC's mandatory transition plan in the *TRRO* did *not* depend on any particular contract language, including any change-of-law or dispute resolution provisions in existing agreements. Pursuant to

the FCC's explicit directive, the transition plan for the UNEs at issue in the *TRRO* took effect as of March 5, 2005, even though change-of-law processes with respect to the CLEC's embedded base of de-listed UNEs might take up to 12 months (18 months, for dark fiber facilities) under the FCC's plan.

For example, as to high-capacity transport, the FCC held that "carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes." *TRRO* ¶ 143. Furthermore, the "no-new-adds" and transition rate provisions for these facilities begin "as of the effective date of this Order" —that is, March 11, 2005. *Id.* ¶ 145. The FCC emphasized that the transition period applies only to the arrangements in service as of the effective date of the *TRRO*, and that as of that date, its rules "do not permit competitive LECs to add new dedicated transport UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists." *Id.* ¶ 142. As noted above, the FCC made identical findings as to high-capacity loops, *see id.* ¶¶ 195-198, and switching, *see id.* ¶¶ 227-228.

In other words, the FCC held that the *TRRO*, including its transition plans, would be immediately effective on March 11, 2005, and that CLECs would have up to 12 months (18 months for dark fiber) to modify their interconnection agreements to implement the FCC's *permanent* unbundling rules (*e.g.*, to change the list of UNEs available under interconnection agreements, to work out operational details of the transition). The FCC firmly shut the door on any possibility of using the change-in-law process as an excuse to circumvent the *TRRO* itself or to avoid following the relevant transition plans.

If the FCC had meant for the change-in-law process to take precedence over its currently effective binding federal regulations, it would have held that the relevant transition plans would take effect after negotiations, rather than on a date certain (March 11, 2005). Instead, the FCC repeatedly and explicitly stated that the transition period does not apply to the "no-new-adds" prohibition. It would make no sense for the FCC to have ruled that the transition plan "does not permit competitive LECs to add new switching UNEs" as of March 11, 2005 (*TRRO* ¶ 5), but then to have given carriers 12 (or 18) months to complete an amendment before they could implement this prohibition, as the CLECs argue. The CLECs' interpretation, embodied in their contract amendments, would render the FCC's no-new-adds directive meaningless and contravene this Commission's May 5 Order.

Second, as for discontinuation of the UNEs de-listed in the *Triennial Review Order* – that is, as to UNEs other than mass market switching and high-capacity loops and transport – the FCC determined that "the section 252 process . . . described above provides good guidance even in instances where a change of law provision exists." *TRO*, ¶ 704. The FCC "expect[ed] that parties would begin their change of law process promptly," that "negotiations and any timeframe for resolving the dispute would commence immediately," and that "a state commission should be able to resolve a dispute over contract language *at least* within the nine-month timeframe envisioned for new contract arbitrations under section 252." *Id.* at ¶ 704 (emphasis added).

Verizon initiated negotiations over 20 months ago, and filed for arbitration more than a year ago to modify its agreements, where necessary, to implement the *TRO* rulings. But–because of CLECs' procedural wrangling and delaying tactics–the FCC's

timeframe for conclusion of a *TRO* amendment expired without any substantive progress toward an arbitrated amendment, even to implement the *TRO* rulings that have been final and un-appealable for over a year now.

No CLEC can seriously argue that their contracts require another "negotiation" period or other procedures before the Board may resolve the issues in this arbitration. Indeed, AT&T's Mr. Nurse testified that this arbitration proceeding is an appropriate forum to achieve amendment of the parties' contracts to reflect the *TRO* and *TRRO* rulings. (Ex. 2, at 17.) The CCG Panel appears to agree.[50] MCI's Mr. Darnell agreed that "we probably should have had an arbitration a year ago on the TRO issues," but claimed that the *TRRO* issues were not "ripe for arbitration." (Ex. 4, at 22) In fact, instead of setting forth substantive positions on the issues in this arbitration, Mr. Darnell mostly just stated, over and over, that the parties' ICA requires the parties to negotiate amendments to reflect changes in the FCC's unbundling rules. (*See generally* Darnell Direct and Supplement Direct Testimony.) In his deposition, Mr. Darnell claimed that the time for negotiations under the change-of-law provisions in the contract would end 90 days from the effective date of the *TRRO* (Ex. 4, at 23, 28). Therefore, Mr. Darnell did not believe arbitration was appropriate at the time of his deposition (April 19, 2005)—despite MCI's ongoing participation in this arbitration and despite sponsoring an amendment proposal specifically addressing *TRRO* issues.

There is no conceivable, legitimate motivation for MCI's position. MCI appears to think it can participate fully in this arbitration, yet keep its options open to initiate

[50] Ex. 3, at 22 (Cadieux) ("it should go without saying that what we should be about here in these arbitrations is incorporating all of the now effective FCC UNE rules, so that would include both the TRO and the TRRO changes into this amendment"). Mr. Cadieux incorrectly testified that Verizon's Amendment did not incorporate the *TRRO* changes. *Id.*

some other form of dispute resolution proceeding later (*see* Ex. 4, at 27) if it doesn't like the results in this case. The Commission should inform MCI that it will not tolerate any such procedural gamesmanship to avoid implementation of federal law. In any event, the 90-day negotiation period Mr. Darnell claims applied expired on June 9--without the parties resolving any issues in dispute in this case--so an arbitrated decision on those issues is appropriate, even under Mr. Darnell's (incorrect) theory.[51]

CCG's principal argument, once again, is that parties are required to follow the change-of-law and/or dispute resolution procedures in their ICAs to implement the "FCC-mandated transition plans." (CCG DT, at 29-30.) As Verizon explained, and as the Commission confirmed in its May 5 Order, the CCG is wrong. And to the extent the ICAs must be amended to reflect the FCC's non-impairment rulings and any details about the transition of the embedded base of de-listed UNEs, that process *must* be completed by the FCC's March 11, 2006 deadline. **The Commission should make clear to the CLECs that they must cooperate with Verizon to meet this deadline by prompting submitting their conversion orders.**

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

** **In general, rate increases and new charges should be implemented through Verizon's issuance of a rate schedule to take effect no earlier than the date the FCC**

[51] Verizon does not agree that the change-of-law/dispute resolution provisions Mr. Darnell cited are relevant. First, as Verizon has explained, implementation of the *TRRO*'s mandatory transition plan does not depend on any provisions in existing contracts, as Mr. Darnell argues. Second, Mr. Darnell has misinterpreted the change-of-law provisions. For instance, he pointed to section 6, Amendment 1, of MCI's ICA with Verizon as a change-of law provision relevant to repricing de-listed UNE arrangements. But that provision (quoted in Darnell DT, at 4, 7-8) addresses only changes to the ICA as a result of Docket No. 990649-TP (Verizon's UNE rate-setting docket) or "any other rate proceeding (including any proceeding designed to implement deaveraged rates)." Mr. Darnell could not say whether the *TRO* or *TRRO* were rate proceedings for purposes of this provision (Ex. 4, at 25-26). They clearly were not.

establishes. Verizon will, of course, comply with the *TRRO*'s transitional rate provisions; its Amendment specifically recognizes Verizon's right to use the true-up the *TRRO* specified for application of rate increases for de-listed elements. **

Verizon's Amendment 1 provides that Verizon may implement any rate increases or new charges established by the FCC by issuing a schedule of rates, to take effect no earlier than the date established by the FCC. *See* Verizon Am. 1, § 3.5. It also specifically recognizes Verizon's right to use a true-up, as specified in the *TRRO*, to apply any rate increases; and makes clear that any new rates prescribed by the FCC shall be "in addition to, and not in limitation of," any rate increases imposed by the Commission or that are otherwise lawfully applicable under the Amended Agreement or tariff.

Many, if not most, of Verizon's existing interconnection agreements already give automatic effect to any FCC-ordered rate increases, so Verizon's approach in section 3.5 is consistent with existing practice. In addition, Verizon is entitled to a true-up, back to March 11, 2005, to collect the rates prescribed in the *TRRO* (to the extent particular contracts may not permit automatic implementation of rate increases). *See TRRO* ¶ 145 n.408, ¶ 198 n.524, ¶ 228 n.630. As discussed, the CLECs cannot extend the FCC's mandatory transition periods by failing to cooperate with conversion of the embedded base or for any reason, so they cannot deny Verizon the right to a true-up (whether or not the amendment specifically refers to a true-up).

No CLEC identifies any substantive problem with Verizon's proposal for implementation of FCC-prescribed rate changes. With regard to the *TRRO* rate increases for the embedded base of de-listed UNEs, AT&T recognizes that the effective date for the FCC's transition rates is non-negotiable: "The *TRRO* provides that the transition

rates apply starting the effective date of the order (March 11, 2005)." (Nurse DT, at 38.) Mr. Nurse also acknowledges that Verizon is entitled to a true-up to the transitional rates once contracts are amended. *Id.*

CCG and MCI recognize that the FCC has imposed transitional rates, but suggest that they may attempt to use the change-of-law process in existing agreements to avoid the March 1, 2005 effective date, and maybe even the rates themselves. (CCG DT, at 31-32; Darnell DT, at 12.) MCI, for example, says that if Verizon does not give notice of rate changes to MCI's satisfaction, then it may seek dispute resolution "before the new rates go into effect." (Darnell DT, at 12.) As Verizon has discussed (and the Commission has confirmed), the effective date of the FCC's transition rates and the rates themselves are not negotiable, but are part of the FCC's mandatory transition plan that does not depend on any particular contract language for implementation.

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

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

In the *TRO*, the FCC removed its commingling restrictions to permit CLECs to commingle UNEs and combinations of UNEs with other wholesale services, subject to eligibility criteria that apply for commingled EELs. *TRO*, ¶ 579. Verizon's proposed language thus provides that Verizon will not prohibit commingling of UNEs with wholesale services (to the extent it is required under federal law to permit commingling). (Verizon Am. 2, § 3.4.1.1.) The Amendment also provides that Verizon will perform the functions necessary to allow CLECs to commingle or combine UNEs with wholesale services. *Id.* The rates, terms, and conditions of the applicable access tariff or separate

non-251 agreement will apply to the wholesale services. *Id.* To offset Verizon's costs of implementing and managing commingled arrangements, a nonrecurring charge will apply to each UNE circuit that is part of a commingled arrangement. *Id.* Ratcheting — creating a new pricing mechanism that would charge CLECs a single, blended rate for the commingled facilities, rather than the charges for its component parts — "shall not be required." *Id.* Verizon may exclude its performance from standard provisioning measures and remedies, if any, since any such measures and remedies were established before Verizon became subject to the new requirements under the *Triennial Review Order* and thus do not account for the additional time and activities associated with those requirements. These provisions are consistent with the rules adopted in the *TRO*, which the FCC did not modify in the *TRRO*. *See* 47 C.F.R. § 51.315; *TRO*, ¶¶ 581-582.

