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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. Bayó:

Enclosed for filing in the above referenced docket is AT&T Communications of the Southern States, LLC's and TCG South Florida's Posthearing Brief. If you have any questions, please do not hesitate to contact me at (850) 425-6360.

Thank you for your assistance with this filing.

Sincerely yours,

Tracy W. Hatch

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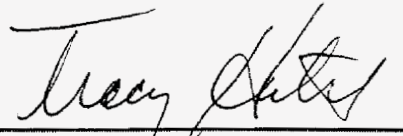
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

**BRIEF OF
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC.
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition for Arbitration of Amendment)
to Interconnection Agreements With Certain) Docket No. 040156-TP
Competitive Local Exchange Carriers and) Filed: May 13, 2005
Commercial Mobile Radio Service Providers)
in Florida by Verizon Florida Inc.)

**BRIEF OF
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC.**

AT&T Communications of The Southern States, LLC and TCG South Florida
(together, "AT&T") hereby submits their brief addressing the disputed issues between
AT&T and Verizon Florida, Inc. ("Verizon") in the above-captioned proceeding.

INTRODUCTION

AT&T Basic Position: *** The purpose of this proceeding is to arbitrate an amendment to the interconnection agreement between AT&T and Verizon to incorporate the changes of law stemming from the FCC's TRO and TRRO orders. The amendment ultimately adopted by the Commission should be limited to changes stemming from the TRO and TRRO but should be comprehensive in including all the changes made in those decisions. ***

Verizon's approach to amending the parties' interconnection agreements ("ICAs") to incorporate the results of the Federal Communications Commission's ("FCC's") recent orders and rules is fundamentally and fatally flawed both as a matter of process and substance. Rather than dealing with all of the issues raised by the *Triennial Review Order*,¹ the *USTA II* decision,² the *Triennial Review Remand Order*³ and other applicable

¹ In the Matter of 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, CC Docket Nos. 01-338, 96098, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*")

FCC rulings⁴ in a unified, comprehensive manner, Verizon has advocated a scattershot approach in which Verizon would have the Commission consider and adopt issues through two distinct amendments that share their author's disdain for the requirements set down by the FCC.

The first, the so-called "Amendment 1," sets forth Verizon's proposed language for implementing its favorite provisions of the *TRO* – that is, those provisions Verizon believes entitle it to unilaterally discontinue the provision of certain unbundled network elements to AT&T. In contrast, Verizon's second proposal, the so-called "Amendment 2," is Verizon's begrudging and defective application of those provisions of the *TRO* that imposed affirmative obligations on it -- or, in the case of routine network modifications, confirmed Verizon's preexisting obligation to perform those functions. Thus, Amendment 2 purports to implement such obligations as the requirement to eliminate the commingling restrictions on Enhanced Electronic Links ("EELs"), to permit the conversion of wholesale facilities, such as special access circuits, to unbundled elements, to perform routine network modifications, and to permit competitors to self-certify their eligibility for EELs.

Neither Verizon Amendment, however, faithfully implements the directives of the *TRO* – and neither essentially reflects the detailed requirements of the *TRRO* at all. For example, Verizon's Amendment 1 would vest in Verizon the right to unilaterally

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

³ In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290 (Rel. Feb. 4, 2005) ("*Triennial Review Remand Order*" or "*TRRO*");

⁴ MDU Reconsideration Order, 19 FCC Rcd 15856 (2004); FTTC Reconsideration Order, FCC 04-248, issued October 18, 2004.

discontinue provisioning unbundled network elements and other facilities without prior negotiation with AT&T or consideration by the Commission. Verizon's Amendment 2, in turn, attempts to saddle AT&T with obligations not grounded in the *TRO* and ignores or subverts obligations placed on Verizon and other ILECs by that order. And both Amendments utterly fail to address critical requirements established in the *TRRO*, such as the provisions for transitioning arrangements that were discontinued as UNEs under that order.

Given their myriad and pervasive defects, the Commission should reject Verizon's proposed amendments. In contrast to Verizon's proposals, and as explained further below, AT&T's proposed Amendment fully and faithfully reflects all of the provisions of the *TRO*, *USTA II* and the *TRRO* that should be incorporated into AT&T's interconnection agreement with Verizon. Indeed, unlike Verizon's proposals, AT&T's Amendment was specifically updated to include the unbundling rules and transitional requirements established by the FCC in the *TRRO*.⁵ Of course, a single Amendment, by definition, would implement all the issues simultaneously, without gaming the implementation to wrangle an improper advantage. AT&T's proposal meets this need. Accordingly, AT&T respectfully requests that the Commission adopt AT&T's comprehensive amendment, which has been updated to reflect the *TRRO* as discussed below.

DISCUSSION OF DISPUTED ISSUES

ISSUE 1: Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C.

⁵ AT&T's Amendment was filed with the Commission on March 25, 2005. (See Exh. 13; ECN-R1) As was noted in that filing, AT&T's amendment originally was submitted to Verizon on September 15, 2004, and an updated amendment to reflect the *Triennial Review Remand Order* was submitted to Verizon on March 10, 2005.

sections 251 and 252, including issues asserted to arise under state law or the Bell Atlantic/GTE Merger Conditions?

As a result of a stipulation between the parties filed with the Commission, the parties have agreed to delete this issue from this arbitration.

ISSUE 2: What rates, 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?

AT&T Position: *** Existing interconnection agreements should be amended to reflect the actual changes in unbundling obligations that the FCC has directed. The FCC did not order any change to the change-of-law provisions in existing ICAs. Therefore, Verizon's attempt to insinuate changes to ICA's existing change of law provisions should be rejected. ***

The simple response to this issue is that the interconnection agreements should be amended to reflect the actual changes in unbundling obligations that the FCC has directed. The FCC did not, however, order any change to the change-of-law provisions in the parties' existing ICAs, and thus Verizon's effort to use this arbitration as a vehicle for subverting existing change of law provisions should be squarely rejected. (TR 63)

In this Arbitration, the CLECs seek to incorporate the terms of the FCC's most recent orders into their existing ICAs. Verizon, however, is attempting to expand the process by proposing a fundamental change to the parties' existing change of law provisions. Although the task of incorporating actual changes in law should be relatively straightforward, Verizon's proposal revises the change-of-law *process* that the parties have already agreed to – and that the Commission has already approved.⁶ In short, rather than implementing the changes that the law has wrought, Verizon wants to change the procedure for reflecting these and other changes in the law.

⁶ Verizon Proposed Amendment 1, Section 3.1.

Verizon's intent in seeking these changes should be clear. What Verizon attempts to do through its Amendment 1 is effectively eliminate the negotiation and arbitration process for implementing changes in its unbundling and other obligations, not only now but in the future as well. Under this new scheme, it would be Verizon that would in the first instance interpret the FCC's decisions (both those that already have been issued and those that may be issued at some unknown point in the future), and then – without consultation with the other party to its interconnection agreement, much less approval by the Commission – implement that interpretation. In essence, Verizon would displace the Commission as regulator, and set itself up as the judge of its own unbundling obligations. (TR 64)

By expressly reaffirming the use of the Section 252 process,⁷ the FCC has eliminated any doubt that Verizon's proposal to revise the change-of-law provisions is inappropriate. This proposal is patently inappropriate and lacks any basis in the *TRO* or *TRRO*. Accordingly, it should not be adopted by this Commission.⁸ The Commission should adopt AT&T's comprehensive amendment that reflects the *TRO*, *USTA II* and the *TRRO* decisions as shown in Exhibit 13, ECN-R1.

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?

AT&T Position: *** The amendment should contain provisions for the 12-month transition period established applicable to all UNE-P arrangements. The four-line carve-

⁷ *TRO* at ¶ 701; *TRRO* at ¶¶ 143, 196 & 227.

⁸ Issue 2 is stated so broadly that it necessarily encompasses, and is duplicative of, several others Issues dealing with specific unbundled elements. Accordingly, AT&T has limited discussion on this issue to the question of what general changes are necessary to reflect the changes in law that have occurred since the execution of the ICA. Issues regarding unbundling requirements for specific UNE are addressed in subsequent sections.

out is superseded by the *TRRO*. During the transition period, CLECs are to be allowed to continue to serve the existing customer base including the use of signaling, call related databases and shared transport for existing UNE-P arrangements. The Amendment should address that Verizon is no longer obligated to provide Enterprise switching and how this change should be implemented. ***

Clearly the most significant change that the FCC ordered in the *TRRO* was the nationwide elimination of unbundled switching and UNE-P. Specifically, the FCC found that incumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching. In reaching this determination, the FCC recognized that eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass-market customers. Consequently, the FCC adopted a twelve-month plan for competing carriers to transition away from the use of unbundled mass-market local circuit switching. (TR 65)

As a result, AT&T updated its previous contract language to propose terms at section 3.5 that reflect the FCC's determinations in the *TRRO*. (See Exh. 13; ECN-R1) Verizon's amendment, on the other hand, has not been updated to explicitly reflect the *TRRO*. Accordingly, Verizon's proposed amendments do not address any of the currently effective FCC requirements related to switching. The next several paragraphs discuss these current requirements, which AT&T's Amendment has been conformed to address.

The FCC's switching transition plan requires CLECs to submit the necessary orders to convert mass market customers to an alternative service arrangement within twelve months of the March 11, 2005, effective date of the *TRRO*.⁹ The transition plan allows CLECs to continue to serve their embedded customer base, including the use of

⁹ *TRRO* at ¶ 227.

signaling, call related databases and shared transport for grandfathered UNE-P arrangements prior to conversion to an alternative arrangement,¹⁰ but it prohibits CLECs from adding UNE-P arrangements for new customers.¹¹ Therefore, carriers have twelve months from the effective date of the Order to modify their interconnection agreements and transition UNE-P customers to an alternate service arrangement.¹² (TR 66)

The FCC also set forth the appropriate pricing for UNE-P during the transition period. Under the terms of the *TRRO*, the transition price for embedded customers is the higher of: the UNE-P rate as of June 16, 2004 (the effective date of the *TRO*) plus one dollar, or a rate set by the Commission between that date and March 11, 2005 (if higher) plus one dollar.¹³ Additionally, the FCC found that a true-up would apply to the rates for

¹⁰ *TRRO* at n. 627.

¹¹ *TRRO* at ¶226.

¹² The *TRRO* also eliminated the need to deal with the “four line carve out.” This “carve out” was a policy announced by the FCC in its 1999 *UNE Remand Order*. In its *UNE Remand Order*, the FCC concluded that incumbent LECs like Verizon that make Enhanced Extended Links combinations (EELs) available were not required to provide unbundled local circuit switching to CLECs serving customers with four or more DS0 loops in Density Zone one of the top fifty MSAs. This limitation was rarely applied, as few state commissions found that EELs were available to CLECs.

Having determined that unbundled switching would no longer be available even to mass-market customers after the twelve-month transition period, the FCC did not establish a cut-off between mass market and enterprise customers. Instead, the FCC applied the transition to all UNE-P arrangements used to serve customers at a single location, as long as they do not exceed 24 lines (a DS1 equivalent)*TRRO* at n. 625 “The transition period we adopt here thus applies to all unbundled local circuit switching arrangements used to serve customers at less than the DS1 capacity level as of the effective date of this Order [March 11, 20-05]. The transition for local circuit switching for the DS1 enterprise market was established in the *Triennial Review Order*, 18 FCC Rcd at 17318 at ¶ 532.” Given this new regulatory framework, Verizon’s definition of declassified network elements, which continues to reference the four line carve out, is obsolete.

¹³ *TRRO* at ¶ 228. Additionally, the FCC provided “[t]o the extent that a state public utility commission order raises some rates and lowers others for the aggregate combination of loops, shared transport, and switching (i.e., UNE-P), the incumbent LEC may adopt either all or none of these UNE platform rate changes.” *Id.* at n. 630.

UNE-P arrangements no longer subject to unbundling upon the completion of relevant interconnection agreement amendments.¹⁴ (TR 66-67)

Verizon has insisted that its multifarious amendments do not require revision to explicitly address the TRRO's requirements regarding mass market switching (or for that matter, for high capacity loops or dedicated interoffice transport) because Verizon asserts that it will comply with the applicable rules. However, it already has become apparent that Verizon's idea of "compliance" demonstrates both the necessity for an ICA Amendment that expressly incorporates the requirements set forth in the *TRRO* and the perils posed by leaving the interpretation and implementation of those rules solely to Verizon.

This is best exemplified by Verizon's approach to the *TRRO*'s provisions, discussed above, that establish transitional periods and pricing for mass market local switching (as well as those provisions, discussed in connection with Issues 4 and 5 below, that prescribe the transition for dedicated interoffice transport and high capacity loops in those wire centers in which Verizon's obligation to provide those facilities as UNEs was eliminated). In order to implement these provisions – and to secure an orderly transition for its customers – AT&T's proposed Amendment includes provisions (at §3.10.1) that will permit AT&T to submit orders to convert UNEs to alternative facilities or arrangements at any time before the end of the respective transitional period. However, under AT&T's proposed Amendment those orders will not take effect until the date marking the end of those transitional periods – March 11, 2006 for mass market local switching, dedicated interoffice transport and high capacity loops, and September 11,

¹⁴ *Id.*

2006 for dark fiber loops and transport. Moreover, the transitional rates adopted by the FCC will apply to these elements for the entire length of these transitional periods.

These proposals are fully grounded in the language and spirit of the *TRRO*, and are specifically designed to provide for the orderly and non-disruptive transition that the FCC envisioned. And, not surprisingly, Verizon opposes them. Verizon of course has not included any language concerning these issues in the Amendments it now has before the Commission. Nevertheless Verizon has made it clear that AT&T's proposal should be rejected in favor of a scheme that would permit Verizon to improperly shorten the *TRRO*'s transitional periods. Specifically, Verizon appears to be arguing that a CLEC's orders for converting UNEs to alternative facilities should take effect before the end of the transitional period, at which point those arrangements would no longer be subject to transitional rates.

Verizon's approach to implementing the *TRRO* would undermine the FCC's purpose in establishing those transitional periods for discontinued UNEs. As the *TRRO* makes clear, the transitional rates were set for specifically defined periods "to prevent potential disruption of a 'flash cut' to commercial pricing."¹⁵ Verizon's scheme, however, would create the potential for such disruption by discouraging CLECs from submitting conversion orders in a timely and efficient manner. Indeed, if Verizon were permitted to automatically convert UNEs and impose higher rates than those provided for in the *TRRO* before the end of the transitional period, CLECs would be incented to refrain from submitting such orders until a time at or near the end of the respective transition periods, only to unload them on Verizon at that time in one fell swoop.

¹⁵ See *TRRO* at ¶¶ 145, 198 and 228.

This makes no sense, and is plainly not what the *TRRO* contemplates. The Order in fact expressly provides that it is the CLEC that will initiate the orders for converting their UNE customers to alternative arrangements – and gives them the full transitional period to accomplish that task.¹⁶ CLECs and their customers are also entitled to the benefit of the transitional rates specified in the *TRRO* during that entire period.¹⁷ There is thus no basis in the Order for Verizon’s effort to improperly short-circuit those important transitional provisions. Accordingly, AT&T’s proposed language for implementing those requirements should be adopted.¹⁸

Further, while the ability to place orders to migrate a customer to another arrangement such as Resale or UNE-P-like service should be available immediately, it is essential that Verizon not be allowed to unilaterally change any UNE-P arrangement and particularly prior to the end of the transition period. Allowing Verizon to act unilaterally in this manner would clearly be inconsistent with FCC rules and the *TRRO*, which *expressly* identifies that the CLEC will initiate the conversion orders.¹⁹ In addition, it is important to adopt procedures that make the transition to alternative service arrangements both efficient—that is mechanized—and as transparent as possible for our customers. As

¹⁶ See *TRRO* ¶227.

