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From: Ann Bassett [abassett@lawfla.com]
Sent: Tuesday, February 14, 2006 4:38 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 040156-TP
Attachments: 2006-02-14, CCG's Brief in Support of Proposed Contract Language.pdf

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The Docket No. is 0040156-TP Verizon Arbitration

This is being filed on behalf of DIECA Communications, Inc. d/b/a Covad Communications Company, NuVox Communications, Inc. (formerly NewSouth Communications Corp.), The Ultimate Connection, Inc. d/b/a DayStar Communications, 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.) (members of the Competitive Carrier Group) and Florida Digital Network, Inc. d/b/a FDN Communications (collectively, the "CLEC Parties")

Total Number of Pages is 24

Brief in Support of Proposed Contract Language

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February 14, 2006

BY ELECTRONIC FILING
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 NewSouth Communications Corp.), The Ultimate Connection, Inc. d/b/a DayStar Communications, 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.) (members of the Competitive Carrier Group) and Florida Digital Network, Inc. d/b/a FDN Communications (collectively, the "CLEC Parties") is an electronic copy of their Brief in Support of Proposed contract Language in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,

Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

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Before the
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Verizon Florida Inc. for Arbitration of an Amendment to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.	)	Docket No. 040156-TP Filed: February 14, 2006

BRIEF IN SUPPORT OF PROPOSED CONTRACT LANGUAGE

DIECA Communications, Inc. d/b/a Covad Communications Company, NuVox Communications, Inc. (formerly NewSouth Communications Corp.), The Ultimate Connection, Inc. d/b/a DayStar Communications, 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.) (members of the Competitive Carrier Group) and Florida Digital Network, Inc. d/b/a FDN Communications (collectively, the "CLEC Parties") hereby submit this brief in support of their proposed contract language to implement the Arbitration Orders of the Florida Public Service Commission (the "Commission") in the above-captioned proceeding.[1] For the reasons set forth herein, the Commission should approve the contract language proposed by the CLEC Parties, and should reject the contract language proposed by Verizon Florida Inc. ("Verizon").

Section 2.2: Verizon's Unbundling Obligations. The contract language proposed by Verizon improperly forecloses the rights of Florida Competitive Local Exchange Carriers ("CLECs") to obtain access to network elements, combinations of network elements, and Section 251(c)(3) network elements commingled with wholesale services, on unbundled basis, under

[1] Order on Denying Motions for Reconsideration and Granting Clarification of Certain Portions of Order No. PSC-05-1200-FOF-TP, Order No. PSC-06-0078-FOF-TP (rel. Feb. 3, 2006) ("Reconsideration Order"); Order on Arbitration, Order No. PSC-05-1200-FOF-TP (rel. Dec. 5, 2005) (together, the "Arbitration Orders").

applicable law other than 47 U.S.C. Sections 251 and 252 (together, the "1996 Act") and 47 C.F.R. Part 51), as permitted by existing interconnection agreements between Verizon and Florida CLECs. As ordered by the Commission,[2] the interconnection agreement amendment resulting from this proceeding (the "Amendment") addresses only those changes to the unbundling rules of the Federal Communications Commission ("FCC") arising under the *Triennial Review Order*[3] and the *Triennial Review Remand Order*.[4] Thus, any unbundling rights and obligations set forth in existing interconnection agreements between Verizon and Florida CLECs, including those rights and obligations arising under Florida state law, are not impacted by the Amendment. The contract language proposed by Verizon at Section 2.2 exceeds this scope, and therefore should be rejected by the Commission.

Section 2.3; Limitations on Use of UNEs. The contract language proposed by Verizon is overbroad, and improperly suggests an indefinite number of limitations on the use of Unbundled Network Elements ("UNEs") by Florida CLECs under Section 251(c)(3) of the 1996 Act and the FCC's unbundling rules. Under the *Triennial Review Remand Order*, the FCC imposed a single limitation on the use of UNEs by CLECs, where a requesting telecommunications carrier seeks to provide exclusively mobile wireless services or

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2 Order on Arbitration at 15.

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

4 *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*" or "TRRO").

interexchange services using the UNEs.[5] The CLEC Parties already have agreed to include in the Amendment contract language that incorporates the specific limitation set forth in the FCC's rule.[6] However, Verizon has identified no additional limitations on the use of UNEs by Florida CLECs, and no such limitations exist under Section 251(c)(3) of the 1996 Act or the FCC's unbundling rules. The expansive contract language proposed by Verizon purports to narrow the scope of Verizon's unbundling obligations in a manner that is inconsistent with Section 251(c)(3) of the 1996 Act and the FCC's unbundling rules. Accordingly, the contract language proposed by Verizon at Section 2.3 should be rejected by the Commission.

