BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment for 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 VERIZON'S REPLY BRIEF

Aaron M. Panner Scott H. Angstreich Stuart Buck KELLOGG, HUBER, HANSEN, TODD, EVANS, & FIGEL, P.L.L.C. 1615 M Street, N.W., Suite 400 Washington, D.C. 20036 (202) 326-7900 (202) 326-7999 (fax) apanner@khhte.com sangstreich@khhte.com sbuck@khhte.com	Timothy J. O'Connell John H. Ridge STOEL RIVES, LLP One Union Square 600 University St., Suite 3600 Seattle, WA 98101 (206) 624-0900 (206) 386-7500 (fax) Kimberly Caswell Associate General Counsel, Verizon Corp. 201 N. Franklin St. Tampa, FL 33601 (727) 360-3241 (727) 367-0901 (fax)

Attorneys for Verizon Northwest Inc.

April 1, 2005

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES vii

I. INTRODUCTION 2

II. ISSUE-BY-ISSUE ANALYSIS 3

Issue 1: Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law? 3

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? 7

A. Verizon's Amendment appropriately defines its unbundling obligations by reference to the current unbundling obligations imposed under federal law 7

B. Various CLECs complain that it is somehow unfair to allow Verizon in the future to adapt to current federal law as to unbundling obligations, while requiring written amendments as to new requirements such as commingling and routine network modifications 10

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? 10

A. The parties' principal disagreement with regard to this issue concerns the interpretation of the FCC's "no-new-adds" directive 11

B. Some CLECs seek a ruling that "any UNE-P line added, moved, or changed by a competitive carrier, at the request of a [pre-existing customer] is within the competitive carrier's 'embedded customer base.'" 18

C. The specific language proposed by AT&T regarding local circuit switching is objectionable for additional reasons. 18

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? 19

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? 22

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? 24

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? 26

Issue 8: Should Verizon be permitted to assess non-recurring charges when it changes a UNE arrangement to an alternative service? If so, what charges apply? 27

Issue 9: What terms should be included in the Amendments' Definitions Section and how should those terms be defined? 28

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? 30

A. Verizon explained in its opening brief, and has further explained above, that the FCC's determinations in the *TRRO* its no-new-adds order and its transition rules – do not depend for their implementation on the language of any particular interconnection agreement 30

B. With regard to the additional unbundling obligations contained in the *TRO*, the FCC determined that such new obligations should be implemented through contractual processes, as appropriate, and Verizon's Amendment 2 would achieve that 31

Issue 11: How should any rate increases and new charges established by the FCC in its final unbundling rules or elsewhere be implemented? 32

Issue 12: Should the interconnection agreements be amended to address changes arising from the *Triennial Review Order* with respect to commingling of UNEs with wholesale services, EELs, and other combinations? If so, how? 32

Issue 13: Should the interconnection agreements be amended to address changes arising from the *Triennial Review Order* with respect to conversion of wholesale services to UNEs/UNE combinations? If so, how? 33

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

a) Line splitting;
b) Newly built FTTP, FTTH, or FTTC loops;
c) Overbuilt FTTP, FTTH, or FTTC loops;
d) Access to hybrid loops for the provision of broadband services;
e) Access to hybrid loops for the provision of narrowband services;
f) Retirement of copper loops;
g) Line conditioning;
h) Packet switching;
i) Network Interface Devices (NIDs);
j) Line sharing? 33

Issue 15: What should be the effective date of an Amendment to the parties' agreements? 36

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? 38

Issue 17: Should Verizon be subject to standard provisioning intervals or performance measurements and potential remedy payments, if any, in the underlying Agreement or elsewhere, in connection with its provision of

a) Unbundled loops in response to CLEC requests for access to IDLC-served hybrid loops;
b) Commingled arrangements;
c) Conversion of access circuits to UNEs;
d) Loops or Transport (including Dark Fiber Transport and Loops) for which Routine Network Modifications are required;

e) batch hot cut, large job hot cut and individual hot cut processes 39

Issue 18: How should sub-loop access be provided under the *TRO*?....40

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?....41

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?....41

Issue 21: What obligations, if any, with respect to EELs should be included in the Amendment to the parties' interconnection agreements?....42

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?....42

b) Conversion of existing circuits/services to EELs:

