BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Petition of Verizon Northwest Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	Docket No. UT-043013 INITIAL BRIEF OF THE COMPETITIVE CARRIER GROUP

I. INTRODUCTION

1 Advanced TelCom, Inc., BullsEye Telecom, Inc., and Covad Communications Company (collectively, the "Competitive Carrier Group" or "CCG"), provide the following Initial Brief responding to the Issues List in the above-captioned proceeding.

II. DISCUSSION

Issues 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 asserted to arise under state law?

2 The Amendment must incorporate rates, terms, and conditions that reflect Verizon's ongoing obligations under state law to provide competitive local exchange carriers ("CLECs") access to its network elements on an unbundled basis. 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

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"the facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient."[1]

3 Further, the federal Telecommunications Act of 1996 ("1996 Act") requires that the Commission oversee the rates, terms and conditions applicable to the network elements provided by Verizon, whether under federal law or state law, to Washington CLECs, and to impose on Verizon any unbundling obligation that is consistent with the 1996 Act and Washington state law. Even in the absence of unbundling rules promulgated by the Federal Communications Commission ("FCC") pursuant to section 251(c) of the 1996 Act, the Commission may require that Verizon offer network elements to Washington CLECs on an unbundled basis and at TELRIC rates. The 1996 Act does not preempt, and in fact expressly permits the Commission to issue and enforce its own unbundling rules. Thus, at a minimum, the Commission should reject Verizon's proposal to limit its unbundling obligation to the FCC's rules.

4 The Commission has the authority under the 1996 Act to utilize state law to establish and maintain Verizon's existing unbundling obligations. In amending the Communications Act of 1934, Congress specifically preserved state law as a basis of requiring access to network elements.[2] Pursuant to section 252 of the 1996 Act, state commissions may implement unbundling rules consistent with section 251(c)(3). Indeed, section 252 charges state commissions with "ensur[ing]" that arbitrated agreements "meet the requirements of section 251 … including the regulations prescribed by the [FCC] pursuant to section 251…."[3] In addition, section 252(e)(3) of the 1996 Act provides that "nothing in this section shall prohibit a State commission

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[1] RCW 80.36.140.

[2] 47 U.S.C. § 251(d)(3).

[3] 47 U.S.C. § 252(c)(1).

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from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements."[4]

5 The Commission also is authorized to make unbundling determinations on issues that the FCC has not yet resolved. Pursuant to section 252(c), states are tasked with arbitrating all "open issues," which includes issues that might not have been resolved by the FCC.[5] As such, the 1996 Act preserves and protects the Commission's independent authority under federal law to ensure continued access to Verizon's network elements in furtherance of competition.

6 Section 251(d)(3) of the 1996 Act also provides the Commission with the authority to establish unbundling obligations, as long as those obligations comply with subsections 251(d)(3)(B) and (C). Section 251(d)(3) states that the FCC "shall not preclude the enforcement of any regulation, order, or policy of a State commission that … establishes access and interconnection obligations of local exchange carriers."[6] Under this section, the Act protects state action that promotes the unbundling objectives of the statute and prohibits the FCC from interfering with such action. The FCC's *Triennial Review Order*[7] and *Triennial Review Remand Order*[8] do not displace the Commission's authority to order unbundling pursuant to these provisions.

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[4] 47 U.S.C. § 252(e)(3).

[5] *See* 47 U.S.C. § 252(c).

[6] 47 U.S.C. § 251(d)(3).

[7] *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) ("*Triennial Review Order*" or "TRO")), *vacated and remanded in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

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Issues 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?

7 The Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and the *Triennial Review Remand Order*, including, without limitation, the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Washington CLECs may implement changes of law arising under the *Triennial Review Order* and the *Triennial Review Remand Order* only "as directed by section 252 of the Act,"[9] and consistent with the change of law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Washington CLECs "negotiate in good faith regarding any rates, terms and conditions necessary to implement the FCC's rule changes."[10] At the least, Verizon is bound by the unbundling obligations set forth in its existing interconnection agreements with Washington CLECs until such time as those agreements are properly amended to incorporate the changes of law and FCC-mandated transition plans established under the *Triennial Review Order* and the *Triennial Review Remand Order.*

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[8] *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*").

[9] *Triennial Review Remand Order* at ¶ 233.

[10] *Id.*

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8 Although the Amendment should reflect recent changes in federal law, those changes do not include any modification to the change of law provisions in CLECs' existing agreements. In its proposed interconnection agreement amendments, Verizon improperly attempts to modify the change in law provisions of the Agreements 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 Agreements' change of law provisions. However, Verizon claims that it is not required to implement other changes of law that it does not like – i.e. 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 *Triennial Review Order* or *Triennial Review Remand Order* 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 *Triennial Review Order* and *Triennial Review Remand Order* 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 interconnection agreements and make such changes to agreements self-effectuating.[11]

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[11] *Triennial Review Order* at ¶ 701. *See also Triennial Review Remand Order* at ¶ 233 ("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.*") (footnote omitted and emphasis added).

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10 Verizon is asking the Commission to nullify its obligations under federal law and its 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.

