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December 20, 2005

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

Re: Docket No. 040156-TP

Dear Ms. Bayó:

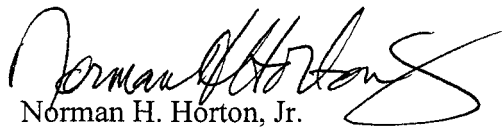
Enclosed for filing on behalf of DIECA Communications, Inc. d/b/a Covad Communications Company, NuVox Communications, Inc. (formerly New South Communications Corp.), Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Jacksonville, LLC and XO Communications Services, Inc. (formerly XO Florida, Inc. and Allegiance Telecom of Florida, Inc.) (together, the "CLEC Parties") is an original and 15 copies of CLEC Parties' Motion for Reconsideration in the above referenced docket.

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Thank you for your assistance with this filing.

Sincerely yours,


Norman H. Horton, Jr.

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**Before the
FLORIDA PUBLIC SERVICE COMMISSION**

In re Petition for Arbitration of an Amendment)	
to Interconnection Agreements with Certain)	Docket No. 040156-TP
Competitive Local Exchange Carriers and)	Filed: December 20, 2005
Commercial Mobile Radio Service Providers in)	
Florida by Verizon Florida Inc.)	

MOTION FOR RECONSIDERATION

DIECA Communications, Inc. d/b/a Covad Communications Company, NuVox Communications, Inc. (formerly NewSouth Communications Corp.), Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Jacksonville, LLC and XO Communications Services, Inc. (formerly XO Florida, Inc. and Allegiance Telecom of Florida, Inc.) (together, the "CLEC Parties"), through counsel and pursuant to the procedural rules of the Florida Public Service Commission (the "Commission"), FLORIDA ADMIN CODE R. 25-22.060, hereby submits this Motion for Reconsideration of Issue 5 decided by the Commission in the consolidated interconnection agreement amendment arbitration proceeding between Verizon Florida Inc. ("Verizon") and competitive local exchange carriers ("CLECs") within the State of Florida, under section 252 of the Communications Act of 1934, as amended, 47 U.S.C. § 252 (the "1996 Act"). As discussed more fully below, the Commission's ruling set forth in its final arbitration Order¹ is inconsistent with the unbundling determinations of the Federal Communications Commission ("FCC") in the *Triennial Review Remand Order*.² Accordingly, the Commission should grant this Motion for Reconsideration, and order that Verizon and

¹ Order No. PSC 05-1200-FOF-TP (Dec. 5, 2005).

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

Florida CLECs adopt the relevant contract language proposed by the CLEC Parties in the above-captioned proceeding.³

I. The Commission Should Reverse its Ruling That the UNE DS1 Dedicated Transport Cap Applies for All Routes Where UNE DS1 Dedicated Transport is Available

In the Order, the Commission concluded that the Amendment must implement the limitation or “cap” established by the FCC for DS1 dedicated transport facilities that Verizon is obligated to provide under section 251(c)(3) of the 1996 Act (“UNE DS1 Dedicated Transport”), as set forth in the FCC’s modified rules, at 47 C.F.R. § 51.319(a)(4)(ii). However, the Commission declined, without explanation, to require that the Amendment also include contract language clarifying the manner in which the UNE DS1 Dedicated Transport cap must be applied, consistent with the *Triennial Review Remand Order*. Specifically, as set forth in the *Triennial Review Remand Order*, the Amendment must make clear that the cap on UNE DS1 Dedicated Transport applies only on routes for which the FCC has determined that Verizon no longer is obligated to provide to CLECs DS3 dedicated transport facilities, pursuant to section 251(c)(3) of the 1996 Act (“UNE DS3 Dedicated Transport”). By this Motion, the CLEC Parties respectfully request that the Commission adopt contract language clarifying the proper scope of the cap on UNE DS1 Dedicated Transport, as ordered by the FCC, and as set forth in the *Triennial Review Remand Order*.

