BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of VERIZON NORTHWEST INC. with COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON Pursuant to 47 U.S.C. Section 252(b), and the *Triennial Review Order*.	)	Docket No. UT-043013

INITIAL BRIEF OF

INTEGRA TELECOM OF WASHINGTON, INC., PAC-WEST TELECOMM, INC., AND XO WASHINGTON, INC.

March 11, 2005

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I. INTRODUCTION

1. Integra Telecom of Washington, Inc. ("Integra"), Pac-West Telecomm, Inc. ("Pac-West"), and XO Washington, Inc. ("XO"), including affiliate Allegiance Telecom of Washington, Inc. ("Allegiance") (collectively "Joint CLECs"), provide the following Initial Brief.

2. The issues in this proceeding remain a moving target, even one year after Verizon Northwest Inc. ("Verizon") filed its original petition for arbitration of an amendment to its interconnection agreements ("ICAs") to incorporate the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO").[1] The release of the Triennial Review Remand Order ("TRRO")[2] on February 4, 2005, substantially modifies the TRO and represents the latest, although not necessarily last, order from the FCC changing its unbundling rules. The FCC has required the provisions of that Order to be implemented through the change of law process in ICAs, but Verizon has yet to propose any contract language that would implement the TRRO. As a result, many of the issues raised in this proceeding are not yet ripe for review.

3. Other issues, however, have been ripe since Verizon filed its petition. Neither the FCC nor the D.C. Circuit U.S. Court of Appeals altered Verizon's obligations to undertake routine network modifications and to permit commingling of tariffed services and unbundled network elements ("UNEs") and conversions of tariffed services to UNEs. Indeed, Verizon should have implemented those TRO provisions without a written amendment to the ICAs. Not only has Verizon refused to do so, but even now, almost 18 months after the TRO became

[1] *In re Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand (rel. Aug. 21, 2003).

[2] *In re Unbundled Access to Network Elements*, FCC 04-290, WC Docket No. 04-313 & CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005).

effective, Verizon continues to attempt to delay implementation of these federal requirements by proposing that the Commission either not even consider those issues in this proceeding, or consider them is a separate and later "phase." The Commission should reject that proposal and require Verizon finally to implement its federal legal obligations.

4. The Jointly Proposed TRO Amendment filed on behalf of several competing local exchange companies ("CLECs") on October 21, 2004 ("CLEC Amendment") represents the best contract language to implement the FCC's requirements as of that date. The Commission should adopt that Amendment to resolve all issues that are not impacted by the TRRO. The Commission should require the parties to negotiate and expeditiously present revised contract language to implement the new requirements in the TRRO so that all remaining issues can be resolved.

II. DISCUSSION

Issue 1: Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. §§ 251 and 252, including issues arising under state law?

5. This issue would be more accurately framed as whether the Amendment should limit Verizon's unbundling obligations to the FCC's unbundling rules, as Verizon has proposed. It should not. Prior to passage of the Act, the Commission concluded that it "has authority to order unbundling pursuant to RCW 80.36.140." *WUTC v. U S WEST, et al.*, Docket Nos. UT-941464, *et al*., Fourth Supp. Order at 51 (Oct. 31, 1995) ("*Interconnection Order*"); *accord In re Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest, Inc.*, Docket No. UT-011219, First Supp. Order ¶ 19 (March 2002). The Commission explained that the statute "gives the Commission broad authority over practices and services," and "[t]he way in which services are offered, on a bundled or unbundled basis, certainly falls within the scope" of that authority. *Interconnection Order* at 51. The

Commission further concluded that the rates for unbundled services must be based on total service long run incremental costs ("TSLRIC"), which is comparable to the total element long run incremental cost ("TELRIC") methodology adopted by the FCC. *See id*. at 52.