Issues 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 Amendment to the parties' agreements must incorporate the complete unbundling framework ordered by the FCC under the *Triennial Review Order* and the *Triennial Review Remand Order*, including the transition plan set forth for mass market local switching no longer available under section 251 of the 1996 Act. Specifically, the Amendment must expressly provide a twelve-month transition period, beginning on March 11, 2005, during which competitive carriers may convert existing mass market customers to alternative local switching arrangements. The Amendment also must state that competitive carriers will continue to have access to the Unbundled Network Element Platform ("UNE-P") priced at TELRIC rates plus one dollar until such time as Verizon successfully migrates existing UNE-P customers to competitive carriers' switches or alternative switching arrangements, which rate shall be trued up to the March 11, 2005 effective date of the *Triennial Review Remand Order*. In accordance with the *Triennial Review Remand Order*, Verizon and competitive carriers within Washington must execute an amendment to existing interconnection agreements within the prescribed twelve-month transition period, including any change of law processes required by the parties' respective interconnection agreements.

12 In setting forth the transition plan for mass market local switching required by the *Triennial Review Remand Order*, the Amendment must define competitive carriers'

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"embedded customer base" for which the prescribed transition plan will apply. Specifically, the Amendment should clarify that any UNE-P line added, moved or changed by a competitive carrier, at the request of a UNE-P customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. In addition, consistent with the *Triennial Review Remand Order*, the Commission should not permit Verizon to refuse to provision UNE-P lines for new customers of competitive carriers until such time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the 1996 Act.

13 The Amendment also must reflect the fact that the FCC's Four-Line Carve-Out is no longer a component of the section 251(c) unbundling regime and must not be included in the Amendment. The *Triennial Review Remand Order* confirmed that CLECs are eligible to purchase unbundled mass market local switching, subject to the transition plan, to serve all customers at less than the DS1 capacity level.[12]

Issues 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?

14 The Amendment to the parties' agreements must incorporate the complete unbundling framework ordered by the FCC under the *Triennial Review Order* and the *Triennial Review Remand Order*, including the transition plan set forth for high capacity (i.e., DS1 and DS3) and dark fiber loop facilities that no longer are available under section 251 of the 1996 Act. The Amendment must state that Verizon remains obligated to provide to Washington CLECs unbundled access to its high capacity loops, including DS3 loops and DS1 loops, at any location within the service area of a Verizon

[12] *Triennial Review Remand Order* at n. 625.

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wire center for which carriers would be impaired, under the criteria set forth in the *Triennial Review Remand Order*, without access to such facilities. The FCC has determined that competitive carriers are impaired without access to DS3 capacity loops at any location within the service area of a Verizon wire center containing fewer than 38,000 business lines or fewer than four fiber-based collocators, and are impaired without access to DS1 capacity loops at any location within the service area of a Verizon wire center containing fewer than 60,000 business lines or four or more fiber-based collocators. To be sure, the criteria established by the FCC for a determination of impairment, and thus, for competitive carriers' access to high capacity loops, including DS1 loops and DS3 loops, should be expressly incorporated into the terms and conditions of the Amendment. Further, the Amendment must clearly define "business lines" and "fiber-based collocators," as those terms are defined under the *Triennial Review Remand Order*.

15 Importantly, the Amendment must include a comprehensive list of the Verizon wire centers that satisfy the non-impairment criteria for DS1 and DS3 loops set forth in the *Triennial Review Remand Order*. This list must be the result of a process whereby the parties to this proceeding are afforded access to and a reasonable opportunity to review and verify the data Verizon believes supports its initial identification of wire center locations where non-impairment exists for DS1 and DS3 loops. In addition, the Amendment must establish a process for review and investigation of any future claim by Verizon that an additional specified wire center location within Washington meets the FCC's criteria for unbundling relief. Specifically, the Amendment should require that Verizon submit to Washington carriers all documentation and other information that reasonably supports its claim of "no impairment" for a specified wire center location within Washington. In the event that Verizon and any Washington carrier

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disagree as to whether any wire center location within Washington actually satisfies the FCC's criteria for unbundling relief, or whether Verizon has presented documentation and other information that reasonably supports its "no impairment" claim, the Amendment must expressly permit either party to submit the dispute for resolution by the Commission, in accordance with the dispute resolution provisions set forth in the parties' interconnection agreements. Moreover, the Amendment must establish a process for review, on an annual basis, of the list of the Verizon wire centers that satisfy the FCC's criteria for unbundling relief, which shall include the same procedures for review of Verizon "no impairment" claims and for resolution of carrier disputes by the Commission.

16 For high capacity loop facilities that Verizon no longer is obligated to provide under section 251(c) of the 1996 Act, the Amendment must expressly provide a transition plan, consistent with the *Triennial Review Remand Order*, during which competitive carriers may convert existing customers to alternative service arrangements. The time period established for the transition of customers from DS1 and DS3 capacity loop facilities that no longer will be provided by Verizon subject to the impairment criteria set forth in the *Triennial Review Remand Order*, is twelve months, effective March 11, 2005. The time period established for the transition of customers from dark fiber loop facilities that no longer will be provided by Verizon under section 251(c) is eighteen months, effective March 11, 2005. The Amendment must state that Verizon will be required to provide, for the duration of the applicable transition period, grandfathered high capacity loops facilities, including DS1 and DS3 loops, and dark fiber loops, at the rates set forth in the *Triennial Review Remand Order*, which shall be the higher of (1) 115 percent of the rate of the requesting carrier for the loop facility on

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June 15, 2004; or (2) 115 percent of the rate that a state commission has established for the requested loop facility since June 16, 2004.