1) Should Verizon be prohibited from physically disconnecting, separating, changing or altering the existing facilities when a CLEC requests a conversion of existing circuits/services to an EEL unless the CLEC requests such facilities alteration?....47

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?....47

3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the FCC's service eligibility criteria?....48

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)?....49

c) What are Verizon's rights to obtain audits of CLEC compliance with the FCC's service eligibility criteria?.....51

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?.....53

Issue 23: Should the parties retain their pre-Amendment rights arising under the Agreement, tariffs, and SGATs?.....54

Issue 24: Should the Amendment set forth a process to address the potential effect on the CLECs' customers' services when a UNE is discontinued?.....55

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?.....56

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?.....57

Issue 27: Should Verizon provide an access point for CLECs to engage in testing, maintaining and repairing copper loops and copper subloops? 57

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? 57

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? 47

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?.....57

Issue 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? 58

CONCLUSION 58

TABLE OF AUTHORITIES

CASES **Page**

Central Tex. Tel. Coop. v. FCC,
No. 03-1405, 2005 WL 562741 (D.C. Cir. Mar. 11, 2005) 7

Eastern Enters. v. Apfel,
524 U.S. 498 (1998) 49

ICC v. Brotherhood of Locomotive Eng'rs,
482 U.S. 270 (1987) 49

U.S. West Communications v. MFS Intelent, Inc.,
193 F.3d 1112 (9th Cir. 1999) 49

ADMINISTRATIVE DECISIONS

Memorandum Opinion and Order, *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control*,
15 FCC Rcd 14032 (2000) 29

Memorandum Opinion and Order and Notice of Inquiry, *BellSouth Telecommunications, Inc. Request for Declaratory Ruling*,
WC Docket No. 03-251, FCC 05-78 (FCC rel. Mar. 25, 2005) 1, 4, 7

Memorandum Opinion and Order, *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty To File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, 17 FCC Rcd 19337 (2002) 24

Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*,
19 FCC Rcd 20293 (2004) 1, 5, 9, 30

Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338,
FCC 04-290 (FCC rel. Feb. 4, 2005) 2, 11, 12, 13, 17, 18, 20, 21, 24, 25, 41, 45, 46

Petition for Reconsideration of CTC Communications Corp. *et al.*, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313,
CC Docket No. 01-338 (FCC filed Mar. 29, 2005) 18

Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003), *vacated in part and remanded, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004), *cert. denied, NARUC v. United States Telecom Ass'n,* 125 S. Ct. 313 (2004) .....1, 33, 34, ...37, 38, 39, ...41, 43, 44, ...45, 48, 49, ...50, 52, 53, 54

STATUTES AND REGULATIONS

28 U.S.C. § 2342 49

28 U.S.C. § 2344 49

47 U.S.C. § 252(c)(1) 4, 7

47 C.F.R. § 51.319(a)(3)(i) 30

47 C.F.R. § 51.319(d)(2)(i) 12

47 C.F.R. § 51.319(d)(2)(iii) 17

STATE COMMISSION RULINGS

Assigned Commissioner's Ruling Granting In Part Motion for Emergency Order Granting Status Quo for UNE-P Orders, Petition of Verizon California Inc. (U 1002 C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 and the Triennial Review Order, App. No. 04-03-014 (Ca. PUC Mar. 11, 2005) 15, 16

Commission Staff's Response to Joint CLECs' Motion to Maintain the Status Quo, *Petition of QWEST Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order*, Docket No. UT-033044 (Wash. UTC filed May 25, 2004) 4

Consolidated Order Dismissing Triennial Review Order Investigation and Vacating Suspension of Tariff M.D.T.E. No. 17, *Proceeding by the Department on its Own Motion to Implement the Requirements of the FCC's Triennial Review Order Regarding*

Switching for Mass Market Customers, D.T.E. 03-60
(Mass. D.T.E. Dec. 15, 2004) 3

Forty-Fifth Supplemental Order Approving Compliance Tariff Filing, *Continued Costing and Pricing Proceeding for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale*, Docket No. UT-003013, 2003 Wash UTC LEXIS 2
(Wash. UTC Jan. 7, 2003) 34

Indiana Utility Regulatory Commission's Investigation of Matters Related to the Federal Communications Commission's Report and Order, Cause Nos. 42500, 42500-S1 & 42500-S2, 2005 Ind. PUC LEXIS 31
(In. URC Jan. 12, 2005) 3