6. The Commission's conclusions are no less applicable today. Indeed, the concerns with creation of "new" services raised by the incumbent local exchange companies in the *Interconnection Order* no longer exist now that Verizon files interconnection agreements with the Commission, all of which establish rates, terms, and conditions for Verizon's provisioning of UNEs, including local switching, dark fiber, transport, and high capacity loops. Having already unbundled its network, the issue is whether Verizon can discontinue providing certain UNEs in the absence of federal rules requiring Verizon to continue providing them. Such an issue indisputably falls within the Commission's authority to determine whether the "practices of any telecommunications company are unjust or unreasonable" and whether "the facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient." RCW 80.36.140.

7. The Commission thus has interpreted Washington law to provide the Commission with independent authority to require Verizon to provide unbundled network elements ("UNEs") at cost-based rates. The Act expressly preserves such authority as long as it is consistent with the Act and does not substantially prevent implementation of the requirements of [Section 251] and the purposes of [the Act]." 47 U.S.C. § 251(d)(3). At a minimum, therefore, the Commission should reject Verizon's proposal to limit its unbundling obligation to the FCC's rules.

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

8. The Amendment should reflect the recent changes in federal law, but those changes do not include any modification to the change of law provisions in CLECs' existing

agreements. In its proposed amendment, Verizon improperly attempts to modify or alter the change in law provisions of the Agreement so that any change of law limiting or eliminating Verizon's obligation to provide certain UNEs in the future would automatically be incorporated into the parties' Agreement. Not surprisingly, this modification would solely benefit Verizon by permitting Verizon to reduce its unbundling obligations without going through negotiations or other procedures established in the Agreement's change of law provisions. Verizon's proposed amendment is even more egregiously self-serving by expressly stating that Verizon is not required to implement other changes of law that Verizon does not like – commingling and routine network modifications – unless and until there is a written amendment to the parties' interconnection agreement. Verizon's proposed language is not even arguably reasonable.

9. Nothing in the TRO or TRRO, moreover, requires parties to amend the change of law provisions in their existing agreements *at all*, much less automatically to incorporate only changes that benefit Verizon. To the contrary, the FCC repeatedly has stated that the changes to its rules reflected in the TRO and TRRO must be implemented using the *existing* change of law provisions in the agreements. The FCC expressly rejected the proposals of Verizon and other ILECs to by-pass the ICAs and make such changes to agreements self-effectuating. TRO ¶ 701. The FCC was equally clear in its latest order:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, **the incumbent LEC and competitive LEC must negotiate in good faith regarding *any* rates, terms, and conditions necessary to implement our rule changes**.

TRRO ¶ 233 (footnote omitted and emphasis added).

10. Verizon is asking the Commission to nullify Verizon's obligations under federal law and Verizon's interconnection agreements when the FCC has repeatedly and expressly

refused to grant that same request. The Commission, therefore, should reject Verizon's proposed Amendment language.

Issue 3: What obligations, 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?

11. The FCC issued its TRRO on February 4, 2005, and the rules adopted in that Order are effective March 11, 2005. The FCC's latest unbundling rules now supercede many of the terms of the TRO and all of the terms of the Interim Rules Order governing unbundled access to local and tandem switching. These rules should be reflected in the Amendment to the parties' interconnection agreements. There have been no negotiations conducted in the wake of the latest FCC Order, however, nor have either Verizon or any other party even proposed contract language to implement those rules in this proceeding. Accordingly, this issue is not yet ripe for Commission determination.

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

12. The FCC issued its TRRO on February 4, 2005, and the rules adopted in that Order are effective March 11, 2005. The FCC's latest unbundling rules now supercede many of the terms of the TRO and all of the terms of the Interim Rules Order governing unbundled access to DS1, DS3 and dark fiber loops. These rules should be reflected in the Amendment to the parties' interconnection agreements. There have been no negotiations conducted in the wake of the latest FCC Order, however, nor have either Verizon or any other party even proposed contract language to implement those rules in this proceeding. Accordingly, this issue is not yet ripe for Commission determination.