17 In setting forth the transition plan for high capacity and dark fiber loop facilities required by the *Triennial Review Remand Order*, the Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan will apply. For loop facilities that Verizon no longer is obligated to provide under section 251 of the 1996 Act, the Amendment should clarify that any loop added, moved or changed by a competitive carrier, at the request of a customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. Consistent with the *Triennial Review Remand Order*, the Commission should not permit Verizon to block "new adds" by competitive carriers until time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the Act.

Issues 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?

18 The Amendment to the parties' agreements must incorporate the complete unbundling framework ordered by the FCC under the *Triennial Review Remand Order*, including the transition plan set forth for dedicated interoffice transport facilities, including DS1, DS3 and dark fiber transport, that no longer are available under section 251 of the 1996 Act. The Amendment must state that Verizon remains obligated under section 251(c) of the 1996 Act to provide to Washington carriers unbundled access to dedicated interoffice transport, including DS3 and DS1 transport facilities, at any location within the service area of a Verizon wire center for which carriers would be

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impaired, under the criteria set forth in the *Triennial Review Remand Order*, without access to such facilities. The FCC has determined that competitive carriers are impaired without unbundled access to DS3 dedicated transport facilities along any route that originates or terminates in any Tier 3 wire center (i.e., any wire center that contains less than three fiber-based collocators and less than 24,000 business lines), and are impaired without unbundled access to DS1 dedicated transport facilities in all routes where at least one end-point of the route is a wire center containing fewer than 38,000 business lines and fewer than four fiber-based collocators. To be sure, the criteria established by the FCC for a determination of impairment, and thus, for competitive carriers' access to dedicated interoffice transport facilities, including DS1 and DS3 transport facilities, under section 251(c) of the 1996 Act should be expressly incorporated into the terms and conditions of the Amendment. Further, the Amendment must clearly define "business lines" and "fiber-based collocators," as those terms are defined under the *Triennial Review Remand Order*.

19 Importantly, the Amendment must include a comprehensive list of the Verizon wire centers that satisfy the "no impairment" criteria for dedicated transport, including dark fiber transport, set forth in the *Triennial Review Remand Order*. This list must be the result of a process whereby the parties to this proceeding are afforded access to and a reasonable opportunity to review and verify the data Verizon believes supports its initial identification of wire centers where non-impairment exists for DS1, DS3 and dark fiber transport. Further, the Amendment must establish a process for review and investigation of any future claim by Verizon that an additional specified wire center location within Washington meets the FCC's criteria for unbundling relief. Specifically, the Amendment should require that Verizon submit to Washington carriers all documentation and other information that reasonably supports its claim of "no

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impairment" for a specified wire center location within Washington. In the event that Verizon and any Washington carrier disagree as to whether any wire center location within Washington actually satisfies the FCC's criteria for unbundling relief, or whether Verizon has presented documentation and other information that reasonably supports its "no impairment" claim, the Amendment must expressly permit either party to submit the dispute for resolution by the Commission, in accordance with the dispute resolution provisions set forth in the parties' interconnection agreements. Moreover, the Amendment must establish a process for review, on an annual basis, of the list of the Verizon wire centers that satisfy the FCC's criteria for unbundling relief, which shall include the same procedures for review of Verizon "no impairment" claims and for resolution of carrier disputes by the Commission.

20 For dedicated interoffice transport facilities that Verizon no longer is obligated to provide under section 251 of the 1996 Act, the Amendment must expressly provide a transition plan, consistent with the *Triennial Review Remand Order*, during which competitive carriers may convert existing customers to alternative service arrangements offered by Verizon. The time period established for the transition of customers from DS1 and DS3 transport facilities that no longer will be provided by Verizon subject to the impairment criteria set forth in the *Triennial Review Remand Order*, is twelve months, effective March 11, 2005. The time period established for the transition of customers from dark fiber transport facilities that no longer will be provided by Verizon is eighteen months, effective March 11, 2005. The Amendment must state that Verizon will be required to provide, for the duration of the applicable transition period, grandfathered dedicated transport facilities, including DS1 and DS3 transport facilities, and dark fiber transport facilities, at the rates set forth in the *Triennial Review Remand Order*, which shall be the higher of (1) 115 percent of the rate of the requesting carrier

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for the interoffice transport facility on June 15, 2004; or (2) 115 percent of the rate that a state commission has established for the requested interoffice transport facility since June 16, 2004.

21 In setting forth the transition plan for dedicated interoffice transport facilities required by the *Triennial Review Remand Order*, the Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan will apply. For dedicated interoffice transport facilities that Verizon no longer is obligated to provide under section 251 of the 1996 Act, the Amendment should clarify that any circuit added, moved or changed by a competitive carrier, at the request of a customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. Consistent with the *Triennial Review Remand Order*, the Commission should not permit Verizon to refuse to provision new dedicated transport circuits for competitive carriers until time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the Act.