¹⁷ *TRRO* ¶¶145, 198 and 228.

¹⁸ In addition, AT&T, as well as other CLECs, must continue to use existing systems for submission of maintenance and repair orders for these customers. Similarly, Verizon must allow CLECs to continue to request feature changes for existing arrangements. AT&T’s revised Amendment includes language that addresses these concerns. See, AT&T Proposed Amendment, Sections 3.5.1.1 and 3.5.1.2.

¹⁹ *TRRO* ¶227.

noted above, AT&T's revised Amendment includes language that addresses this concern.²⁰ (TR 69)

In conclusion, it is important that the ICA include specific detail regarding the parties' rights and obligations during this transition period. AT&T's proposed Amendment meets this need, while Verizon's – especially in view of its failure to explicitly include any of the *TRRO*'s requirements – plainly does not. While some of the issues can be addressed through business-to-business negotiations, it is essential that the ICA is sufficiently detailed to remove the possibility of misunderstandings and avoidable disputes. Given the relatively short time frame for the transition, there is simply no room for delays caused by competing interpretations and lengthy dispute resolution processes.

ISSUE 4: What obligations under federal law, 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?

AT&T Position: *** The amendment should include provisions for all loop types except:

- “Greenfield” fiber to the home (“FTTH”) loops
- “Brownfield” “FTTH” loops except where copper is not available
- Loops to Multiple Dwelling Units (MDUs) pursuant to FCC's MDU Reconsideration Order
- DS1 loops in wire centers containing both 60,000 or more business lines and 4 or more fiber based collocators
- DS3 loops in wire centers containing both 38,000 business lines and 4 or more fiber based collocators
- Dark fiber loops (but 18-month transition for the embedded base)
- OC-n loops ***

²⁰ This concern also applies to the transition periods for high-capacity loops and transport (Issues 4 and 5).

The FCC recognized the importance of unbundled high-capacity loops in the *TRO*, finding that the “cost to self-deploy local loops at any capacity is great,” and that “the cost to deploy fiber does not vary based on capacity.”²¹ Indeed, the FCC noted the record evidence showing the significant time required to construct local loops, including a process fraught with delays attributable to such issues as securing rights of way from local authorities, permitting processes, and even construction moratoria.²² The FCC also cited the additional barriers to entry associated with serving multi-unit premises, particularly in those cases where the entity controlling access to the premises does not permit a competitor to reach customers there.²³ (TR 70)

Given the costs and associated obstacles, the FCC found a competitor planning to deploy its own high capacity facilities would target those locations where there was sufficient demand to generate a revenue stream that could recover the sunk costs of construction, including laying the fiber and attaching the necessary optronics for lighting it.²⁴ Even then, the CLEC would have to convince the prospective customer to accept the delays and uncertainty associated with this self-deployment – and the enterprise business customers usually involved in these situations are not characterized by their patience with delay and uncertainty in the provision of their telecommunications services. Thus, the ability of CLECs to obtain unbundled access to the incumbent’s high capacity loops is still necessary in many – if not most – locations to facilitate competitive choice for these customers. (TR 70-71)

²¹ *TRO* at ¶ 303.

²² *TRO* at ¶ 304.

²³ *TRO* at ¶ 305.

²⁴ *TRO* at ¶303.

Ultimately the FCC determined in the *TRRO* that, while it is appropriate to limit access to high-capacity loops when certain conditions exist, Verizon remains obligated to provide high-capacity loops under most circumstances. As a result, AT&T has updated its contract language at section 3.2.1 to reflect the FCC's determinations in the *TRRO* concerning high capacity loops. (See Exh. 13; ECN-R1) Because Verizon chose not to explicitly incorporate the *TRRO*'s findings into its proposed amendments, Verizon's amendments do not contain any language describing the *TRRO* requirements for access to unbundled DS1, DS3 and Dark Fiber Loops.

The FCC's new rules impose four new types of limitations on the use of unbundled high capacity loops: these involve exclusive use, geographic market, quantity and type. First, the FCC revised its rules to specifically prohibit the use of all UNEs for the *exclusive* provision of mobile wireless services or interexchange services.²⁵ In applying this prohibition, the FCC found that competition evolved in both of these markets without access to UNEs and, relying on its "at a minimum" authority, determined that "whatever incremental benefits could be achieved . . . by requiring unbundling in these service markets would be outweighed by the costs of such unbundling."²⁶ (TR 73)

Second, after evaluating a requesting carrier's ability to use alternatives to the unbundled high-capacity loops and the best method for determining the appropriate geographic market for determining impairment, the FCC adopted a wire center-based analysis. Specifically, the FCC determined that the combination of two criteria – the

²⁵ See 47 C.F.R. § 51.309(b).

²⁶ *TRRO* at ¶36. In adopting this standard, the FCC discarded the "qualifying service" requirement established in the *TRO*.

number of fiber-based collocators located at the wire center *and* the number of business lines within the wire center's service area – provided the best evidence of impairment. Significantly, the FCC found in the *TRRO* that in the vast majority of wire centers, CLECs are impaired without access to unbundled DS-1 and DS-3 loops.²⁷ For those wire centers where there is no impairment, the FCC provided a twelve-month transition period for the embedded base of customers served with DS-1 and DS-3 loops. (TR 73-74)

Third, relying on economic criteria, the FCC determined that requesting carriers are not impaired without access to new unbundled dark fiber loops, but it provided an eighteen-month transition period for the embedded base.²⁸ (TR74)

Finally, the new rules impose a cap on the number of high-capacity loops an individual CLEC may obtain to any single building. These caps are capacity specific. For DS-1 loops, each requesting carrier is limited to ten (10) DS-1s to any single building.²⁹ For DS-3 loops, each requesting carrier is limited to one (1) DS-3 to any single building.³⁰ (TR 74-75)

Therefore, under the *TRRO* Verizon is required to provide unbundled access to all DS-1 loops except those that terminate in wire centers with at least 60,000 business lines and at least 4 fiber-based collocators.³¹ As noted above, each requesting carrier will be limited to 10 DS-1s to any single building. Verizon is also required to provide unbundled access to all DS-3 loops except to those that terminate in wire centers with at

²⁷ The FCC estimated in the *TRRO* that its new criteria will only limit UNE availability of high-capacity DS3 loops in wire centers accounting for about 14% of BOC business lines (fn 477), and of high-capacity DS1 loops in wire centers accounting for approximately 8% of BOC business lines (¶179).

²⁸ *TRRO* at ¶ 182.

²⁹ *TRRO* at ¶ 179.

³⁰ *TRRO* at ¶177.

³¹ *TRRO* at ¶ 146.

least 38,000 business lines and at least 4 fiber-based collocators.³² Further, as noted above, each requesting carrier will be limited to 1 DS-3 to any single building.

Thus, in light of the FCC's findings in the *TRRO*, the only restrictions³³ that the ICA, as amended, should impose on AT&T's access to unbundled loops in the wire centers in which Verizon continues to have an obligation to provide access to unbundled DS-1 and DS-3 loops are:

- that it be technically feasible to unbundle the loop at the point desired by the CLEC (i.e., at any point ordinarily accessible by a technician without having to open a splice case or remove a cable sheath);
- that the CLECs' use of the loop does not interfere with another carrier's ability to utilize, in a non-discriminatory manner, the full functions and capabilities of neighboring loops (e.g., binder group separation between analog and digital signals);
- that unbundled loops be provided in accordance with applicable law;
- that Verizon is not obligated to unbundle dark fiber loops (except as required by the transition plan);
- that Verizon is not obligated to unbundle more than one DS-3 and 10 DS-1s per CLEC, per building; and
- that Verizon is not obligated to unbundle DS-1 and DS-3 loops terminating in central offices that meet the FCC's business line and fiber-based collocator criteria.

³² *TRRO* at ¶174.

³³ In the *TRO* and orders clarifying that decision, the FCC also made findings that ILECs need not unbundle specific loops-types including "Greenfield" fiber-to-the-home ("FTTH") loops, where the premises have not previously been served by any Verizon loop facility; "Brownfield" FTTH loops, except where copper is not otherwise available (the term "Brownfield," refers to those situations in which the original copper plant has been overlaid with new fiber facilities, but the original plant remains); certain loops to Multiple Dwelling Units (MDU), pursuant to the FCC's *MDU Reconsideration Order* ("The Commission held that fiber loops deployed to the minimum point of entry (MPOE) of multiple dwelling units (MDUs) that are predominantly residential should be treated as fiber-to-the home loops (FTTH) for unbundling purposes, irrespective of the ownership of inside wiring." *TRRO* footnote 49, summarizing its *MDU Reconsideration Order*, 19 FCC Rcd 15856 (2004); and OC-n loops.

Thus, the ICA, as amended, must clearly and accurately set forth the scope of the foregoing restrictions. (TR 72-73)

In order to identify wire centers meeting the FCC's criteria, on February 4, 2005, FCC's Wire Line Competition Bureau Chief requested that all of the RBOCs, including Verizon, provide data by February 18, 2005, to identify "by CLLI code the wire centers that satisfy the non-impairment thresholds for DS1 and DS3 loops."³⁴ In its responsive filing, Verizon did not identify any wire centers in Florida in which it claimed that its obligation to provide DS1 loops currently has been eliminated.³⁵ (TR75)

The amended interconnection agreement thus should reflect Verizon's acknowledgement that it continues to be obligated to provide unbundled access to DS1 and DS3 loops in Florida. Moreover, the interconnection agreement also should reflect that, to the extent wire center designations change in the future, Verizon should remain obligated to provide for a transition. Recognizing that it would be imprudent to remove significant unbundling obligations without a transition period, the FCC established a plan for competing carriers to transition high-capacity loops no longer subject to unbundling, by establishing a twelve-month plan for the conversion of DS1 and DS3 loops, and an eighteen-month transition for dark fiber loops.³⁶ While these transition plans by their

³⁴ February 4, 2005 Letter to James C. Smith, Senior Vice President, SBC from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau.

³⁵ February 18, 2005, letter to Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, FCC, from Suzanne A. Guyer, Senior Vice President Federal Regulatory Affairs, Verizon. The wire centers for which Verizon claims its obligation to provide DS1 loops has been eliminated are identified as BSTNMABE, CMBRMAWA and MRBOMAMA.

³⁶ The *TRRO* establishes a plan that is consistent with both the FCC's *Interim Order* and *NPRM* and the pricing scheme established for the transition of dedicated transport UNEs. During the transition period, any high-capacity loop UNEs that a CLEC leases as of the effective date of the Order, but for which there is no longer an unbundling obligation, shall be available at the higher of (1) 115 % of the rate the requesting carrier paid for the high-capacity loop on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16 2004 and the effective date of the Order. *TRRO* at ¶ 198.

terms apply to the CLEC's current embedded customer base,³⁷ the same concern for avoiding customer disruption warrants the application of these same terms to any future reclassification of wire-centers that require CLECs to seek alternative arrangements.

(TR 78)

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

AT&T Position: *** The agreement should include the language consistent with the FCC rules on determining the availability of dedicated transport based on the characteristics of the wire centers forming a route and the capacity of the facility being sought. Wire centers identified by Verizon as Tier 1 or Tier 2, should be verified by the Commission and then language applicable to the availability of DS1, DS3 and dark fiber transport consistent with the rules should be included. ***

The FCC found in the *TRRO* that CLECs were impaired without access to UNE transport except in limited, specific circumstances, which primarily involve only the most urban markets. In its *TRRO* decision, the FCC adopted a route-specific and capacity-specific approach to unbundling dedicated transport. This approach establishes categories of routes, defined by the economic characteristics of the end-points. The issue of impairment is determined by both the actual deployment of competitive facilities and by the probability of future deployment, based on inferences drawn from the existing correlations between the number of business lines and fiber-based collocations in a given ILEC wire center.³⁸ (TR 80) AT&T has updated its proposed contract language at

³⁷ *TRRO* at ¶ 195.

³⁸ *TRRO* at ¶ 44.

sections 3.6.1 and 3.6.2 to reflect the FCC's determinations in the *TRRO* concerning dedicated transport. (See Exh. 13; ECN-R1)

The FCC articulated what it described as very clear “administrable and verifiable” criteria in the *TRRO* for determining where CLECs will have access to unbundled transport. Although the presumption is that unbundled dedicated transport is available under most circumstances, the FCC did identify circumstances in which ILECs are not required to provide dedicated access. The first circumstance is consistent with the FCC's finding that carriers are not impaired without access to UNEs for the *exclusive* provision of mobile wireless services or long distance service. Therefore, Verizon is not required to provide unbundled dedicated access for the provisioning of those services. Second, the FCC found that ILECs are not required to provide unbundled dedicated transport for the purpose of standalone entrance facilities.³⁹ (TR 81)

The FCC also adopted rules to determine the availability of dedicated transport based on the characteristics of the wire centers forming a route⁴⁰ and the capacity of the facility being sought by the CLEC. First, the FCC rules identify three categories of ILEC wire centers.

- Tier 1 wire centers are those that have either at least 4 fiber-based collocators *or* at least 38,000 business lines *or* both. Tier 1 also includes ILEC tandem switching locations that have no line switching but are used as a point of traffic aggregation accessible by CLECs.⁴¹

³⁹ While an ILEC is not obligated to provide access to entrance facilities as UNEs, the FCC was clear that CLECs will continue to have access to these facilities for purposes of interconnection at cost-based rates. *TRRO* at ¶140. See also discussion re: Issue 19 below.

⁴⁰ A route is defined as a transmission path between one of the ILEC's wire centers or switches and another of its wire centers or switches. Transmission paths between identical endpoints are the same route, regardless of whether they pass through the same intermediate points or switches. *TRRO* at ¶ 80.

⁴¹ *TRRO* at ¶ 112.

- Tier 2 wire centers are those wire centers that are not Tier 1 wire centers and have either at least 3 fiber-based collocators *or* at least 24,000 business lines *or* both.
- Tier 3 wire centers include all of the ILEC wire centers that do not fall within the first two categories.

Although the FCC noted that the information needed to make these determinations was readily available to ILECs, it did not elaborate on the process to be used to categorize wire centers. However, the FCC did adopt new definitions of the terms *business lines*,⁴² *fiber-based collocator*⁴³ and *wire center*⁴⁴ to be used in making the determination.⁴⁵ (TR 82)

The designation of a wire center as Tier 1, Tier 2 or Tier 3 controls the availability of the facility sought by the requesting carrier. The FCC's rules establish that DS1 dedicated transport is available between any pair of ILEC wire centers, *except* if both the wire centers at the ends of the route are Tier 1.⁴⁶ Additionally, each CLEC is limited to a maximum of 10 DS1 circuits on a single route.⁴⁷ DS3 dedicated transport circuits are available between any pair of ILEC wire centers, *except* if both ends are

⁴² "Business Line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC, include ILEC-owned switched access lines used to serve a business customer, including lines used to provide retail service and lines leased as UNEs by CLECs, including UNE-P loops. 47 C.F.R. §51.5 (Terms and Conditions).

⁴³ "Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in the paragraph. . . ." *Id.*

⁴⁴ "Wire center. A wire center is the location of an incumbent LEC local switching facility containing one or more central offices, as defined in Appendix to Part 36 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located." *Id.*

⁴⁵ AT&T has updated its proposed Amendment at sections 2.1, 2.18 and 2.39 to include these new definitions.

⁴⁶ *TRRO* at ¶ 126.