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

13. The FCC issued its TRRO on February 4, 2005, and the rules adopted in that Order are effective March 11, 2005. The FCC's latest unbundling rules now supercede many of the terms of the TRO and all of the terms of the Interim Rules Order governing unbundled access to dedicated transport, including dark fiber transport. These rules should be reflected in the Amendment to the parties' interconnection agreements. There have been no negotiations conducted in the wake of the latest FCC Order, however, nor have either Verizon or any other party even proposed contract language to implement those rules in this proceeding. Accordingly, this issue is not yet ripe for Commission determination.

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?

14. The TRRO establishes the conditions under which Verizon is permitted to re-price existing arrangements that are no longer subject to unbundling under the FCC's rules, and these conditions should be reflected in the Amendment. Because no party has yet proposed contract language to implement the TRRO, however, this issue is not yet ripe for Commission determination.

Issue 7: Should Verizon be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements? Should the Amendment state that Verizon's obligations to provide notification of discontinuance have been satisfied?

15. This issue assumes adoption of Verizon's proposed language that would permit Verizon to discontinue UNEs resulting from future changes in law without amending the ICAs. The Joint CLECs oppose that language, as discussed in connection with Issue 2, *supra*. Whatever notice Verizon provides of any future discontinuation of UNEs should be consistent with the transition periods established in the TRRO and in the future order reducing Verizon's

unbundling obligations under the FCC's rules. Because no party has yet proposed contract language to implement the TRRO, this issue is not yet ripe for Commission determination.

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 should apply?

16. Changing a UNE arrangement to an alternative service requires Verizon to perform the same functions that it undertakes to convert tariffed services to UNEs. As discussed in more detail below, any charge that Verizon is authorized to impose for such changes should recover only the minimal administrative costs that Verizon incurs to change its billing records.

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

17. This issue depends in large part on the language used to incorporate the requirements of the TRRO, which introduces several new definitions, including "business lines," "fiber-based collocator," and "Tier 1," "Tier 2," and "Tier 3" wire centers. Because no party has yet proposed contract language to implement the TRRO, this issue is not yet ripe for Commission determination.

Issue 10: Should Verizon be required to follow the change of law and/or dispute resolution provisions in existing interconnection agreements if it seeks to discontinue the provisioning of UNEs under federal law? Should the establishment of UNE rates, terms, and conditions for new UNEs, UNE combinations or commingling be subject to the change of law provisions of the parties' interconnection agreements?

18. The Commission, as well as the FCC, has consistently respected the integrity of ICAs. *See* Order No. 12; Issue 2 discussion, *supra*. The Ninth U.S. Circuit Court of Appeals also has interpreted the Act to "mandate that interconnection agreements have the binding force of law." *Pacific Bell v. Pac West Telecomm, Inc*., 325 F.3d 1114, 1127 (9th Cir. 2003). Congress, the FCC, the courts, and the Commission thus have resolved this issue. Verizon must follow the change of law provisions in its existing agreements to incorporate any and all changes in federal law.

19. Verizon apparently disagrees, although only selectively. Verizon proposes to be able to discontinue UNEs unilaterally, without complying with the change of law provisions in its ICAs, but that any additional unbundling requirements can only be implemented through Verizon's UNE tariff or a written amendment to the ICAs. To the extent that Verizon contends that it can ignore the binding provisions of its ICAs, Verizon's proposal is unlawful, as well as unreasonable and self-serving.

20. In the past, Verizon has purported to justify having its cake and eating it too by maintaining that parties must negotiate appropriate language and Verizon must revise its systems and processes to implement new obligations, but that no contract language or system or process modifications are necessary if Verizon's existing obligations are reduced. Quite apart from its illegality, Verizon's proposal improperly ignores its ramifications. It may be easy for Verizon to stop providing UNEs, but such action threatens major disruption to the services that CLECs provide to their customers using UNEs obtained from Verizon. The FCC recognized this issue by establishing default transition periods of up to 18 months to enable the CLECs to negotiate and make arrangements for alternative services and to undertake the operational tasks required to make the conversion with minimal, if any, disruption to their customers' service. To the extent that the CLECs cannot make arrangements for an economically feasible alternative to Verizon UNEs, CLECs also need time to notify their affected customers and to provide them with sufficient time to obtain service from another provider.