22 In addition to the impairment criteria set forth in the *Triennial Review Remand Order* for DS1 dedicated transport facilities, the FCC also imposed a limitation on the availability of such facilities on routes for which the FCC determined that Verizon no longer is required to unbundle DS3 dedicated transport facilities under section 251 of the 1996 Act. Specifically, under the *Triennial Review Remand Order*, a competitive carrier may not obtain from Verizon more than ten DS1 transport circuits on a single route for which the FCC did not impose on Verizon a section 251 unbundling obligation for dedicated DS3 transport facilities. To the extent that Verizon elects to implement the so-called "DS1-cap" under the parties' agreements, the Amendment must state that

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the FCC's limitation on Verizon's obligation to provide to carriers unbundled DS1 dedicated transport facilities applies only if section 251(c) unbundling relief also has been granted for DS3 dedicated transport facilities on the same route.

Issues 6: Under what conditions, if any, is Verizon permitted to re-price existing arrangements which are no longer subject to unbundling under federal law?

23 As set forth more fully in response to Issues 2-5 above, the Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. Verizon may re-price existing arrangements, however, only in accordance with the incremental rate increases prescribed by the FCC, and set forth in the Amendment, for those network elements that Verizon no longer is obligated to provide under section 251 of the Act. Under the *Triennial Review Remand Order*, Verizon is not permitted to impose any termination or other non-recurring charge in connection with any carrier's request to transition from a current arrangement that Verizon is no longer obligated to provide under section 251 of the 1996 Act. Notwithstanding the above, Verizon is bound by the unbundling obligations set forth in its existing interconnection agreements with Washington CLECs, including the rates, terms and conditions for section 251 unbundled network elements, until such time as those agreements are properly amended to incorporate the changes of law and FCC-mandated transition plans (including transition rates) established under the *Triennial Review Remand Order*.

Issues 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?

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24 As set forth more fully in response to Issues 2-5 above, the Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and/or the *Triennial Review Remand Order*, including, without limitation, the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Washington CLECs may implement changes of law arising under the *Triennial Review Order* and the *Triennial Review Remand Order* only "as directed by section 252 of the Act," and consistent with the change of law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Washington CLECs "negotiate in good faith regarding any rates, terms and conditions necessary to implement [the FCC's] rule changes. Therefore, the *Triennial Review Remand Order* expressly precludes any effort by Verizon to circumvent the change in law process set forth in its interconnection agreements with Washington CLECs by providing notice of discontinuance of any network element in advance of the date on which such agreements are properly amended to reflect changes to the FCC's unbundling rules.

Issues 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?

25 As set forth more fully in response to Issues 2-5 above, the Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and/or the *Triennial Review Remand Order*, including, without limitation

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the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The transition plans ordered by the FCC for unbundled dedicated transport, high capacity loops and mass market local switching, each prescribe the rates that Verizon may impose when a "no impairment" finding exists and the *Triennial Review Remand Order* does not permit Verizon to impose any additional charges, including non-recurring charges, for the disconnection of a "de-listed" UNE or the reconnection of an alternative service arrangement.

26 The cost of converting unbundled network elements to alternative arrangement should be incurred by the "cost causer," i.e., Verizon. Because the disconnection of UNE arrangements and the subsequent reconnection of alternative service arrangements is the result of Verizon's decision to forego unbundling, the cost of such network modifications should be borne by Verizon, not by the carrier that otherwise would continue under a UNE arrangement.

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

27 The Amendment's Definition Section should include all terms necessary to properly implement changes to the FCC's unbundling rules under the *Triennial Review Order* and *Triennial Review Remand Order*, including new terms defined in those orders, and required modifications to the definitions of existing terms under the parties' interconnection agreements.

Issues 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?

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28 Verizon is required to follow the change of law and dispute resolution provisions set forth in its interconnection agreements with Washington CLECs to discontinue any network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Washington CLECs may implement changes in law arising under the *Triennial Review Order* and the *Triennial Review Remand Order* only "as directed by section 252 of the Act," and consistent with the change in law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Washington CLECs "negotiate in good faith" any rates, terms and conditions necessary to implement the FCC's rule changes." At the least, Verizon is bound by the unbundling obligations set forth in its existing interconnection agreements with Washington CLECs until such time as those agreements are properly amended to incorporate the changes in law and the FCC-mandated transition plans established under the *Triennial Review Remand Order*.

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

29 The Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and the *Triennial Review Remand Order*, including without limitation the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Washington CLECs may implement changes in law

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arising under the *Triennial Review Order* and the *Triennial Review Remand Order*, including without limitation, changes in the rates and new changes, only "as directed by section 252 of the Act," and consistent with the change in law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Washington CLECs "negotiate in good faith regarding any rates, terms and conditions necessary to implement the FCC's rule changes. At the least, Verizon is bound by the unbundling obligations and rates set forth in its existing interconnection agreements with Washington CLECs until such time as those agreements are properly amended to incorporate the changes in law and the FCC-mandated transition plans (including transition rates) established under the *Triennial Review Remand Order*.