⁴⁷ *TRRO* at ¶ 128.

categorized as Tier 1 or Tier 2.⁴⁸ In the case of DS3 circuits, each CLEC is limited to a maximum of 12 DS3 circuits on a single route.⁴⁹ Dark fiber transport facilities will continue to be available as a UNE on routes where a wire center on either or both ends of the route is classified as Tier 3.⁵⁰ (TR 83)

In adopting this paradigm to evaluate the availability of unbundled dedicated transport, the FCC specifically abandoned the “qualifying service” approach it set forth in the *TRO* that limited access to UNEs only for the provision of services competing with “core” incumbent LEC offerings.⁵¹ With its most recent order, the FCC has established the criteria by which ILECs may restrict access;⁵² no further restrictions are permissible. (TR 83)

Having determined the conditions under which ILECs continue to be obligated to provide unbundled access to dedicated transport, the FCC turned its attention to those situations in which CLECs will no longer be able to access unbundled dedicated transport. As it did for mass market circuit switching and high capacity loops, the FCC adopted a similar twelve-month plan for competing carriers to transition DS1 and DS3 dedicated transport to alternative facilities or arrangement in those wire centers meeting the non-impairment criteria. Recognizing the unique characteristics of dark fiber, the Commission adopted a longer, eighteen-month transition period.⁵³ Although the FCC

⁴⁸ *TRRO* at ¶129.

⁴⁹ *TRRO* at ¶ 131.

⁵⁰ *TRRO* at ¶ 133.

⁵¹ *TRRO* at ¶ 29.

⁵² As provided in previous FCC Orders, Verizon is only obligated to unbundle Dedicated Transport over existing facilities (i.e., Verizon is not obligated to construct new plant).

⁵³ *TRRO* at ¶ 142.

had suggested in its *Interim Order and NPRM*⁵⁴ that a six-month transition might be appropriate, ultimately the FCC determined that the longer time periods were necessary to ensure an orderly transition for CLECs, including providing sufficient time for CLECs to make decisions concerning where to deploy, purchase or lease facilities. The transition plan only applies to a CLEC's embedded customer base, and CLECs are prohibited from ordering new transport UNEs not permitted under the *TRRO*'s new rules.⁵⁵ (TR 86)

Furthermore, the FCC adopted the proposal outlined in the *Interim Order* for transitional pricing. The rate for any dedicated transport UNE that a competitive LEC leases as of the effective date of the *TRRO*, but for which there is no future unbundling requirement, shall be the higher of (1) 115 % of the rate the requesting carrier paid for the transport element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of the Order.⁵⁶ (TR 87)

As was case with high capacity loops, the Chief of the FCC's Wireline Competition Bureau requested that Verizon submit a list identifying the wire centers in its operating areas that satisfy the Tier 1, 2 and 3 criteria for dedicated transport. Verizon's response identified a total of 13 wire centers in Florida in which it claimed a lack of impairment: nine wire centers were identified as a Tier 1, and the other four were identified as a Tier 2.⁵⁷ Verizon's filing does not indicate the specific criteria applicable

⁵⁴ Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, FCC 04-179 (*Interim Order and NPRM*), released August 20, 2004

⁵⁵ *TRRO* at ¶ 143.

⁵⁶ *TRRO* at ¶ 145; 47 C.F.R. §51.319(e)(2)(ii)(C) and (iii)(C). AT&T provides language addressing the transition requirements and pricing at 3.6.2.3 and 3.6.2.4 of its proposed Amendment.

⁵⁷ February 18, 2005, letter to Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, FCC, from Suzanne A. Guyer, Senior Vice President Federal Regulatory Affairs, Verizon. The Tier 1 wire centers

to the wire centers it has identified as meeting the relevant non-impairment standard, and AT&T does not in any way concede that Verizon has in fact applied the new rules properly. To the contrary, it is clear that the Commission must step in to ascertain that Verizon has correctly identified those wire centers in which it seeks to eliminate its obligation to provide access to dedicated transport. (TR 84)

Indeed, Verizon's perfunctory filing highlights the need for the Commission to adopt a process for verifying that the wire centers Verizon has identified as satisfying the *TRRO*'s criteria. Absent such a process, it will be extremely difficult for AT&T or other CLECs to engage in a comprehensive and accurate verification of the data and its application. Further, under the *TRRO* requirements, once these wire centers are verified, Verizon will not be required in the future to unbundle those elements.⁵⁸

Given the significance of such identification, it is very important that CLECs and this Commission have confidence that Verizon has properly applied the FCC's criteria.⁵⁹ As noted by the FCC, the information regarding the number of fiber-based collocators and business lines served in any particular wire center resides only with the ILEC. Although the FCC called this data "administrable and verifiable,"⁶⁰ the ability to accurately verify the data in light of the failure of Verizon to provide the basis for its list of central offices in Florida is dependent on further regulatory action. Neither the Commission nor any other party has access to the data that Verizon has relied on.

were identified as BHPKFLXA, CLWRFLXA, SPBGFLXA, SWTHFLXA, TAMPFLXA, TAMPFLXE, TAMPFLXX, WSSDFLXA and YBCTFLXA. The Tier 2 wire centers were identified as CNSDFLXA, FHSDFLXA, PNLSFLXA and SRSTFLXA.

⁵⁸ *TRRO* at n 466.

⁵⁹ This principle is also consistent with ¶ 100 of the *TRRO*, which clearly affirms a CLEC's right to verify and challenge Verizon's identification of fiber-based collocation arrangements in the listed Tier 1 and Tier 2 wire centers.

⁶⁰ *TRRO* at n. 466.

Indeed, neither the Commission nor the parties have comprehensive data from which they can draw their own conclusions. Only Verizon possesses that data, and only if the Commission orders Verizon to produce it for Commission and CLEC review and challenge will it have the legitimacy necessary to implement the *TRRO*. The determination of which areas are subject to unbundling should not simply be left to the party a demonstrated interest in eliminating its unbundling obligations.

The FCC suggested that carriers could resolve disputes regarding wire center designations that are tied to UNE availability through the Section 252 negotiation and arbitration process. However, this process could impose a significant burden on the Commission's resources and could produce inconsistent outcomes in different arbitrations or dispute resolution proceedings.⁶¹ Instead, AT&T believes that it would be more efficient for the Commission to conduct a generic inquiry into the wire centers identified by Verizon as part of this proceeding. Verizon should be required to provide both the Commission and participating CLECs with the wire-center specific information on which it relied in making its assertions. Disputes regarding Verizon's conclusions could then be resolved, and the Commission could certify the list of wire center designations to be incorporated into all ICAs, thereby making those designations both identifiable and no longer subject to dispute. These designations should apply for the term of the carriers' agreements, avoiding market disruption and allowing for the certainty needed for business planning. Such an approach would be consistent with the

⁶¹ If the question of verifying the list of wire centers were addressed in an uncoordinated fashion, it is possible that the outcome of two different arbitrations or dispute resolution proceedings could arrive at inconsistent outcomes based on the underlying records.

FCC's rationale behind establishing a permanent wire center classification.⁶² AT&T's revised Amendment contains contract language at section 3.9 to incorporate this approach. (TR 85)

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?

AT&T Position: *** Verizon is not permitted to re-price existing arrangements except as specifically prescribed by the TRO, and only after such price changes have been incorporated into a Commission-approved ICA amendment. ***

Insofar as this question relates to the three elements affected by the *TRRO* -- that is, mass market local circuit switching, high capacity loops, and dedicated interoffice transport, the short answer is that Verizon may only "re-price" de-listed elements in accordance with the terms of the *TRRO*. AT&T has previously described the transitional pricing provisions of that Order in response to issues 3, 4 and 5 above. As AT&T reflected in its updated Amendment (sections 3.2.1.3, 3.2.5.2, 3.5.1.2 and 3.6.2.4), the rates currently prescribed in the interconnection agreement will remain in effect for these "transitional declassified network elements" (see section 3.10 of AT&T's proposed Amendment) until the ICAs have been amended pursuant to their change of law provisions, at which time a retroactive true-up back to March 11, 2005 would occur. In contrast, Verizon's proposed Amendments allow Verizon to immediately, upon delisting, reprice existing arrangements without having to go through any change of law process.

⁶² The FCC determined that, in order to protect against the possible disruption to the market if modest changes could result in the re-imposition of unbundling obligations, once a wire center satisfies the criteria to eliminate the obligation of the ILEC to provide either certain high capacity loops or dedicated transport, the wire center will not be subject to reclassification. *TRRO* at n 466; 47 C.F.R. §§ 51.319(a)(4); 51.319(a)(5) & 51.319(e)(3)(i), (ii).

As discussed above in Issue 2, Verizon's approach, in which it alone would serve as judge and jury of what is required by federal law, should be rejected.

Any other rate increases and new charges that Verizon may attempt to impose, several of which are scattered throughout Verizon's proposed amendments, should be subject to Commission review in appropriate cost proceedings, and not be retroactive. Moreover, and, as discussed in more detail with respect to issue 8 below, Verizon should be prohibited from imposing any termination or non-recurring charges for the transition of "de-listed" UNEs to alternative arrangements.

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

AT&T Position: *** Yes, as long as the effective date of any discontinuance is after the effective date set forth for such discontinuance in the order allowing for the discontinuance, including any transitions periods provided by the order. The effective date of any discontinuance should not be before the issuance of the relevant order to be sure all parties have a chance to see the FCC's language. ***

No, for the reasons set forth in AT&T's response to issue 2, above.⁶³ Additionally, its notices should be required to be specific, identifying the specific circuits being discontinued.

ISSUE 8: Should Verizon be permitted to assess non-recurring charges when it changes a UNE arrangement to an alternative service? If so, what charges apply?

AT&T Position: *** No. The transition from UNEs to alternative arrangements should be governed by the same principles articulated by the FCC in rule 51.316(b) and (c) for the conversion of wholesale services to UNEs. Verizon should not be able to impose any termination charges, disconnect fees, reconnect fees, or charges associated with

⁶³ It may very well be that this issue is actually moot. The authority Verizon appears to be seeking here would only apply if the amendments addressed future unbundling, which they should not. At this point all notices related to the *TRO* and *TRRO* already have been given. However, to the extent that DTE permits the Amendment to address future unbundling obligations, then Verizon can give notice in advance of the effective date, but not before the applicable Order has been released. In this way all parties at least will have the ability to read the text of the order before drafting/reviewing the notice.

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

The short answer to this question is a resounding “no.” Prior to the issuance of the *TRO* and the FCC’s decision on remand from the *USTA II* opinion, CLECs could access certain facilities as unbundled network elements, and in fact had been purchasing those UNEs from Verizon at TELRIC rates. To the extent the determinations made by the FCC change the terms of that access, Verizon is now insisting on the right to assess non-recurring charges on AT&T for the discontinuation of the eliminated UNE, or for the transition of that UNE to an “alternative arrangement,” such as changing a UNE-P arrangement to resale. (TR 88)

There is no basis in the basic principles of “cost causation” for Verizon’s approach. Indeed, this is not a situation in which AT&T has imposed any non-recurring costs on Verizon. If anything, this is a situation in which Verizon is the cost-causer. The disconnection of a UNE arrangement utilized by AT&T that occurs as a result of Verizon’s desire to eliminate that arrangement as a UNE is an activity that Verizon has initiated. The FCC is not forcing Verizon to discontinue the UNE and it is certainly not AT&T’s decision to disconnect the UNE. In short, to the extent that any costs can even be deemed to result from these circumstances, it is Verizon—and Verizon alone—that is responsible for them. (TR 88)

And it is in fact unlikely that the transition of these facilities from UNEs to “alternative arrangements” will cause any additional costs at all. For example, in the case in which Verizon is switching the CLEC’s UNE-P customers over to an “alternative” resale arrangement, no technical work is involved – the same loop, transport and

switching facilities that were being used to provide UNE-P also would be used in this alternative arrangement. At most, the only “work” would simply involve a billing change. As the FCC found with respect to EELs conversions, “Converting between wholesale services and UNEs (or UNE combinations) is largely a billing function.”⁶⁴ (TR 89)

The transition from UNEs to alternative arrangements thus should be governed by the same principles articulated by the FCC in 47 C.F.R. §§ 51.316(b) and (c) for the conversion of wholesale services to UNEs. Verizon should be required to perform the conversions without adversely affecting the service quality enjoyed by the requesting telecommunications carrier’s end-user. Further, Verizon should not be able to impose any termination charges, disconnect fees, reconnect fees, or charges associated with establishing a service for the first time in connection with the conversion between existing arrangements and new arrangements. (TR 88-89) AT&T’s revised Amendment properly recognizes these principles and contains appropriate contract language to implement them. (See Exh. 13; ECN-R1)

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

AT&T Position: *** All specified terms that are used in the Amendment should be included in the definitions section and those terms should be defined, where possible, to reflect the FCC’s definitions and/or industry practice. These terms are identified in AT&T’s proposed TRRO Amendment. ***

The Commission should adopt AT&T’s proposed definitions, set forth in Section 2 of the proposed Amendment, because they comport fully with the *TRO* and *TRRO* and because

⁶⁴ *TRO* at ¶ 588.

they are more complete and comprehensive than Verizon's definitions. Indeed, Verizon, in refusing to amend its proposed Amendments in any meaningful way to reflect the provisions of the *TRRO*, utterly fails to capture any of the new definitions that the FCC adopted in that order, such as those for "business switched access lines," "fiber-based collocator," or "wire center," all of which are set forth in AT&T's revised proposal.

AT&T's definitions also properly reflect the terms of the *TRO*. For example, the definition of Fiber-to-the-home ("FTTH") loops proposed by AT&T at section 2.19 reflects that those facilities do not include intermediate fiber in the loop architectures such as fiber-to-the building or fiber-to-the node. AT&T's amendment makes clear that those types of loop architectures are properly defined as "hybrid loops," which are in turn defined at section 2.21. AT&T's amendment in section 2.22 also includes the proper definition for Inside Wire Subloop.

AT&T's amendment also sets out a list of facilities or classes of facilities for which the *TRO* has made a general finding of non-impairment. This list is set forth in the amendment's definition of "Declassified Network Elements" at section 2.8. Verizon's competing definition of Declassified Network Elements is inaccurate for several reasons. It inappropriately includes the four line carve out, entrance facilities that are part of a loop and items that are available under Section 252(c)(2) of the Act. Additionally, it has a very broad "catch-all" at the end of the paragraph, and it allows for "rolling" declassification without pursuit of change of law proceedings if, in the future, Verizon determines that additional network elements should be declassified. AT&T's revised Amendment properly captures the current state of unbundling, and leaves to the parties'

interconnection agreements the process for changing the treatment of network elements that may be declassified in the future, if any.

The revised AT&T amendment also explicitly differentiates between the network elements declassified by the *TRO* and the “transitional declassified network elements” established in the *TRRO*. The latter are defined at section 2.37 of AT&T’s amendment. AT&T also proposes definitions for “Line Conditioning” (section 2.23) and “Line Splitting” (section 2.25), two topics ignored by Verizon. Finally, AT&T proposes additional language to sharpen the definitions of “Subloop” (section 2.35) and “Loop Distribution” (Section 2.27). (See Exh. 13; ECN-R1) Verizon continues to refer to house and riser cable (rather than inside wire subloop), a term made obsolete by and not even used in the *TRO*.

While the above paragraphs do not provide a comprehensive listing of the defects with Verizon’s proposed definitions, they are illustrative. Because AT&T’s proposed definitions in its revised Amendment comport with federal law and are more complete and comprehensive than Verizon’s, the Commission should adopt AT&T’s proposed definitions found in Section 2 of the revised Amendment. (See Exh. 13;ECN-R1)

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?