21. Verizon, of course, does not care about CLECs' customers except to the extent that Verizon can regain those customers by precipitously pulling the plug on UNEs. The Commission has a very different view. The Commission's ultimate responsibility is to ensure that end user customers have an effective choice of telecommunications service providers, including maintaining continuity of service and minimal disruption during any change of service

provider. Indeed, the Commission promulgated a rule establishing notice and other requirements when a carrier stops providing one or more services in a particular geographic area. WAC 480-120-083. Those concerns are no less applicable here. CLECs need to negotiate appropriate terms and conditions to address all of the impacts associated with reductions in Verizon's unbundling obligations, no less than Verizon allegedly must negotiate terms and conditions to implement additional requirements. The difference is that CLECs need to ensure that their customers continue to have service, while Verizon must address only its own operational issues.

22. As the FCC continues to retreat from requiring access to the ILECs' networks, moreover, the Commission also should be concerned with the impact of FCC rules reducing ILECs' unbundling obligations on the state of competition in Washington. Commission Staff testified in the most recent cost proceeding, Docket No. UT-023003, that Verizon currently enjoys a 97% market share for local exchange services in its service territory. Further reductions to Verizon's unbundling obligations will only solidify Verizon's *de facto* monopoly. The Commission should be able to consider requirements under state law *before* Verizon discontinues any UNEs.

23. As a matter of law and public policy, therefore, the Commission should require Verizon to comply with the change of law provisions in its ICAs to implement any and all changes in federal law.

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

24. Rate increases and new charges established by the FCC in its final unbundling rules should be implemented consistent with the requirements in the TRRO. Because no party has yet proposed contract language to implement the TRRO, this issue is not yet ripe for Commission determination.

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?

25. The Amendment should include the commingling requirements established in the TRO, and the contract language that the CLECs have proposed most accurately reflects those requirements. Verizon's language, on the other hand, limits the availability of commingling to "Qualifying UNEs," which Verizon uses to exclude UNEs that have been declassified, both now and in the future without an amendment to the ICA. As discussed above, such a restriction improperly seeks to circumvent the change of law provisions of the ICAs and is inconsistent with the FCC's contemplation in both the TRO and the TRRO that changes in federal law are to be implemented consistent with Section 252 and the change of law provisions in the parties' ICAs.

26. Verizon also proposes to impose special charges on commingling requests. No such charges are appropriate. The Commission has previously approved nonrecurring charges for UNEs, including order processing charges, and Verizon has not demonstrated, and cannot demonstrate, that orders for UNEs to be commingled with special access or other tariffed services require Verizon to undertake any activities that it does not undertake when processing an order for UNEs to be combined with other UNEs. To the extent that a CLEC submits an order to convert a portion of a tariffed service to a UNE that remains connected to the tariffed circuit, Verizon should be entitled to recover no more than the order processing charge that the Commission has established.

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

27. The Amendment should include the conversion requirements established in the TRO and affirmed in the TRRO, and the contract language that the CLECs have proposed most accurately reflects those requirements. Verizon proposes minimal language governing

conversions that simply refers to Verizon's own "conversion guidelines." Verizon is not entitled to require CLECs to forgo including appropriate terms and conditions in the ICA and simply accept the terms and conditions that Verizon develops (and potentially modifies) unilaterally in the form of "guidelines." Verizon also proposes special charges for conversions, but a conversion is nothing more than a billing change. To the extent that Verizon is permitted to impose any charge for making such a change, that charge should be limited to the order processing charge that the Commission previously authorized.

Issue 14: Should the parties' interconnection agreements 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?

28. All of these changes of law should be incorporated into the Amendment, and the Joint CLECs support the contract language in the CLEC Amendment to do so.