Section 2.4: Verizon's Pre-Existing Rights to Cease Offering Discontinued Facilities (*see also* Sections 2.4.1; 3.9.1.1.; 3.9.2; 3.9.2.1). The contract language proposed by Verizon is overbroad, and improperly suggests that Verizon may cease offering or providing access to Section 251(c)(3) UNEs prior to executing a written amendment to existing interconnection agreements with Florida CLECs. Specifically, Verizon implies that it may be entitled under a pre-existing right – other than any right set forth in its existing interconnection agreements with Florida CLECs – to discontinue offering or providing certain network elements or facilities de-listed under Section 251(c)(3) prior to executing the Amendment that results from this proceeding. The position taken by Verizon is contrary to the Commission's Arbitration Orders, the *Triennial Review Order* and the *Triennial Review Remand Order*, and therefore should be rejected by the Commission.

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5 47 C.F.R. § 51.309(b).

6 Verizon and the CLEC parties to the consolidated interconnection amendment arbitration docket before the Massachusetts Department of Telecommunications (D.T.E. 04-33) voluntarily agreed that Section 2.3 should state *only* that a requesting telecommunications carrier may not access a UNE for the exclusive provision of Mobile Wireless Services or Interexchange Services, as those services are defined by the FCC. *See* D.T.E.04-33, Proposed Joint Amendment (filed Jan. 17, 2006) "Massachusetts Proposed Joint Amendment").

In this proceeding, the Commission concluded that Verizon must follow the change-of-law and/or dispute resolution processes set forth in existing interconnection agreements with Florida CLECs to discontinue offering or providing Section 251(c)(3) UNEs, including those UNEs de-listed under Section 251(c)(3) of the 1996 Act by operation of the *Triennial Review Order* and the *Triennial Review Remand Order.*[7] The Commission also noted that the FCC "specifically declined to preempt the [S]ection 252 negotiation and arbitration process," and further, declared that changes of law under the *Triennial Review Order* and the *Triennial Review Remand Order* are not self-executing, or automatically implemented between carriers without corresponding modifications to existing interconnection agreements. Thus, prior to executing the Amendment that results from this proceeding, Verizon may discontinue offering or providing network elements or facilities de-listed under Section 251(c)(3) of the 1996 Act *only* as expressly permitted by the terms and conditions of its existing interconnection agreements with Florida CLECs. The contract language proposed by Verizon at Section 2.4 should be rejected by the Commission.

Section 2.4.1: Rates for Alternative Wholesale Arrangements. In the event that Verizon, pursuant to Section 2.4.1, converts a Discontinued Facility to an alternative wholesale arrangement that Verizon provides under its access tariff for the State of Florida, or otherwise elects to re-price such Discontinued Facility by applying a new rate or surcharge to the existing rate, the Amendment must expressly state that the applicable rate for the alternative wholesale arrangement shall be the month-to-month rate set forth in the applicable access tariff, or the **lower** rate to which the requesting CLEC is entitled under an applicable special access term/volume plan, or other special access tariff arrangement to which the requesting CLEC

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7 Order on Arbitration at 52.

subscribes. The contract language proposed by the CLEC Parties ensures that Verizon does not unlawfully impose a higher rate for wholesale arrangements that a requesting CLEC previously obtained from Verizon as UNEs, under Section 251(c)(3) of the 1996 Act, where the requesting CLEC otherwise is entitled to a lower rate for such wholesale arrangements. Under the Amendment, Verizon must consistently apply its rates for wholesale arrangements obtained by a requesting CLEC, regardless of whether such arrangements previously were obtained from Verizon by the requesting CLEC as UNEs, under Section 251(c)(3) of the 1996 Act. The contract language proposed by Verizon at Section 2.4.1 permits Verizon to increase its current rates for wholesale arrangements upon converting or re-pricing Discontinued Facilities, and therefore should be rejected by the Commission.