The CLECs raise relatively few substantive objections to Verizon's commingling proposal, and the few points they raise are without merit. Mr. Nurse agrees with Verizon's proposal to apply the tariffed access rate or the rate from a separate, non-section-251 agreement, as applicable, to the non-UNE portion of the commingled arrangement, and to apply the established UNE rate to the UNE portion of the commingled arrangement. (Nurse DT, at 42.) He argues, however, that Verizon should not be allowed to recover any costs it incurs to perform commingling. (Nurse DT, at 50-51.) While Verizon has not proposed specific rates for commingling in this proceeding, the Amendment cannot foreclose the possibility of such charges if they are appropriately justified: if and when Verizon proposes such charges, the Commission can determine whether they are reasonable. *See* Issue Stipulation, at 2.

The CLECs' commingling proposals are also unacceptable because they would prevent Verizon from changing its wholesale or access tariffs "in any fashion that impacts the availability or provision of Commingling" under the Amendment unless Verizon and MCI have amended the parties' Agreement "in advance to address Verizon's proposed tariff changes." (MCI Am. § 4.1; AT&T Am., § 3.7.1; CCG Am., §3.7.1.) This provision would effectively give the CLECs a veto over every tariff change that might in some way affect any commingled arrangement, no matter how immaterial the impact. Through this provision, for example, the CLECs could hold up network improvements and upgrades. There is no FCC obligation for the ILECs to freeze their network unless a CLEC approves of changes, and there is no legal basis for imposing this anticompetitive requirement. If the CLECs believe Verizon is violating the FCC's commingling requirements as embodied in the parties' interconnection agreement, then they can seek dispute resolution under the contract.

The CLEC would also require Verizon to implement commingling "in a manner that does not affect service quality, availability, or performance from the end user perspective."[52] As Mr. Darnell's testimony proved, this vague provision would be impossible to implement, and would permit the CLEC to claim a violation for just about anything—on the end user's say-so--even if it wasn't Verizon's fault. Asked how MCI would measure service quality perceived by the customer, Mr. Darnell responded: "Well, you can't really measure perception until after the fact, I would imagine...."I can't really give you a black and white answer on what that perceived quality is. It is in the eye of the customer." (Ex. 4, at 12-13.) This totally subjective standard, which would be

[52] MCI Am., § 4.1; CCG Am., § 3.7.1; AT&T Am., § 3.7.1. The CLECs propose the same, unacceptable requirement for conversions. MCI Am., § 5.2; AT&T Am., § 3.7.1; CCG Am., § 3.7.1.

applied at the discretion of the CLEC, will only lead to needless disputes.

Finally, Mr. Nurse also contends that Verizon was required to perform commingling immediately upon the *TRO*'s effective date, apparently without an amendment (even though he agrees that elimination of the commingling prohibition was a rule change). (Nurse DT, at 32-33, 39.) This approach would allow the CLECs to seek retroactive pricing for commingling back to October 2, 2003. The CLECs have withdrawn the retroactive pricing issue as to conversions (formerly Issue 21(b)(3), so Verizon assumes they will not urge retroactive pricing for commingling, either. If they do, the Commission should reject this unique carve-out to the otherwise effective date of the Amendment.

The FCC in the *TRO* declined to override existing contracts to order automatic implementation of its rules as of a date certain (as it did with the *TRRO* transition plan). Instead, it required carriers to use section 252 to amend their agreements, where necessary, to implement the *TRO* rulings. *TRO*, ¶ 701. The FCC, of course, expected any necessary amendments to be completed by no later than July of last year, nine months from the *TRO*'s effective date — and amendments *would* have been completed within that timetable but for CLECs' efforts to delay this arbitration proceeding. The CLECs' continuing refusal to amend their ICAs means that they were not able to proceed to arbitration of any amendment terms, including those that are favorable to them. The CLECs should not be rewarded for ignoring the FCC's directive to promptly amend their contracts by awarding them two years' worth (or more, by the time amendments are executed) of the difference between their existing contract rate and any lower rates for commingled arrangements. Such retroactive billing would impose a substantial,

unanticipated, and unjustified liability on Verizon. If the CLECs wish to have some items priced retroactively, then it is only fair for the Commission to permit Verizon to retroactively price all the elements that were de-listed in the *TRO* over 20 months ago.

Verizon addressed additional, substantive problems with the CLECs' commingling proposals in Issue 9, in conjunction with the commingling definition.

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?

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

AT&T and CCG contend that they should not be required to certify, on a circuit-by-circuit basis, that any combined facilities satisfy the eligibility criteria that the FCC established in the *TRO* and reaffirmed in the *TRRO*.[53] (Nurse DT, at 41, CCG DT, at 40.) This proposal is at odds with the certification requirements, which are circuit-specific: "We apply the service eligibility requirements *on a circuit-by-circuit basis*, so *each DS1 EEL* (or combination of DS1 loop with DS3 transport) *must satisfy the service eligibility criteria.*" *TRO*, ¶ 599 (emphasis added).

The TRO's enhanced extended link ("EEL") service eligibility criteria require information on a DS1 or DS1-equivalent basis. For example, each DS1 or DS1-equivalent circuit must have its own local number assignment. This obligation alone requires the CLEC to provide information that is specific to each DS1 circuit. The CLECs have not explained how a batch certification could accommodate providing specific local phone numbers for each circuit. (Ciamporcero RT, at 66-67.)

[53] *TRRO* ¶ 234 n.659 ("[W]e retain our existing certification and auditing rules governing access to EELs.").

Moreover, Mr. Nurse misleads the Commission by claiming that "AT&T's eligibility for these circuits has already been established," so Verizon should permit all CLECs to re-certify prior conversions in one batch. (Nurse DT, at 41.) Neither AT&T nor any other CLEC has certified to the *TRO* EEL service eligibility for its prior conversions. Rather, pre-*TRO* EELs were certified under very different criteria. For example, those earlier criteria, unlike the new criteria, did not require collocation or a relationship of the DS1 or DS1-equivalent EEL circuits to interconnection trunks. Therefore, eligibility under other EEL criteria does not prove an existing EEL qualifies under the *TRO* criteria (Ciamporcero RT, at 67), and there is no basis for accepting Mr. Nurse's suggestion that CLECs may submit batch re-certifications omitting circuit-specific information required for *all* certifications.

MCI recognizes that a CLEC must re-certify existing EELs under the same, circuit-specific criteria used for new EELs, but proposes to take up to 60 days to re-certify after the Amendment is executed.[54] This is an unreasonably long period, particularly given that the Amendment effective date will be about two years after the TRO took effect. There is no reason CLECs should not be prepared to certify their existing circuits as soon as the Amendment is executed. Verizon has proposed a 30-day certification period, which is very generous and will not unduly burden CLECs. A long period would harm Verizon, because it would deprive Verizon of access revenue for circuits that do not meet the new criteria. *See* Ex. 6, at 99.

[54] *See* MCI Am., § 4.2.1. AT&T and CCG do not address re-certification at all in their amendments. Unless a CLEC currently has no EELs, a statement regarding re-certification is necessary to ensure that the CLECs comply with the FCC's certification criteria for all circuits, including existing circuits. Otherwise, they might claim there is no requirement to re-certify existing circuits at all. *See* Ex. 6, at 100.

Verizon will discuss other conversion-related issues in its response to the related Issue 21.

Issue 14: Should the ICAs 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?

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

This proceeding is intended to address parties' disputes about how to implement the changes in unbundling obligations adopted in the *TRO* and the *TRRO*. Thus, Verizon's Amendment 2 incorporates language to address, for example, commingling and FTTP loops. But the Commission should not entertain CLEC proposals that relate to unbundling obligations that predate the *Triennial Review Order*, including line splitting, line conditioning, and NIDs (among other issues). This arbitration is not a free-for-all for parties to propose changes to terms in their underlying agreements that they may not like. CLEC proposals to litigate non-*TRO* items fail to acknowledge that existing agreements already address these issues. Their proposals likewise do not include standard

operational provisions, including recurring and non-recurring charges, which have already been negotiated or arbitrated under existing agreements. To the extent any CLECs have "holes" in their agreements, Verizon has offered to negotiate appropriate provisions with them. But the scope of this proceeding is limited to modification of the ICAs in order to effectuate the changes in unbundling obligations brought about by the *TRO* and the *TRRO*. This reasoning informs Verizon's discussion of the various sub-issues presented here.

a) Line splitting

As it had in earlier orders, in the *Triennial Review Order*, the FCC continued to find that ILECs must provide line splitting, which is defined as describing the "scenario where one competitive LEC provides narrowband voice service over the low frequency of a loop and a second competitive LEC provides xDSL service over the high frequency portion of that same loop." *TRO*, ¶ 251. This requirement merely reaffirmed the FCC's line splitting requirement adopted in 2001. *Id.* ("The Commission previously found that existing rules require incumbent LECs to permit competing carriers to engage in line splitting . . . . We reaffirm those requirements.")[55]

Because the requirement to provide line splitting is not a new obligation, there is no basis for addressing this issue in this arbitration. Although the *TRO* adopted line-splitting-specific rules for purposes of regulatory certainty, there is no need for the Amendment to address line splitting, because Verizon's underlying contracts typically do so already. (Ciamporcero RT, at 52.) To the extent any CLEC may lack line splitting

[55] *See also* Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 2101, 2109, ¶ 16 (2001) ("[W]e clarify that existing [FCC] rules support the availability of line splitting.").

provisions in its existing contract, Verizon's standard line splitting amendment is available, and has been available since 2001. (*See id.*) Numerous CLECs across Verizon's region have signed this amendment. No CLEC can complain (or has complained) that litigation of this issue here is necessary to implement their line-splitting rights.

b) Newly built FTTP loops

In the *Triennial Review Order*, the FCC found that CLECs are not impaired, on a national basis, without unbundled access to "loops consisting of fiber from the central office to the customer premises," known as fiber-to-the-premises or FTTP loops. *TRO*, ¶ 211. Thus, the FCC held that "[i]ncumbent LECs do not have to offer unbundled access to newly deployed or 'greenfield' fiber loops." *Id.*, ¶ 273. The FCC has clarified that this rule applies to multiple dwelling units ("MDUs") that are primarily residential. *See generally MDU Reconsideration Order*. And the FCC has also extended this relief to "fiber-to-the-curb" loops as well, defined as "local loop[s] consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE." *FTTC Order*, 19 FCC Rcd at 20311, App. B - Final Rules; 47 C.F.R. § 51.319(a)(3)(i)(B).

Verizon's Amendment 2 accordingly provides simply that "in no event shall [the CLEC] be entitled to obtain access to an FTTP Loop (or any segment or functionality thereof) on an unbundled basis" where the FTTP loop is newly built to serve a new

customer. (Verizon Am. 2, § 3.1.) This language is consistent with the FCC's rules, and no CLEC substantively disagrees.[56]

c) Overbuilt FTTP loops

Although the FCC eliminated unbundling obligations for new FTTP loops, it held that ILECs must offer unbundled access to FTTP loops "for narrowband services only," in so-called "fiber loop overbuild situations" — that is, where the ILEC builds a new FTTP loop to serve a customer currently served by a copper loop and then "elects to retire existing copper loop[]." *TRO*, ¶ 273. If the ILEC "keep[s] the existing copper loop connected to a particular customer," it does not have to unbundle the narrowband portion of the FTTP loop. *Id.*, ¶ 277.