AT&T Position: *** Yes. The FCC in the *TRRO* refers to the process for negotiation and arbitration established by Sec. 252 expressly including the change of law requirement to amend ICAs such as AT&T’s to reflect changes occasioned by the FCC’s Order. Verizon’s contractual obligation to provision a particular unbundled network element continues under the contract until the contract or agreement is properly amended. The *TRO* contains similar language. ***

In the *TRRO*, the FCC repeatedly referred to the process for negotiation and arbitration established by Section 252, including the requirement to amend ICAs to reflect changes occasioned by the FCC's Order itself.⁶⁵ If Verizon has a contractual obligation to provision a particular unbundled network element, then it should be required to adhere to the provisions of that contract to amend the agreement. To the extent the FCC relieves Verizon of its obligation under federal law to provide a particular unbundled network element, then Verizon should invoke the change of law provisions of the contract and notify the other party that it seeks to negotiate an amendment to the contract to change its obligations. Where the parties cannot reach an agreement as to either the effect of the change of law or contract language to implement this change of law, the parties should be required to follow the dispute resolution provisions contained in the contract. (TR 90)

The federal courts have repeatedly noted that reliance on contractual agreements, and their negotiation, for implementation of the 1996 Telecommunications Act is a core characteristic of Congress's scheme for encouraging new competitive entry into the local exchange market. For example, in *Verizon-North, Inc., v. Strand*, the Sixth Circuit quoted with approval the District Court's description of the Telecommunications Act: "Congress designed a deregulatory process that would rely in the first instance on private negotiations to set the terms for implementing new duties under the Act."⁶⁶ Eliminating Verizon's obligation to follow contractual change of law provisions, and permitting Verizon to unilaterally implement the requirements of the Telecommunications Act, would essentially gut the principal mechanism that Congress established for

⁶⁵ See footnotes 7 and 8 above.

⁶⁶ *Verizon North, Inc., v. Strand*, 309 F.3d 935, 940 (6th Cir. 2002), quoting *Verizon North, Inc. v. Strand*, 140 F.Supp.2d 803, 810 (W.D.Mich. 2000).

implementing the Telecommunications Act. For this reason, Verizon should be required to follow change of law provisions in its existing interconnection agreements and should not be allowed to eliminate those contract protections going forward.

Under its proposed amendment language, Verizon would have the right to unilaterally interpret the law and take customer-affecting action to implement that interpretation, thus compelling the CLECs to run to the Commission or to court seeking an injunction to maintain the status quo until the dispute is resolved. The change of law process helps ensure seamless and uninterrupted customer service as carriers alter their agreements and systems over time. The Commission should not allow Verizon's impatience to alter its UNE obligations to disrupt an orderly and fair process.⁶⁷

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

AT&T Position: *** The TRRO provides that the allowable transition rates shall apply starting the effective date of the Order but not be billed until the ICA is amended. A true-up back to the effective date shall apply for the new rates for UNEs no longer subject to unbundling upon the execution of amendments to the relevant interconnection agreements. ***

This question is clearly answered by the *TRRO*, and has already been addressed in the discussion of Issues 3 – 6 above. For mass market local circuit switching, the FCC allows Verizon to increase the price for UNE-P by \$1 over the higher of the UNE-P rate as of June 16, 2004 (the effective date of the *TRO*), or a rate set by the PSC between that date and March 11, 2005. For dedicated transport and high-capacity loops, the FCC adopted the proposal outlined in the *Interim Order*. The rate for any dedicated transport UNE that a competitive LEC leases as of the effective date of the *TRRO*, but for which

⁶⁷ See also the discussion *supra* in Issue 2.

there is no future unbundling requirement, shall be the higher of (1) 115 % of the rate the requesting carrier paid for the transport element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of the Order.⁶⁸ (TR 90-91)

Similarly, during the transition period, any high-capacity loop UNEs that a CLEC leases as of the effective date of the *TRRO*, but for which there is no longer an unbundling obligation, shall be available at the higher of: (1) 115 % of the rate the requesting carrier paid for the high-capacity loop on June 15, 2004 or (2) 115% of the rate the state commission has established or establishes, if any, between June 16 2004 and the effective date of the Order. (TR 90-91)

The *TRRO* provides for the parties to pursue the change of law process to amend their interconnection agreements to reflect the rate changes established in the *TRRO*. After that process is completed, a retroactive true-up back to the effective date of the order (March 11, 2005) is required.⁶⁹ (TR 91) Because Verizon's proposed Amendments are not consistent with the process established by the FCC in the *TRRO* for implementing rate changes, they should be rejected, and AT&T's revised Amendment should be adopted. (See Exh 13; ECN-R1)

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?

AT&T Position: *** Yes, the agreements should be amended to affirmatively allow AT&T to commingle UNEs and combinations of UNEs with other services (e.g. switched access or special access) and to require Verizon to perform the necessary functions to effectuate such commingling upon request. AT&T's proposed amendment has proposed language consistent with the FCC requirements on commingling. ***

⁶⁸ *TRRO* at ¶ 145.

⁶⁹ *TRRO* at n. 630.

Yes. Commingling allows competitive carriers to use some of the spare capacity they have on their leased special access trunk groups to carry local traffic such that competitors do not have to maintain two under utilized trunk groups (one for local traffic and one for toll traffic) where one would suffice.⁷⁰ Prior to the issuance of the *TRO*, the FCC placed certain restrictions on when competitive carriers could “commingle” or combine “loops or loop-transport combinations with tariffed special access services.”⁷¹

The *TRO* eliminated those restrictions. Instead, the FCC modified the rules to “affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g. switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request.”⁷² Accordingly, Verizon is now required to permit CLECs like AT&T to commingle UNEs or UNE combinations it obtains from Verizon with other wholesale facilities. (TR 92)

These provisions are particularly important since commingling helps level the playing field for CLECs to compete with Verizon in the local exchange market. The FCC agreed with several state commissions “that the commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks – one network dedicated to local services and one dedicated to long distance and other services – or to chose between using UNEs

⁷⁰ AT&T’s revised Amendment includes a specific definition of “commingling” at section 2.5.

⁷¹ Supplemental Order Clarification, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, June 2, 2000 at ¶ 22.

⁷² *TRO* at ¶ 579.

and using more expensive special access services to serve their customers.”⁷³ Because Verizon and the other incumbents place no such restrictions on themselves, the FCC found that restricting commingling by the CLECs was unjust, unreasonable, and discriminatory.⁷⁴ (TR 92)

According to the *TRO*, Verizon must permit commingling and conversion *upon the TRO's effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria.⁷⁵ In light of this new rule, AT&T's proposed amendment at section 3.7, makes clear that: (1) as of October 2, 2003, Verizon is required to provide commingling and conversions unencumbered by additional processes or requirements (e.g., requests for unessential information) not specified in *TRO*;⁷⁶ (2) AT&T is required to self-certify its compliance with any applicable eligibility criteria for high capacity EELs (and may do so by written or electronic request) and to permit an annual audit for cause by Verizon to confirm its compliance;⁷⁷ (3) Verizon's performance in connection with commingled facilities must be subject to standard provisioning intervals and performance measures;⁷⁸ and (4) there will be no charges for conversion from wholesale to UNEs or UNE combinations.⁷⁹ (TR 93)

⁷³ *TRO* at ¶ 581.

⁷⁴ *Id.*

⁷⁵ *TRO* at ¶ 589; 47 C.F.R. § 51.318.

⁷⁶ *TRO* at ¶¶ 589, 588 & 623-24.

⁷⁷ *TRO* at ¶¶ 623-24.

⁷⁸ *TRO* at ¶ 586; 47 C.F.R. § 51.316(b).

⁷⁹ *TRO* at ¶ 587; 47 C.F.R. ¶ 51.316(c) (“Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges or any disconnect, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled elements”).

The manner in which Verizon seeks to implement the FCC’s requirements does not comply with the *TRO*, and in fact, imposes new and onerous obligations on the CLECs that will impede their ability to provide services through commingled facilities. Among other things, Verizon contends that: (1) AT&T should be required to re-certify that it meets the *TRO*’s eligibility requirements for existing DS1 and DS1 equivalent circuits on a circuit-by-circuit basis rather than through the use of a single written or electronic request;⁸⁰ (2) Verizon’s performance in connection with commingled facilities should not be subject to standard provisioning intervals and performance measures;⁸¹ and (3) Verizon is entitled to apply a non-recurring charge for each circuit that AT&T requests to convert from a wholesale service to UNE or UNE combination,⁸² as well as other fees not contemplated by the *TRO* (for example, “retag fees”).⁸³ Verizon also would require AT&T to reimburse Verizon for the entire cost of an audit when an auditor finds no AT&T material failure to comply with the service eligibility criteria for any DS1 circuit.⁸⁴ (TR 94)

The Commission should reject Verizon’s effort to force the CLECs to “re-certify” existing arrangements on a circuit-by-circuit basis -- a make-work process for which Verizon offers no legitimate justification. AT&T’s eligibility for these circuits has already been established, and forcing AT&T—or any other CLEC—to go through this process will unnecessarily increase costs. The Commission thus should permit competitors to re-certify all prior conversions in one batch. Moreover, for future

⁸⁰ Verizon Proposed Amendment 2, Section 3.4.2.1.

⁸¹ Verizon Proposed Amendment 2, Section 3.4.2.6.

⁸² Verizon Proposed Amendment 2, Section 3.4.2.4.

⁸³ Verizon Proposed Amendment 2, Section 3.4.2.5.

⁸⁴ Verizon Proposed Amendment 2, Section 3.4.2.7.

conversion requests, rather than requiring competitors to certify individual requests on a circuit-by-circuit basis, the Commission should permit competitors to submit orders for these as a batch. (TR 94-95)

The Amendment also should make Verizon subject to order and provisioning metrics and performance measures and remedies for these facilities. At a minimum the commingled arrangements that CLECs order include UNEs that already are subject to such metrics and remedies. There is no reason, either technical or logical, that Verizon's provisioning of commingled UNEs should be excluded from appropriate provisioning intervals and performance incentives simply because they are being provided in combination with other wholesale services. This is especially true in view of Verizon's history of antagonism towards commingling. Without metrics and remedies, Verizon would have little incentive to ensuring that CLEC orders for these arrangements are provisioned in a timely and efficient manner. (TR 95)

The amendment should also provide that recurring and non-recurring charges contained in the Verizon access tariff apply to the access portion of the "commingled" arrangement, and that the recurring and non-recurring charges contained in the interconnection agreement apply to the UNE portion of the commingled arrangement, prorated as appropriate. While Verizon appears to agree with this principle to some extent, it also seeks to impose additional non-recurring charges "to each UNE that is a part of the commingled arrangement." For example, it appears that Verizon would insist on charging CLECs for the "expense" of retagging circuits to reflect their status as UNEs rather than access facilities (TR 95-96)

These proposed changes are simply not appropriate. There should be no charge for conversions of special access facilities to commingled UNE EELs. As the FCC concluded in the *Triennial Review Order* at ¶ 587:

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

Moreover, given Verizon's previous refusal to previously make these arrangements available as UNEs, imposing charges for re-tagging these circuits now would be blatantly discriminatory. Accordingly, they should be rejected. (TR 96)

Finally, AT&T should not be required to foot the entire cost of a service eligibility audit as proposed by Verizon. Verizon should be able to pass along the total cost of an audit *only* if the independent auditor concludes that AT&T failed to comply with the service eligibility criteria "in material respects." AT&T certainly should not be required to bear the entire cost of an audit in the event of a few inadvertent mistakes, or something less than a material misrepresentation that affects more than a *de minimis* number of circuits. On the other hand, if the auditor finds AT&T materially in compliance with the service eligibility criteria, then Verizon should have to pay AT&T's costs of complying with any requests of the independent auditor. (TR 96-97)

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

AT&T Position: *** Yes. The agreement should be amended to allow AT&T to convert special access and wholesale services to UNEs unless precluded by service eligibility criteria established by the FCC. Conversions should be done as requested by AT&T in the future as well as retroactively as allowed by the TRO. Rates for services

converted to UNEs should be effective with the next month's billing following the request. ***

The FCC was clear in the *TRO* concerning Verizon's obligation to permit conversions of wholesale services to UNEs and UNE combinations. The *TRO* in fact states that CLECs "may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets the eligibility criteria that may be applicable."⁸⁵ Finding that these conversions are "largely a billing function," the FCC also concluded that conversions should be performed in an expeditious manner.⁸⁶ The *TRO* also made clear that Verizon's obligation to provide for conversions commenced upon the effective date of the Order.

Thus, with the FCC's reaffirmation of the elimination of commingling restrictions and the elimination of qualifying services criteria in the *TRRO*, AT&T needs to have Verizon convert high-priced special access and wholesale services to UNEs, unless precluded by service eligibility criteria, so that AT&T can be cost competitive with Verizon. Such conversions should be done as requested by AT&T in the future, as well as retroactively as allowed by the *TRO*. Since conversions are essentially a mere billing change, Verizon should make the conversions to UNEs and UNE rates effective with the next month's billing. These requirements are reflected in AT&T's Amendment at section 3.7.1, which provides that as of October 2, 2003 Verizon is required to provide conversions unencumbered by additional processes or requests not specified in the *TRO*.

(TR 97)

⁸⁵ *TRO*, ¶586.

⁸⁶ *TRO*, ¶588.

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, FTTH or FTTC loops;**
- c) Overbuilt FTTP, FTTH or FTTC 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?**

ISSUE 14(a) Line Splitting

AT&T Position: *** Yes. The AT&T amendment provisions regarding should be adopted by the Commission to require Verizon to use a splitter collocated at the central office. ***

The parties' ICA should be amended to address changes arising from the *TRO* with respect to line sharing, line splitting, line conditioning, and the maintenance, repair and testing of copper loops and subloops. While Verizon's proposed amendments have no comparable provisions, AT&T's proposed language at section 3.3 on this issue appropriately implements the *TRO* requirements, and especially the line splitting and line conditioning requirements of 47 C.F.R. 51.319(a)(1)(ii). In particular, AT&T's Amendment includes procedures consistent with the rule that requires Verizon to use a splitter collocated at the central office to enable AT&T to engage in line splitting and to condition a copper loop at no cost to AT&T where AT&T seeks access in order to ensure that the copper loop is suitable for providing digital subscriber line services. In addition, AT&T's Amendment sets out a procedure for Verizon's maintenance, repair and testing

in connection with line splitting. Because these provisions properly reflect the FCC's requirements, AT&T's proposal should be adopted. (See Exh. 13; ECN-R1)

ISSUE 14(b), (c) Newly built and Overbuilt FTTP, FTTH or FTTC loop changes

AT&T Position: *** Yes, the agreement should be amended to address changes arising from the TRO for newly built and overbuilt fiber-to-the-home loops. The Commission should adopt AT&T's contract amendment language contained in Exhibit 13 (ECN-R1) at Paragraphs 3.2.2 through 3.2.2.6 which properly implement the FCC's rules regarding Verizon's obligation to provide access to narrowband transmission path in newly built FTTH and certain overbuilt FTTH situations. The acronym FTTH proposed by AT&T is consistent with FCC use of the terms in its Rule 51.319(a)(3). ***

Yes, the ICA should be amended to address these issues. Specifically, the Commission should adopt AT&T's proposed contract amendment language at Paragraphs 3.2.2 through 3.2.2.9. These provisions properly implement the FCC's Rules regarding Verizon's obligation to provide access to a narrowband transmission path in newly built FTTH and certain overbuilt FTTH situations. (TR 98)

The primary disagreement between AT&T's proposed language and Verizon's proposed language is that AT&T uses the acronym "FTTH", while Verizon uses the acronym "FTTP". AT&T's proposed language, with the acronym FTTH, should be adopted because it is consistent with the FCC's rules. The FCC, in its rules (47 C.F.R. § 51.319(a)(3)) uses the term of art: "Fiber-to-the-home" or FTTH, as proposed by AT&T, and not the term "Fiber to the premises" or FTTP used by Verizon. (TR98)

With regard to new builds, the FCC rules specifically provide that Verizon is "not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC deploys such a loop to an end user's customer

premises that previously has not been served by any loop facility.”⁸⁷ As the FCC noted, with respect to newly built FTTH, “the entry barriers appear to be largely the same for both the incumbent and competitive LEC – that is, both incumbent and competitive carriers must negotiate rights-of-way, respond to bid requests for new housing developments, obtain fiber optic cabling and other materials, develop deployment plans and implement construction programs.”⁸⁸ (TR 99)

However, for overbuilds, where Verizon presently has facilities in place to residential subdivisions but retires the copper facilities, Verizon is obligated to provide AT&T with a 64 -kilobit transmission path capable of voice grade service.⁸⁹ By attempting to define this fiber deployment as Fiber to the Premises or FTTP, rather than Fiber to the Home, as the FCC has defined it, Verizon seeks to limit its unbundling obligations. This approach violates federal law and cannot, therefore, be adopted. (TR 99)

ISSUE 14(d) (e) Access to Hybrid Loops

AT&T Position: *** Yes. CLECs are entitled to unbundled loops regardless of the architecture used to provide loop functionality. AT&T’s proposed amendment language will ensure that CLECs will have access to TDM features and capabilities that serve TDM Loops. ***

CLECs are entitled to access an entire unbundled loop, regardless of the telecommunications service that a carrier wishes to provide, and regardless of the underlying loop architecture Verizon uses to provide the loop functionality. Nothing in a Next Generation Digital Loop Carrier (“NGDLC”) architecture changes the fact that the connection from the customer’s premises to the central office is still a “loop.” In

⁸⁷ 47 C.F.R. §51.319(a)(3)(i).