Order, *Application of Competitive Local Exchange Carriers to Initiate a Commission Investigation*, Case No. U-14303
(Mich. PSC Mar. 29, 2005) 15

Open Hearing, *Implementation of the FCC's Triennial Review Order*, Docket No. TO03090705 (N.J. BPU Mar. 11, 2005) 14

Open Meeting, *Verizon RI Tariff filing to implement the FCC's new unbundled (UNE) rules regarding as set forth in the TRO Remand Order issued February 4, 2005*, Docket 3662 (R.I. PUC Mar. 8, 2005)
(http://www.ripuc.org/eventsactions/docket/3662page.html) 14

Order Closing Dockets, *Implementation of Requirements Arising from FCC's Triennial UNE Review: Local Circuit Switching for Mass Market Customers*, Docket Nos. 030851-TP & 030852-TP (Fla. PSC Oct. 11, 2004) 3

Order, *Complaint of Indiana Bell Telephone Company for Expedited Review of a Dispute with Certain CLECs Regarding Adoption of an Amendment to Commission-Approved Interconnection Agreements*, Cause No. 42749 (Ind. URC Mar. 9, 2005) 14

Order Denying Motions to Dismiss; Granting Joint CLECs' Motion; Requiring Verizon to Maintain Status Quo, Order No. 5
(Wash. PUC June 15, 2004) 29, 31

Order Dismissing Petitions, *Petitions of the Competitive Carrier Coalition and AT&T Communications of Virginia, LLC*, Case Nos. PUC-2004-00073 & PUC 2004-00074
(Va. SCC July 19, 2004) 3

Order Dismissing Remaining Issues, *Investigation by the Department on its own motion as to the propriety of the rates and charges*

set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000, D.T.E. 98-57 Phase III-D, at 15-17 (Mass. D.T.E. Jan. 30, 2004) 3

Order Granting in Part and Denying in Part Formal Complaint and Motion for an Expedited Order, *General Investigation to Establish a Successor Standard Agreement to the Kansas 271 Interconnection Agreement,* Docket No. 04-SWBT-763-GIT (Kan. SSC Mar. 10, 2005).....15, 16

Order Implementing *TRRO* Changes, *Ordinary Tariff Filing of Verizon New York Inc. to Comply with the FCC's Triennial Review Order on Remand,* Case No. 05-C-0203 (N.Y. PSC Mar. 16, 2005) 13, 18

Order, *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)*, Docket No. 2002-682 (Me. PUC Mar. 17, 2005) 14

Proposed Order on Clarification, Approved as Written, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement,* Docket No. 28821 (Tex. PUC Mar. 9, 2005) 15

Thirty-Eighth Supplemental Order, *Continued Costing and Pricing Proceeding of Unbundled Network Elements, Transport and Termination*, Docket No. UT-003013, 2002 Wash UTC LEXIS 370 (Wash. UTC Sept. 23, 2002).....36

OTHER MATERIALS

Briefing Questions to Additional Parties, *Petition of Verizon New England, Inc. for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers Pursuant to Section 252 and the Triennial Review Order*, D.T.E. 04-33 (Mass. DTE Mar. 10, 2005).....15

Entry, *Emergency Petition of LDMI Telecomms., Inc., et al. for a Declaratory Ruling,* Case No. 05-298-TP-UNC & 05-299-TP-UNC (Ohio PUC Mar. 9, 2005) 15

Ex Parte Letter from Suzanne A. Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 98-141, 98-184, and 01-338, WC Docket No. 04-313 (FCC filed Feb. 18, 2005) 23, 39

First Supp. Order, *Development of Universal Terms and Conditions for Interconnection and Network Elements to be Provided by Verizon Northwest, Inc.*, Docket No. UT-011219, (March 2002) 6

Letter, *Emergency Petition MCI for a Commission Order Directing Verizon to Continue to Accept New Unbundled Network Element Platform Orders*, ML# 96341 (Md. PSC Mar. 10, 2005) 14

Open Meeting, *Complaint of A.R.C. Networks, Inc. Against Verizon Delaware Inc., for Emergency Declaratory Relief*, Docket No. 334-05 (De. PSC Mar. 22, 2005) 15

1. Verizon Northwest, Inc. ("Verizon"), in accordance with the schedule established by the Arbitrator, files this Reply Brief.