Verizon's language accordingly provides that if Verizon deploys an FTTP loop to replace a copper loop used for a particular end-user customer, and if Verizon retires that copper loop such that there are no other copper loops available to serve that customer, then Verizon will provide "nondiscriminatory access on an unbundled basis to a transmission path capable of providing DS0 voice grade service to that end user's customer premises." (Verizon Am. 2, § 3.1.) Verizon's language is thus consistent with the FCC's determinations and should be adopted. In particular, Verizon's language correctly refers to section 251(c)(3) and the FCC's rules as the authority controlling Verizon's obligations, while AT&T's and CCG's proposals inaccurately paraphrase the FCC's requirements and (as explained in Issue XX) refer to "FTTH," instead of the more accurate "FTTP." (AT&T Amendment, § 3.2.2.2; CCG Am., § 3.3.4.2.).

---

[56] *See* AT&T Amendment § 3.2.2.1; CCG Am., § 3.3.4.1; MCI Am., § 7.1. As explained in response to Issue 9, however, Verizon disagrees with AT&T's and CCG's use of FTTH instead of FTTP, and their related efforts to expand Verizon's fiber unbundling obligations. *See also* Ciamporcero RT, at 53-54.

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

In constructing loops, carriers often install "feeder plant" made of fiber. This fiber feeder carries traffic from the carrier's central office to a centralized field location called a "remote terminal." From the remote terminal, traffic then travels over "distribution plant" (typically made of copper) to and from customers. *TRO*, ¶ 216. The result is a "hybrid loop," *i.e.*, those "local loops consisting of both copper and fiber optic cable (and associated electronics, such as DLC systems)." *Id.*, ¶ 288 n.832.

In the *Triennial Review Order*, the FCC "decline[d] to require incumbent LECs to unbundle the next-generation network, packetized capabilities of their hybrid loops to enable requesting carriers to provide broadband services to the mass market." *Id.* ¶ 288. Nor do ILECs have to provide "unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities to the mass market." *Id.* The FCC found that "incumbent LECs remain obligated, however, to provide unbundled access to the features, functions, and capabilities of hybrid loops that are not used to transmit packetized information," *i.e.*, a "complete transmission path over their TDM networks." *Id.*, ¶ 289. The FCC noted that certain DS1 and DS3 services "are non-packetized, high-capacity capabilities provided over the circuit switched networks of incumbent LECs," and that "[t]o provide these services, incumbent LECs typically use the features, functions, and capabilities of their networks as deployed to date – *i.e.*, a transmission path provided by means of the TDM form of multiplexing over their digital networks." *Id.*, ¶ 294.

Verizon's language accordingly provides that, if a CLEC requests a hybrid loop for broadband services, Verizon will provide "the existing time division multiplexing features, functions, and capabilities of that Hybrid Loop (but no features, functions or capabilities used to transmit packetized information) to establish a complete time division multiplexing transmission path between the main distribution frame (or equivalent) in a Verizon wire center service an end user to the demarcation point at the end user's customer premises." (Verizon Am. 2, § 3.2.2.)

No CLEC raised any specific disputes as to these issues in their testimony. Their counter-proposals reflected in their amendments are, however, not consistent with binding federal law. They omit the FCC's limitation that Verizon is only required to unbundle *existing* time division multiplexing features. *See FTTC Order*, 19 FCC Rcd at 20303-04, ¶ 20 ("we clarify that incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability") (*See* AT&T Am., § 3.2.3.1; CCG Am., § 3.3.5.1.). Furthermore, they fail to include important conditions governing the use of all UNEs, as set forth in Section 2 of Verizon's proposed Amendment.

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

As noted, the FCC limited ILECs' unbundling obligations to the "features, functions, and capabilities of hybrid loops that are *not* used to transmit packetized information." *TRO*, ¶ 289 (emphasis added). Under the new rules, if a CLEC requests a hybrid loop for the purpose of providing narrowband service, the FCC "require[s] incumbent LECs to provide an entire non-packetized transmission path capable of voice-grade service (*i.e.*, a circuit equivalent to a DS0 circuit) between the central office and

customer's premises." *Id.*, ¶ 296. The FCC "limit[ed] the unbundling obligations for narrowband services to the TDM-based features, functions, and capabilities of these hybrid loops." *Id.*, ¶ 296. Incumbent LECs, moreover, "may elect, instead, to provide a homerun copper loop rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC has not removed such loop facilities." *Id.*

Verizon's language accordingly provides that if a CLEC seeks to provide narrowband services via a hybrid loop, Verizon may either provide (a) a "spare home-run copper Loop serving that customer on an unbundled basis," or (b) a "DS0 voice-grade transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises, using time division multiplexing technology." (Verizon Am. 2, § 3.2.3.) By contrast, although the FCC says that "[i]ncumbent LECs may elect" to provide a copper rather than a TDM-based narrowband pathway over a hybrid loop, the CLECs' language would *require* Verizon to provide a copper loop at the CLECs' discretion. (AT&T Am., § 3.2.3.2; CCG Am., § 3.2.5.2.) The *Triennial Review Order*, however, plainly gave Verizon — not the CLECs — the choice whether to use a spare copper loop. In addition, AT&T's and CCG's reference to the "entire hybrid loop capable of voice-grade service" is misleading, because it is undisputed that a CLEC may not demand access to the "entire" loop, but only to a voice-grade transmission path.

f) Retirement of copper loops

In the *TRO*, the FCC stated that "when a copper loop is retired and replaced with a FTTH loop, we allow parties to file objections to the incumbent LEC's notice of such retirement." *TRO*, ¶ 282. Likewise, the FCC's rules provide that "Prior to retiring any

copper loop or copper subloop that has been replaced with a fiber-to-the-home loop, an incumbent LEC must comply with: (A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and (B) Any applicable state requirements." 47 C.F.R. § 51.319(a)(3)(iii).

Verizon will provide notice of its intention to retire copper facilities in a manner consistent with the FCC's rules and its existing ICAs, which already reflect the FCC's requirements. (Ex. 6, at 199-200, *quoting* § 28 of Verizon's standard ICA.) AT&T and the CCG, however, propose that Verizon be required to provide 180 days notice before retiring copper facilities (AT&T Am., § 3.2.2.7; CCG Am., § 3.3.4.6), which departs from the FCC's notice requirement (47 C.F.R. § 51.333(b)(ii) & (f)) establishing the applicable timetable and procedures. Under the FCC's rules, Verizon may provide notice to affected CLECs and then file a certification with the FCC; the FCC then issues a public notice. *See id.* In the absence of an objection filed within 10 days, the notice is deemed approved on the 90th day after the release of the FCC's public notice of filing. (Such objections are likewise deemed denied if they have not been ruled upon within the 90-day period.).

The CLEC proposals depart from the FCC's rules in other respects as well. The CCG would require CLEC approval for Verizon to before a copper loop is retired (CCC Am., § 3.3.4.5; *see also* Ex. 6, at 121-23), but the FCC regulation bars such a requirement. And both AT&T and CCG include "copper subloops" in their retirement provisions (CCG Am., § 3.3.4.6; AT&T Am, § 3.2.2.6), even though the FCC has specifically held that its regulations do not apply to "copper feeder plant." *TRO*, ¶ 283 n.829. AT&T's sections 3.2.2.7, 3.2.2.8, and 3.2.2.9 (and CCG's analogous sections

3.3.4.7, 3.3.4.8, and 3.3.4.9) contain additional onerous and unreasonable requirements that are not in the FCC's regulations or that would affirmatively violate the FCC's regulations, and that would prevent Verizon from managing its own network.

g) Line conditioning

In the *Triennial Review Order*, the FCC did not adopt any new rules related to line conditioning. Instead, it expressly stated that "we readopt the [FCC's] previous line and loop conditioning rules for the reasons set forth in the *UNE Remand Order*.[57]" *TRO*, ¶ 642 (citing *UNE Remand Order*, 15 FCC Rcd at 3775, ¶ 172). Because the requirement to provide line conditioning is not a new obligation, there is no need to address this issue in this generic proceeding to address changes of law. As in the case of line splitting, Verizon has offered line conditioning terms in its standard contract for years. To the extent particular CLECs' agreements (if any) omit such terms, Verizon has offered to negotiate with such CLECs outside of this arbitration to incorporate the terms into their agreements. (Ciamporcero RT, at 55.)

The CLECs do not identify any changes the *TRO* made in Verizon's line conditioning obligations, so they have no basis for proposing any line conditioning terms in the TRO Amendment.

Mr. Nurse disputes Verizon's rates for line conditioning (Nurse DT, at 48), but Verizon believes he may be confused. The charges for removal of load coils and bridged taps that Mr. Nurse calls unlawful were already approved by this Commission in its November 2002 UNE rate-setting Order, and Verizon is not asking the Commission to

---

[57] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3835, 3840, ¶¶ 306, 313 (1999) ("*UNE Remand Order*"), *petitions for review granted, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

change these currently effective rates. (Ciamporcero DT, at 55-56; Ex. 6, at 105-14) Verizon does not believe any other party intends for the Commission to change them, either. As Verizon has explained, it is not asking the Commission in this arbitration to set rates for any *new* activities the *TRO* requires Verizon to perform, but it will continue to apply existing rates (including the line conditioning rates), where they exist.

h) Packet Switching

With respect to packet switching, whether used in conjunction with hybrid loops or otherwise, the FCC found, "on a national basis, that competitors are not impaired without access to packet switching, including routers and DSLAMs," and accordingly "decline[d] to unbundle packet switching as a stand-alone network element." *TRO,* ¶ 537 (footnotes omitted). Accordingly, Verizon's proposed amendment simply clarifies that, in the case of hybrid loops, CLECs "shall not be entitled to obtain access to the Packet Switched features, functions, or capabilities of any Hybrid Loop on an unbundled basis." (Verizon Am. 2, § 3.2.1.) Verizon's language is consistent with the FCC's rules, and should be adopted.

AT&T concedes that Verizon has no obligation to unbundle packet switching (Nurse DT, at 49), but it, as well as the other CLECs, nevertheless proposes terms that would grant them access to packet switching that is allegedly used to provide circuit switched services. (*See, e.g.*, AT&T Am., § 2.26 (defining "Local Circuit Switching" to include packet switches) and §3.5.4 (claiming that "Local Circuit Switching, even if performed by a Packet Switch, is a network element that Verizon is obligated to provide on an Unbundled Network Element basis."); CCG Am. §2.25 and 2.28 (same); MCI Am.,

§ 12.7.14 ("Local Circuit Switching" includes "the circuit switching functionalities of any switching facility regardless of the technology used by that facility.").

AT&T also proposes that, where Verizon is replacing a circuit switch with a packet switch, Verizon should "continue to provide AT&T with circuit switching capability to serve its UNE-P customers during the 12-month transition [prescribed in the *TRRO*], until such time as Verizon is no longer required to provide UNE-P." (Nurse DT, at 49.)

All of these proposals are squarely precluded by federal law. The FCC has always held that packet switching need not be unbundled: in the *Local Competition Order*, the FCC expressly "decline[d] to find, as requested by AT&T and MCI, that incumbent LECs' packet switches should be identified as network elements" that must be unbundled.[58] In the *UNE Remand Order*, the FCC again determined that it would "not order unbundling of the packet switching functionality as a general matter," creating only "one limited exception" that is not relevant here.[59] For this reason, Verizon's current interconnection agreements, virtually all of which were approved before release of the *TRO*, do not obligate Verizon to unbundle packet switching. The *TRO* confirms that any such order would violate federal law. The FCC again "decline[d] to unbundle packet switching as a stand-alone network element," finding, "on a national basis, that competitors are not impaired without access to packet switching." *TRO*, ¶¶ 537, 539 ("there do not appear to be any barriers to deployment of packet switches that would cause us to conclude that requesting carriers are impaired with respect to packet

[58] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15713, ¶ 427 (1996) ("*Local Competition Order*") (subsequent history omitted).