⁸⁸ *TRO* at ¶ 275.

⁸⁹ *TRO*, ¶277.

addition, the electronics associated with the next-generation loop architecture should be considered part of the loop. Specifically, the line cards with DSLAM functionality and Optical Concentration Devices (OCDs) perform transmission-oriented functions when placed in next-generation loop architecture (*i.e.*, when transmission electronics are placed in the remote terminal that must work in conjunction with central office-deployed electronics). Moreover, even if physical, adjacent, and virtual collocation may be useful to some competitors in limited circumstances, remote terminal collocation is not a practical mass-market solution and cannot provide a substitute for access to an entire loop.

In addition to the many physical limitations that preclude physical collocation at the remote terminal, the economies and costs are clearly prohibitive for collocation because remote terminals each serve only a few hundred customers, rather than the thousands reachable via central office collocation. Remote deployment of transmission-related electronics by competitive LECs is unlikely to occur in most areas. Thus, AT&T's proposed language, at section 3.2.3, is intended to ensure that Verizon is not able to impede AT&T's unbundled access to all of the TDM features and capabilities of Verizon's network assets under the guise of a network upgrade or by adding packet capabilities in a digital loop carrier that otherwise serves legacy, TDM loops.

ISSUE 14(f) Retirement of Copper Loops

AT&T Position: *** Yes. The TRO requires Verizon to follow network modification and notification requirements to insure that copper loops are otherwise available for CLECs to serve customers. AT&T's amendment appropriately addresses these issues and should be adopted by the Commission. ***

While the *TRO* permits, under certain circumstances, the retirement of copper loops or subloops that have been replaced with fiber, except with respect to FTTH loops,

it requires Verizon to follow certain network modification and disclosure requirements when retiring copper loops and subloops.⁹⁰ AT&T's proposed Amendment (at section 3.2.2) appropriately addresses these issues consistent with the treatment in the *TRO*. In contrast, Verizon's proposed amendment inadequately addresses issues concerning the retirement of copper loops, and should be rejected.

ISSUE 14(g) Line Conditioning

AT&T Position: *** Under federal law, Verizon may not impose a specific charge for line conditioning in addition to the TELRIC charges that CLECs pay for an xDSL loop . The Commission should adopt AT&T's amendment to require Verizon to provide line conditioning at no additional cost. ***

The Commission should adopt AT&T's proposed amendment language to address changes arising from the *TRO* with respect to line conditioning (sections 2.23 and 3.2.11). These provisions properly implement the FCC's rule regarding Verizon's obligation to perform line conditioning.⁹¹ In particular AT&T's proposed language requires Verizon to condition a copper loop, at no cost, where AT&T seeks access to a copper loop, the high frequency portion of a copper loop, or a copper subloop to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not Verizon offers advanced services to the end-user customer on that copper loop or copper subloop. (See Exh. 13; ECN-R1) In contrast, Verizon's proposed contract language does not contain provisions spelling out its obligation to perform line conditioning.

⁹⁰ *TRO*, ¶¶271, 281-284.

⁹¹ 47 C.F.R. § 51.319(a)(1)(iii).

The FCC defined line conditioning in its rules as “the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.”⁹² (TR 100)

In the *TRO*, the FCC concluded that Verizon is obligated to provide access to “xDSL-capable stand alone copper loops because competitive carriers are impaired without such loops.”⁹³ In order to provide xDSL-capable loops, “line conditioning is necessary because of the characteristics of xDSL service – that is certain devices added to the local loop in order to facilitate the provision of voice services disrupt the capability of the loop in the provision of xDSL services. In particular, bridge taps; load coils and other equipment disrupt xDSL transmissions. Because providing a local loop without conditioning the loop for xDSL services would fail to address the impairment competitive carriers face, we require incumbent LECs to provide line conditioning to requesting carriers.”⁹⁴ (TR 100)

Verizon argued at the FCC that it should not be required to perform line conditioning because conditioning amounted to providing the competitive carriers with “superior quality access.”⁹⁵ The FCC, however, rejected Verizon’s argument, noting that line conditioning and the other routine network modifications were similar to the same modifications that Verizon makes to its network to serve its own customers.⁹⁶ (TR 101)

⁹² 47 C.F.R. §51.319(a)(1)(iii)(A).

⁹³ *TRO* at ¶ 642.

⁹⁴ *Id.*

⁹⁵ *TRO* at ¶¶ 639 & 643, n. 1950.

⁹⁶ *TRO* at ¶ 643.

Under federal law, Verizon may not impose a specific charge for line conditioning over and above the TELRIC- based nonrecurring and recurring charges that CLECs pay for an xDSL capable unbundled loop. The FCC rules at 47 C.F.R. § 51.319(a)(1)(iii)(B) clearly state that Verizon is required to “recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission’s forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in § 51.507(e).” (TR 101)

Notwithstanding these provisions, Verizon’s amendment would require CLECs to pay additional charges for line conditioning, including charges for the removal of load coils and bridged taps that are contained in the unsupported Pricing Attachment, attached to its proposed contract amendment as Exhibit A, in addition to the non-recurring rates that CLECs pay for an xDSL capable loop. Verizon’s proposal is not authorized by federal law and should be rejected. (TR 101)

ISSUE 14(h) Packet Switching

AT&T Position: *** The ICA should reflect that, notwithstanding the discontinuance of Packet Switching as a UNE, Circuit switching performed on a packet switch that is capable of circuit switching is not discontinued under the TRO. Packet Switching used to provide mass market switching remains available as a UNE to the embedded base through March 11, 2006. ***

Under the terms of the *TRO*, Verizon no longer has an obligation to provide AT&T with packet switching functionality as an unbundled network element. That is not in dispute here. Rather, the main disagreement between AT&T and Verizon on this issue involves the situation in which AT&T’s UNE-P customers are served off of a Verizon switch that has both packet switching and circuit switching capability. In those

circumstances Verizon should be required to continue to provide AT&T with circuit switching capability to serve its UNE-P customers during the twelve-month transition period established in the *TRRO* until such time as Verizon is no longer required to provide UNE-P. (TR 102)

Several compelling reasons support this result. First, there is a fundamental need to protect the CLEC's customers from the disruption caused by Verizon's unilateral efforts to disconnect existing services. Second, and just as important, the CLECs themselves must be able to rely on the orderly transition periods established by the FCC in the *TRRO* to prepare their own ordering and other back-office systems to process orders for alternative facilities. These mutual needs must be met in tandem, and any future efforts by Verizon to avoid its contractual or transition obligations should be discouraged. Thus, the interconnection agreement should contain a provision regarding packet switching requiring that Verizon provide AT&T with twelve months notice for any switch change that would eliminate the availability of circuit switching prior to March 11, 2006, and ensuring that regardless of Verizon's decision to deploy packet switching, it is obligated to continue to provide local circuit switching functionality to AT&T for its UNE-P customers until such time as Verizon is no longer required to provide mass market local circuit switching as an unbundled element. (TR 103)

AT&T addresses this issue in several sections of its proposed amendment. Under section 3.5.4, Verizon is required to provide unbundled local circuit switching. Local circuit switching is defined in section 2.26 as a function provided by a circuit switch or a packet switch. A packet switch is defined to recognize that a packet switch may be capable of both "packet switching" and "local circuit switching." The language in each

of these sections works together to establish that while Verizon is not obligated to perform packet switching, it is obligated to allow local circuit switching when it utilizes a switch that is capable of both packet switching and local circuit switching. (See Exh. 13; ECN-R1)

ISSUE 14(i) Network Interface Devices (“NIDs”)

AT&T Position: *** The agreement should contain a provision reflecting Verizon’s obligation, affirmed by the TRO, to provide access to Network Interface Devices (NIDs) and to provide the NID functionality with unbundled local loops ordered by AT&T. AT&T’s proposed amendment contains language consistent with this requirement at Paragraph 3.2.6 and 3.4.9. ***

The Commission should adopt provisions that accurately reflect Verizon’s obligations with respect to providing unbundled access to Network Interface Devices. In the *TRO* the FCC stated that the “NID and subloop unbundling rules we adopt herein ensure that competitive LECs obtain a full loop, including the network termination [NID] portion of that loop or subloop, if required, yet preserves the ability of facilities-based LECs to obtain access to only the NID on a stand-alone basis when required.”⁹⁷ AT&T’s proposed contract amendment language at Paragraphs 3.2.6 and 3.4.9 properly reflects this determination, detailing Verizon’s obligation to provide access to NIDs and to provide the NID functionality with unbundled local loops ordered by AT&T. (TR 104)

Verizon’s proposed contract amendments do not address either issue. In order to avoid any doubt or future dispute concerning Verizon’s obligations, these issues should be clearly addressed in the interconnection agreement to reflect the FCC’s determinations in the *TRO*. (TR 104)

⁹⁷ *TRO* at ¶356, n. 1083.

ISSUE 14(j) Line Sharing

AT&T Position: *** Line Sharing is still available for existing customer being served prior to October 2, 2003. AT&T's proposed amendment properly reflects this requirement and should be adopted. ***

While the *TRO* eliminates over time Verizon's obligation to provide line-sharing as a UNE under federal law, it requires Verizon to continue existing line-sharing arrangements for customer locations where AT&T began providing xDSL service using line sharing prior to October 2, 2003.⁹⁸ This requirement is specified in AT&T's updated Amendment at section 3.2.9. (See Exh. 13; ECN-R1)

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

AT&T Position: *** The effective date of the parties' amendment to the interconnection agreement should be on the date the amendment is executed by the parties unless another date is specified in the amendment. ***

As a general matter the effective date of the parties' amendment to the interconnection agreement should be on the date the amendment is executed by the parties, following arbitration, and redrafting of an amendment to reflect the Commission's order in this matter. (TR 105) However, as discussed in connection with issue 11 above, Verizon must permit commingling and conversions *upon the TRO's effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria.⁹⁹ In light of this rule, AT&T's proposed amendment (section 3.7) makes clear that (1) as of October 2, 2003, Verizon is required to provide commingling and conversions unencumbered by additional processes or requirements (e.g., requests for

⁹⁸ *TRO*, ¶¶ 255-270.

⁹⁹ *Id.* at ¶ 589; 47 C.F.R. § 51.318.

unessential information) not specified in *TRO*.¹⁰⁰ Moreover, the rates for new EELs/conversions should be those applicable as of the date AT&T first made its request for those arrangements to Verizon.

Submission of the final agreement should occur expeditiously after the Commission has ruled on the various issues in this arbitration proceeding and the parties have agreed to language that implements the Arbitrator's decision. The Commission should be watchful of a party's effort to try to take a proverbial "second bite at the apple" by proposing compliance language that does not genuinely conform to the Commission's order. (TR 105)

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?

AT&T Position: *** The Commission should reject Verizon's current proposal and direct Verizon to provide a solution involving the rearrangement of existing equipment just as Verizon has told the FCC it could do and as other ILECs already do on a routine basis. AT&T's proposed amendment outlines such FCC-mandated obligations and appropriate remedies. ***

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

¹⁰⁰ *Id.* at ¶¶ 586, 588 & 623-624.

implement different practices and procedures to provide CLECs with unbundled loops where the customer is served by a Verizon IDLC system. A remote terminal may contain and often contains a mixture of both IDLC and UDLC whenever IDLC is present at the remote terminal. (TR 106)

In the *TRO*, the FCC confirmed that Verizon has an obligation to provide AT&T and other CLECs access to unbundled loops where the customer is served by an IDLC system.¹⁰¹ As the FCC recognized, providing this transmission path “may require incumbent LECs to implement policies, practices, and procedures different from those used to provide access to loops served by Universal DLC systems.”¹⁰² The FCC further recognized that “in most cases, this will be either through a spare copper facility or through the availability of Universal DLC systems. Nonetheless *even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access.*”¹⁰³ (TR 106)

Verizon has not provided a genuine offer to meet this obligation. Instead, Verizon has proposed a costly, time consuming and discriminatory process for providing AT&T and other CLECs with access to unbundled loops served by IDLC systems. This is directly contrary to Verizon’s express obligation to unbundle IDLC loops. And the problems with Verizon’s proposals are exacerbated by the imminent sunset of its obligation to provide unbundled local switching or UNE-P. Verizon’s proposal should be rejected, and Verizon should be compelled to genuinely comply with the FCC requirement. (TR 107)

¹⁰¹ *TRO* at ¶297.

¹⁰² *Id.*

¹⁰³ *Id.* (emphasis added).

Verizon's proposal is set forth at Paragraph 3.2.4.1 of its proposed Amendment 2. In that Amendment, Verizon states that when AT&T requests an unbundled loop to serve a customer location that is served by an IDLC system, it will "endeavor" to provide AT&T with an unbundled loop over either existing copper or a loop served by Universal DLC. However, if neither of these options is available, Verizon's proposal at Paragraph 3.2.4.2 of Amendment 2 is that it will construct either a copper loop or Universal DLC system at considerable expense to AT&T, including a whopping special construction NRC for the unbundled loop. (TR 107)

Other than possibly to inflate the costs and delay the provisioning of a loop ordered by AT&T, there is no reason why Verizon should construct loop plant or a UDLC system to provide AT&T with access to an unbundled loop served by an IDLC system. There are several engineering solutions that are available – as Verizon recognized when it was providing information to the FCC during the *TRO* proceedings – and that can be implemented by Verizon. (TR 109)

As the FCC noted in the *TRO* itself, the ILECs "can provide unbundled access to hybrid loops served by integrated DLC systems by configuring existing equipment, adding new equipment, or both."¹⁰⁴ In fact, during the course of the *TRO* proceedings, when Verizon was advocating at the FCC that CLECs could use their own switching equipment and unbundled loops from Verizon to serve mass-market customers, Verizon apparently saw no impediments to providing loops served by IDLC systems. As noted by the FCC, "Frequently, unbundled access to Integrated DLC-fed hybrid loops can be provided through the use of cross-connect equipment, which is equipment incumbent

¹⁰⁴ *TRO* at ¶ 297, n. 855.