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

29. The effective date of the Amendment should be the date on which the Commission approves the Amendment developed in this proceeding. Certain provisions of the Amendment nevertheless will apply to a period of time prior to the effective date as required by the FCC. The requirement that Verizon undertake routine network modifications, for example, was not a change in law but merely clarified the network modification and nondiscrimination requirements that the FCC established in its original Local Competition Order. Similarly, the FCC lifted a prohibition on commingling and conversions; it did not impose new obligations on

Verizon. All of these requirements thus were effective on October 2, 2003, when the TRO became effective. Verizon, moreover, interprets the change in law provisions of its existing agreements to incorporate legal changes automatically. Accordingly, the provisions of the Amendment governing routine network modifications, commingling, and conversions should all be effective as of October 2, 2003. Any other provisions of the Amendment to have retroactive application should be separately identified, including the FCC rule or order requiring such treatment.

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?

30. The Joint CLECs support the proposed language in the CLEC Amendment to incorporate this requirement into the ICAs.

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 provision of:

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

31. This issue is largely theoretical in Washington because the Commission has yet to establish standard provisioning intervals or performance measurements, much less potential remedy payments, for Verizon. To the extent that existing ICAs include any such intervals, measurements, or payments, however, their applicability is not affected by the requirements the FCC adopted in the TRO and TRRO.

32. Conversions and commingling, as discussed above, are largely billing changes that have no impact on provisioning intervals or performance measurements. Even to the extent

that a new UNE order includes commingling, Verizon has offered no evidence to demonstrate that provisioning such orders is any different than provisioning an order for the same facilities when commingling is not involved. In the absence of any such evidence, Verizon has identified no basis on which it can or should be relieved of its obligations to meet any performance metrics for orders for conversions or commingling.

33. The same is true with respect to routine network modifications. The *TRO* expressly states that to the extent that such modifications to existing loop facilities affect loop provisioning intervals contained in performance metrics, "we expect that states will address the impact of these modifications as part of their recurring reviews of incumbent LEC performance." *TRO* ¶ 639. The FCC thus assumes that these performance metrics apply to all UNEs, including those requiring routine network modifications. Indeed, the FCC observed that Verizon "provides the routine modifications listed above with minimal delay, in most cases, to their own retail customers." *Id*., n.1940. Verizon has offered no contrary evidence and thus has failed to identify any grounds on which the Commission should relieve Verizon of its obligation to comply with otherwise applicable service intervals or performance measurements when Verizon must undertake routine network modifications to provision a UNE order.

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

34. The Joint CLECs support the proposed language in the CLEC Amendment to incorporate this requirement into the ICAs.

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

35. The Joint CLECs do not address this issue at this time.

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?

36. The TRRO has resolved this issue in favor of continuing to require that Verizon provide entrance facilities that are used for interconnection at cost-based rates:

> We note in addition that our 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.

TRRO ¶ 140. Verizon, therefore, must continue to provide interconnection trunks between a Verizon wire center and a CLEC wire center at TELRIC rates.

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

- **a) What information should a CLEC be required to provide to Verizon as certification to satisfy the FCC's service eligibility criteria 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 to an EEL unless the CLEC requests such facilities alteration?**
  - **(2) What type of charges, if any, and under what conditions, if any, can Verizon impose when CLECs convert existing access circuits/services to UNE loop and transport combinations?**
  - **(3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the FCC'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 the 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 FCC's service eligibility criteria?**

37. Subsections a) and c). The FCC in the TRRO abandoned the TRO's service eligibility criteria, stating, "We now conclude that whether a requesting carrier seeking to

provide a telecommunications service is eligible to access UNEs is not subject to such prequalification and instead depends solely on our 'impairment' analysis and other factors we consider under section 251(d)(2)." TRRO ¶ 34. The FCC, however, did not amend the rule it previously adopted to implement the EEL service eligibility criteria. Unfortunately, such inconsistency is not unusual in the FCC's unbundling orders. The Commission should resolve this issue by imposing no service eligibility requirement on EELs or any other UNEs other than prohibiting their use solely for mobile wireless and long distance service. Such a determination is consistent with both the letter and the spirit of the TRRO.