[59] 15 FCC Rcd at 3835, 3840, ¶¶ 306, 313.

switching"). The FCC also found that its "limited exception to its packet-switching unbundling exemption is no longer necessary." *Id.*, ¶ 537. As this Commission has recognized, where the FCC has expressly found that competitors are not impaired without UNE access to a network element, state commissions have no authority to require unbundling of that element; any state law purporting to require unbundling would be preempted. *See id.*, ¶¶ 191-95; *Implementation of Requirements Arising from FCC's Triennial UNE Review*, Order, Docket Nos. 030851-TP & 0208520-TP, at 3 (Oct. 11, 2004); Ex. 6, at 96-97, 149-52.

Furthermore, the FCC has expressly rejected the argument made by the CLECs here, that packet switching should be unbundled if Verizon uses it to provide circuit switching functionality. After the FCC in the *UNE Remand Order* had said for a second time that packet switches were not subject to unbundling, MCI filed a petition for clarification of that Order in which it argued the following:

> Packet switched technology can be used to provide voice services as well as high-speed Internet access. . . . Given the [FCC]'s expressed policy of implementing the 1996 Act in a technology-neutral fashion, it cannot be the [FCC]'s position that voice traffic that is transmitted through a new type of switch is no longer subject to the 1996 Act's unbundling obligation. Indeed, no rational distinction between circuit-switched voice service and packet-switched voice service can be countenanced by the Act. The [FCC] should clarify that packet switching must be unbundled as a network element to the extent that it is used to provide narrowband or voice service.[60]

However, citing precisely to the page of MCI's petition for clarification that is quoted above, the FCC flatly rejected MCI's request to make packet switches subject to unbundling to the extent they are used to provide circuit switching: "Because we decline

---

[60] **Petition of MCI Worldcom, Inc. for Clarification, CC Dkt. No. 96-98, at 2-3 (filed Feb. 17, 2000)** (footnote omitted), at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6010955528.

to require unbundling of *packet-switching equipment*, we deny WorldCom's petition[ ] for . . . clarification requesting that we unbundle packet-switching equipment . . . ." *TRO* ¶ 288 n.833 (emphasis added) (citing MCI Petition for Clarification at 2).

As if that were not clear enough, the FCC went on to make this point even clearer by explicitly holding that the replacement of a circuit switch with a packet switch eliminates any unbundling requirement – even if the *sole purpose* of such deployment is to avoid having to continue to provide unbundled switching.

> [T]o the extent that there are significant disincentives caused by the unbundling of circuit switching, incumbents can avoid them by deploying more advanced packet switching. This would suggest that incumbents have every incentive to deploy these more advanced networks, which is precisely the kind of facilities deployment we wish to encourage.
>
> *Id.* ¶ 446 n.1365.

The Commission has no authority to contradict the FCC's binding judgment and policy in this regard; it cannot adopt any language that purports to require unbundling of packet switches in any circumstance.

Moreover, AT&T's proposal to keep customers on a packet switch until the end of the *TRRO* transition creates a purely hypothetical dispute. Verizon has not replaced or announced that it will replace any circuit switches with packet switches in Florida anytime soon, so there is no need for the Commission to consider AT&T's proposal to impose packet switching obligations on Verizon. In the event that Verizon replaces any circuit switches with packet switches in Florida in the next year, AT&T can bring any purported concerns about customer disruption to the Commission at that point—which AT&T will, no doubt, do even if the Commission were to approve its amendment language. (Ciamporcero RT, at 57-58; Ex. 6, at 26.) Finally, AT&T's proposal is moot,

because, by the time the arbitrated amendment is executed, there will likely be less than six months left of the transition period, so a year's notice would be impossible.

i) Network Interface Devices ("NIDs")

Network interface devices, or NIDs, were included in the initial set of UNEs in 1996. The FCC defined "NID" as "a cross-connect device used to connect loop facilities to inside wiring." *Local Competition Order*, 11 FCC Rcd at 15697, ¶ 392 n.852. The FCC later modified the definition of a NID "to include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism." *UNE Remand Order*, 15 FCC Rcd at 3801, ¶ 233. In the *Triennial Review Order*, the FCC did not change, but merely reaffirmed, its previous rules: "We conclude that the NID should remain available as an UNE as the means to enable a competitive LEC to connect its loop to customer premises inside wiring." *TRO*, ¶ 356. Because Verizon's contracts already address the current NID requirements, which did not change with the *TRO*, there is no reason to include any new language regarding Verizon's pre-existing obligation to provide access to NIDs as UNEs.

No CLEC except Mr. Nurse raised any NID issues, and even he did not identify any specific dispute. He suggests that the Amendment must address NIDs to "insure the avoidance of doubt" about Verizon's obligation to access the NID on a stand-alone basis as well as part of a full loop, but does not allege any problems with the existing ICA in this regard. (Nurse DT, at 51.) Mr. Nurse does not appear to know that Verizon's contracts, including the AT&T contract, already address the FCC's current NID requirements. (*See* Ciamporcero RT, at 58-59, citing AT&T/Verizon Interconnection

Agreement, Att. 2, at 1, § 2.1, stating, among other things, that "[the NID may be ordered as a Network Element independently from the Loop Distribution".) It would, in any event, be inappropriate to include a stand-alone NID obligation in an amendment that will not include related operational terms or the applicable rates. (Ex. 6, at 25.)

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

j) Line Sharing

In the *Triennial Review Order*, the FCC determined that CLECs are not impaired without unbundled access to the high-frequency portion of the loop and eliminated ILECs' obligation to provide access to line-sharing as a UNE. *See TRO*, ¶ 255. The FCC also established a transition plan to govern treatment of existing line-sharing arrangements and CLECs' right to establish new line-sharing arrangements. *See id.*, ¶¶ 264-265. Even as to those ongoing obligations, the FCC reaffirmed that CLECs may obtain unbundled access to the high frequency portion of the loop ("HFPL") only where "the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop." *Id.* at 17140, ¶ 269.

Verizon's Amendment 1 identifies line sharing as a "Discontinued Facility" in § 4.7.5. This suffices to bring the agreements into accord with federal unbundling rules.

To the extent that the FCC mandated a transition period or grandfathering for pre-existing line sharing arrangements, *TRO*, ¶¶ 264-265, Verizon must comply with this transition plan without an amendment, and regardless of any change-of-law provisions in its existing agreements. In addition, the FCC adopted the line sharing transition plan pursuant to 47 U.S.C. § 201 — not § 251 — so there are no grounds, in any event, to incorporate such requirements into the Vermont ICAs as certain CLECs propose. *See, e.g.*, AT&T Amendment, § 3.2.9; CCC Amendment, §§ 1.5.1.1, 1.5.1.2; CCG Amendment § 3.4.1. Because interconnection agreements are designed to implement the requirements of section 251 and the FCC's rules adopted thereunder – not other provisions of federal law – the agreements cannot address any transitional arrangements governing line sharing adopted under section 201. Verizon has and will continue to comply with the FCC's line sharing transition plan, and has reached a number of commercial line sharing agreements under which Verizon will provide the CLECs with line sharing in Florida outside of the 251/252 process.

None of the CLECs raise any disputes regarding line sharing in their testimony. But their line sharing provisions are intentionally ambiguous and misleading, if not directly contrary to federal law. For example, both AT&T and CCG would require Verizon to provide new line sharing arrangements "in accordance with 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law." (AT&T Am., § 3.2.9; CCG Am., 3.4.1 ("Pursuant to section 251(c)(3), Verizon shall also provision new Line Sharing arrangements under the Agreement.") MCI's amendment would allow it to gain access to "any portion of a copper Loop, including, without limitation, the high frequency portion of a copper Loop." (MCI Am., § 7.4.) Of course, Verizon has no legal obligation to

provision new line sharing arrangements under section 251, so the *TRO* amendment cannot suggest that it does (even to refer to the FCC's transitional rules, which were adopted under section 201, not section 251).

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

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

The effective date of Amendment 1 (and Amendment 2, if a CLEC wants the items covered in Amendment 2) should be the date of approval by the Commission, unless the parties agree to specify a different effective date. All of the parties seem to agree on this general principle. (*See* Darnell DT, at 15; CCG DT, at 35; Nurse DT, at 52), so Verizon is not sure why the CLECs raised this issue.

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?

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

Carriers use digital loop carrier ("DLC") systems to aggregate the many copper subloops that are connected to a remote terminal location. At the remote terminal, a carrier multiplexes (*i.e.*, aggregates) such signals onto a fiber or copper feeder loop facility and transports the multiplexed signal to its central office. These DLC systems may be integrated directly into the carrier's switch (*i.e.*, Integrated DLC systems or "IDLC") or not (*i.e.*, Universal DLC systems or "UDLC"). As the FCC has explained,

"Universal DLC systems consist of a 'central office terminal' and a 'remote terminal,' *i.e.*, a DLC system in the carrier's central office terminal mirrors the deployment at the remote terminal. . . . By contrast, an Integrated DLC system does not require the use of a central office terminal because the DLC system is integrated into the carrier's switch (thus, the naming convention)." *TRO*, ¶ 217 n.667 (citation omitted).

In those cases where the ILEC is required to unbundle a loop for an end-user customer who is currently served over IDLC architecture, the FCC recognized that, in most cases, the ILEC will be able to do this "through a spare copper facility or through the availability of Universal DLC systems," but that, "if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access." *Id.*, ¶ 297. The unbundling obligation is limited, however, to narrowband services: "we limit the unbundling obligations for narrowband services to the TDM-based features, functions, and capabilities of these hybrid loops." *Id.*, ¶ 296. In that situation, "we require incumbent LECs to provide an entire non-packetized transmission path capable of voice-grade service (*i.e.*, a circuit equivalent to a DS0 circuit) between the central office and customer's premises." *Id.*, ¶ 296.

Verizon recognizes this obligation, and its proposed language provides that if a CLEC seeks to provide narrowband services via a 2-wire or 4-wire loop that is currently provisioned via IDLC, Verizon will provide a "Loop capable of voice-grade service to the end user customer." *See* Verizon Panel RT, at 3; Verizon Am. 2, § 3.2.4. Verizon's language further states that Verizon will provide the CLEC with an existing copper loop or a UDLC loop, where available, at the standard recurring and non-recurring charges. *See* Verizon Am. 2, § 3.2.4.1. If, and only if, neither a copper loop nor a UDLC loop is

available, the CLEC has the option of requesting Verizon to construct the necessary copper loop or UDLC facilities. *See id.* § 3.2.4.2. In that case, the CLEC will be responsible for certain charges associated with the construction of that new loop facility, including an engineering query charge, an engineering work order nonrecurring charge, and construction charges. *See id.* Of course, the CLEC has options available to it other than requesting Verizon to construct the copper loop or UDLC facilities: it could build analogous facilities or lease them from another provider, or enter into alternative arrangements with Verizon such as utilizing resale or obtaining services through a commercially negotiated agreement. *See* Ex. 6, at 114.