I. INTRODUCTION

2. Despite the complexities associated with individual technical issues, the basic legal principles governing this proceeding are clear and becoming clearer. Even in the short time since the parties filed their initial briefs, a key preemption decision of the FCC and an emerging consensus among state commissions across the country have helped to cement these points. All that remains is for the Commission to resolve the outstanding issues in accordance with the dictates of federal law.

3. *First*, the CLECs' basic position – that the limitations on unbundling established in federal law do not bind state commissions – is all-the-more untenable after the FCC's decision in the *BellSouth Telecommunications, Inc. Request for Declaratory Ruling* proceeding.[1] The FCC's ruling – which declares that decisions by state commissions in Florida, Georgia, Kentucky, and Louisiana are contrary to the FCC's determinations in the *Triennial Review Order*[2] and therefore preempted – makes clear that, contrary to CLEC arguments, a decision by the FCC that a particular network element should not be subject to mandatory unbundling preempts any inconsistent determination by a state commission acting pursuant to state law.

---

[1] Memorandum Opinion and Order and Notice of Inquiry, *BellSouth Telecommunications, Inc. Request for Declaratory Ruling*, WC Docket No. 03-251, FCC 05-78 (FCC rel. Mar. 25, 2005) ("*BellSouth Preemption Declaratory Ruling*").

[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) *("USTA II"), cert. denied, NARUC v. United States Telecom Ass'n,* 125 S. Ct. 313, 316, 345 (2004).

4. *Second*, the strong majority of state commissions to consider the question have determined that the no-new-adds directive in the *Triennial Review Remand Order* ("*TRRO*")[3] – which bars CLECs from ordering new mass market switching or de-listed high-capacity facilities – is immediately effective, just as the FCC said it was. CLECs' claims that parties are not bound by the "nationwide bar" on unbundling of mass-market switching until their interconnection agreements are amended have been rejected repeatedly. Indeed, there is little if anything that this Commission needs to do in this proceeding to implement any of the FCC's decision in the *TRRO* – other than to reject the unlawful CLEC proposals that seek to overturn the FCC's no-new-adds decision.

5. Because Verizon's proposed amendments are faithful to these basic principles – and because the CLECs' proposals are not – the Commission should adopt Verizon's proposed amendment.

II. ISSUE-BY-ISSUE ANALYSIS

6. Five CLECs or groups of CLECs submitted initial briefs in this proceeding: the Competitive Carrier Group ("CCG");[4] the Joint CLECs;[5] MCI, Inc.; Focal Communications Corp.;[6] and AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T"). In addition, two CLECs –

---

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

[4] The CCG is now composed of Advanced TelCom, Inc., BullsEye Telecom, Inc., and Covad Communications Co.

[5] The Joint CLECs are Integra Telecom of Washington, Inc., Pac-West Telecomm, Inc., and XO Washington, Inc. These CLECs, along with Focal, have made previous submissions in this proceeding under the name "Competitive Carrier Coalition" or "CCC."

[6] Focal has heretofore been a member of the CCC. Its brief focuses solely on Issues 8, 9, 12, 21, and 25. Focal also claims that its brief "alleges violation by Verizon" of federal unbundling statutes and rules, as well as "a breach of the terms and conditions of the Interconnection Agreement between Focal and Verizon." Focal Br. at 1. The rest of Focal's brief never specifies what Focal means by this allegation.

AT&T and MCI – proposed new Amendment language that purports to incorporate the *TRRO*'s determinations.

7. In the sections that follow, Verizon addresses the positions taken by the CLECs on each of the issues. In many instances, the CLECs' arguments have already been addressed in Verizon's initial brief, which Verizon incorporates by reference here. In addition, many CLEC positions consist of little more than the statement that the Commission should adopt the CLECs' language. In such instances, no response is necessary.