Issues 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?

30 The parties' interconnection agreements must be amended to reflect Verizon's obligation to provide commingling of unbundled network elements ("UNEs") or combinations of UNEs with wholesale services, as clarified by the FCC under the *Triennial Review Order*, including the terms under which carriers may commingle UNEs and wholesale services. Specifically, the FCC determined that "a restriction on commingling would constitute an unjust and unreasonable practice under section 201 of the Act," and an "undue and unreasonable prejudice or advantage" under section 202 of the Act, and would violate the "nondiscrimination requirement in section 251(c)(3)."[13] Therefore, competitive carriers may "connect, combine or otherwise attach UNEs and UNE combinations to wholesale services," including switched or special access services

[13] *Triennial Review Order* at ¶ 581.

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offered under the rates, terms and conditions of an effective tariff.[14] Importantly, the *Triennial Review Order* also requires Verizon to effectuate commingling immediately, subject to penalties for noncompliance.

31 Conversely, Verizon's language 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 amending the interconnection agreement. Such a restriction improperly seeks to circumvent the Agreements' change in law provisions, and is inconsistent with the FCC's determination in both the *Triennial Review Order* and the *Triennial Review Remand Order* that changes in federal law are to be implemented consistent with section 252 and the change in law provisions in the parties' interconnection agreements.

Issues 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?

32 The parties' interconnection agreements should be amended to reflect that competitive carriers may convert tariffed services provided by Verizon to UNEs or UNE combinations, provided that the service eligibility criteria established by the FCC, under the *Triennial Review Order*, are satisfied. Neither the D.C. Circuit's *USTA II* decision nor the *Triennial Review Remand Order* displaced the FCC's earlier findings with regard to competitive carriers' rights to covert Verizon wholesale services to UNEs or combinations of UNEs, as permitted by the *Triennial Review Order*.

33 The Amendment should include the conversion requirements established in the *Triennial Review Order* and affirmed in the *Triennial Review Remand Order*. The contract language proposed by the CLECs have proposed most accurately reflects those requirements. Verizon proposes no language governing conversions, presumably

[14] *Id.* at ¶ 579.

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because Verizon disagrees with the FCC that Verizon should be required to permit CLECs to convert wholesale services to UNEs. Yet Verizon must abide by the law. Therefore, the Commission should adopt the CLEC language.

Issues 14: Should the ICAs be amended to address changes, if any, arising from the TRO with respect to:

a) Line splitting;
b) Newly built FTTP, FTTH or FTTC loops;
c) Overbuilt FTTP, FTTH or FTTC loops;
d) Access to hybrid loops for the provision of broadband services;
e) Access to hybrid loops for the provision of narrowband services;
f) Retirement of copper loops;
g) Line conditioning;
h) Packet switching;
i) Network interface devices (NIDs);
j) Line sharing?

34 The parties' interconnection agreements should be amended to reflect any changes to the FCC's unbundling rules arising under the *Triennial Review Order* that were not vacated by the D.C. Circuit in *USTA II*, or modified by the FCC in the *Triennial Review Remand Order* or other FCC order. The Amendment should expressly incorporate the requirements of the *Triennial Review Order* and the FCC's rules with regard to the following: line splitting; newly built fiber-to-the-home and fiber-to-the-curb loops; overbuilt fiber-to-the-home and fiber-to-the curb loops; access to hybrid loops for the provision of broadband services; access to hybrid loops for the provision of narrowband services; retirement of copper loops; line conditioning; packet switching; network interface devices (NIDs); and line sharing.

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

35 The Amendment to the parties' agreements should be effective as of the date of the last signature on the Amendment, except with respect to the transition rates for network elements that Verizon no longer is obligated to provide under section 251 of the 1996 Act, as expressly provided by the FCC's rules and orders, including the

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Triennial Review Remand Order. To the extent that any provision of the Amendment should be given retroactive effect, as required by the FCC, the Amendment must state the effective date of the specified provision of the Amendment and the controlling FCC rule or Order.

36 With regard to any rates, terms and conditions set forth in the Amendment applicable to commingling and conversions, the effective date of such provisions will be, as required by the FCC, October 2, 2003, the effective date of the *Triennial Review Order*. Under the *Triennial Review Order*, Verizon must permit commingling and conversions as of the effective date of the *Triennial Review Order* in the event that a requesting carrier certifies that it has complied with the FCC's service eligibility criteria. Under section 51.318 of the FCC's rules, Verizon must provide to requesting carriers, as of October 2, 2003, commingling and conversions unencumbered by additional processes or requirements not specified in the *Triennial Review Order*, and requesting carriers must receive pricing for new EELs/conversions as of the date the request was made to Verizon.

Issues 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?

37 The Amendment should require that Verizon comply with section 51.319(a)(iii) of the FCC's rules, which requires that, where a requesting carrier seeks access to a hybrid loop for the provision of narrowband services, Verizon provide nondiscriminatory access to either an entire unbundled hybrid loop capable of providing voice-grade service, using time division multiplexing technology, or a spare home-run copper loop serving that customer on an unbundled basis. However, in the event that a requesting carrier specifies access to an unbundled copper loop in its request to Verizon, the Amendment should obligate Verizon to provide an unbundled copper loop, using

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Routine Network Modifications as necessary, unless no such facility can be made available via Routine Network Modifications.