Section 2.4.1: Disconnection of Discontinued Facilities. The contract language proposed by Verizon unlawfully permits Verizon to disconnect a Discontinued Facility (or the replacement service to which the Discontinued Facility has been converted) if a requesting CLEC fails to pay when due any applicable new rate or surcharge billed by Verizon. The existing interconnection agreements between Verizon and Florida CLECs each set forth the appropriate processes for disconnecting or discontinuing facilities or services where a requesting CLEC fails to pay, in a timely manner, the charges for such facilities or services invoiced by Verizon, and detail, among other things, the appropriate processes for resolving billing disputes. Such terms and conditions included in the parties' existing interconnection agreement are not impacted by the *Triennial Review Order* or the *Triennial Review Remand Order*, and therefore should not be supplanted or modified by the Amendment. Moreover, the contract language proposed by Verizon – which permits Verizon to *immediately* disconnect Discontinued Facilities (or replacement arrangements) upon non-payment of new rates or surcharges that Verizon may

invoice – threatens service disruptions to those consumers served by the networks of Florida CLECs. The contract language proposed by Verizon at Section 2.4.1 is contrary to law and public policy, and therefore should be rejected by the Commission.

Section 2.5.2: Future Implementation of Rates Approved by the Commission. The contract language proposed by Verizon improperly permits Verizon to unilaterally implement rates and charges approved by the Commission, at a future date, without first executing a written amendment to existing interconnection agreements between Verizon and Florida CLECs. In this proceeding, the Commission expressly rejected modifications to existing change-of-law processes approved by the Commission, under Section 252 of the 1996 Act.[8] To the contrary, the Commission ordered, consistent with the *Triennial Review Order* and the *Triennial Review Remand Order*, that Verizon and Florida CLECs continue to follow the change-of-law processes set forth in the parties' existing interconnection agreements approved by the Commission, pursuant to the Section 252 negotiation and arbitration process. The contract language proposed by Verizon would nullify such change-of-law processes for future rates and charges approved by the Commission, and in so doing, flatly contradicts the Commission's Arbitration Orders. Accordingly, the Commission should reject the contract language proposed by Verizon at Section 2.5.2.

Section 3.1.1: New Builds. The contract language proposed by Verizon improperly expands the Section 251(c)(3) unbundling relief granted by the FCC for Fiber-to-the-Home ("FTTH") and Fiber-to-the-Curb ("FTTC") loops, and further, fails to properly incorporate the FCC's rules applicable to such facilities, at 47 C.F.R. §§ 51.319(a)(3)(i) and 51.319(a)(3)(ii). Specifically, Verizon proposes to include in the Amendment additional

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[8] Order on Arbitration at 15-16, 52.

language that would permit Verizon to deny Florida CLECs access to copper facilities extending from the end user's customer premises to the curb, where such facilities exist, solely on the basis of Verizon's position that such facilities constitute a "segment" of a FTTC loop. The contract language addressing the parties' respective rights and obligations regarding unbundled access to FTTH and FTTC loops should closely follow the FCC's rules, and should not include terms that expand or contract the rulings of the FCC under the *Triennial Review Order*, or related subsequent orders. Accordingly, the additional contract language proposed by Verizon at Section 3.1.1 should be rejected by the Commission.

Section 3.2.4.2: IDLC Hybrid Loops. As ordered by the Commission,[9] the Amendment should require that Verizon provide to a requesting CLEC unbundled access for narrowband service where the end user is served via Integrated Digital Loop Carrier ("IDLC") through either spare copper facilities or Universal Digital Loop Carrier ("UDLC") systems.[10] Where such methods of unbundled access are unavailable, however, Verizon must provide a different technically feasible method of unbundled access, which must not be "**solely restricted to new construction of copper facilities and UDLC systems.**"[11] The contract language proposed by the CLEC Parties properly reflects the Arbitration Orders, and is consistent with the *Triennial Review Order* and the FCC's unbundling rules. In contrast, the contract language proposed by Verizon, at Section 3.2.4.2, permits Verizon, **in its sole discretion**, to select among technically feasible methods of unbundled access for narrowband service where spare copper facilities and UDLC systems are unavailable, and further, to limit its offerings to any requesting CLEC to construction of a new copper Loop or UDLC facilities. At bottom, the contract

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9 Order on Arbitration at 95.

10 *Id.*

11 *Id.* (emphasis supplied).

language proposed by Verizon plainly contradicts the Arbitration Orders. Therefore, the contract language proposed by the CLEC Parties at Section 3.2.4.2 should be approved by the Commission, and the contract language proposed by Verizon should be rejected.

The contract language proposed by Verizon also improperly includes rate elements for construction of a copper Loop or UDLC facilities that the Commission did not approve, or even address, in this proceeding. Specifically, by its proposed contract language, Verizon is permitted to impose engineering query, work and construction charges, and related cancellation charges each time spare copper facilities or UDLC systems are unavailable for the provision of narrowband service to a requesting CLEC's end user customer served via IDLC. The Amendment should not include any rate or rate element that the Commission did not specifically approve for the network elements, facilities or services addressed in this proceeding. Accordingly, the contract language proposed by Verizon at Section 3.2.4.2 is inappropriate, and should be rejected by the Commission.