Each of the CLECs' proposals attempts to expand Verizon's obligations with regard to IDLC loops beyond the requirements imposed by the FCC. For example, MCI's language is inconsistent with the FCC's determinations insofar as it requires Verizon to provide, at the *CLEC's* "option," a choice of an existing copper loop, a UDLC loop, or an "unbundled TDM channel on the Hybrid Loop." (MCI Am. § 7.2.42.1.) Nothing in the *Triennial Review Order* gives CLECs such a choice. To the contrary, the FCC only required that the ILEC provide access to "a transmission path" — not to the transmission path of the CLEC's choice. *TRO*, ¶ 297. MCI's language transforms the ILEC's choice into the CLEC's, and thus contradicts the *Triennial Review Order*.

AT&T's argument opposing Verizon's proposed language on new construction activities (and CLEC reimbursement of ILEC costs incurred in such new construction) fails for the same reason. AT&T would require that Verizon adopt new engineering and reconfiguration processes purportedly used by another ILEC rather than engage in new construction activities. *See* Nurse DT, at 56-57. Aside from being based on incorrect

costing principles and the false assumption that Verizon makes use of certain ordering, provisioning and maintenance systems (*see* Verizon Panel RT, at 6), AT&T's rationale would transform Verizon's choice on how to provide access to a transmission path into an AT&T fiat favoring reconfiguration over new construction.

Moreover, CLEC proposals that address new construction activities appear to imply incorrectly that Verizon could be forced to construct a new copper loop at the CLEC's request for free. *See* CCG Am., § 3.3.6; AT&T Am., § 3.2.4. Nothing in the *Triennial Review Order* (or anything else) requires incumbents to construct a brand new copper loop for a CLEC for free, and the Amendment should eliminate any basis for the CLECs to argue that they are entitled to free loop construction. Verizon is entitled to recover its costs of providing facilities and services to CLECs, at the CLECs' requests, so Verizon's proposal to charge for loop construction is appropriate.

AT&T's proposal on IDLC loops would even re-impose unbundling obligations eliminated by the FCC. AT&T would require Verizon to provide "UNE-P at TELRIC" if a spare copper facility or UDLC system is unavailable for an end user served by an IDLC loop. (AT&T Am., § 3.2.4.) Nothing in the FCC rules on providing a technically feasible method of access for customers served through IDLC loops can be construed to reinstate the previous unbundling requirement on mass market local circuit switching that was eliminated in the *Triennial Review Remand Order*. *TRRO*, ¶ 199.

The Commission should reject all CLEC proposals suggesting that they have a right to dictate how Verizon will provide the voice-grade transmission path the *TRO* requires.

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;

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

The CLECs' argument that the *TRO*-related items listed above should be subject to existing performance measures and intervals makes no sense, because these are new activities the *TRO* required Verizon to perform. There are no performance measures for these activities, nor would it be appropriate to try to apply any pre-*TRO* measures that were not developed with these new activities in mind. (Ciamporcero RT, at 61.)

For example, the CLECs would apparently apply loop provisioning metrics to unbundled loops to loops provided in response to requests for access to IDLC-served loops. As explained above in response to Issue 16, new loop construction may be necessary in instances where there are no spare copper loops or UDLC systems available. It is plainly unreasonable to expect Verizon to complete new construction in the same time it would take to furnish unbundled access to an already existing loop. (Ciamporcero RT, at 61.)

To take another example, Verizon did not have to perform commingling before the *TRO* removed commingling restrictions. Providing and managing a UNE service in conjunction a non-UNE wholesale service is necessarily more complex than providing and managing the standalone UNE. *Id.* at 61-62.

As Mr. Ciamporcero explained in his Direct (at 17) and Rebuttal Testimony (at 62-63), performance measurement proposals are governed by the *Stipulation on Verizon Florida Inc. Performance Measurement Plan* that the Commission adopted in Docket No. 000121C-TP. (Ciamporcero DT, at 17.) That stipulation sets forth a very specific process for raising and resolving performance issues, and it does not permit litigation of those issues in this arbitration.

Despite his testimony about application of performance metrics, remedies, and intervals to the new *TRO* items, Mr. Nurse nevertheless admits that it would be "an administrative nightmare" to apply different standards to different CLECs, and that "[a]ny modifications or exceptions to the Commission's metrics and remedies program should be addressed in the docket established for that purpose, after notice to all carriers." (Nurse DT, at 59 n. 84.) That is exactly Verizon's point. As Mr. Nurse recognizes, there is already a docket open to address performance measures, and the parties have agreed on specific procedures to consider new performance plan issues.

Issues of industry-wide interest—such as the application of performance standards to the new activities required in the *TRO*—belong in Verizon's generic performance measures docket, not in this arbitration with individual carriers. That is why the hot cuts issue was dropped from the case (*see* Order No. PSC-05-0221-PCO-TP ("Feb. 24 Order") (Feb. 24, 2005)), and the same rationale applies here. (Ciamporcero

RT, at 62-63.) Indeed, the Order advises "[a]ll parties...to make a concerted effort to negotiate in good faith regarding performance measures in the future, as specifically called for in the 'Continuing Best Efforts' section of the stipulation." (Feb. 24 Order, at 8.)

Finally, even aside from the existence of the stipulation, nothing in the *TRO* requires examination or implementation of performance plans, so consideration of performance plan issues is not appropriate here. (Ciamporcero DT, at 18.)

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

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

a) Sub-loop access

In the *Triennial Review Order*, the FCC generally required "incumbent LECs to provide unbundled access to their copper subloops, *i.e.*, the distribution plant consisting of the copper transmission facility between a remote terminal and the customer's premises." *TRO*, ¶ 253. The FCC "define[d] the copper subloop UNE as the distribution portion of the copper loop that is technically feasible to access at terminals in the incumbent LEC's outside plant (*i.e.*, outside its central offices)," and held further that "any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal." *Id.*, ¶ 254. Verizon accordingly provides that CLECs "may obtain access to the Distribution Sub-Loop Facility at a technically feasible access point located near a Verizon remote terminal equipment enclosure . . . . It is not

technically feasible to access the sub-loop distribution facility if a technician must access the facility by removing a splice case to reach the wiring within the cable." (Verizon Am. 2, § 3.3.2.)

Mr. Nurse complains that Verizon does not define subloops, but that is not true. Section 4.7.24 of Verizon's Amendment 2 includes a definition of "Sub-Loop Distribution Facility," which was the *TRO*'s focus. Verizon has also agreed in negotiations to add a definition for "Sub-Loop Distribution Facility" as follows: "The copper portion of a Loop in Verizon's network that is between the minimum point of entry ("MPOE") at an end user customer premises and Verizon's feeder/distribution interface." (Verizon Panel RT, at 8-9.) In addition, Mr. Nurse is ignoring that the underlying ICA, which also addresses subloops (*see* Network Elements Amendment, § 6). The ICA and the proposed Amendment define subloops consistently with the FCC's Orders.

Contrary to Mr. Nurse's testimony (DT, at 61), Verizon's proposal complies with the *TRO*'s requirement to provide access "at or near" the customer's premises. Verizon's Amendment 2 defines a sub-loop to include "[a]ny portion of a Loop, other than an FTTP, that is technically feasible to access at a terminal in Verizon's outside plant *at or near a multiunit premises*." (Verizon Am. 2, § 4.7.24 (emphasis added); Verizon Panel DT, at 9.)

In addition, it is reasonable for Verizon to specify that Verizon will not allow CLECs to attach to Verizon equipment or do their own installation work. In order to protect the security and reliability of its network, Verizon must be able to control access to that network. Given the number of consumers (both CLEC and ILEC) who depend on

Verizon's network, and the critical importance of securing the telecommunications infrastructure, Verizon cannot risk any harm to that network through either mistakes or deliberate sabotage. (Verizon Panel RT, at 11.).

The language Mr. Nurse proposes presents just such risks. It would allow AT&T personnel to work "without the presence of Verizon technicians" and fails to put any meaningful limits on the "connecting work" AT&T would be authorized to do without Verizon oversight. (Verizon Panel DT, at 11, citing Nurse DT, at 63.) Mr. Nurse appears to believe that "nondiscriminatory access" to Verizon's network means that Verizon must give any and all CLECs the free run of its network, just as Verizon has. That is a very dangerous standard that does not appear in any rule or law. On the contrary, this Commission has already ruled, in the subloop context, that "CLECs should not be allowed access to Verizon's network where there are network security and reliability concerns." *Verizon UNE Order*, *supra*, at 37. These concerns are not just theoretical, as there have been incidents of unauthorized, unpaid-for use of Verizon facilities by CLECs. (Verizon Panel DT, at 11-12.) Allowing only Verizon technicians to do the actual connections minimizes the chance of such incidents. The Commission should confirm, once again, that Verizon must have the ability to control access to its network.

Finally, Mr. Nurse criticizes Verizon for failing to offer specific prices for subloop-related activities. But, as the Commission has already ruled, it is not feasible to set prices for subloops on a blanket basis: "Due to the customer-specific nature of providing access to subloop elements, prices for access to subloops shall be set on an individual case basis." (*Verizon UNE Order*, at 37.) No CLEC has presented any reason for the Commission to reverse this decision in this arbitration. Because subloop access

situations are often unique, the associated costs may vary widely (Verizon Panel DT, at 10), and Verizon will continue to set prices on a case-by-case basis. If, over time, experience shows that subloop costs follow a pattern for which Verizon can set fixed prices, it will do so. (Verizon Panel DT, at 10.)

b) Feeder portion of the loop

In the *Triennial Review Order*, the FCC held that "[c]onsistent with our section 706 goal to spur deployment of advanced telecommunications capability, we do not require incumbent LECs to provide access to their fiber feeder loop plant on an unbundled basis as a subloop UNE." *TRO*, ¶ 254. As explained below, in light of our decision to refrain from unbundling the packetized capabilities of incumbent LECs, incumbent LECs will provide access to their fiber feeder plant only to the extent their fiber feeder plant is necessary to provide a complete transmission path between the central office and the customer premises when incumbent LECs provide unbundled access to the TDM-based capabilities of their hybrid loops." *Triennial Review Order*, 18 FCC Rcd at 17131, ¶ 253. Verizon accordingly classifies "feeder" as a "Discontinued Facility" in Amendment 2, § 4.7.5. **The CLECs substantially agree.** *See* AT&T Amendment, § 3.2.3.3; CCG Am., § 2.9; MCI Am., § 12.7.5.

c) Single Point of Interconnection

Verizon's language mirrors the FCC's determination that ILECs are not required to construct a single point of interconnection ("SPOI") at a multiunit premises unless: (1) it has distribution facilities to the premises and owns and controls (or leases and controls) the house and riser cable at the premises; and (2) the CLEC commits that it will place an order for access to the subloop element via the newly-provided SPOI. *See TRO*, ¶ 350

n.1058; Verizon Am. 2, §§ 3.3.1.2.1, 3.3.1.2.2. Where these conditions are satisfied, Verizon's Amendment provides that the parties shall negotiate in good faith an amendment memorializing the terms, conditions, and rates under which Verizon will provide a SPOI. *Id.* § 3.3.1.2.