Issues 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?

38 Although the Commission has not yet established many of these standards, Verizon should be subject to standard provisioning intervals or performance measurements, and potential remedy payments in the parties' underlying agreement or elsewhere for the facilities and services identified in the Commission's Order Establishing Procedure, including: (a) unbundled loops provided by Verizon in response to a carrier's request for access to IDLC-served hybrid loops; (b) commingled arrangements; (c) conversion of access circuits to UNEs; (d) Loops and Transport (including Dark Fiber Transport and Loops) for which routine network modifications are required. To the extent that existing interconnection agreements include any such intervals, measurements, or payments, however, their applicability is not affected by the requirements the FCC adopted in the *Triennial Review Order* and *Triennial Review Remand Order.*

39 Conversions and commingling 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,

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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.

40 The same is true with respect to routine network modifications. The *Triennial Review Order* expressly states that to the extent 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."[15] 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."[16] 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.

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

41 Verizon is obligated to provide access to its subloops and network interface devices ("NID"), on an unbundled basis, in accordance with section 51.319(b) of the FCC's rules and the *Triennial Review Order*. Under the *Triennial Review Order*, Verizon is obligated to provide a requesting carrier access to its subloops at any technically feasible access point located near a Verizon remote terminal for the requested subloop facilities. Accordingly, the Amendment should incorporate the requirements of the *Triennial Review Order* and the FCC's applicable rules. Specifically, the Amendment to the parties' interconnection agreements should include:

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[15] *Triennial Review Order* at ¶ 639.

[16] *Id.*, n.1940.

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(a) detailed definitions of subloops and access terminals, consistent with the *Triennial Review Order*; and (b) detailed procedures for the connection of subloop elements to any technically feasible point both with respect to distribution subloop facilities and subloops in multi-tenant environments. The Amendment also should include requirements set forth in the *Triennial Review Order* applicable to Inside Wire Subloops, and to Verizon's provision of a single point of interconnection ("SPOI") suitable for use by multiple carriers.

Issues 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?

42 Yes. The FCC requires that the transmission path between Verizon's local circuit switching equipment located in a CLEC's facilities and the Verizon serving wire center should be treated as unbundled transport. The FCC noted that "incumbent LECs may 'reverse collocate' in some instances by collocating equipment at a competing carrier's premises, or may place equipment in a common location, for purposes of interconnection … to the extent that an incumbent LEC has local switching equipment, as defined by the [FCC's] rules, "reverse collocated" in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport between incumbent LEC switches or wire centers…"[17] In making this finding, the FCC distinguished a "reverse collocation" arrangement from an "entrance facility." Therefore, Verizon continues to be obligated to provide such unbundled dedicated transport under the terms set forth in the *Triennial Review Remand Order.*

[17] *Triennial Review Order* at ¶ 369, n. 1126.

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43 Proposed contract language should contain a definition of Dedicated Transport that reflects the FCC's findings, as follows: "Dedicated Transport - A transmission facility between Verizon switches or wire centers (including Verizon switching equipment located at CLEC premises), within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law.

Issues 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?

44 Yes. Interconnection trunks between a Verizon wire center and a CLEC wire center *established for the transmission and routing of telephone exchange service and exchange access* are interconnection facilities under section 251(c)(2) that must be provided at TELRIC rates. Section 251(c)(2) of the Act specifically provides that Verizon has an obligation to interconnect with the CLEC's network via interconnection trunks "for the transmission and routing of telephone exchange service and exchange access … on *rates*, terms and conditions … in accordance with … section 252 (251(c)(2)(A) and (D). Section 252(d)(1), in turn, contains the TELRIC standard. Although the *Triennial Review Order* revised the definition of dedicated transport to exclude entrance facilities, finding that they "exist outside the incumbent LEC's local network," the FCC was very clear that this conclusion did not alter the obligations of Verizon to continue to provide interconnection trunks, pursuant to section 251(c)(2), at TELRIC rates. The FCC observed that "[c]ompetitive LECs use these transmission connections between incumbent LEC networks and their own networks both for interconnection and to backhaul traffic. Unlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection, we find that the Act does not require incumbent LECs to unbundle transmission facilities connecting

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incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic."[18] The FCC noted that, "to the extent that requesting carriers need facilities in order to "interconnect [] with the [incumbent LEC's] network," section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation."[19]

45 In the *Triennial Review Remand Order* the FCC, relying on guidance from the D.C. Circuit in *USTA II*, reinstated the *Local Competition Order's* definition of dedicated transport.[20] However, after applying an impairment analysis to dedicated transport, the Commission found that CLEC carriers are not impaired without access to entrance facilities as an unbundled network element. The FCC did not, however, retreat from its finding regarding the availability of interconnection facilities at TELRIC prices. Rather, the FCC stated that while an ILEC is not obligated to provide access to entrance facilities as UNEs, CLECs continue to have access to these facilities at cost-based rates.[21]

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[18] *Triennial Review Order* at ¶¶ 365-66. On this basis, the FCC found that "the transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LECs' local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network. Accordingly, such transmission facilities are not appropriately included in the definition of dedicated transport." *Id.*

[19] *Triennial Review Order* at ¶ 366.