Sections 3.4.1.1.2: Limitations on DS1 and DS3 Capacity Loops and Dedicated Transport Facilities (*see also* Sections 3.4.2.1.2; 3.5.1.1.2; 3.5.2.1.2). The contract language proposed by Verizon improperly modifies the "caps" on Section 251(c)(3) unbundled loops and dedicated transport facilities that a requesting CLEC may obtain at a single wire center or route location imposed by the FCC, under the *Triennial Review Remand Order*. Specifically, Verizon proposes to include in the Amendment contract language that would apply such caps to Section 251(c)(3) network elements obtained by a requesting CLEC "and its affiliates," and thereby, would improperly expand the limited Section 251(c)(3) unbundling relief granted by the FCC for certain high capacity loops and dedicated transport facilities. Moreover, the contract language proposed by Verizon fails to properly incorporate the FCC's rules applicable to Section

251(c)(3) DS1 and DS3 capacity loops and dedicated transport facilities.[12] The contract language addressing the parties' respective rights and obligations regarding unbundled access to Section 251(c)(3) DS1 and DS3 loops and dedicated transport facilities should closely follow the FCC's rules, and should not include terms that expand or contract the rulings of the FCC under the *Triennial Review Remand Order*. Accordingly, the additional contract language proposed by Verizon should be rejected by the Commission.

Sections 3.6.1.1: CLEC Certification (*see also* Section 3.6.1.2). The Amendment must include a reasonable process whereby a requesting CLEC may obtain from Verizon back-up data supporting Verizon's assertions that certain wire centers or route locations exceed the thresholds set forth in the *Triennial Review Remand Order* for unbundling relief for Section 251(c)(3) loops and dedicated transport facilities. The contract language proposed by the CLEC Parties permits a requesting CLEC to obtain from Verizon such back-up data, in a timely manner, subject to a non-disclosure agreement between Verizon and the requesting CLEC. The back-up data requested by Florida CLECs is critical to effectuating the self-certification process ordered by the FCC for network elements and facilities that Verizon claims it no longer is obligated to provide under Section 251(c)(3) of the 1996 Act, and moreover, permits CLECs to undertake a "reasonably diligent inquiry" regarding the current availability of Section 251(c)(3) loops and dedicated transport facilities, as required by Section 3.6.1.1 of the Amendment.

The contract language proposed by the CLEC Parties also does not unduly burden Verizon. Indeed, to support its assertions that specific wire centers and route locations exceed the thresholds set forth in the *Triennial Review Remand Order* for unbundling relief for Section 251(c)(3) loops and dedicated transport facilities, Verizon necessarily must possess the back-up

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12 47 C.F.R. §§ 51.319(a)(4)(ii), 51.319(a)(5)(ii), 51.319(e)(2)(ii)(B), 51.319(e)(2)(iii)(B).

data typically requested by Florida CLECs in a usable format. Moreover, by their proposed contract language, the CLEC Parties agree to obtain such back-up data subject to a non-disclosure agreement, and therefore, to protect the propriety of any information that may be commercially sensitive to Verizon or other carriers within Florida. The draft joint Amendment recently filed by Verizon and CLEC parties with the Massachusetts DTE demonstrates that Verizon is amenable to following the process proposed by the CLEC Parties,[13] and Verizon has offered no justification why this reasonable process for obtaining back-up data should not apply for the State of Florida. Accordingly, the Commission should approve the contract language proposed by the CLEC Parties at Sections 3.6.1.1 and 3.6.1.2.

Sections 3.6.2.2: Provision-Then-Dispute Requirements (*see also* Section 3.6.2.2.2). The contract language proposed by Verizon would improperly permit Verizon to assess late payment charges where Verizon prevails in a dispute related to its provisioning of a network element or facility that Verizon no longer is obligated to provide under Section 251(c)(3) of the 1996 Act. As agreed by the parties, the Amendment includes reasonable provisions that permit Verizon to recover charges that would have applied if a requesting CLEC ordered a network element de-listed under Section 251(c)(3) of the 1996 Act as the appropriate wholesale arrangement, subject to the rate set forth in Verizon's applicable special access tariff. However, where a requesting CLEC lawfully obtains a network element or arrangement subject to the "provision-then-dispute" process ordered by the FCC, and set forth the Amendment, is patently unfair. The contract language proposed by Verizon would impose on Florida CLECs an unreasonable financial burden, and further, would inappropriately discourage use of the self-certification process for ordering network elements and facilities that Verizon claims no longer

[13] *See* Massachusetts Proposed Joint Amendment at §§ 3.6.1.1 and 3.6.1.2.

are available under Section 251(c)(3) of the 1996 Act. Accordingly, the contract language proposed by Verizon at Section 3.6.2.2 should be rejected by the Commission.