LECs typically use to assist in managing their DLC systems.”¹⁰⁵ The FCC also cited a 2002 *ex parte* letter from Verizon “showing that Verizon typically uses central office terminations and cross-connects.”¹⁰⁶ (TR 109)

The Commission thus should reject Verizon’s costly, time consuming and discriminatory proposal – and its unsupported and inflated rates -- to require that AT&T pay to construct facilities to obtain access to an unbundled loop to its customer presently served by a Verizon IDLC system. Approving that proposal would clearly provide Verizon with the wrong incentives; rather than motivating it to find the most expeditious, least cost method. Verizon’s proposal incents it to offer a prohibitively expensive, uneconomic method which effectively undermines its unbundling obligation. (TR 110) Instead, as set forth in AT&T’s revised Amendment at section 3.2.4, the Commission should direct Verizon to provide a technically feasible method of unbundled access as it told the FCC it could do, including, if necessary, providing a UNE-P arrangement at TELRIC rates. (See Exh 13; ECN-R1)

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;**

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

AT&T Position: 17(a) – (d): *** Yes. Contractual performance measurements and remedies are the only practical means of ensuring non-discriminatory access to UNEs. Verizon should be required to meet the standard provisioning intervals and performance measurements that are contained in the current plan adopted and approved by this Commission. Verizon should be subject to potential remedy payments for failure to meet those requirements that are contained in the current plan adopted and approved by this commission.

17(e) This issue was deleted by the Prehearing Officer in Order No. PSC-05-0221-PHO-TP ***

The Commission should require Verizon to meet the standard provisioning intervals or performance measurements that are contained in any plan adopted and approved by this Commission. Furthermore, Verizon should be subject to the potential remedy payments for failure to meet those requirements that are contained in any Performance Assurance Plan adopted and approved by this Commission. In its proposed amendment, Verizon proposes to specifically exempt itself from these requirements for the provision of IDLC loops at Paragraph 3.2.4.3 and for the provision of Commingled arrangements at Paragraph 3.4.1.1. In addition, Verizon seeks to exempt itself from the requirements of the Performance Plans for the provision of UNEs requiring Routine Network Modifications at Paragraph 3.5.2., in spite of the fact that Routine Network Modifications are already contemplated in the activities in the Verizon cost study that establish the non-recurring and recurring charges for High Capacity Loops and Transport. (TR 111)

Moreover, exemption of UNEs requiring Routine Network Modifications from the Performance Plans would be inconsistent with the rationale and reasoning underlying the FCC's requirement that Verizon perform Routine Network Modifications. The FCC's purpose is to prevent anticompetitive discrimination by ensuring that Verizon

performs for CLECs the same Routine Network Modifications that it performs for its own customers. If Verizon is permitted to provide with impunity the Routine Network Modifications to CLECs on a systematically slower schedule than it provides such modifications to its own retail customers, it would effectively negate the entire purpose of the FCC's ruling. By including UNEs requiring Routine Network Modifications in the Commission's Performance Plans, the Commission will ensure that Verizon's provisioning to CLECs is at parity with its provisioning to its own retail customers.

As a result, the provisioning of High Capacity Loops and Transport, which require Routine Network Modifications, should adhere to the Commission's approved provisioning intervals and performance measurements. Verizon's proposal to exempt itself from the Performance Plans should be rejected. (TR 112)

ISSUE 18: How should the Amendment address subloop access under the *TRO*?

AT&T Position: *** AT&T seeks and is entitled to non-discriminatory access to subloop elements consistent with the findings of the *TRO* requiring Verizon to provide AT&T with unbundled access to Verizon's copper subloops elements including Verizon's network interface devices. AT&T is also entitled to unbundled subloops used to access customers in multiunit premises which includes access to any technically feasible access point located near a Verizon remote terminal for these subloop facilities. ***

The *TRO* requires Verizon to provide AT&T with unbundled access to Verizon's copper subloops and Verizon's network interface devices. These requirements encompass any means of interconnection of the Verizon distribution plant to customer premises wiring.¹⁰⁷ In addition, the FCC found that AT&T and other CLECs are impaired on a nationwide basis "without access to unbundled subloops used to access

¹⁰⁷ *TRO* at ¶ 205.

customers in multiunit premises.”¹⁰⁸ As a result, the *TRO* requires Verizon to provide AT&T with access to any technically feasible access point located near a Verizon remote terminal for these subloop facilities.¹⁰⁹ (TR 112)

Access to the subloop facilities is particularly important in the case of multiunit premises. As the FCC found, CLECs face significant barriers to obtaining access to provide service to customers located in the multiunit environment. This is particularly true in view of the exclusive access to these premises that the incumbent providers previously have enjoyed. Given the substantial costs and risks associated with self-deployment to these multiunit premises, “the ability to access subloops at, or near, the customer’s premises in order to reach the infrastructure in those premises where they otherwise would not be able to take their loop the full way to the customer, is critical.”¹¹⁰ (TR 113)

In many critical respects, Verizon’s amendment fails to fully reflect the requirements of the *TRO* on this issue and leaves issues unresolved that could subsequently result in new disputes that will require Commission intervention. In fact, unlike AT&T’s Amendment, which defines the Subloop in section 2.35 and the Inside Wire Subloop in section 2.22 consistent with the provisions of the *TRO*,¹¹¹ Verizon’s proposal does not even provide a definition of subloops (although Verizon defines “Sub-

¹⁰⁸ *Id.* at ¶ 348.

¹⁰⁹ *Id.* at ¶ 343.

¹¹⁰ *Id.* at ¶ 348.

¹¹¹ For example, AT&T’s proposed section 3.4.4 provides that Verizon is required to provide AT&T with non-discriminatory access to Inside Wire Subloops for access to multiunit premises wiring on an unbundled basis regardless of the capacity or type of media (including, but not limited to copper, coax, radio and fiber) employed for the Inside Wire Subloop. Although, in the MDU Reconsideration Order, the FCC extended the terms of its FTTH rules to include multiple dwelling units that are predominantly residential, the FCC specifically stated that it was retaining CLEC’s rights under the *TRO* to unbundled access to inside wiring, NIDs, and other subloops for multi-tenant premises. *MDU Reconsideration Order* at ¶9.

Loop for Multiunit Premises Access”). The definitions in AT&T’s Amendment are important to the Parties’ agreements as they help to make clear just what Verizon is providing and what it is not providing. Ensuring that the parties are in agreement as to the meaning of these terms should prevent unnecessary threshold disputes in the future. (TR 114)

Further, Verizon’s proposal does not comply with the *TRO*’s requirement to provide access “at or near” the customer premises. Instead, Verizon’s proposal seeks to limit access to “any technically feasible point” located near a Verizon remote terminal. While this minor language difference may appear insignificant, experience indicates that minor differences can result in not-so-minor disputes. AT&T simply seeks to have the language of the ICA track the requirements of the FCC’s order to avoid such disputes.¹¹² (TR 114)

Verizon also refuses to reserve House and Riser cable for competitors. AT&T is willing to accept this limitation, if and only if, Verizon is expressly willing to contract to abide by the same limitation.¹¹³ (TR 115)

Verizon also seeks to impose a variety of restrictions on AT&T’s access to inside wire subloops. These are found in paragraph 3.3.1.1.1.3 of Verizon’s proposed Amendment 2. For example, Verizon contends that AT&T’s facilities cannot be attached, otherwise affixed or adjacent to Verizon’s facilities or equipment, cannot pass through or otherwise penetrate Verizon’s facilities or equipment and cannot be installed

¹¹² Verizon’s proposal also indicates that access would be subject to certain rates and charges to be reflected in the amended ICA. Verizon has yet to submit any proposed charges for review or negotiation by the parties. Of course, proposed rates when submitted would have to be forward looking, not involve double recovery, and be supported.

¹¹³ That is, if Verizon will not reserve House and Riser cable for its competitors, it also should forgo reserving those facilities for its own retail operations. Otherwise, this limitation would discriminate against competitors.

so that AT&T's facilities or equipment are located in a space where Verizon plans to locate its facilities or equipment. Verizon also asserts that it shall perform any cutover of a customer to AT&T service by means of a House and Riser Cable subject to a negotiated interval, that Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to AT&T's facilities, and that Verizon shall determine how to perform such installation. (TR 115)

Finally, under its proposal Verizon would perform all installation work on Verizon equipment in connection with AT&T's use of Verizon's House and Riser Cable. Verizon's effort to force AT&T to use only Verizon's technicians to enable access to subloops is not authorized by the *TRO*. Indeed, this restriction would result in unnecessary delays and increased costs in providing service to customers. Thus, AT&T's proposed amendment, at section 3.4.8, makes it clear that connections to subloops (including the NID), including but not limited to directly accessing the cross-connection device owned or controlled by Verizon, may be performed by AT&T technicians or its duly authorized agents, at its option, (i) without the presence of Verizon technicians, and (ii) at no additional charge by Verizon. (TR 116)

AT&T's language, at section 3.4.8, also makes clear that, "Such connecting work performed by AT&T may include but is not limited to lifting and re-terminating of cross connection or cross-connecting new terminations at accessible terminals used for Subloop access. No supervision or oversight by Verizon personnel shall be required but Verizon may monitor the work, at its sole expense, provided Verizon does not delay or otherwise interfere with the work being performed by AT&T or its duly authorized agents." Contrary to Verizon's characterization of AT&T's proposal, AT&T is not seeking

unlimited access to Verizon equipment, like the splice case. Instead, AT&T is only seeking to ensure that it is able to obtain **non-discriminatory** access.¹¹⁴ (TR 116)

Nor does Verizon propose a method for dealing with issues relating to Single Points of Interface (“SPOI”). Rather, Verizon’s proposed language would require the parties to negotiate yet another amendment to the ICA at some future date to memorialize the terms conditions and rates under which Verizon would provide a SPOI at a multiunit premises. However, there is no reason to postpone resolution of this issue to some indeterminate date. Rather, the Commission should resolve it in this proceeding, under the terms AT&T has proposed in its Paragraph 3.4.5 of its proposed Amendment. (TR 117)

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

AT&T Position: *** Yes. The TRO requires that the facility between Verizon’s local circuit switching equipment located in AT&T facilities and the Verizon serving wire center should be treated as unbundled transport. ILECs may reverse collocate by collocating equipment at a competing carrier’s premises or may place equipment in a common location for purposes of interconnection. The transmission path from this point back to the ILEC wire center shall be unbundled as transport between ILEC switches or wire centers. AT&T’s proposed amendment reflects the FCC’s findings. ***

The transmission path between the Verizon’s local circuit switching equipment located in AT&T facilities and the Verizon serving wire center should be treated as unbundled transport, as required by the FCC. The FCC recognized in the *TRO* that

¹¹⁴ For example, AT&T should be entitled to access the wiring inside the splice case when Verizon itself has opened it, and a Verizon technician is present.

“incumbent LECs may ‘reverse collocate’ in some instances by collocating equipment at a competing carrier’s premises, or may place equipment in a common location, for purposes of interconnection.”¹¹⁵ The FCC further found that to the extent that an incumbent LEC has local switching equipment, as defined by the FCC’s rules, “reverse collocated” in a non-incumbent LEC premises, “the transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport between incumbent LEC switches or wire centers.”¹¹⁶ (TR 117)

In making this finding, the FCC distinguished a “reverse collocation” arrangement from an “entrance facility.” Therefore, Verizon continues to be obligated to provide such unbundled dedicated transport under the terms set forth in the *TRRO*. (TR 118)

AT&T’s proposed contract language contains a definition of Dedicated Transport at Paragraph 2.9 that reflects the FCC’s findings. Specifically, that language defines “Dedicated Transport” as “A transmission facility between Verizon switches or wire centers, (including Verizon switching equipment located at AT&T’s premises) . . . , dedicated to a particular customer or carrier.” This proposal is fully consistent with applicable law, and should be adopted. (TR 118)

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?

AT&T Position: *** Yes. Section 251(c)(2) of the federal Act specifically provides that Verizon has an obligation to interconnect with the CLEC’s network via interconnection trunks for the transmission and routing of telephone exchange service and exchange

¹¹⁵ *TRO* at ¶ 369, n. 1126.

¹¹⁶ *Id.*

access. The rates, terms and conditions should be in accordance with Section 252 (251(c)(2)(A) and (D)). The TELRIC standard is prescribed in Section 252(d)(1). ***

Interconnection trunks between a Verizon wire center and a CLEC wire center are interconnection facilities under Section 251(c)(2) which must be provided at TELRIC and the ICA should be amended to reflect this requirement. The specific obligation that should be reflected in the Amendment is the requirement that interconnection trunks established for the transmission and routing of telephone exchange service and exchange access, and not for the purpose of “backhauling” traffic, are interconnection facilities under section 251(c)(2) that must be provided at TELRIC. (TR 119)

Interconnection trunks established for the transmission and routing of telephone exchange service and exchange access are interconnection facilities under Section 251(c)(2); Verizon must provide interconnection trunks at TELRIC rates. Section 251(c)(2) of the Act specifically provides that Verizon has an obligation to interconnect with the CLEC’s network via interconnection trunks “for the transmission and routing of telephone exchange service and exchange access ... on rates, terms and conditions ... in accordance with ... Section 252.”¹¹⁷ Section 252(d)(1), in turn, contains the TELRIC standard. (TR 119)

Although in the *TRO* the FCC revised the definition of dedicated transport to exclude entrance facilities, finding that they “exist outside the incumbent LEC’s local network,” the FCC nevertheless was very clear that this conclusion did not alter the obligations of Verizon to continue to provide interconnection trunks, pursuant to Section 251(c)(2) of the Act, at TELRIC prices. Indeed, the FCC explicitly stated that “to the

¹¹⁷ 47 U.S.C. §251(c)(2)(A) and (D).

extent that requesting carriers need facilities in order to “interconnect with the [incumbent LEC’s] network, section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission’s interpretation of this obligation.”¹¹⁸ (TR 119-120)

In the *TRRO*, the FCC, relying on guidance from the D.C. Circuit in the *USTA II* decision, reinstated the *Local Competition Order* definition of dedicated transport.¹¹⁹ However, after applying an impairment analysis to dedicated transport, the Commission found that CLEC carriers are not impaired without access to entrance facilities as an unbundled network element. The FCC did not, however, retreat from its finding regarding the availability of interconnection facilities at TELRIC prices. Rather, the FCC stated that while an ILEC is not obligated to provide access to entrance facilities as UNEs, CLECs continue to have access to these facilities at cost-based rates, stating:

[o]ur finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain *interconnection facilities* pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities *at cost-based rates* to the extent that they require them to interconnect with the incumbent LEC’s network.¹²⁰

Therefore, it is clear that interconnection trunks established for the transmission and routing of telephone exchange service and exchange access, and not for the purpose of “backhauling” traffic, are interconnection facilities under section 251(c)(2) that must be provided at TELRIC. Thus, the ICA should be amended in accordance with AT&T’s proposed section 3.6.3 to properly reflect that requirement. (TR 120-121)

¹¹⁸ *TRO* at ¶ 366.

¹¹⁹ *TRO* at ¶¶ 136-141.

¹²⁰ *TRRO* at ¶ 140 (emphasis added).