A. The Contract Language Proposed by The CLEC Parties Properly Reflects the *Triennial Review Remand Order*

The cap on UNE DS1 Dedicated Transport established by the FCC is set forth both in the FCC’s modified unbundling rules, at 47 C.F.R. § 51.319(a)(4)(ii), and in the text of the *Triennial Review Remand Order*. Although the rule provision does not explicitly address the

³ The CLEC Parties each are parties to the proposed interconnection agreement amendment submitted by the Competitive Carrier Group in the above-captioned proceeding.

limited circumstances for which DS1 Dedicated Transport cap applies,⁴ the related text of the *Triennial Review Remand Order* does so in a clear and unambiguous fashion. Specifically, paragraph 128 of the *Triennial Review Remand Order* states as follows:

Limitation on DS1 Transport. ***On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits.*** This is consistent with the pricing efficiencies of aggregating traffic. While a DS3 circuit is capable of carrying 28 uncompressed DS1 channels, the record reveals that it is efficient for a carrier to aggregate traffic at approximately 10 DS1s. When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, ***we find that our DS3 impairment conclusions should apply.*** (footnotes omitted) (emphasis added)

Thus, the *Triennial Review Remand Order* explicitly states that the limitation of ten (10) UNE DS1 Dedicated Transport circuits applies only on those particular routes where the incumbent LECs, including Verizon, no longer are obligated to provide to CLECs UNE DS3 Dedicated Transport, but where impairment exists for UNE DS1 Dedicated Transport. The interpretation of the UNE DS1 Dedicated Transport cap advocated by Verizon, and adopted by the Commission, ignores paragraph 128 of the *Triennial Review Order*, pretending that it does not exist. Rather, the contract language proposed by the CLEC Parties properly reflects that the FCC's rule must be read, interpreted, and applied in a manner that is consistent the text of the *Triennial Review Remand Order* explicitly addressing this issue. The *Triennial Review Remand Order* should not be casually ignored, and must be given effect in the Amendment. The meaning of the UNE DS1

⁴ The FCC's Rule states that "[a] requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis. 47 C.F.R. § 51.319(a)(4)(ii).

Dedicated Transport cap is clear – the limitation of (ten) 10 UNE DS1 Dedicated Transport circuits to a particular CLEC applies only on those routes where the section 251(c)(3) unbundling obligation for DS3 transport circuits has been removed due to a finding of non-impairment, and not on all transport routes.

B. The Contract Language Proposed by the CLEC Parties is Consistent With the FCC’s Impairment Analysis For High Capacity Transport Facilities

The contract language proposed by the CLEC Parties to address the UNE DS1 Dedicated Transport cap also is consistent with the general framework of the FCC’s impairment analysis for high capacity facilities set forth in the *Triennial Review Remand Order*. Specifically, the FCC’s impairment analysis for high capacity dedicated transport facilities focused on when it would make economic sense for a CLEC to construct a DS3 dedicated transport facility, or otherwise to acquire such DS3 dedicated transport from a carrier other than the incumbent LEC. Because DS3 facilities simply are larger digital capacity than DS1 facilities, there is some cross-over point at which the level of demand is sufficient that a CLEC theoretically could be served equally by a DS3 transport facility, or by multiple DS1 transport facilities, depending in part on the relative pricing of UNE DS3 Dedicated Transport versus UNE DS1 Dedicated Transport.

In the *Triennial Review Remand Order*, the FCC found that a reasonable estimate of that cross-over point is ten (10) DS1 dedicated transport circuits. While a DS3 transport circuit can carry 28 DS1 transport circuits, the FCC estimated that it is economically efficient for a CLEC to move to a DS3 dedicated transport circuit at the ten (10) DS1 transport circuit level. In other words, the FCC found that at or below the ten (10) DS1 circuit level, traffic aggregation is insufficient to justify obtaining a DS3 transport facility. Conversely, above the ten (10) DS1 circuit level traffic, aggregation of traffic is considered to be sufficient such that a single DS3

transport facility could be substituted for the multiple DS1 transport circuits. Whether one agrees or disagrees with the FCC's judgment that the "magic number" is ten (10) DS1 transport circuits, the important consideration for purposes of this Motion is that the FCC entered this point into its analysis, and did so in the context of its impairment framework.