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

8. In Verizon's initial brief, it explained the reasons that no source of law – in particular, no state law – can override the FCC's determinations that certain elements are no longer required to be unbundled. *See* Verizon Initial Br. at 11-18, ¶¶ 22-34. As this Commission's Staff – along with other state commissions[7] – has correctly noted, a state commission cannot order unbundling that a federal court has rejected: "It would not be legally sustainable for this Commission to adopt the FCC's provisional national impairment findings for

[7] *See also* Order Dismissing Petitions, *Petitions of the Competitive Carrier Coalition and AT&T Communications of Virginia, LLC*, Case Nos. PUC-2004-00073 & PUC 2004-00074, at 6 (Va. SCC July 19, 2004); Order Closing Dockets, *Implementation of Requirements Arising from FCC's Triennial UNE Review: Local Circuit Switching for Mass Market Customers,* Docket Nos. 030851-TP & 030852-TP, at 3 (Fla. PSC Oct. 11, 2004). *See also Indiana Utility Regulatory Commission's Investigation of Matters Related to the Federal Communications Commission's Report and Order*, Cause Nos. 42500, 42500-S1 & 42500-S2, 2005 Ind. PUC LEXIS 31, at *14 (In. URC Jan. 12, 2005); Consolidated Order Dismissing Triennial Review Order Investigation and Vacating Suspension of Tariff M.D.T.E. No. 17, *Proceeding by the Department on its Own Motion to Implement the Requirements of the FCC's Triennial Review Order Regarding Switching for Mass Market Customers*, D.T.E. 03-60, at 22 (Mass. D.T.E. Dec. 15, 2004); *see also* Order Dismissing Remaining Issues, *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000*, D.T.E. 98-57 Phase III-D, at 15-17 (Mass. D.T.E. Jan. 30, 2004) (finding that the D.T.E. could not lawfully override the FCC's determination not to unbundle packet switching).

mass market switching and dedicated transport because those were discredited by the court as inconsistent with Section 251." *See* Commission Staff's Response to Joint CLECs' Motion to Maintain the Status Quo, *Petition of QWEST Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order*, Docket No. UT-033044, ¶ 7 (Wash. UTC filed May 25, 2004). Thus, the Amendment should not purport to allow any "Applicable Law" to create unbundling obligations; rather, the Amendment should be limited to implementing the requirements of section 251 and the FCC's regulations thereunder.

9. The CLECs disagree, *see, e.g.*, AT&T Br. at 4-7; CCG Br. at 2; Joint CLEC Br. at 2-3; MCI Br. at 2, but their arguments – plainly wrong before – are all-the-more untenable in the wake of the FCC's decision in the *BellSouth Preemption Declaratory Ruling*. In that case, the FCC granted BellSouth's request for a declaratory ruling that decisions by state commissions in Florida, Georgia, Kentucky, and Louisiana – which had purported to require BellSouth to provide DSL service to customers that purchase voice telephone service from CLECs using unbundled loops leased from BellSouth – are contrary to the FCC's determinations in the *Triennial Review Order* and therefore preempted. *See BellSouth Preemption Declaratory Ruling* ¶¶ 17, 25, 26. In so ruling, the FCC squarely ruled that section 251(d)(3) – notwithstanding any of the "savings clauses" in the 1996 Act – bars state commissions from ordering unbundling in circumstances where the FCC has determined that no unbundling should be required.

10. The FCC held that "state decisions that require BellSouth to provide DSL service over the [high frequency portion of the loop ('HPFL')] while a competitive LEC provides voice service over the low frequency portion of a UNE loop facility effectively require unbundling of the [low frequency portion of the loop ('LFPL')]." *Id.* ¶ 25. The FCC held further that such decisions "violated [47 U.S.C. §] 251(d)(3)(B) because such decisions directly conflict and are

inconsistent with the [FCC's] rules and policies implementing section 251." *Id.* ¶ 26. Such requirements "impose on BellSouth a requirement to . . . do exactly what the Commission expressly determined was not required by the Act and thus exceed the reservation of authority under section 251(d)(3)(B)." *Id.* ¶ 27. Such decisions are "therefore inconsistent with federal law." *Id.*

11. The FCC's analysis squarely applies to the question whether a state commission may require an incumbent to unbundle any de-listed network element. The FCC reiterated that "a state decision, pursuant to state law, to unbundle an element for which the [FCC] has either found no impairment or otherwise declined to require unbundling on a national basis, would likely conflict with and 'substantially prevent' implementation of the federal regime, in contravention of the Act's specific and limited reservation of state authority." *Id.* ¶ 7 (citing *Triennial Review Order,* 18 FCC Rcd at 17101, ¶ 195). The FCC held that "[t]he Act establishes – and courts have confirmed – the primacy of federal authority with regard to several of the local competition provisions in the 1996 Act . . . including, of course, unbundling and other issues addressed by section 251." *Id.* ¶ 22.[8] "[E]xcept in limited cases, the [FCC's] prerogatives with regard to local competition supersede state jurisdiction over these matters." *Id.*