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 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?**
- b) **Conversion of existing circuits/services to EELs:**
 - (1) **Should Verizon be prohibited from physically disconnecting, separating or physically altering the existing facilities when a CLEC requests a conversion of existing circuits/services unless the CLEC requests such facilities alteration?**
 - (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?**
 - (3) **Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the TRO's service eligibility criteria?**
 - (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 to CLEC submitted the request (but not earlier than October 2, 2003)?**
- c) **What are Verizon's rights to obtain audits of CLEC compliance with the service eligibility criteria in 47 C.F.R. 51.318?**

AT&T Position - *** The TRRO affirmed the EELs eligibility criteria established by the FCC in the TRO: "[T]o the extent that the loop and transport elements that comprise a requested EEL circuit are available as unbundled elements, then the incumbent LEC must provide thee requested EEL". ***

As a predicate matter, it is important that the Amendment recognize Verizon's obligation to provide CLECs with access to EELs, or Enhanced Extended Links. EELs are the combination of one or more segments of unbundled (DS-0, DS1 and DS3) loops with unbundled (typically DS1 and DS3) dedicated transport. At the option of the CLEC,

an EEL may or may not include multiplexing and the loop portion is not limited to just DS1 loop types. EELs are essentially long loops -- loops that have been extended from the legacy ILEC wire center to a location where AT&T has a switch or some other network appearance. (TR 121)

Because it is not practical or prudent for a CLEC such as AT&T to physically collocate in every wire center, the availability of EELs is critical to the ability to compete in the local exchange market. Indeed, EELs provide a natural bridge between resale or UNE-P to UNE-L. If volumes of a CLEC's dedicated transport traffic (and the transport component of EELs) cross the economic break-even point to warrant self-provisioning given a particular transport route's construction cost (driven by rights-of-way, distance, and other cost factors), a CLEC such as AT&T can then establish collocation in that end office, construct its own transport facilities or obtain third-party transport, and roll service from EELs to UNE-L (or completely off of UNEs if it has its own or controlled loop facilities). As the FCC concluded in the *TRO*, "EELs facilitate the growth of facilities-based competition in the local market."¹²¹ (TR 121-122)

Given this determination, the FCC has explicitly obligated Verizon to provide CLECs with access to EELs. This obligation, as well as the criteria for ordering or converting existing circuits to EELs, is contained in FCC rule 47 C.F.R. § 51.318. As the FCC stated in the *TRO*, "Our rules currently require incumbent LECs to make UNE combinations, including loop-transport combinations, available in all areas where the

¹²¹ *TRO* at ¶ 576. The FCC also noted that the availability of EELs "promotes innovation because competitive LECs can provide advanced switching capabilities in conjunction with loop-transport combinations." *Id.*

underlying UNEs are available and in all instances where the requesting carrier meets the eligibility requirements.”¹²²

These determinations were not altered in the *TRRO*. To the contrary, in the *TRRO* the FCC noted that the *USTA II* court affirmed the EELs eligibility criteria that were established in the *TRO*. Specifically, the Commission reiterated its previous finding in the *TRO* and stated “to the extent that the loop and transport elements that comprise a requested EEL circuit are available as unbundled elements, then the incumbent LEC must provide the requested EEL.”¹²³ Thus, the EEL’s eligibility requirements have been in place since the effective date of the *TRO*, and they have not been changed by either the *USTA II* decision or the FCC in the *TRRO*.¹²⁴ (TR 122)

As discussed above with respect to Issues 4 and 5, the *TRRO* provides specific criteria to determine in which wire centers Verizon will no longer have an obligation to provide unbundled DS1 and DS3 Loops and unbundled DS1 and DS3 dedicated transport. In locations where Verizon’s obligation to provide unbundled DS1 and DS3 Loops and unbundled DS1 and DS3 dedicated transport has not been removed – in other words, as reflected in Verizon’s FCC filing, in just about every wire center in Verizon’s Florida territory -- Verizon is required to provide AT&T and other CLECs with EELs. This obligation exists in both the situation in which AT&T is placing an order for a new EEL circuit and in which it is converting an existing circuit (for example a T-1 access circuit) to an EEL, so long as certain service criteria eligibility are met. (TR 122-123)

¹²² *TRO* at ¶ 575.

¹²³ *TRRO* at ¶ 85.

¹²⁴ *TRRO* at ¶ 85.

AT&T's revised Amendment specifically addresses Verizon's obligations concerning EELs in sections 3.7.1 and 3.7.2. The Commission should adopt these provisions to ensure that there is no ambiguity regarding Verizon's obligations vis-à-vis EELs. (See Exh. 13; ECN-R1)

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

AT&T Position - Issue 21(a): *** The FCC allows CLECs to self certify when ordering new EELs or converting existing circuits to EELs. Rule 51.318 requires that the CLEC be certificated by the state and provide self certification that each DS1 circuit and each DS1-equivalent circuit on a DS3 EEL meet specific criteria. The FCC does not require any additional information other than the self certification letter from the CLEC certifying that the specific requirements have been satisfied. Any other proposed requirements should be rejected. ***

The FCC established specific service eligibility criteria for a CLEC to self-certify when ordering either a new EEL or convert existing circuits to an EEL. Those service eligibility criteria are set forth in FCC rule 47 C.F.R. § 51.318, which requires a CLEC to be certificated by the state and provide self-certification that that each DS1 circuit and each DS1-equivalent circuit on a DS3 EEL meet the following criteria:

- (i) Each circuit to be provided to each customer will be assigned a local number prior to the conversion of that circuit;
- (ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;
- (iii) Each circuit to be provided to each customer will have 911 or E911 capability prior to the conversion of that circuit;
- (iv) Each circuit to be provided to each customer will terminate in a collocation arrangement that meets the requirements of paragraph (c) of this section;

- (v) Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of section (d) of this section;
- (vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section; and
- (vii) Each circuit to be provided to each customer will be served by a switch capable of switching local voice traffic. (TR 123-124)

The FCC imposed no further requirements for information from the requesting CLEC other than the self-certification letter. In fact, the FCC rejected the proposals of the incumbent LECs such as Verizon that had sought to require other onerous conditions on the CLECs as a pre-condition to order an EEL or convert existing circuits to EELs, such as pre-audits and other requirements that the FCC described as constituting “unjust, unreasonable and discriminatory terms and conditions for obtaining access to UNE combinations.”¹²⁵ (TR 124)

Regarding the certification process, the FCC prescribed that a requesting carrier’s “self certification” that it satisfied the service eligibility criteria “is the appropriate mechanism to obtain promptly the requested circuit” and found that “a critical component of nondiscriminatory access is preventing the imposition of undue gating mechanisms that could delay the initiation of the ordering or conversion process.”¹²⁶ (TR 125)

The FCC further prescribed that this “self certification” process would be subject to “later verification based on cause” in a limited annual audit process.¹²⁷ The FCC found that a requesting carrier’s self-certification of satisfying the qualifying service

¹²⁵ TRO at ¶ 577.

¹²⁶ TRO at ¶ 623.

¹²⁷ TRO at ¶ 622.

eligibility criteria for EELs “is the appropriate mechanism to obtain promptly the requested circuit.”¹²⁸ (TR 125)

The FCC thus plainly envisioned a streamlined, nondiscriminatory process for CLECs to order new EELs and to convert existing special access arrangements to EELs. Not surprisingly, Verizon will have none of it. Rather, Verizon’s proposed contract amendment for the implementation of the *TRO*’s requirements proposal – and specifically regarding the information that AT&T and other CLECs would be required to provide in its “self certification” of satisfaction of the service eligibility criteria – is much more onerous than is required or allowed by the FCC’s Rules. Indeed, the language appears to be designed to impede AT&T and other CLECs from utilizing the EELs that Verizon is obligated to provide. (TR 125)

For example, Paragraph 3.4.2.3 of Verizon’s proposed Amendment 2 would require AT&T to provide the specific local telephone number assigned to each DS1 circuit or DS1-equivalent; the date each circuit was established in the 911/E911 database; the specific collocation termination facility assignment for each circuit and a “showing” that the particular collocation arrangement was established pursuant to the provisions of the federal Act dealing with local collocation and the interconnection trunk circuit identification number that serves each DS1 circuit. Verizon has no legal or persuasive basis for these extraordinary requirements that are not contained in the FCC rules.¹²⁹ (TR

¹²⁸ *TRO* at ¶ 623.

¹²⁹ There are a number of specific examples of the way in which Verizon’s language regarding the content of the written certification needed to meet the service eligibility criteria does not fairly reflect the law. For example, Verizon requires that AT&T actually provide and input specific identifying information rather than simply certifying that the criteria has been met, as allowed by the *TRO*. Specifically, Verizon would require AT&T to provide the local phone number assigned to each DS1 or DS3 circuit or equivalent. when the *TRO* provides only that in making its certification, AT&T is representing that at least one such number has been assigned. Verizon would also require AT&T to input the date each circuit was established in the 911 database, whereas the *TRO* provides only that in making its certification AT&T is

126) Indeed, the information that Verizon proposes goes well beyond what is required by the FCC for a CLEC to “self certify” the satisfaction of the service eligibility criteria and receive “promptly the requested circuit.”

Under the FCC’s rules, AT&T should only have to send a letter “self-certifying” that the DS1 EEL circuit or the 28 DS1-equivalent circuits of a DS3 EEL has a local telephone number assigned¹³⁰ and the date established in the 911 or E911 database.¹³¹ It should not be required to provide the specific telephone number or the date that the telephone number was established in the 911/E911 database. Likewise, AT&T should not be required to make a “showing” as to the nature of the collocation that it has established,¹³² but rather should be permitted to self-certify that the collocation established for the termination of the circuit meets the requirements established in rule 47 C.F.R. § 51.318(c). (TR 126-127)

representing that there is a 911 capability to each circuit. Verizon would require AT&T to identify the address of the collocation termination for each circuit, when the *TRO* provides only that AT&T’s certification is a representation that the circuit terminates to a collocation. Verizon would require AT&T to demonstrate that the collocation arrangement was established under 47 USC 251(c)(6) and not under a federal collocation tariff, when in fact, the *TRO* only provides that in making a certification, Verizon represents that the collocation is governed by 47 USC 251(c)(6). Verizon also would require AT&T to provide the interconnection trunk circuit ID for each DS1 circuit, when the *TRO* requires only that in making its certification AT&T represents that there is an interconnection trunk serving each circuit. Finally, Verizon would require AT&T to identify the local switch serving each DS1 circuit, when the *TRO* provides only that in making its certification AT&T represents that a local switch service the DS1 circuit.

¹³⁰ For example, the particular local telephone number assigned may change in the ordinary course of business, but a change in the local telephone number assigned continues to satisfy the FCC criteria, and should not trigger a pointless recertification obligation.

¹³¹ The requirement to establish the local number in the E911 database is a binary condition. Verizon’s proposal seeks to expand the requirement, thereby converting a one-time certification into an ongoing certification contrary to the FCC rules. Of course, a change in telephone number could be associated with a new establishment of that number in the E911 database. Neither condition changes the CLEC’s eligibility or triggers any bona fide need for a re-certification.

¹³² For example, the collocation arrangement may have originally been established for access traffic and now used for both access and local, interstate and intrastate purposes.

Furthermore, there is no requirement in the FCC's rule that AT&T provide the "interconnection trunk circuit identification number" for each DS1 EEL or DS1-equivalent of a DS3 EEL. Rather, the eligibility criteria simply require that AT&T self-certify that each DS1 or DS1-equivalent circuit will be served by an interconnection trunk that "will transmit the calling party's number in connection with calls exchanged over the trunk."¹³³ (TR 127)

Much of the information that Verizon's proposed Amendment would require is information that would be examined in an "after the fact" compliance audit should such an audit be initiated. However, Verizon's proposal effectively foists the burden of a continuous "before the fact" audit upon the CLECs. This effort is unjustified and contrary to the FCC rules. Because the information requested in Verizon's proposal amounts to an impermissible "pre-audit" that was rejected by the FCC as being a discriminatory "gating mechanism," its proposed language seeking to impose such an obligation on the CLECs through an interconnection amendment also should be rejected. (TR 127)

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

AT&T Position - Issue 21(b)(1): *** Yes. Verizon should be prohibited from physically disconnecting or physically altering the existing facilities when AT&T requests that an existing circuit be converted to an EEL. Section 51.316(b) provides that: "An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer." ***

¹³³ 47 C.F.R. §51.318 (d).

The FCC Rules do not permit Verizon to physically disconnect, separate or physically alter the existing facilities when AT&T requests the conversion of existing access circuits to an EEL unless AT&T specifically requests that such work be performed. 47 C.F.R. § 51.316(b) specifically provides:

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

As the FCC discussed in the *TRO*, "Converting between wholesale services and UNEs or UNE combinations should be a *seamless* process that does not alter the customer's perception of service quality."¹³⁴ In fact, the FCC considered such conversions to be "largely a billing function."¹³⁵ Accordingly, Verizon's anti-competitive effort to turn these conversions it into a far more costly and inefficient process should be rejected. (TR 128)

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

AT&T Position - Issue 21(b)(2): *** Verizon is not authorized to impose any non-recurring charges on AT&T or any other CLEC when access facilities are being converted to EELs. FCC Rule 51.316(c) specifically prohibits such charges. ***

Verizon is not authorized to impose non-recurring charges (including, but not limited to termination charges, disconnect and reconnect fees) on a circuit-by-circuit basis when wholesale services (e.g., special access facilities) are being converted to

¹³⁴ *TRO* at ¶ 586.

¹³⁵ *TRO* at ¶ 588.

EELs. In fact, the FCC's Rules expressly prohibit such charges. Specifically, 47 C.F.R.

§ 51.316(c) provides:

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

In promulgating this Rule, the FCC recognized that:

[O]nce a competitive LEC starts serving customer, there exists a risk of *wasteful and unnecessary* charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could *unjustly enrich* an incumbent LEC. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just reasonable and nondiscriminatory rates, terms and conditions.¹³⁶

Notwithstanding the FCC's clear directive on this point, Verizon's proposed Amendment 2 purports to impose several non-recurring charges on CLEC conversion orders. For example, Verizon proposes to charge, on a per circuit basis - \$19.33 for a service order and \$6.12 for an installation (or \$ 25.45 "per circuit"). Thus, under Verizon's proposal, a CLEC ordering a DS1 EEL -- which consists of 24 circuits -- would incur a total charge of \$610.80 for just ordering and "installation." In addition, as indicated in Paragraph 3.4.2.5 of Verizon's proposed Amendment 2, Verizon would add on an additional "re-tagging fee" of \$52.73 per circuit. Again, in the case of the DS1

¹³⁶ TRO at ¶ 587 (emphasis supplied).

EEL order, this would mean additional charges to the CLEC of \$1265.52. Thus, for a simple conversion of a T-1 access circuit to a DS1 EEL, Verizon's proposal would impose charges of almost \$2000 on the ordering CLEC. (TR 130)

Charges of this level are clearly in excess of any forward-looking costs that Verizon conceivably could incur to make the "simple billing change" described by the FCC. In fact, Verizon's proposed retagging fee is a band-aid approach to Verizon's inventory systems, and is plainly not recoverable as a forward-looking cost. Given the stipulation between the parties concerning Verizon's Pricing Attachment and Issue 26, it is not clear whether Verizon is still seeking to have these rates adopted in this arbitration. If it is, because these rates are plainly unreasonable and discriminatory, they should be rejected as a violation of 47 C.F.R. § 51.316(c). (TR 130)

Issue 21(b)(3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the TRO's service eligibility?

By agreement of the Parties, this issue has been withdrawn from the proceeding.

Issue 21(b)(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 to CLEC submitted the request (but not earlier than October 2, 2003)?