Section 3.6.2.2.2: Notification of Retroactive Pricing (*see also* Section 3.11.2.2). As proposed by the CLEC Parties, the Amendment must require that Verizon provide to Florida CLECs, within thirty (30) days of a requesting CLEC's self-certification of compliance, written notification of its intent to retroactively re-price a facility or service back to the date of provisioning, in the event that Verizon prevails in a dispute related to its provisioning of a network element or facility that Verizon no longer is obligated to provide under Section 251(c)(3) of the 1996 Act. Moreover, where such retroactive re-pricing of a facility or service is permitted by the Commission or other authority having jurisdiction over the parties' dispute) such retroactive re-pricing must be at rates no greater than the lowest rates that the requesting CLEC could have obtained in the first instance, had the requesting CLEC not ordered the subject facility or service as a Section 251(c)(3) UNE. The contract language proposed by the CLECs Parties provides Florida CLECs with regulatory certainty, and ensures that Verizon will not engage in unreasonable back-billing practices where a requesting CLEC lawfully obtained a network element or facility subject to the "provision-then-dispute" process ordered by the FCC, and set forth the Amendment. Accordingly, the Commission should approve that contract language proposed by the CLEC Parties at Section 3.6.2.2.

Sections 3.9.1: Discontinuance of TRRO Embedded Base at Close of Transition Period (*see also* Sections 3.9.1.1; 3.9.2). The contract language proposed by the CLEC Parties is entirely consistent with the transition framework set forth in the *Triennial Review Remand Order* and the FCC's unbundling rules, and accordingly, should be approved by the Commission. The *Triennial Review Remand Order* expressly permits CLECs to obtain any network element or

facility de-listed under Section 251(c)(3) of the 1996 Act, subject to the transition rates set forth in the *Triennial Review Remand Order*, through March 10, 2006, or in the case of dark fiber, through September 10, 2006.[14] Moreover, consistent with the *Triennial Review Remand Order* and the FCC's unbundling rules, the parties agreed to incorporate in the Amendment contract language that maintains de-listed Section 251(c)(3) network elements and facilities, subject to the transition rates established by the FCC, until such time as the applicable transition periods expire (on March 11, 2006 or September 11, 2006, in the case of dark fiber); and in turn, that permits Verizon to true-up charges invoiced for such network elements and facilities back to the date on which the applicable transition periods expired, regardless of the date on which such Section 251(c)(3) UNEs actually are converted to an alternative wholesale arrangements.[15] However, notwithstanding the contract language already agreed on by the parties, Verizon refuses to include in the Amendment an express statement that the applicable transition rates will apply for *all* de-listed Section 251(c)(3) networks elements and facilities through the date on which the applicable transition period expires, including those network elements and facilities subject to a conversion order submitted by a requesting CLEC to Verizon before that time. The contract language proposed by the CLECs Parties at Section 3.9.1 is necessary to ensure that the transition requirements set forth in the Amendment are internally consistent, and therefore should be approved by the Commission.

In addition, the Commission should reject efforts by Verizon to impose on Florida CLECs an obligation to account for Verizon's standard provisioning intervals, order volumes

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14 *See Triennial Review Remand Order* at ¶¶142 (transition plan for DS1, DS3 and dark fiber transport), 195 (transition plan for DS1, DS3 and dark fiber loops), and 227 (transition plan for local circuit switching).

15 *See* Amendment Section 3.9.2 ("the rates, terms, and conditions of such [alternative] arrangement shall apply and be binding upon ***CLEC Acronym TXT*** as of March 11, 2006 (or, in the case of dark fiber, September 11, 2006).").

and preparatory activities in submitting to Verizon requests to convert network elements and facilities de-listed under Section 251(c)(3) of the 1996 Act to alternative wholesale services. This obligation is not supported by the *Triennial Review Remand Order* or the FCC's unbundling rules. Moreover, the contract language proposed by Verizon is highly ambiguous, and fails to establish a definitive time frame within which orders for converting network elements and facilities de-listed under Section 251(c)(3) of the 1996 Act to alternative wholesale arrangements must be submitted by Florida CLECs. Accordingly, the Commission should reject the contract language proposed by Verizon at Sections 3.9.1, 3.9.1.1 and 3.9.1.2.