38. If the Commission nevertheless concludes that the EEL certification requirements survived the TRRO, the Commission should adopt the CLEC language to implement the TRO requirements with one exception. The reference in section 3.7.2 to the service eligibility criteria should include the TRO, as well as Rule 51.318. More specifically, the TRO provides that a CLEC can satisfy the collocation prong of the service eligibility requirements through "reverse collocation," *i.e.*, "the installation of incumbent LEC equipment at the premises of a competitive LEC or any other entity not affiliated with that incumbent LEC, regardless of whether the incumbent LEC has a cage." TRO ¶ 605 & n.1843. The Amendment should not be construed to preclude this interpretation of the EEL service eligibility requirements if the Commission determines that those requirements are applicable.

39. Subsection b)(1). Verizon should 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. A conversion is nothing more than a billing change. The same circuits remain in the same configuration and location both before and after they become UNEs. As the FCC stated, "Converting between wholesale services and UNEs or UNE combinations should be a seamless

process that does not affect the customer's perception of service quality." TRO ¶ 586. Any physical alteration of the existing facilities in response to a conversion request thus should be prohibited as unnecessary and inconsistent with the seamless process required by the FCC.

40. Subsection b)(2). As discussed under Issue 13, *supra*, the only charge, if any, that Verizon should be authorized to impose for conversions is the order processing charge that the Commission previously established. Subject to resolution of the service eligibility issue in sub issue a), the Commission should not authorize Verizon to impose any condition on conversions.

41. Subsection b)(3). *See* discussion of subsections a) and c), *supra*.

42. Subsection b)(4). *See* discussion of Issue 15, *supra*

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?

43. The parties agree that the FCC has required Verizon to undertake routine network modifications on behalf of requesting CLECs and that Verizon is entitled to recover its costs to undertake such work. The parties disagree, however, on whether Verizon is already recovering those costs in its existing UNE charges. The issue, then, is whether the recurring or non-recurring UNE rates that the Commission has authorized Verizon to charge include such costs, and if they do not, what are those costs, and what type of cost recovery mechanism should be used.

44. Verizon has produced no evidence to demonstrate that it will incur any additional costs to undertake routine network modifications, much less the nature and quantity of any such costs. Nor could Verizon produce such evidence. By terminology and definition, the routine network modifications the FCC has required are activities that Verizon already undertakes for its end user and tariff customers. The costs that Verizon incurs to perform these activities would be

included among the expenses in Verizon's annual reports to the FCC. The expense accounts in these reports, in turn, are used to establish the expense factors that are applied to investment figures to develop UNE rates. The rates that CLECs pay for a UNE that requires some form of routine network modification, therefore, already fully compensate Verizon for whatever such activity is required.

45. Based on Commission practice and the record in this proceeding, therefore, Verizon is not entitled to any additional cost recovery from CLECs to provide routine network modifications. The Commission, therefore, should adopt the contract amendment language proposed by the CLECs.

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

46. The parties should retain all of their pre-Amendment rights that are not expressly modified by the Amendment. Again, the terms and conditions of the ICAs govern the parties' relationship, and that remains the case after the ICAs are amended.

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

47. The Amendment should include transition periods for discontinued UNEs as the required in the TRRO. Those periods should be of sufficient duration to enable the CLECs to have the time to make the necessary arrangements to obtain and/or build replacement facilities. Similarly, the Agreement should include language requiring that transitions from UNEs to other service arrangements do not result in disruption of service to the CLECs' customers. Because no party has yet proposed contract language to implement the TRRO, this issue is not yet ripe for Commission determination.

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?

48. The TRRO abandoned the "service eligibility" requirements established in the TRO and now prohibit competitors from obtaining UNEs only if those UNEs are used solely to provide long distance or mobile wireless services. TRRO ¶ 29. The Amendment should reflect the latest FCC requirement.