The CLECs' proposals are inconsistent with federal law, because they omit these conditions and add other obligations that have no foundation in federal law (such as the requirement that Verizon has only "forty-five (45) days from receipt of a request by [CLEC] to construct a SPOI"). (AT&T Am., § 3.4.5; CCG Am., § 3.5.5.)

Verizon's proposal reflects the requirements of federal law more accurately than the CLECs' proposals, and should be adopted.

d) Inside Wire Subloop

In the *Triennial Review Order*, the FCC defined the subloop as a "smaller included segment of an incumbent LEC's local loop plant, *i.e.*, a portion of the loop from some technically accessible terminal beyond the incumbent LEC's central office and the network demarcation point, including that portion of the loop, if any, which the incumbent LEC owns and controls inside the customer premises." *TRO*, ¶ 343 (footnotes omitted). Its rules, in turn, define the "inside wire" subloop: "One category of this subloop is inside wire, which is defined for purposes of this section as all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in § 68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in § 68.3 of this chapter." 47 C.F.R. § 51.319(b)(2). "A competitor purchasing a subloop from an incumbent LEC to serve a particular customer location will access the incumbent LEC's loop along its

distribution path at a technically feasible accessible terminal," and the usual access points include "a feeder distribution interface (FDI); a pole or pedestal; the MPOE; or the NID." *TRO*, ¶ 343 (footnotes omitted). The FCC also clarified that "no collocation requirement exists with respect to subloops used to access the infrastructure in multiunit premises." *Id.*, ¶ 350.

Verizon's language accordingly provides that a CLEC "may access a House and Riser Cable only between the MPOE for such cable and the demarcation point at a technically feasible access point." (Verizon Am. 2, § 3.3.1.1; *cf.* 47 C.F.R. § 51.319(b)(2).) Verizon's language also provides that "[i]t is not technically feasible to access inside wire sub-loop if a technician must access the facility by removing a splice case to reach the wiring within the cable." (Verizon Am. 2, § 3.3.1.1; *cf. TRO*, ¶ 254 ("any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal"). The rest of Verizon's provisions relating to inside wire are geared towards the practical and logistical implementation of CLEC orders for inside wire, including the omission of any requirement for a CLEC to install a terminal block, in recognition of the FCC's ruling on this issue in the *TRO*. *See, e.g.*, Verizon Amendment 2, §§ 3.3.1.1.1.1-3.3.1.1.1.6, 3.3.1.1.2-3.3.1.1.4.

AT&T's and CCG's language, on the other hand, includes several specific requirements that are not present in the *Triennial Review Order*. (AT&T Am., § 3.4.2; CCG Am., § 3.5.2 (giving Verizon 30 days to provide a "written proposal" to AT&T regarding points of access, requiring negotiation over such points between 10 to 40 days after Verizon's written proposal, *etc.*).) These requirements are too specific, especially given the varying nature of subloop access arrangements that this Commission

recognized in Verizon's UNE rate-setting case, and might not apply to every given situation. The CLECs have not provided any testimony to justify these extra requirements, so the Commission should not adopt them.

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

**** Verizon does not collocate its switching equipment in any CLEC premises and does not plan to do so. Therefore, there is no reason for amendment language to address hypothetical disputes about reverse collocation. ****

In the *Triennial Review Order*, the FCC noted that if an ILEC "has local switching equipment . . . 'reverse collocated' in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport." *TRO*, ¶ 369 n.1126.

None of the CLECs has raised any specific dispute about "reverse collocation" requirements. (Ciamporcero RT, at 63.) Indeed, the situation described in this issue does not appear to exist anywhere in the real world, and in Florida, in particular. There is no instance where Verizon has installed "local switching equipment" at a CLEC "collocation hotel," which was the situation addressed by the FCC. *See TRRO*, ¶ 87 n. 251; *TRO*, ¶ 369 n. 1126; Ex. 6, at 117; Ex. 3, at 36. Nor does Verizon intend to establish any such arrangement in Florida.[61] If Verizon did so, it would comply with the FCC's

[61] Ciamporcero RT, at 63-64. In the CCG deposition, Mr. Falvey speculated that Verizon might one day pay a CLEC transport to carry Verizon's traffic to the CLEC's switch. (Ex. 3, at 38-39.) But this scenario, even if it did occur (and it should not, because Verizon has no obligation to carry its traffic to a point of interconnection on the CLEC's network), has nothing to do with the "reverse collocation" situation the FCC addressed, whereby the ILEC's *switching equipment* is placed in the CLEC facility.

requirement. But it is unnecessary for the Commission to consider amendment language addressing this purely hypothetical issue.

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?

**** Neither the *TRO* nor *TRRO* established any new interconnection requirements under §251(c)(2), so there is no need for any amendment language in this regard. Existing ICAs already contain complex, inter-related interconnection terms, and changing an isolated aspect of those terms would be inappropriate. The Commission should also reject CLEC arguments that they are entitled to exactly the same facilities under §251(c)(2) as they were under §251(c)(3). Accepting this argument would completely moot the FCC's de-listing of entrance facilities. ****

The *Triennial Review Order* did not purport to establish new rules regarding CLECs' rights to obtain interconnection facilities under section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Parties' existing interconnection agreements contain negotiated (or arbitrated) terms regarding such interconnection architecture issues, and there has been no change in law that would justify renegotiation (or arbitration) of such issues here. The network architecture attachments of interconnection agreements address not only the parties' financial responsibility for interconnection facilities under 251(c)(2), but also a host of related provisions that typically reflect the outcome of bargaining and mutual concessions on related issues such as the number and location of points of interconnection the CLEC must establish in a LATA, the types of interconnection trunks the parties will use, the extent to which either party is likely to originate a disproportionate amount of traffic, and the per-minute rate of compensation for the exchange of traffic. (Ciamporcero RT, at 65-66; Ex 6, at 118.)

Of the CLECs, only Mr. Nurse provided testimony on this issue. He recognizes that, when the FCC excluded entrance facilities from the definition of UNE dedicated transport in the TRO, it "did not alter" any obligations ILECs had to provide TELRIC-priced interconnection under section 251(c)(2). (Nurse DT, at 66-67.) So it is not clear why AT&T or any other CLEC would believe it is appropriate to address this pre-existing obligation in this arbitration involving *changes* in unbundling rules. It would be unreasonable to permit CLECs to seek new contract language on one aspect of interconnection—where *no* rules have changed—without regard to how their new (and unnecessary) language might affect the complex, inter-related network architecture provisions in their ICAs. (Ciamporcero RT, at 65-66.)

The Commission should, moreover, refuse any CLEC requests for a ruling that they are entitled to exactly the same facilities under §251(c)(2) ("Interconnection") as they used to get under §251(c)(3) ("Unbundled Access"). As the FCC discussed in its *Local Competition Order* and in the *TRO*, the obligation to provide cost-based access to section 251(c)(2) interconnection facilities is narrower than the section 251(c)(3) unbundling obligation: "Subsection (c)(3) . . . allows unbundled elements to be used for a broader range of services than subsection (c)(2) allows for interconnection." *Local Competition Order* ¶ 270; *see also TRO*, ¶ 365 n.1113. I n the *TRRO*, the FCC confirmed that CLECs may obtain access to §251(c)(2) interconnection facilities at "cost-based rates" only "to the extent that they require them to interconnect with the incumbent LEC's network." *TRRO*, ¶ 140.

Any CLEC proposal that fails to distinguish between the § 251(c)(2) and (c)(3) obligations thus overstates the scope of the Act's interconnection obligation. The CLECs' novel theory that Verizon's §251(c)(2) interconnection obligation is exactly the

same as the §251(c)(3) obligation it once had would render the FCC's de-listing of entrance facilities meaningless.

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

(a) What information should a CLEC be required to provide to Verizon as certification to satisfy the FCC's 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?

**** The CLEC should provide information sufficient to certify that new and existing EELs arrangements comply with all the FCC's certification criteria in the *TRO*. ****

Verizon's language states that a CLEC's certification required to convert existing services to EELs or to order new EELs:

> must contain the following information for each DS1 circuit or DS1 equivalent: (a) the local number assigned to each DS1 circuit or DS1 equivalent; (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was established in the 911/E911 database; (d) the collocation termination connecting facility assignment for each circuit, showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6), and not under a federal collocation tariff; (e) the interconnection trunk circuit identification number that serves each DS1 circuit. There must be one such identification number per every 24 DS1 circuits; and (f) the local switch that serves each DS1 circuit.

(Am. 2, § 3.4.2.3. This language precisely implements the criteria established in the *TRO*, where the FCC required the following: (a) the CLEC must certify the "local number assignment to a DS1 circuit" (*TRO*, ¶ 602), (b) "each DS3 must have at least 28 local voice numbers," *id.*, (c) the date of each circuit's establishment, which would enable the CLEC to certify "that it will not begin to provide service until a local number is assigned and 911 or E911 capability is provided," *id.*, (d) the collocation termination connecting facility assignment for each circuit, because "termination of a circuit into a

section 251(c)(6) collocation arrangement in an incumbent LEC central office is an effective tool to prevent arbitrage," *id.* at 17356, ¶ 604, and (e) the interconnection trunk information, which would enable the CLEC to certify that "each EEL circuit" was "served by an interconnection trunk in the same LATA as the customer premises served by the EEL," *id.* at 17358, ¶ 607. Finally, the FCC stated "that each EEL circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic." *Id.*, ¶ 610.

Some CLECs complain that it would be too onerous to provide the level of detail described above. *See* Nurse DT, at 71-74. But the FCC clearly did not suggest that a CLEC's self-certification could consist of a completely unsubstantiated single sentence (*e.g.*, "[The CLEC] hereby certifies that it meets the criteria."). The FCC, in fact, specified that it "expect[ed] that requesting carriers will maintain the appropriate documentation to support their certifications" and held that demonstrating compliance with each of the eligibility criteria would not "impos[e] undue burdens upon" CLECs. *TRO*, ¶¶ 622, 629. If a CLEC indeed has the "appropriate documentation," it should be no burden upon that CLEC simply to send a letter describing how it meets the EEL criteria.[62] Indeed, if CLECs were permitted to provide self-certifications without supporting information, resort to the more expensive and cumbersome audit procedure would be far more common. Providing the background information in the initial certification would minimize the need to resolve compliance issues through costly and inefficient audits and dispute resolution proceedings that may follow. (Ciamporcero RT, at 70-71.)

[62] Contrary to AT&T's assertion, Verizon's proposal is not tantamount to a "pre-audit," but merely an expectation that a certification letter should contain the information specified by the FCC.

(b) Conversion of existing circuits/services:

(1) Should Verizon be prohibited from physically disconnecting, separating, changing, 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?

**** Verizon has not proposed to disconnect, separate, change, or physically alter existing facilities when a CLEC requests conversion to an EEL, so there is no need to include amendment language addressing this hypothetical dispute. ****

Verizon's Amendment does not provide for separation or other physical alteration of existing facilities when a CLEC requests an EEL conversion. While Verizon would not expect a standard conversion to require any physical alteration of the facilities used for wholesale services that may be converted to UNEs, an inflexible, uniform prohibition on all alterations might preclude those that Verizon might find necessary to convert wholesale services to UNEs in particular instances. Removing the flexibility to address situations that depart from the norm would likely just delay requested conversions. Moreover, removing only Verizon's flexibility in this regard, while allowing the CLECs the ability to request a change to the facilities as part of an EEL conversion is simply one-sided and unfair. If a CLEC requires changes in its facilities to conform them to UNE requirements, it must make those changes first, before the facilities would qualify for EEL conversion. (See Ciamporcero DT, at 71-72.)