Section 3.9.2.1: Re-Pricing Pending Actual Conversion or Migration. The contract language proposed by the CLEC Parties properly incorporates the "provision-then-dispute" process ordered by the FCC, and set forth the Amendment, for network elements and facilities that Verizon asserts it no longer is obligated to provide under Section 251(c)(3) of the 1996 Act, subject to the criteria established by the *Triennial Review Remand Order*. Consistent with the *Triennial Review Remand Order* and the FCC's unbundling rules, Verizon and the CLEC Parties agreed that Verizon shall process, in timely a manner, all requests by Florida CLECs for such network elements and facilities, and if Verizon elects to challenge whether the network element or facility provisioned remains available under Section 251(c)(3) of the 1996 Act, Verizon must provision the network element or facility as a Section 251(c)(3) UNE, and then may seek dispute resolution by the Commission, the FCC, or through any dispute resolution process otherwise permitted under the parties' existing interconnection agreement.[16] The contract language proposed by the CLEC Parties is both reasonable, and consistent with agreed

[16] Amendment at § 3.6.2.1.

upon terms and conditions included in the Amendment. Accordingly, the Commission should approve the contract language proposed by the CLEC Parties at Section 3.9.2.1.

Section 3.10A: Line Conditioning.[17] As ordered by the Commission,[18] the contract language proposed by the CLEC Parties properly incorporates the FCC's rules applicable to line conditioning, at 47 C.F.R. § 51.319(a)(1)(iii), and requires that Verizon perform line conditioning, upon request by Florida CLECs, to ensure xDSL service delivery at least equal in quality to that which Verizon provides itself. The contract language addressing the parties' respective rights and obligations regarding Line Conditioning should closely follow the FCC's rules, and should not include terms that expand or contract the rulings of the FCC. Accordingly, the contract language proposed by the CLEC Parties at Section 3.10A should be approved by the Commission.

Section 3.11.2.3: Certification of Compliance with High Capacity EEL Service Eligibility Criteria. The contract language proposed by Verizon plainly contradicts the Commission's Arbitration Orders. Specifically, Verizon's proposal requires that Florida CLECs submit with an ASR "all specified supporting information on the ASR related to the circuit's eligibility...." The Commission held in the Arbitration Orders that "[t]he TRO does not require a CLEC to provide detailed, verifiable information showing compliance with the service eligibility criteria prior to the circuit being provisioned."[19] Accordingly, the contract language proposed by Verizon that would obligate CLECs to provide "all specified supporting information" is inconsistent with the Commission's Arbitration Orders and should be rejected.

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17 FDN Communications is not a party to briefing on this Section 3.10A.

18 Order on Arbitration at 82.

19 *Id.* at 111.

Section 3.12.1: Routine Network Modifications, Applicable Law. As proposed by the CLEC Parties, the Amendment must expressly state that Verizon shall perform routine network modifications "in accordance with 47 C.F.R. § 51.319(a)(8) and (e)(5) and *applicable law*" (emphasis added). Under the Arbitration Orders, the Commission defined routine network modifications as "those activities that Verizon regularly undertakes for its own customers, excluding the installation of new loop,"[20] and as such, the Commission declined to require that the Amendment list all possible routine network modifications that Verizon may be obligated to perform under the FCC's rules. Therefore, under the Amendment, a carrier may request that the Commission resolve a future disagreement regarding Verizon's obligation to perform certain unlisted tasks as a "routine network modification," and the Commission may require that Verizon perform such tasks as a "routine network modification," pursuant to a Commission order. The reference to "applicable law" proposed by the CLEC Parties is necessary to ensure that Verizon complies with all such orders of the Commission defining the scope of Verizon's obligation to perform routine network modifications. Accordingly, the Commission should approve the contract language proposed by the CLEC Parties at Section 3.12.1.

Section 3.12.1.1: Routine Network Modifications, Parity. As proposed by the CLEC Parties, the Amendment must expressly state that Verizon shall perform routine network modifications "at least equal in quality with the manner in which Verizon performs the same functions for itself." The contract language proposed by the CLEC Parties is consistent with Arbitration Orders and the *Triennial Review Order*, and therefore should be approved by the Commission.[21]

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20 *Id.* at 124.

21 *Id.* at 123.