The capacity basis of the FCC's impairment standard for UNE Dedicated Transport, and the potential substitutability of multiple UNE DS1 Dedicated Transport circuits for a UNE DS3 Dedicated Transport facility led to a determination by the FCC that a 10-circuit cap on UNE DS1 Dedicated Transport is necessary to protect the efficacy of its "non-impairment" findings for UNE DS3 Dedicated Transport. For example, consider a transport route where the wire center on one end is Tier 1, and the wire center on the other end is Tier 2. Under the FCC's modified unbundling rules, no impairment exists for UNE DS3 Dedicated Transport – i.e., the incumbent LEC no is longer obligated to provide UNE DS3 Dedicated Transport on this route. If a CLEC has enough traffic to justify more than ten (10) UNE DS1 transport circuits on that route, the FCC's view is that the CLEC has enough traffic that it could substitute a DS3 capacity transport facility for multiple UNE DS1 Dedicated Transport circuits. However, on routes where the FCC found no impairment without UNE DS3 Dedicated Transport, that substitution would create a potential "hole" in the FCC's "non-impairment" finding – i.e., the CLEC could continue to meet its transport needs by obtaining multiple UNE DS1 Dedicated Transport circuits notwithstanding its demand for DS3 capacity facilities. This "hole" exists only on routes where the UNE DS3 Dedicated Transport no longer is available. Therefore, a straightforward reading of paragraph 128 indicates that it is this potential "hole" that the DS1 Dedicated Transport cap is intended to plug.

The link between the UNE DS1 Dedicated Transport cap and the FCC's goal of protecting its impairment determinations under the *Triennial Review Remand Order* is made clear in the final sentence of paragraph 128 which states, “[w]hen a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.” (emphasis added) If the FCC had intended that the DS1 ~~UNE Dedicated Transport cap apply to all transport routes, such intent would be stated in the~~ *Triennial Review Remand Order* – there would be no reason to tie the UNE DS1 Dedicated Transport cap to FCC's impairment conclusions for UNE DS3 Dedicated Transport. Moreover, as discussed more fully above, the first sentence of paragraph 128 is unequivocal regarding the FCC's intent to limit the UNE DS1 Dedicated Transport cap to routes where incumbent LECs' obligation to provide UNE DS3 Dedicate Transport has been removed. Conversely, on routes where UNE DS3 Dedicated Transport remains available, there is no concern that a CLEC might circumvent the FCC's non-impairment findings for UNE DS3 Dedicated Transport by requesting multiple DS1 UNE Dedicated Transport circuits. In other words, where either wire center is Tier 3, and DS3 UNE Dedicated Transport remains available (as does UNE DS1 Dedicated Transport), there is no opportunity for a requesting CLEC to sidestep the non-impairment findings of the FCC for UNE DS3 Dedicated Transport. The regulatory purpose of the DS1 Dedicated Transport cap is not necessary for those routes.

Importantly, the interpretation of the UNE DS1 Dedicated Transport cap advocated by Verizon, and adopted by the Commission, is flatly inconsistent with the FCC's policies regarding impairment for UNE DS1 Dedicated Transport. Specifically, in the *Triennial Review Order*, the FCC found very little evidence of CLEC self-provisioning DS1 transport

facilities,⁵ and further that “although competitive fiber has been deployed in many areas, DS1 transport is not generally made available on a wholesale basis.”⁶ A nationwide finding of impairment for UNE DS1 Dedicated Transport was the result. Although the FCC backed away from that nationwide finding in the *Triennial Review Remand Order*, it did so only to a limited degree, holding that CLECs are non-impaired without access to UNE DS1 Dedicated Transport only on routes where both end-points are the densely populated (i.e., Tier 1) wire centers. Moreover, the FCC concluded that the loop/transport combinations using UNE DS1 Dedicated Transport aid the growth of facilities-based competition in the local market, extend CLECs’ geographic reach, and promote and service innovation by CLECs. Therefore, the Commission’s ruling addressing the DS1 Dedicated Transport cap, extending that limitation to all transport artificially constrains the availability of DS1 capacity EELs, and therefore is inconsistent with the FCC’s policy of protecting access to such unbundled facilities.