[20] *Triennial Review Remand Order* at ¶¶ 136-41.

[21] *Triennial Review Remand Order* at ¶ 140 ("[o]ur finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain *interconnection facilities* pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities *at cost-based rates* to the extent that they require them to interconnect with the incumbent LEC's network.")(emphasis added).

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46 Therefore, it is clear that interconnection trunks between a Verizon wire center and a CLEC wire center established for the transmission and routing of telephone exchange service and exchange access, and not for the purpose of "backhauling" traffic, are interconnection facilities under section 251(c)(2) that must be provided at TELRIC rates.

Issues 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?**

47 The parties' interconnection agreements should be amended to incorporate changes in law that address Verizon's obligation to provide "new" EELs, in addition to EELs converted from existing special access circuits, including the high capacity EEL service eligibility criteria set forth in section 51.318 of the FCC's rules. In light of the FCC's rule setting forth Verizon's obligation to provide EELs, the Amendment should make clear that: (1) Verizon is required to provide access to new and converted EELs unencumbered by additional processes or requirements not specified in the *Triennial*

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Review Order; (2) competitive carriers must self-certify compliance with the applicable high capacity EEL service eligibility criteria for high capacity EELs, by manual or electronic request, and permit a limited annual audit by Verizon to confirm their compliance with the FCC's high capacity EEL service eligibility criteria; (3) Verizon's performance relative to EEL facilities must be subject to standard provisioning intervals and performance measures; and (4) Verizon will not impose charges for conversion from wholesale to UNEs or UNE combinations, other than a records change charge. In addition, the Commission should permit competitive carriers to re-certify prior conversions in a single batch, and to certify requests for future conversions in one batch, rather than to certify individual requests on a circuit-by-circuit basis.

48 **Issue 21(a).** The Amendment should require that competitive carriers comply with the service eligibility requirements established by the *Triennial Review Order* and section 51.318 of the FCC's rules. Specifically, to obtain a new or converted EEL under the *Triennial Review Order* and section 51.318 of the FCC's rules, the Amendment should require that a competitive carrier supply self-certification to Verizon of the following information: (1) state certification to provide local voice service, or proof of registration, tariff and compliance filings; (2) that at least one local number is assigned to each DS1 circuit prior to provision of service over that circuit; (3) that each circuit has 911/E911 capability prior to the provision of service over that circuit; (4) that the circuit terminates to a collocation or reverse collocation; (5) that each circuit is served by an interconnection trunk in the same LATA over which calling party number ("CPN") will be transmitted; (6) that one DS1 interconnection trunk (over which CPN will be passed) is maintained for every 24 DS1 EELs; and (7) that the circuit is served by a Class 5 switch or other switch capable of providing local voice traffic.

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49 **Issue 21(b)(1).** Yes. The Amendment to the parties' interconnection agreements should state that, when existing circuits or services employed by a competitive carrier are converted to an EEL, Verizon shall not physically disconnect, separate, alter or change in any fashion equipment and facilities employed to provide the wholesale service, except at the request of the competitive carrier.

50 **Issue 21(b)(2).** The amendment should expressly preclude Verizon from imposing additional charges on any competitive carrier in the absence of a CLEC request for conversion of existing access circuits or services to UNE loops and transport.

51 **Issue 21(b)(3).** No. Any EEL provided by Verizon to a competitive carrier prior to October 2, 2003 should not be required to meet the service eligibility criteria set forth in the *Triennial Review Order* and section 51.318 of the FCC's rules.

52 **Issue 21(b)(4).** Yes. The Amendment should expressly state that conversion requests issued by a competitive carrier after the effective date of the *Triennial Review Order* and before the effective date of the Amendment shall be deemed to have been completed on the effective date of the Amendment, and as such, should be subject to EELs/UNEs pricing available under the *Triennial Review Order*.

53 **Issue 21(c).** Under the *Triennial Review Order*, Verizon is permitted to conduct one audit of a competitive carrier to determine compliance with the FCC's service eligibility criteria for EELs, provided that Verizon demonstrates cause with respect to the particular circuits it seeks to audit, and obtains and pays for an AICPA-compliant independent auditor to conduct such audit. The independent auditor is required to perform its evaluation of the competitive carrier in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which require that the auditor perform an "examination engagement" and

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issue an opinion regarding the carrier's compliance with the FCC's service eligibility criteria. The independent auditor must conclude whether the competitive carrier has complied in all material respects with the applicable service eligibility criteria. If the auditor's report concludes that the competitive carrier failed to materially comply with the service eligibility criteria in all respects, the carrier will be required to true-up any difference in payments, convert all noncompliant circuits to the appropriate service and make correct payments on a going-forward basis. In such cases, the competitive carrier also must reimburse Verizon for the costs associated with the audit. If the auditor's report concludes that the competitive carrier has complied with the FCC's service eligibility criteria, Verizon must reimburse the competitive carrier its costs (including staff time and other appropriate costs) associated with the audit.