Section 4.4: Scope of the Amendment (*see also* Sections 2.4; 3.1.1; 3.1.2; 3.2.1; 3.2.2; 3.2.3; 3.2.4; 3.3.1; 3.3.2; 3.4.1; 3.4.2; 3.4.3.1; 3.5.1; 3.5.4; 3.6.2.3; 3.10; 3.11.1). The Amendment must expressly state that contract provisions implementing the *Triennial Review Order* and the *Triennial Review Remand Order* are intended to modify only those specific unbundling rights and obligations, under Section 251(c)(3) of the 1996 Act, that are impacted by those orders of the FCC. To that end, the Amendment must include the following contract language proposed by the CLEC Parties: "This Amendment does not alter, modify or revise any rights and obligations under applicable law contained in the Agreement, other than those Section 251 rights and obligations specifically addressed in this Amendment. Furthermore, ***CLEC Acronym TXT***'s execution of this Amendment shall not be construed as a waiver with respect to whether Verizon, prior to the Amendment Effective Date, was obligation under the Agreement to perform certain functions required by the TRO. " Indeed, the Arbitration Orders limit the scope of this proceeding only to arbitration of terms that are necessary to implement the *Triennial Review Order* and the *Triennial Review Remand Order*,[22] and does not purport to modify any unbundling rights or obligations of the parties under other applicable law. Thus, the contract language proposed by the CLEC Parties is both consistent with the Arbitration Orders, and necessary to limit the scope of the Amendment to changes of law specifically addressed by the Commission.

Importantly, the CLEC Parties also seek to include in the Amendment various references to "Section 251(c)(3)," to clarify that certain network elements and facilities referred to in the Amendment are those provided by Verizon under Section 251(c)(3), and not arrangements provided by Verizon under other applicable law. Because the rates, terms and

22 *Id.* at 15.

conditions set forth in the Amendment must be limited to Section 251(c)(3) network elements and facilities impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, such qualifying contract language is necessary to properly define the scope of the Amendment.

Section 4.5: Reservation of Rights (*see also* Sections 3.1.2; 3.2.2; 3.2.3; 3.2.4; 3.3.1; 3.3.1.1; 3.3.2; 3.10; 3.12.1). The contract language proposed by the CLEC Parties makes clear that the Amendment does not foreclose the rights of Florida CLECs to obtain access to network elements, facilities and services that Verizon is obligated to provide under applicable law, other than Section 251(c)(3) of 1996 and the FCC's unbundling rules (47 C.F.R. Part 51), including those unbundling rights and obligations arising under Florida law. As ordered by the Commission,[23] the Amendment resulting from this proceeding addresses only those changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*. Thus, any unbundling rights and obligations set forth in existing interconnection agreements between Verizon and Florida CLECs, including those rights and obligations arising under Florida law, are not impacted by the Amendment.

In addition, the Commission also should reject efforts by Verizon to expressly foreclose unbundling rights and obligations under other applicable law through its proposed qualifying contract language throughout the Amendment. Specifically, Verizon's proposed contract language "only to the extent required by the Federal Unbundling Rules" improperly limits Verizon's unbundling obligations to those imposed by Section 251(c)(3) of the 1996 Act and the FCC's unbundling rules (47 C.F.R. Part 51). Accordingly, the Commission should reject such contract terms proposed by Verizon.

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23 *Id.*

Verizon's Proposed Pricing Attachment (*see also* Sections 1; 2.5.2; 3.1.2; 3.2.4.2; 3.3.2; 3.11.1.1; 3.11.2.4). The Pricing Attachment proposed by Verizon, and related references to rates and charges throughout the Agreement, improperly reflect issues that Verizon and the CLEC Parties stipulated to withdraw from this proceeding. Specifically, Verizon and the CLEC Parties filed with the Commission, prior to the hearing and briefing in this proceeding, a Stipulation that excluded from this arbitration the Pricing Attachment appended to Verizon's proposed interconnection agreement amendment. Moreover, Verizon agreed to withdraw its request that the Commission, in this proceeding, adopt new rates for services and facilities that Verizon is obligated to provide under the *Triennial Review Order*, including commingling and routine network modifications. Therefore, consistent with the Stipulation, the Commission did not arbitrate in this proceeding any issues addressing the rates, rate elements or other pricing terms and conditions that Verizon now seeks to include in the Amendment. Consistent with the Stipulation submitted by Verizon and the CLEC Parties in this proceeding, the Commission must reject the Pricing Attachment and related references proposed by Verizon.

Importantly, the Amendment also must exclude references to rates and charges previously adopted by the Commission, in Docket No. 990649B-TP, that the Commission did not affirmatively approve for those network elements, facilities and services addressed by the Amendment. Indeed, such rates and charges already are set forth in the parties existing interconnection agreements, and are not impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*.

The Arbitration Orders (*see also* Sections 3.1.2; 3.2.2; 3.2.3; 3.2.4; 3.3.1.1;). As proposed by the CLEC Parties, the Amendment should expressly reference the Arbitration Orders of the Commission.