Issue 26: Should the Amendment reference or address commercial agreements that may be negotiated for services or facilities to which Verizon is not required to provide access as a Section 251 UNE?

49. The Joint CLECs do not address this issue at this time.

Issue 27: Should Verizon provide an access point for CLECs to engage in testing, maintaining and repairing copper loops and copper subloops?

50. The Joint CLECs do not address this issue at this time.

Issue 28: What transitional provisions should apply in the event that Verizon no longer has a legal obligation to provide a UNE? How should the Amendment address Verizon's obligations to provide UNEs in the absence of the FCC's permanent rules? Does Section 252 of the 1996 Act apply to replacement arrangements?

51. The FCC has established transition periods for the UNEs for which it found no impairment, and those transition periods should be incorporated into the Amendment. Similarly, those transition periods should apply whenever additional Verizon wire centers satisfy the criteria the FCC has established for determining when there is no impairment. Because no party has yet proposed contract language to implement the TRRO, this issue is not yet ripe for Commission determination.

Issue 29: Should Verizon be required to negotiate terms for service substitutions for UNEs that Verizon no longer is required to make available under section 251 of the Act?

52. The TRRO contemplates that the parties will negotiate appropriate terms and conditions for the transition periods that the FCC has prescribed, including alternative service

arrangements. *E.g.*, TRRO ¶ 197. The Amendment should include this requirement. Because no party has yet proposed contract language to implement the TRRO, however, this issue is not yet ripe for Commission determination.

Issue 30: Should the FCC's permanent unbundling rules apply and govern the parties' relationship when issued, or should the parties not become bound by the FCC order issuing the rules until such time as the parties negotiate an amendment to the ICA to implement them, or Verizon issues a tariff in accordance with them?

53. As discussed above, the FCC has *required* parties to amend their interconnection agreements to incorporate the FCC's latest unbundling rules:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, **the incumbent LEC and competitive LEC must negotiate in good faith regarding *any* rates, terms, and conditions necessary to implement our rule changes**.

TRRO ¶ 233 (footnote omitted and emphasis added). The TRRO thus is not self-effectuating but takes effect only after the parties have negotiated, and if necessary arbitrated, the rates, terms, and conditions necessary to implement the FCC's latest unbundling rules.

54. The transition plans set forth in the TRRO also expressly apply to the ICA amendment process. The Order provides that "carriers have twelve months from the effective date of this Order **to modify their interconnection agreements**, including completing any change of law process." TRRO ¶¶ 143 & 196 (emphasis added). The FCC thus established the transition period to provide the time required for Verizon and CLECs to amend their interconnection agreements, not just to transition affected UNEs to alternative facilities or arrangements. The Order also states, "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period." TRRO ¶¶ 145 & 198. Verizon thus

may not unilaterally implement the TRRO transition plan when that plan itself is subject to being replaced by a plan negotiated or arbitrated between the parties to a Commission-approved ICA.

55. The Amendment, therefore, should include language implementing the requirements of the TRRO, and except as expressly provided by the FCC, those requirements should not be effective until the Amendment has been approved by the Commission.

III. CONCLUSION

56. Long before now, Verizon should have implemented the provisions of the TRO that have remained unaffected by subsequent events, specifically routine network modifications, commingling, and conversions. Verizon's attempts to continue to delay that implementation and unilaterally to implement the changes in law that Verizon chooses should tell the Commission all it needs to know about Verizon's disregard for its ICAs and for legal requirements with which Verizon disagrees. Verizon's proposed ICA Amendment is suffused with Verizon's self-serving world view, and the Commission should reject that Amendment.

57. The Joint CLECs view their ICAs as binding contracts that must be amended to incorporate changes in law. Congress, the FCC, the courts, and the Commission share that view, which is reflected in the CLEC Amendment with respect to issues unaffected by the TRRO. The Commission, therefore, should adopt the language in that Amendment and should require the parties to negotiate and incorporate language into that Amendment to implement the TRRO.

RESPECTFULLY SUBMITTED this 11th day of March, 2005.

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