(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?

**** Verizon is entitled to assess charges sufficient to recover its costs of performing conversions. Although Verizon is not seeking any new rates in this case, the Amendment should not foreclose Verizon's ability to do so in the future. ****

Mr. Nurse disputes Verizon's right to charge a "retag fee" and/or other non-recurring charges to cover Verizon's costs related to conversions, as provided in Amendment 2, §§ 3.4.2.4, 3.4.2.5, claiming that the FCC found that any conversion-related charge is "discriminatory." **(Nurse DT, at 43, 75-76.)** Mr. Nurse has misinterpreted paragraph 587 of the *TRO*, which limits discriminatory charges for conversions.

The FCC's concern there was that ILECs might impose "wasteful and unnecessary charges," *Triennial Review Order*, 18 FCC Rcd at 17349, ¶ 587. It did not, however, hold that ILECs are barred from recovering legitimate expenses.

A "retag fee" is one such legitimate expense. That fee compensates Verizon for the cost of physically retagging a circuit that a CLEC requests to convert from special access to UNEs. The retagging work is necessary because the converted UNE circuit has a different circuit ID from the special access circuit. Tagging the circuit with the correct circuit ID facilitates future maintenance and ordering activities.

Verizon has also proposed a "nonrecurring charge . . . for each UNE circuit that is part of a commingled arrangement," and that this charge is "intended to offset Verizon's costs of implementing and managing commingled arrangements." (Verizon Am. 2, § 3.4.1.1.) These costs include the costs of system and process changes, added costs to perform billing investigations, and added costs for future access product changes or additions that will require changes to UNE products in order to allow commingling. For example, Verizon must receive and validate CLEC's self-certifications for every commingled circuit requested. This requires changes to ASR processing that will increase the amount of time customer service representatives must spend processing

orders manually. In addition, for each conversion order, Verizon must update its design and inventory records in its maintenance and engineering databases, and customer service representatives must set up part of a commingled arrangement to be billed as a UNE while the other part is billed as access, with a different billing rate structure, terms and conditions, and policies. *See* Ciamporcero RT, at 68-69.

None of these activities is associated with disconnecting or reconnecting a circuit, or establishing a circuit for the first time. They are strictly for processing conversions, so Verizon is entitled to recover these costs. (Ciamporcero RT, at 69; Verizon Am. 2, §3.4.2.4 & 3.4.2.5.) Mr. Nurse provided no factual support for his erroneous theory that Verizon incurs no costs to perform conversions. Although Verizon is no longer proposing new rates for conversions at this stage, it has reserved its right to do so later, and the Commission should make no ruling foreclosing Verizon from doing so.

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

This issue was withdrawn by agreement of the parties.

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

This issue was withdrawn by agreement of the parties.

(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 *TRO*, Verizon is entitled to an annual EEL eligibility audit. No showing of cause is required. Instead, the FCC specifically found that the potential for unjustified audits would be eliminated by the FCC's requirement for the ILEC to reimburse the CLEC for an audit that finds no violations. This Commission cannot override the FCC's judgment and add a cause requirement that would eliminate Verizon's audit rights granted by the FCC.** **

ILECs have the right to "obtain and pay for an independent auditor to audit, on an annual basis, compliance with the qualifying service eligibility criteria." *TRO*, ¶ 626. The auditor "must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants," and the audit may "include an examination of a sample selected in accordance with the independent auditor's judgment." *Id.* If the auditor "concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going- forward basis." *Id.*, ¶ 627. In addition, if the auditor "concludes that the competitive LEC failed to comply in all material respects with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor." *Id.* ¶ 628. Similarly, if the auditor "concludes that the requesting carrier complied in all material respects with the eligibility criteria, the incumbent LEC must reimburse the audited carrier for its costs associated with the audit." *Id.*

Verizon's language mirrors the FCC's requirements. Specifically, Verizon provides that it "may obtain and pay for an independent auditor to audit [the CLEC's] compliance in all material respects with the service eligibility criteria," and that the "audit shall be performed in accordance with the standards established by the American Institute for Certified Public Accountants, and may include, at Verizon's discretion, the examination of a sample selected in accordance with the independent auditor's judgment." (Verizon Am. 2, § 3.4.2.7.) If the "report concludes that [the CLEC] failed to comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, then

[the CLEC] must convert all noncompliant circuits to the appropriate service, true up any difference in payments, make the correct payments on a going-forward basis, reimburse Verizon for the entire cost of the audit within thirty (30) days after receiving a statement of such costs from Verizon." *Id.* On the other hand, if the auditor confirms the CLEC's "compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit, then [the CLEC] shall provide to the independent auditor for its verification a statement of [the CLEC's] out-of-pocket costs of complying with any requests of the independent auditor, and Verizon shall then reimburse [the CLEC] for its out-of-pocket costs within thirty (30) days of the auditor's verification of the same." *Id.* Verizon also provides that the CLEC "shall maintain records adequate to support its compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit for at least eighteen (18) months after the service arrangement in question is terminated." *Id.*

Mr. Nurse criticizes Verizon's proposal for the CLEC to reimburse Verizon for the entire cost of an audit where an auditor finds that the CLEC failed to comply with the service eligibility criteria for any DS1 circuit. (Nurse DT, at 43-44, 78; Verizon Am. 2 §3.4.2.7) But Verizon's proposal requires the CLEC to reimburse Verizon for the audit cost in the same manner as the TRO does. (*See TRO*, ¶ 627.) That is, the CLEC must reimburse Verizon "for the cost of the independent auditor," not just a portion of the costs, when the CLEC fails to comply with the service eligibility criteria—and, as noted, those service criteria are circuit-specific basis (for example, a local telephone number for each DS1 or DS1-equivalent circuit), so CLECs must meet the criteria for each circuit in order to be in material compliance. (Ciamporcero RT, at 67-68; Ex. 6, at 30.) Of

course, Verizon will also reimburse the CLEC for its audit-related costs if it passes the audit (as required by *TRO* ¶ 628).

In any event, it appears that Verizon and the CLECs agree that, under the *TRO*, the independent auditor determines materiality in accordance with the American Institute of Certified Public Accountants' Attestation Standards, although either party might raise disagreements with an auditor's report in a particular instance. (*See* Ex. 3, at 44-46, Mr. Falvey citing *TRO* n. 1906; Ex. 2, at 9; Ex. 6, at 140; Verizon Am. 2, § 3.4.2.7.) So the Commission should not (and Verizon's Amendment does not) establish any arbitrary, potentially conflicting standard of materiality in this arbitration.

Finally, the Commission should reject CCG's proposal to condition Verizon's annual audit right upon a showing of "an identified basis for suspecting noncompliance." (CCG Am., § 3.7.2.4.) Under this requirement, Verizon would have to provide the CLEC notice "which shall identify the circuits to be audited and shall identify the specific basis for Verizon's suspicion that each circuit is not in compliance," and include "all supporting documentation upon which Verizon establishes the cause that forms the basis of its allegation of noncompliance for each circuit." *Id.* **This proposal is unlawful.**

Verizon has a *right* to an EELs audit once per calendar year. That right is not conditioned upon any requirement for Verizon to show cause for the audit, let alone a specific, documented basis for "suspecting noncompliance" as to particular circuits. Under CCG's proposal, Verizon could be totally denied its right to an annual audit if its showing of cause for the audit did not satisfy the CLEC.

In his deposition, Mr. Falvey (who is not a lawyer) falsely stated that the "FCC was very clear that there has to be cause demonstrated before an audit can commence"

(Ex. 3, at 46) and that it "explicitly created" limits on audits in terms of "what needs to be established even to initiate one" (*id.* at 48.) Mr. Nurse, likewise, stated his recollection "that the TRO expressed that the audit would be for cause," but without citing any actual requirement (Ex. 2, at 14). When Mr. Falvey was asked where the FCC had imposed such a requirement, Mr. Falvey pointed to paragraph 621 of the *TRO*. This passage has nothing to do with the FCC's new unbundling rules. Rather, paragraph 621, in the "Background" section of the Certification and Auditing discussion in the *TRO*, reviewed the FCC's *old* audit requirements under the *superseded* EEL eligibility criteria in the FCC's *Supplemental Order Clarification*.[63]

The relevant discussion of the FCC's *new* auditing requirement under its revised service eligibility criteria appears at paragraphs 625-629 of the TRO. In paragraph 626, the FCC made the explicit finding that "an annual audit right strikes the appropriate balance between the incumbent LECs' need for usage information and risk of illegitimate audits that impose cost on qualifying carriers." In paragraph 628, it further found that the requirement for the ILEC to reimburse the CLEC when the audit proves compliance with the eligibility criteria, "will *eliminate the potential for abusive or unfounded audits*, so that incumbent LECs will only rely on the audit mechanism in appropriate circumstances." *TRO*, ¶ 628 (emphasis added).

So, although Mr. Falvey may believe that a requirement to show cause is necessary to avoid "fishing expeditions and really audits that can become completely disruptive to a CLEC's operation." (Ex 3, at 47), the FCC does not agree. Instead, it explicitly found that its reimbursement requirement would eliminate the potential for

---

[63] *TRO*, ¶ 621, *citing Supplemental Order Clarification*, 15 FCC Rcd. at 9603-04 n. 86.

unfounded audits, and that limiting audits to once per year appropriately protected the CLEC's interests in avoiding disruption. This Commission has no authority to conclude, contrary to the FCC's ruling, that the reimbursement requirement will *not* prevent illegitimate audits and instead impose a different or additional requirement to meet this objective, as CCG proposes. *See* Ex. 6, at 142.

Moreover, there is no legitimate reason for the circuit-specific documentation CCG would require, which would only allow CLECs to correct any non-compliance before any audit occurred and avoid paying Verizon retroactive access charges on any non-compliant circuits. Indeed, even Mr. Nurse agreed that any requirement for Verizon to identify a set of potentially non-compliant circuits would be inconsistent with the *TRO*'s sampling criteria. (Ex. 2, at 14-15, Nurse (explaining that "you can't do a spot audit" under the *TRO*), citing *TRO*, ¶ 626.)

The Commission has no authority to condition and potentially eliminate the annual audit right the FCC granted to Verizon, and it must reject any CLEC proposals to do so.

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?

**** The Amendment must accurately reflect the routine network modification obligation imposed in the *TRO*, including the ruling that this obligation does not require new construction. Although Verizon is not seeking any new rates in this arbitration, the Commission should not foreclose Verizon's right to do so later. The Commission cannot accept the CLECs' speculation that routine network modification costs are already included in Verizon's rates. ****

In the *Triennial Review Order*, the FCC required "incumbent LECs to make routine network modifications to unbundled transmission facilities used by requesting carriers *where the* requested transmission facility has already been constructed." *TRO*, ¶ 632 (emphasis added). It defined "routine network modifications" as "those activities that incumbent LECs regularly undertake for their own customers." *Id.* It clarified, however, that such modifications "do not include the construction of new wires (*i.e.*, installation of new aerial or buried cable) for a requesting carrier." *Id.* It noted that "[w]e do not find, however, that incumbent LECs are required to trench or place new cables for a requesting carrier," because such "[r]equests for altogether new transmission facilities" impose greater demands on the ILEC. *Id.*, ¶ 636. The FCC's rule on routine network modifications specifies several examples, including:

> 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.