II. The Commission Should Interpret the UNE DS1 Dedicated Transport Cap Consistent With the Outcome of the BellSouth Generic UNE Docket

In a section 252 arbitration proceeding currently before the Commission to implement the *Triennial Review Order* and the *Triennial Review Remand Order* between BellSouth Telecommunications, Inc. (“BellSouth”) and Florida CLECs, the parties recently agreed that the cap on UNE DS1 Dedicated Transport established by the FCC must be applied consistent with the *Triennial Review Remand Order*, as well as the FCC’s modified unbundling

⁵ Specifically, the FCC held that “[a] carrier requiring only DS1 capacity transport between two points typically does not have large enough presence along a route (generally loop traffic at central office) to justify the higher fixed and sunk costs of self-providing just that DS1 transport circuit. This is because a requesting carrier in need of DS1 transport capacity faces the same fixed and sunk costs as other carriers deploying transport or using alternatives, but faces substantially higher incremental costs across its customer base than a carrier requesting higher capacity transport.” *Triennial Review Order* at ¶ 391 (footnotes omitted).

⁶ *Id.* at ¶ 392.

rules. Specifically, the parties stipulated that the interconnection agreement amendments executed by BellSouth and Florida CLECs will include the following contract language, which properly limits application of the UNE DS1 Dedicated Transport cap to those routes where UNE DS3 Dedicated Transport no longer is available:

CLEC shall be entitled to obtain up to (10) DS1 UNE Dedicated Transport Circuits on each Route where there is no unbundling obligation for DS3 UNE Dedicated Transport. Where DS3 UNE Dedicated Transport is available as a UNE under Section 251(c)(3), no cap applies to the number of DS1 UNE Dedicated Transport Circuits CLEC can obtain.⁷

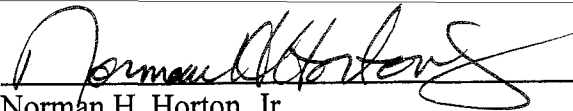
At bottom, Verizon has provided the Commission no legitimate reason to broadly apply the UNE DS1 Dedicated Transport cap in a manner inconsistent with the *Triennial Review Remand Order*. Therefore the Commission should not support, by its arbitration Order in the above-captioned proceeding, the exceptional interpretation of this provision advocated Verizon, that would unlawfully restrict CLEC's access to DS1 Dedicated Transport that Verizon remains obligated to provide.

⁷ See *In Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Fla. Pub. Serv. Comm'n Docket No. 041269-TP, Brief of Competitive Carriers of the South, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, FDN Communications, ITC^DeltaCom Communications, Inc., MCImetro Access Transmission Services, LLC, NuVox Communications, Inc., Xspedius Communications, LLC, Southeastern Competitive Carrier Association and XO Communications, Inc. at 3, n. 5.

CONCLUSION

For the reasons set forth herein, the Commission should grant this Motion for Reconsideration, and adopt the relevant contract language proposed by the CLEC Parties.

Respectfully submitted,



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Dated: December 20, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U.S. Mail on this 20th day of December, 2005.

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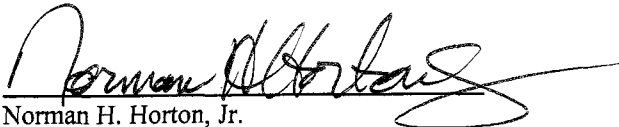
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