Issues 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?

54 The Competitive Carrier Group has consistently maintained that Verizon's obligation under federal law to provide routine network modifications to permit access to its network elements that are subject to unbundling under section 251 of the 1996 Act and the part 51 of the FCC's rules existed prior to the *Triennial Review Order*. Therefore, because the *Triennial Review Order* provides only clarification with respect to Verizon's obligation to provide routine network modifications, the *Triennial Review Order* does not constitute a "change of law" under the parties' agreements for which a formal amendment is required. Nonetheless, for avoidance of doubt, the Competitive Carrier Group maintains that the Amendment must include language clarifying the scope of Verizon's obligation to provide to competitive carriers routine network modifications to permit access to its UNEs.

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55 Consistent with the *Triennial Review Order*, the Amendment should define Routine Network Modifications as those prospective or reactive activities that Verizon regularly undertakes when establishing or maintaining network connectivity for its own retail customers. A determination of whether or not a requested modification is in fact "routine" should, under the Agreement, be based on the tasks associated with the modification, and not on the end-user service that the modification is intended to enable. The Amendment should specify that the costs for Routine Network Modifications are already included in the existing rates for the UNEs set forth in the parties' interconnection agreements, and accordingly, that Verizon may not impose additional charges in connection with its performance of routine network modifications.

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

56 Yes, the parties should retain their pre-Amendment rights under the Agreement, tariffs and SGATs.

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

57 The Amendment should include a process to address the potential effect on CLECs' customers' services when a section 251(c) UNE is discontinued, to ensure that loss of service to a CLECs' customers does not result from Verizon's discontinuance of that particular UNE. The Amendment should further include transition periods for discontinued UNEs as required by the *Triennial Review Remand Order*. Those periods should be of sufficient duration to enable the CLECs to have the time to make the necessary arrangements to obtain and build replacement facilities. The Amendment should expressly incorporate the FCC's service eligibility criteria set forth in the *Triennial Review Order* and section 51.318 of the FCC's rules for combinations and commingled facilities and service.

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Issues 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?

58 As discussed more fully in response to Issue 21 above, the Amendment should expressly incorporate the FCC's service eligibility criteria set forth in the *Triennial Review Order* and section 51.318 of the FCC's rules for combinations and commingled facilities and service.

Issues 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?

59 No. There is no basis for the Amendment to address commercial agreements between Verizon and individual Washington CLECs that may be negotiated in the future.

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

60 Yes. The Amendment should require Verizon to provide an access point for CLECs to engage in testing, maintenance and repair of copper loops and copper subloops. The FCC made clear in the *Triennial Review Order* that incumbent LECs are required to provide access to physical loop test access points on a nondiscriminatory basis for the purpose of loop testing, maintenance, and repair activities.[22]

Issues 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?

61 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

[22] *Triennial Review Order* at ¶ 252.

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centers satisfy the criteria the FCC has established for determining when there is no impairment for high-capacity loops and dedicated transport.

Issues 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?

62 The *Triennial Review Remand Order* contemplates that the parties will negotiate appropriate terms and conditions for the transition periods that the FCC has prescribed, including alternative service arrangements.[23] The Amendment should include this requirement.

Issues 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?

63 As discussed herein, the FCC has *required* parties to amend their interconnection agreements to incorporate the FCC's latest unbundling rules.[24]

64 The *Triennial Review Remand Order* 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.

65 The transition plans set forth in the *Triennial Review Remand Order* also expressly apply to the interconnection agreement 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

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[23] *See, e.g., Triennial Review Remand Order* at ¶ 197.

[24] *Triennial Review Remand Order* at ¶ 233 ("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.*") (footnote omitted and emphasis added).

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process."[25] 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."[26] Verizon thus may not unilaterally implement the *Triennial Review Remand Order* transition plan when that plan itself is subject to being replaced by a plan negotiated or arbitrated between the parties to a Commission-approved interconnection agreement.

66 The Amendment, therefore, should include language implementing the requirements of the *Triennial Review Remand Order*, and except as expressly provided by the FCC, those requirements should not be effective until the Amendment has been approved by the Commission.

Issues 31: Do Verizon's obligations to provide UNEs at TELRIC rates under applicable law differ depending upon whether such UNEs are used to serve the existing customer base or new customers? If so, how should the Amendment reflect that difference?

67 The Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan will apply. For UNEs that Verizon no longer is obligated to provide at TELRIC rates, the Amendment should clarify that any UNE added, moved or changed by a competitive carrier, at the request of a customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. Consistent with the *Triennial Review Remand Order*, the Commission should not permit Verizon to block "new adds" by competitive carriers

[25] *Triennial Review Remand Order* at ¶¶ 143, 196 (emphasis added).

[26] *Triennial Review Remand Order* at ¶¶ 145, 198.

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until time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the Act.

III. CONCLUSION.

68 Consistent with the foregoing, Advanced TelCom, Inc., BullsEye Telecom, Inc., and Covad Communications Company respectfully request that the Commission reject Verizon's proposed Amendment and approve the Amendment proposed by the CLECs in this proceeding.

Respectfully submitted,

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