12. "Accordingly, the reach of the states' authority with regard to local competition is governed principally by federal law" – in particular, section 251(d)(3). *Id.* ¶ 22. The FCC noted that a state requirement is not protected from preemption "when the state regulation is inconsistent with the requirements of section 251 *or* when the state regulation substantially prevents implementation of the requirements of section 251 or the purposes of sections 251

[8] The FCC noted that "'[t]he statutorily authorized regulations of an agency will preempt any state or local law that conflicts with such regulations or frustrates the purposes thereof.'" *Id.* ¶ 19 n.57 (quoting *City of New York v. FCC*, 486 U.S. 57, 64 (1988)).

through 261 of the Act." *Id.* The FCC noted that, in reaching its unbundling determinations, it must "weigh[] the benefits of unbundling against the costs of unbundling, including the potential of depressing competitive incentives to deploy facilities." *Id.* ¶ 29. A state requirement imposing the very unbundling obligation that the FCC had decided should not be imposed would "undermine the effectiveness of incentives for deployment" and "therefore do[es] not pass muster under section 251(d)(3)(C) of the Act." *Id.* ¶ 30.[9]

13. Notably, the FCC specifically rejected the argument, pursued by many of the same CLECs who have filed here, that any of the other provisions of the Act – including section 252(e)(3),[10] section 261, or section 601(c)[11] of the 1996 Act – can override the clear limitations imposed by section 251(d)(3). *See BellSouth Preemption Declaratory Ruling* ¶ 23 nn.74, 75. Where the FCC has made a deliberate determination to limit unbundling obligations – consistent with the pro-competitive goals of the 1996 Act – no state commission can order further unbundling without "substantially prevent[ing] [the FCC's] implementation" of the Act.

14. The Joint CLECs rely on two precedents from this Commission for the proposition that a state commission may order unbundling that the FCC has rejected. Joint CLEC Br. at 2-3 (citing *WUTC v. US WEST, et al.*, Docket Nos. UT-941464, *et al.*, Fourth Supp. Order at 51 (Wash. UTC filed Oct. 31, 1995); and *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 (Wash. UTC filed Mar. 2002). But whatever this Commission's authority over other issues, it cannot (for example) order that

---

[9] Thus, the CCG's reliance on section 251(d)(3) to *support* state authority to override FCC unbundling limitations, *see* CCG Br. at 2, is misplaced.

[10] CCG (Br. at 2-3) and AT&T (Br. at 4-5) wrongly rely on this provision.

[11] AT&T (Br. at 5 n.11) wrongly relies on this provision.

Verizon or other ILECs provide mass market switching as a new UNE now that the FCC has emphatically rejected unbundling as to that element. *TRRO* ¶ 5. Any such determination would automatically "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(C).

15. Thus, AT&T's claim that the FCC's unbundling regulations are a "floor," not a "ceiling," AT&T Br. at 6-7, is flatly contrary to the FCC's binding interpretation of the 1996 Act. The FCC has made clear that in any case where a state commission purports to "require[] an incumbent LEC to provide unbundled access to . . . an element that the [FCC] expressly declined to unbundle" such a decision "directly conflict[s] and [is] inconsistent with the Commission's rules and policies implementing section 251." *BellSouth Preemption Declaratory Ruling* ¶¶ 25, 26. That principle controls here.[12]

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?**

Relevant Provisions: Verizon Amendment 1, §§ 2.1, 2.3, 3.1, 3.2, 4.7.3, 4.7.6; Verizon Amendment 2, §§ 2.1, 2.3, 2.4, 2.5, 3.5.3, 4.7.5; AT&T Amendment, §§ 1.1, 1.2, 2.0, 2.6, 3.1, 3.9; MCI Amendment, §§ 3.1, 3.2, 8, 9.7.5; Sprint Amendment, §§ 2.3, 4.5; CCC Amendment § 1; WilTel Amendment, §§ 2.3, 3.1, 3.2, 4.7.3.