Section 4.7.3: Definition of Commingling. The definition of Commingling proposed by the CLEC Parties properly reflects the FCC's rules and that set forth by the Arbitration Orders.[24] Verizon refuses to agree to the definition but rather, proposes to include only a citation to the FCC Rule. The definition proposed by the CLEC Parties more closely tracks the definition provided by the Commission and is consistent with the intent of the Arbitration Orders to provide clarity to the parties by including specific definitions in the Amendment. Accordingly, the definition proposed by the CLEC Parties should be adopted.

Section 4.7.6: Definition of Dedicated Transport. The Parties have agreed to most of the components of the definition of Dedicated Transport, except for two provisions that Verizon has proposed. Verizon has attempted to narrow the definition of dedicated transport to transmission facilities "within a LATA." Such limitation is not included in FCC Rule 51.319(e)(1) and therefore, should be rejected.[25] Moreover, Verizon is trying to improperly eliminate Entrance Facilities from the types of dedicated transport it is obligated to provide to Florida CLECs. The Amendment includes a section directly addressing Verizon's obligation to provide access to Entrance Facilities (Section 3.5.4) and the CLEC Parties have proposed a cross reference to that section of the Amendment which is appropriate, as opposed to the complete elimination of Entrance Facilities proposed by Verizon. Accordingly, the Commission should adopt the language proposed by the CLEC Parties and reject the language proposed by Verizon for the last provision of the definition of dedicated transport.

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24 Order on Arbitration at 48.

25 47 C.F.R. §51.319(e)(1) ("Definition. For purposes of this section, dedicated transport includes incumbent LEC transmission facilities between wire centers or switches owned by incumbent LECs, or between wire centers or switches owned by incumbent LECs and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.").

Section 4.7.7: Definition of Discontinued Facility. The Parties have dedicated an enormous amount of time and resources negotiating and arbitrating this Amendment in Florida. Accordingly, the basis of the Amendment, *i.e.*, what constitutes a Discontinued Facility, must be clear in order to effectuate this Amendment. Verizon is attempting to add uncertainty into this definition by proposing language that the list of Discontinued Facilities is "[b]y way of example and not by way of limitation." The CLEC Parties submit that the list of Discontinued Facilities subject to this Amendment must be precise and include only those UNEs discontinued pursuant to the FCC's *Triennial Review Order* and the *Triennial Review Remand Order.* Verizon, in proposing the language stated above, is attempting to preserve the opportunity to include any future discontinued facilities into this Amendment, thereby circumventing the change-in-law provisions of the underlying interconnection agreements in violation of this Commission's Arbitration Orders. Specifically, the Commission held that "neither the TRO or TRRO require revisions to the change-of-law provisions in the existing interconnection agreements. Therefore, Verizon's proposal to modify any change-of-law provisions in existing interconnection agreements is rejected."[26] The Commission's holding is clear and Verizon must not be allowed to disregard the Commission's ruling by altering the definition as it proposes. Accordingly, Verizon's language should be rejected.

Section 4.7.17: Definition of Fiber-Based Collocator. The CLEC Parties have proposed language that tracks the FCC's rule for Fiber-Based Collocator[27] and accounts for the FCC's Memorandum Opinion and Order in the Verizon/MCI Merger.[28] Verizon is seeking to

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26 Order on Arbitration at 52.

27 47 C.F.R. § 51.5.

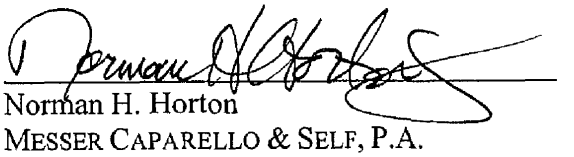
28 *See Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75, FCC 05-184 (Nov. 17, 2005).

avoid counting MCI as an affiliate for purposes of establishing numbers of fiber-based collocators in a particular central office, and such efforts should be prohibited by the Commission. Accordingly, the Commission should adopt the language proposed by the CLEC Parties, which is fully compliant with FCC Rules and Orders.

CONCLUSION

For the reasons set forth herein, the Commission should approve the contract language proposed by the CLEC Parties, and should reject the contract language proposed by Verizon.

Respectfully submitted,



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Dated: February 14, 2006

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 14th day of February, 2006.

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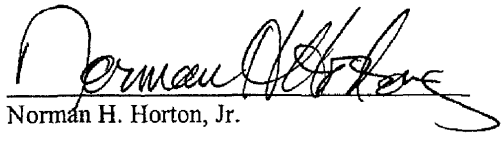

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