47 C.F.R. § 51.319(a)(7)(ii).

Accordingly, Verizon's language provides that "Verizon shall make such routine network modifications, at the rates and charges set forth in the Pricing Attachment to this Amendment, as are necessary to permit access" by the CLEC to the UNE, "where the facility has already been constructed." (Verizon Am. 2, § 3.5.1.1.) Just as in the FCC's rule and the *Triennial Review Order*, Verizon's language specifies that:

> [r]outine network modifications applicable to Loops or Transport may include, but are not limited to: rearranging or splicing of in-place cable at existing splice points; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; deploying a new multiplexer or reconfiguring an existing multiplexer; accessing manholes; and deploying bucket trucks to reach aerial cable. Routine network modifications applicable to Dark Fiber Transport may include, but are not limited to, splicing of in-place dark fiber at existing splice points; accessing manholes; deploying bucket trucks to reach aerial cable; and routine activities, if any, needed to enable [the CLEC] to light a Dark Fiber Transport facility that it has obtained from Verizon under the Amended Agreement. Routine network modifications do not include the construction of a new Loop or new Transport facilities, trenching, the pulling of cable, the installation of new aerial, buried, or underground cable for a requesting telecommunications carrier, or the placement of new cable. Verizon shall not be required to perform any routine network modifications to any facility that is or becomes a Discontinued Facility.

(Verizon Am. 2, § 3.5.1.1.)

AT&T and CCG add this sentence: "Determination of whether a modification is 'routine' shall be based on the tasks associated with the modification, not on the end-user service that the modification is intended to enable." (AT&T Am., § 3.8.1; CCG Am., § 3.8.1.) This addition is unnecessary and confusing: Nothing in Verizon's language limits routine network modifications to any particular services at all, provided that the modifications meet the FCC's governing standard.

Mr. Nurse also criticizes Verizon's language limiting routine network modifications to "in-place cable at existing splice points." (Nurse DT, at 82; Verizon Am. 2, § 3.5.1.1.) This limitation is consistent with the FCC's Rules, because the FCC explicitly "[did] *not* find...that incumbent LECs are required to trench or place new cables for a requesting carrier," *TRO*, ¶ 635 (emphasis added), and it did *not* require creation of a new splice point. Indeed, because of insufficient slack in existing cables, in many cases Verizon would have to place new cable to create a new splice point, which the FCC said

ILECs need not do. Creating new splice points is, moreover, disruptive to the network and unnecessary. (Verizon Panel RT, at 13.)

The CLECs contend that the obligation to perform routine network modifications existed prior to the *TRO*, so the *TRO* did not impose any new requirements. *See, e.g,* Nurse DT, at 80. This is incorrect: The *Triennial Review* NPRM had specifically asked "about the extent to which incumbent LECs have an obligation to modify their existing networks in order to provide access to network elements" (*TRO*, ¶ 631), and the FCC then concluded that "[t]he routine modification requirement *that we adopt today* resolves a controversial competitive issue that has arisen repeatedly." *Id.*, ¶ 632 (emphasis added); *see also* Ex. 6, at 145-46. In short, the FCC made clear that it had first considered, and then adopted, a new requirement. In any event, the Commission need not resolve this legal dispute, because AT&T and CCG have proposed routine network modification language for the *TRO* amendment, as such language does not exist today in their contracts.

The parties' dispute is really about pricing, not whether or not Verizon must perform routine network modifications.[64] In this regard, Mr. Nurse contends that Verizon is already charging for routine network modifications. He merely assumes, without any support, that existing rates for the UNE at issue recover the cost of routine network modifications, and suggests that the *TRO* prohibits separate charges for these activities. (*See* Nurse DT, at 83.) On the contrary, the *TRO* explicitly states that "[t]he Commission's pricing rules provide incumbent LECs with the opportunity to recover the cost of the routine network modifications we require here" in the *TRO*. *TRO*, ¶ 640.

[64] Once the *TRO* Amendment is signed, Verizon will perform the routine network modifications Mr. Nurse references from the TRO, and will reflect that in the *TRO* Amendment. (Verizon Panel RT, at 12-13.)

Although the FCC stated that network modification costs are sometimes reflected in recurring loop rates, *id.*, this does not mean that they *are* recovered in *existing* loop rates in all cases. (Verizon Panel RT, at 13-14.) In any event, the Commission is not being asked to resolve the pricing issue in this arbitration (nor could it), because Verizon agreed that it will not, in this arbitration, ask the Commission to approve any new charges. (*See* Issue Stipulation.) Nevertheless, nothing in the Amendment should foreclose Verizon from seeking new rates later, or applying rates the Commission has already set.

Verizon discussed other problems with the CLECs' routine network modification provisions in Issue 9.

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

**** The Amendment should not affect Verizon's existing contract rights to disconnect particular de-listed UNEs without an amendment. The Amendment will necessarily affect any existing contract provisions that might be construed to require Verizon to continue providing de-listed UNEs. To the extent any CLEC's contract contains any such provisions, the very purpose of this proceeding is to alter them. ****

Verizon filed its arbitration petition to eliminate any doubt regarding its right to cease providing unbundled access to facilities as to which its unbundling obligation under Section 251 of the Act has been removed. Verizon cannot lawfully be required under any interconnection contract to continue providing unbundled access to facilities that are no longer UNEs under Section 251. Accordingly, Verizon's proposed amendment makes clear that the limitations on Verizon's unbundling obligations established in the core provisions of the Amendment are "[n]otwithstanding any other provision of this Agreement, this Amendment, or any Verizon tariff or SGAT." (Verizon Am. 1, §§ 2.1, 3.1.4; *see also* Verizon Amendment 2, §§ 2.4, 3.5.3.) Because the Amendment will be

binding as a matter of federal law, it supersedes any inconsistent obligation, wherever it may be found. In other words, to the extent any CLEC's contract purports to require Verizon to keep providing de-listed UNEs, the very purpose of this proceeding is to alter these contract provisions. Otherwise, this arbitration would be pointless.

At the same time, to the extent that the Amendment does not affect pre-existing terms of agreements or tariffs – including the independent rights to discontinue provision of particular network elements that exist in many contracts (see Ex. 6, at 7-10)--those terms retain their binding force, and Verizon's proposed language makes that clear, as well.

Some CLECs claim that Verizon's proposed language making clear that certain provisions of the Amendment apply "[n]otwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff" (Verizon Am. 1, § 2.1, 3.1), is vague and ambiguous and could cause confusion as to the parties' rights and obligations. On the contrary, Verizon's language removes any ambiguity that might arise in the absence of terms that make clear that federal law defines the parties' obligations with regard to provision of UNEs notwithstanding *any* other provisions in other regulatory instruments. There is no "applicable law" governing Verizon's unbundling obligations other than section 251 and the FCC's implementing regulations. To the extent that contract terms already permit discontinuation of UNEs without an amendment once the FCC eliminates an unbundling obligation, the Amendment will not affect those rights. But if terms in the existing agreements purport to require Verizon to continue providing de-listed UNEs until completion of an amendment, then the very purpose of this proceeding is to change the CLECs' purported rights under those provisions.

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

**** No. It would be unlawful to condition Verizon's right to discontinue de-listed UNEs upon any considerations of potential effects on CLECs' customers' services. These effects are within the CLECs' control; Verizon cannot be held liable for any CLEC's failure to protect their own customers' interests. The *TRRO* gave the CLECs plenty of time to work out the details of the transition of their embedded base of de-listed UNEs, so as to avoid service disruptions for their customers. ****

Verizon's Amendment 1 sets out a clear and fair process for transitioning away from UNE arrangements when Verizon is no longer required to provide such an arrangement under section 251(c)(3) (in the event the FCC does not prescribe a different transition process). Under § 3.1, Verizon will provide at least ninety days' notice that a given UNE has been discontinued, at which point Verizon will stop accepting new orders for the UNE in question. Section 3.2 then provides that, during the 90-day notice period, a CLEC that wishes to continue to obtain access to the facilities used to provide the discontinued UNE arrangement can make an alternative arrangement (whether through a separate, commercial agreement, an applicable Verizon special access tariff, or resale). Even after the 90-day period is over, Verizon will not disconnect the CLEC's service, unless the CLEC asks it to do so. Rather, Verizon will reprice the discontinued UNE at a rate equivalent to the special access, resale or other analogous rate. (Verizon Am. 1, § 3.2.)

In the case of mass-market switches and certain high-capacity loops and transport, the FCC has established a definite, 12-month period for transition of the embedded base to alternate arrangements (18 months for dark fiber facilities). This deadline cannot be modified or conditioned in any way. The Commission cannot, for example, adopt the CCG's proposal for the Commission "to ensure that loss of service to a CLEC's

customers does not result from Verizon's discontinuance of [a] particular UNE." (CCG DT, at 46.) Neither the *TRO* nor the *TRRO* conditions unbundling relief on assurances that no CLEC's customer will lose service. The impact of elimination of particular UNEs on a CLEC's customers depends entirely on the CLEC's own actions. CLECs have known for over two years now which UNEs were delisted in the *TRO*, so they have no excuse for failing to prepare for that transition. The CLECs, likewise, know that the transition of UNE-P and de-listed high-capacity facilities must be completed within the next year, because that is what the *TRRO* says. CLECs must work out the operational details of this transition with Verizon, so they will have every opportunity to prevent service disruptions for their customers.

If the Commission wishes to ensure that CLEC customers do not lose service because of discontinuation of the UNEs de-listed in the TRRO, the best way to do so is to order the CLECs to promptly produce their transition plans so that there is plenty of time to work out the operational details before the end of the transition period.[65] It would not be appropriate, in any event, to address a CLEC's obligations *to its customers* in the context of an interconnection agreement between the CLEC and Verizon. (Ciamporcero RT, at 75-76.)

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?

This Issue was addressed in the context of Issue 21, and Verizon refers the Commission to that discussion.

[65] Ciamporcero RT, at 75-76. Verizon asked the CLECs to provide their transitional procedures by May 15, *id.*, but most did not and still have not.

IV. CONCLUSION

The Commission should adopt Verizon's proposals relating to its *TRO* Amendments and direct the parties to submit amendments that conform to those proposals.

Respectfully submitted on June 13, 2005.

Leigh A. Hyer

Aaron M. Panner
Scott H. Angstreich
Stuart Buck
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(202) 326-7999 (fax)
apanner@khhte.com
sangstreich@khhte.com
sbuck@khhte.com

Leigh A. Hyer
Vice President - General Counsel
201 N. Franklin Street
Tampa, FL 33602
(813) 483-1256
(813) 204-8870 (fax)

Kimberly Caswell
Associate General Counsel
201 N. Franklin St.
Tampa, FL 33602
(727) 360-3241
(727) 367-0901 (fax)