16. **A.** Verizon's Amendment appropriately defines its unbundling obligations by reference to the current unbundling obligations imposed under federal law. Not only is that approach efficient, it reflects the important policy considerations underlying the FCC's

[12] The FCC's ruling also establishes that AT&T's claim that state rules are preempted only where the FCC *explicitly* preempts them, *see* AT&T Br. at 12-13, is incorrect. To the contrary, the FCC held that its power to declare that state rules are preempted – which simply clarifies the state of pre-existing law – is "separate and distinct from" the FCC's power affirmatively to preempt an existing state or local requirement. *See BellSouth Preemption Declaratory Ruling* ¶ 19; *see also Central Tex. Tel. Coop. v. FCC*, No. 03-1405, 2005 WL 562741, at *4 (D.C. Cir. Mar. 11, 2005) (noting that petition for declaratory ruling seeks an adjudication).

unbundling rules. As the FCC has held and reconfirmed, and as the Supreme Court and the D.C. Circuit have likewise determined, limitations on unbundling are critical to promotion of meaningful telecommunications competition. Verizon Initial Br. 13-15, ¶¶ 26-29. Verizon's proposed language ensures not only that the interconnection agreements reflect current unbundling obligations, but also that they will continue to do so in the future. This is precisely what federal law requires. *See* 47 U.S.C. § 252(c)(1) (requiring state commissions to ensure that interconnection agreements "meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251"). CLECs frankly ask this Commission to require Verizon to continue to provide de-listed UNEs that are not required under section 251. The Commission cannot do so without violating the 1996 Act.

17. The CLECs attempt to portray Verizon's proposed provisions as modifying "[the current] change of law provision" in the parties' interconnection agreements. AT&T Br. at 9; CCG Br. at 5; Joint CLEC Br. at 4; MCI Br. at 3. The characterization is incorrect. The provisions at issue do not define the change-of-law process the parties must follow; they define the scope of Verizon's unbundling obligations, and they do so in a manner that is precisely consistent with federal law.

18. Notably, 62 of Verizon's 74 interconnection agreements with Washington CLECs already explicitly provide that Verizon's unbundling obligations are limited to those imposed under federal law. Verizon's proposed amendment would simply bring the handful of interconnection agreements still at issue in this proceeding into line with those. Indeed, to the extent that the agreements still at issue here do not appropriately limit Verizon's unbundling obligations to the requirements imposed under federal law, they confer an unfair advantage on a small group of CLECs, contrary to the non-discrimination principle that animates the 1996 Act.

19. Even if Verizon's proposal could be considered a change-of-law provision, the Commission should adopt it. Various CLECs attempt to argue that the FCC or Congress has somehow barred Verizon from ever proposing a new change-in-law provision for its interconnection agreements. Joint CLEC Br. at 4; MCI Br. at 3; AT&T Br. at 9. These arguments are without merit. While the FCC in the *Triennial Review Order* did contemplate that agreements might need to be amended to reflect current unbundling obligations (18 FCC Rcd at 17404, ¶ 701), the FCC did not indicate that state commissions are somehow prohibited from adopting provisions that appropriately provide for incorporation of current requirements of federal law. Indeed, this proceeding bears witness to the fact that requiring an elaborate process simply to reflect the elimination of unbundling obligations is contrary to public policy, unfair, and inefficient. It was 18 months ago that the FCC (responding to a court order) eliminated some unbundling obligations in the *Triennial Review Order*, and Verizon initiated this proceeding to implement those rule changes a year ago. Even after all this time, this proceeding has achieved little other than to generate expense for the parties and burden on this Commission's resources. This entire process frustrates the FCC's determination that "it would be unreasonable and contrary to public policy to preserve our prior rules for months or even years" after they have been eliminated. *Triennial Review Order*, 18 FCC Rcd at 17406, ¶ 705.

20. According to AT&T, "Verizon would displace the WUTC as regulator, and set itself up as the judge of its own unbundling obligations." AT&T Br. at 10. Not so: Verizon's language states that the *FCC* shall be the "judge" of "unbundling obligations," and that the FCC's rules should be promptly put into effect. In the event that parties cannot agree that a particular element is no longer subject to unbundling, CLECs will have notice of Verizon's

intent to discontinue provision of service, *see* Verizon Initial Br. at 21, ¶ 38, and can bring any dispute to the responsible regulator.