By agreement of the Parties, this issue has been withdrawn from the proceeding.

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

AT&T Position - Issue 21(c): *** AT&T does not object to reasonable audit rights. However, Verizon's extra-regulatory audit burdens sought by Verizon should be rejected. Verizon should be allowed to audit CLEC compliance with service eligibility criteria for EELs on an annual basis. The audit should be conducted by an independent auditor and paid for by Verizon. ***

AT&T certainly does not object to the audit rights prescribed by the FCC, and in fact has proposed language, set forth in Paragraphs 3.7.2 through 3.7.2.8 of its Amendment, that implement the FCC Rules and requirements regarding the ordering of new EELs and the conversion of existing circuits to EELs. (TR 130; Exh. 13, ECN-R1)

Thus, as the FCC specified in the *TRO*, Verizon should have a limited right on an annual basis to audit the compliance of CLECs with the service eligibility criteria for EELs. An independent auditor should conduct the limited audit in accordance with the standards established by the American Institute for Certified Public Accountants (“AICPA”). Verizon should be required to pay for the audit unless the auditor finds that the CLEC failed to comply in all material respects with the service eligibility criteria.¹³⁷ (TR 131)

These FCC requirements clearly function as counterbalance to Verizon’s invoking baseless, harassing audits on CLECs. However, the extra-regulatory audit burdens sought by Verizon in its proposed Amendment 2 at Section 3.4.2.7 pose just such a threat. Because Verizon has no basis for its unlimited auditing proposal, it should be rejected in favor of AT&T’s language. (TR 131)

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?

AT&T Position: *** The TRO requires ILECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed. Verizon’s obligation to perform routine network modifications pre-dates the TRO. The TRO simply clarifies the obligation and rejects Verizon’s “no build” policy as anticompetitive and discriminatory. No change in law has taken place to necessitate amending the existing agreement. AT&T

¹³⁷ *TRO* at ¶¶ 626 - 627.

has however proposed language that correctly reflects the FCC rules and Verizon's obligations. ***

The FCC required Verizon to perform the routine network modifications necessary to permit AT&T access to loops and dedicated transport. The *TRO* requires ILECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed.¹³⁸ 47 C.F.R. § 51.319(e)(5) makes the obligation explicit; it states:

“Routine network modifications.

(i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

¹³⁸

TRO at ¶ 632.

There should be no need to amend the ICA to reflect Verizon's obligation to provide routine network modifications because that requirement *pre-dated* the *TRO*. Indeed, that order simply clarified Verizon's existing obligation, rejecting Verizon's bogus "no build" policy as anticompetitive and discriminatory on its face. Thus, there has been no "change in law" that would necessitate an amendment to the ICA. Indeed, the New York commission and every other commission considering this issue in New England have reached the conclusion that there has been no "change in law" that triggers the contract amendment process.¹³⁹ (TR 133)

Nevertheless, for purposes of moving this case forward—and because Verizon has refused to comply with its obligations absent an amendment—AT&T has proposed

¹³⁹ *In Re: Petition Of Verizon-Rhode Island For Arbitration Of An Amendment To Interconnection Agreements With Competitive Local Exchange Carriers And Commercial Mobile Radio Service Providers In Rhode Island To Implement The Triennial Review Order*, Rhode Island Public Utilities Commission Docket No. 3588, PROCEDURAL ARBITRATION DECISION, April 9, 2004, at 14:

"The current ICAs already require VZ-RI to provide UNEs such as routine network modifications at TELRIC rates."

Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order, New York Public Service Commission, Case 04-C-0314, ORDER DIRECTING ROUTINE NETWORK MODIFICATIONS, February 10, 2005, at 18:

"In 2001, Verizon unilaterally interpreted the scope of its obligation to provide UNE loops by articulating its "no facilities" policy. It did so with no amendment to its agreements or invocation of change-of-law procedures. Now that it must adopt the FCC's interpretation of the same obligation, there is similarly no need for amending language. Rather, Verizon must immediately cease its "no facilities" policy, which has been declared discriminatory by the FCC, without the delay inherent in the amendment negotiation process."

Verizon Maine Petition for Consolidated Arbitration, Maine Public Utilities Commission Docket No. 2004-135, ORDER, June 11, 2004, at 8:

"We find, on balance, that the *TRO* did not establish new law but instead clarified existing obligations. Section 251(c)(3) has always required that Verizon provide access to its UNEs on a non-discriminatory basis. The FCC's new rules merely clarify what is required under that existing obligation. Thus, Verizon must perform routine network modifications on behalf of CLECs in conformance with the FCC's rules. Verizon may not condition its performance of routine network modifications on amendment of a CLEC's interconnection agreement."

language that correctly reflects the FCC's rules. In addition, AT&T's proposed language addresses ambiguities that the FCC clarified in its Orders. However, AT&T does not in any way concede by its response that there has been a "change in law." Likewise AT&T reserves its rights to pursue all remedies available for Verizon's unlawful "no build" practice. (TR 133)

To the extent there is an amendment, the contract Amendment should describe routine network modifications in the same manner and in the same detail as they are described by the FCC's Rules and in the *TRO*. For example, to clarify the extent of Verizon's obligations the *TRO* listed illustrative but not exhaustive examples of such necessary loop modifications as including "rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer."¹⁴⁰ Similarly, AT&T's proposed amendment, at Paragraph 3.8.1, specifies that routine network modifications "include but are not limited to:" rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; and deploying a new multiplexer or reconfiguring an existing multiplexer. Consistent with the FCC's approach, AT&T's proposed language also states that the determination of whether a modification is routine should be based on the nature of the tasks associated with the modification, not on the end-user service that the modification is intended to enable. (TR 133-134)

Rather than reflecting the FCC's clarification of its pre-existing obligation to make routine network modifications, Verizon has proposed contract language on this

¹⁴⁰ *Id.* at ¶ 634.

issue that continues to demonstrate its antipathy to that obligation. First, unlike AT&T's proposal, Verizon's proposed Amendment does not describe all of the routine network modification activities specified in the FCC Rules and the *TRO*, and also attempts to weaken its obligation in certain areas. (TR 134)

There are a number of examples of this. For one, Verizon, in its proposed Paragraph 3.5.1.1 in Amendment 2, describes routine network modifications as including rearranging or splicing of "in-place" cable at "existing splice points." However, there is nothing in the *TRO* or the FCC Rules that limits modifications to "in-place" cable or to "existing splice points." Such modifications could involve new cable or old cable spliced in a new arrangement. It also may necessitate establishing a new splice point. (TR 135)

Verizon also seeks to exclude routine network modifications from the ambit of existing metrics and remedies plans. Once again, there is nothing in the *TRO* that supports such an exclusion. To the contrary, the FCC found that to the extent modifications did affect loop-provisioning intervals it expected any such impact would be addressed by the state commissions in their recurring reviews of LEC performance.¹⁴¹ In fact, subjecting Verizon's performance of this obligation to metrics and remedies is consistent with the principle the FCC used to impose the obligation to provide routine network modifications in the first place – parity between Verizon's wholesale performance and its retail operations. (TR 135-136)

These deficiencies, standing alone, warrant the rejection of Verizon's proposed language. But there is another, perhaps even more fatal problem with Verizon's Amendment – that is, Verizon's Amendment 2 tries to condition its obligation by

¹⁴¹ *TRO* at ¶ 639.

asserting that it will only make routine network modifications subject to its ability to impose certain rates and charges on the requesting CLEC.¹⁴² (TR 134)

Contrary to Verizon's argument that it should be allowed to charge separately for routine network modifications, the FCC noted in the *TRO* that the costs of routine network modifications are most often already included in existing TELRIC rates.¹⁴³ This means that, in most instances, existing non-recurring and recurring UNE rates have been set at levels that fully recover Verizon's forward-looking cost of performing routine network modifications and, as a consequence, no further cost recovery is justified. Thus, the *TRO* itself is quite clear that AT&T shall not be obligated to pay separate fees for routine network modifications to any UNE or UNE combination unless and until Verizon demonstrates that such costs are not already recovered from monthly recurring rates for the applicable UNE(s) or from another cost recovery mechanism. (TR 136-137)

Verizon has not even bothered to make a colorable effort at complying with this express FCC requirement in this case. While Verizon attempts to put a brave face on its failure to support its proposed rates with evidence, the fact is that it has effectively conceded its inability to make the showing required by the *TRO* and the Commission. Given that the data necessary to make its case – to the extent it exists at all – resides in the studies Verizon used to establish its UNE rates, the claim that “difficulties” somehow prevented Verizon from submitting the necessary evidence is simply not credible. The far more likely explanation is that the “difficulties” Verizon encountered is the patent

¹⁴² This is simply a continuation of Verizon's anticompetitive and facially discriminatory “no build” policy. For years ILECs such as Verizon have collected rates that typically include forward-looking cost recovery for routine network modifications, although Verizon refused to perform the routine network modifications. Unashamed of its past noncompliance, Verizon now exacerbates it by only agreeing to perform routine network modifications at unsupported rates that would be imposed in addition to the costs embedded in the Commission's approved UNE rates.

¹⁴³ *TRO*, ¶ 640.

inability to prove that it is not already recovering the costs of routine network modifications in its existing rates. (TR 138)

This has certainly been borne out by the findings of other state commissions that have considered the matter. For example, the Virginia State Corporation Commission ruled, “The costs for routine network modifications have been addressed in the TELRIC rates previously established by the Commission for high capacity UNE loops.”¹⁴⁴ Even more recently, the New York Public Service Commission issued a decision requiring Verizon New York Inc. to make any and all routine network modifications necessary without imposing any charge for such modifications. In making this finding, the NYPSC relied on the FCC’s *TRO* and stated:

As the FCC found, the failure to carry out activities for CLECs that are routinely performed for retail customers is discriminatory and therefore anticompetitive.¹⁴⁵

The commissions in Maine and Rhode Island have made similar findings.¹⁴⁶ (TR 137)

Thus, Verizon should not be permitted to impose any charges on AT&T for routine network modifications without a prior determination by this Commission of whether the activities for which the rates have been proposed are already included in the non-recurring or recurring rates for the unbundled element in question and, if not, without a review and approval of underlying cost studies supporting the charges to be imposed.

¹⁴⁴ Petition of Cavalier Telephone, LLC For Injunction Against Verizon Virginia Inc. for Violations of Interconnection Agreement and For Expedited Relief to Order Verizon Virginia Inc. to Provision Unbundled Network Elements in Accordance with the Telecommunications Act of 1996, Case No. PUC-2002-00088, Final Order (January 28, 2004) at 8, recon. denied by Order on Reconsideration (March 5, 2004).

¹⁴⁵ Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the *Triennial Review Order*, New York Public Service Commission, Case 04-C-0314, (other cites omitted), Order Directing Routine Network Modifications, issued February 10, 2005.

¹⁴⁶ See footnote 166.

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

AT&T Position: *** Yes, except to the extent modified by the TRO and TRRO. ***

Verizon has taken the position in this arbitration that the interconnection agreement should be amended to specifically reserve rights to discontinue UNEs that it claims exist in documents outside of the ICA, such as its tariffs.¹⁴⁷ This proposal should be rejected as superfluous and a potential source of confusion. To the extent that a CLEC is ordering UNEs, facilities or services out of its ICA with Verizon, the provisions of the ICA regarding the discontinuance of facilities should govern. Verizon should not be allowed to attempt to preserve and use some unidentified and unrelated rights external to the ICA. Moreover, Verizon does not identify with specificity any tariffs or other documents that might be implicated. The inclusion of such vague and ambiguous language in the ICA can only cause confusion as to the parties' rights and obligations. Accordingly, it should not be included in the agreement.

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

AT&T Position: *** Yes. The amendment should specify the details of the transition period, prohibit any termination charges, disconnect fees, reconnect fees, or charges associated with establishing a new service in conjunction with conversions between existing arrangements and new arrangements. The transition from UNEs to alternative arrangements should be governed by the principles articulated in Rule 51.316(b) and (d) for the conversion to UNEs. Verizon's obligations to perform the conversions without adversely affecting the service quality for CLEC's end-users should be made clear in the amendment. ***

¹⁴⁷ See Verizon proposed Amendment 1, sections 2.1, 3.1; Verizon proposed Amendment 2, sections 2.4, 3.5.3.

The FCC's adoption of specific transition requirements in the *TRRO* is important for several reasons, including the need to maintain service stability for existing customers; protection against a tidal wave of maintenance issues and service rearrangements; and stability of prices/costs so that AT&T can properly analyze business decisions. By adopting these transition plans, the FCC provided CLECs with the tools to control to the greatest degree both its customers' experience and the firm's business needs. Any adverse modification to these time frames or rates would make an already difficult transition unworkable, and would be inconsistent with the FCC rules. In exchange the FCC granted the ILECs a 15% premium above their forward-looking loop and transport costs, and a one-dollar per line premium above their forward-looking UNE-P costs. (TR 139)

It is vital that these transition mechanisms be reflected in the parties' ICAs. This is not an area in which the parties or the Commission can tolerate any ambiguity. It is essential that the ICA is sufficiently detailed to remove the possibility of avoidable misunderstandings and or disputes. Given the relatively short time frame for the transition, there is simply no room for delays caused by competing "understandings" of the parties' rights and obligations or lengthy dispute resolutions processes. (TR 139)

AT&T seeks to ensure that services to AT&T's customers are not disrupted as a result of the changing obligations under the FCC's orders. Thus, AT&T specifically discusses conversion from transitional declassified network elements (those UNEs for which the FCC established transitional provisions in the *TRRO*) in its section 3.10, and transitional provisions for declassified network elements (those UNEs that were

declassified by the *TRO* or earlier) in 3.11 of its proposed amendment. (See Exh. 13; ECnR-1) The process and obligations related to conversions are conspicuously absent from Verizon's proposed amendments, however, which would leave Verizon with unfettered power to effect such conversions with disruptive, customer-affecting impact. (TR 140)

As discussed earlier, the FCC is also sensitive to these issues and adopted specific parameters for the transition from UNEs that Verizon is no longer obligated to provide. Additionally, AT&T believes that the transition from UNEs to alternative arrangements should be governed by the same principles articulated by the FCC in 47 C.F.R. § 51.316(b) and (d) for the conversion to UNEs. Verizon should be required to perform the conversions without adversely affecting the service quality enjoyed by the requesting telecommunications carrier's end-user. Further, Verizon should not be able to impose any termination charges, disconnect fees, reconnect fees, or charges associated with establishing a service for the first time, in connection with the conversion between existing arrangements and new arrangements. These requirements are reflected in AT&T's Amendment, and should be adopted. (TR 140-141)

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?

AT&T Position: See AT&T's position in Issues 12 and 21.

AT&T addressed this issue in response to issues 12 and 21, above. AT&T will not repeat those arguments here, but rather incorporates them by reference.

ISSUE 26 Should the Commission adopt Verizon's proposed new rates for the items specified in the Pricing Attachment to Amendment 2?

As a result of a stipulation among the parties, this issue has been deleted from this arbitration.

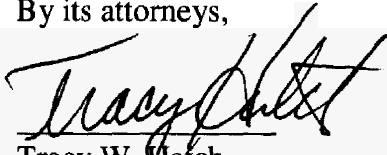
CONCLUSION

AT&T's resolution of the disputed issues is fully consistent with the applicable law established in the *TRO* and *TRRO*. Moreover, and unlike Verizon's proposals, the changes in law established by the FCC in those orders are faithfully reflected in AT&T's updated and comprehensive Amendment. Accordingly, AT&T requests that the Commission adopt AT&T's resolution of the disputed issues its proposed Amendment.

Respectfully Submitted,

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