21. MCI's claims that "[u]nder Verizon's approach, interconnection agreements would have no practical significance," MCI Br. at 3, is likewise incorrect. Interconnection agreements would continue to describe the terms, conditions, and rates for UNEs that must be provided under federal law. What interconnection agreements would *not* do is embody obligations that are contrary to binding federal law.

22. **B.** Various CLECs complain that it is somehow unfair to allow Verizon in the future to adapt its contracts to current federal law as to unbundling obligations, while requiring written amendments as to new requirements such as commingling and routine network modifications. *See* CCG Br. at 5; Joint CLEC Br. at 3-4. But as Verizon pointed out in its initial brief, *see* Verizon Initial Br. at 27-28, ¶ 49, it is one thing to eliminate unbundling obligations – as even the CLECs concede, "[i]t may be easy for Verizon to stop providing UNEs," Joint CLEC Br. at 8. By contrast, a new element cannot be provided until there are appropriate terms and conditions to govern the parties' rights and obligations. Nevertheless, when, in the past, the FCC has expanded Verizon's unbundling obligations, Verizon has rapidly made the new facilities available to CLECs and those new obligations have been quickly implemented.[13] Verizon's proposal will thus equitably ensure rapid incorporation of new unbundling obligations, as well as unbundling limitations, under the parties' agreements.

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,

[13] CLECs, however, have themselves prevented implementation of any expanded unbundling obligations under the *Triennial Review Order* as a result of their efforts to delay implementation of the unbundling limitations contained in that order.

should be included in the Amendment to the parties' interconnection agreements?

Relevant Provisions: Verizon Amendment 1, § 4.7.3; AT&T Amendment, §§ 2.6, 3.1, 3.5; MCI Amendment, § 8.1; CCC Amendment § 1.1.

23. Verizon's obligations with regard to unbundled local circuit switching are established in the *TRRO*. In that order, the FCC (1) eliminated local circuit switching as a UNE (2) barred CLECs from ordering any new switching (and therefore any new UNE-P arrangements) after March 11, 2005 and (3) adopted a transition plan that requires CLECs to compensate ILECs at a higher rate for existing UNE-P arrangements and to replace those arrangements with lawful alternatives by March 11, 2006. As Verizon explained in its initial brief, its Amendments are designed to incorporate limitations on unbundling obligations, including the FCC's recent elimination of mass market switching as a UNE. *See TRRO* ¶ 199 ("[W]e impose no section 251 unbundling requirement for mass market local circuit switching nationwide."). Verizon's Amendments are also designed to conform to any FCC-imposed transition periods, such as the twelve-month transition period (and associated price increases) for pre-existing mass market switching UNEs that begins on March 11, 2005. *See* Verizon Amendment 1, §§ 3.1, 4.7.3. It is therefore unnecessary to incorporate wholesale the language of the *TRRO* into the Amendment, as AT&T suggests (AT&T Br. at 10-11).

24. **A.** The parties' principal disagreement with regard to this issue concerns the interpretation of the FCC's "no-new-adds" directive. The CLECs take the position that, despite the FCC's ruling, CLECs are permitted to continue to add *new* UNE-P arrangements until the Commission approves an interconnection agreement amendment. *See* CCG Br. at 7. (MCI and

Verizon have settled this issue.) The CLECs' position is contrary to the *TRRO* and has been rejected by state commissions across the country.[14]

25. The FCC's *TRRO* establishes a clear rule. When that decision became effective on March 11, competitive LECs were no longer permitted to place *new* orders for facilities that the FCC has decided should no longer be UNEs. Most significantly, the FCC has established a "nationwide bar" on unbundling of switching, *TRRO* ¶ 204, and competitors are "*not* permit[ted]" to place new orders for switching as of the effective date of the *TRRO*, *id.* ¶ 199 (emphasis added). The FCC reiterated this flat bar on new unbundling of switching throughout the *TRRO*:

- **"An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops." 47 C.F.R. § 51.319(d)(2)(i).**
- **"Requesting carriers may not obtain new local switching as an unbundled network element." *Id.* § 51.319(d)(2)(iii).**
- **"Incumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching." *TRRO* ¶ 5.**
- **"[W]e impose no section 251 unbundling requirement for mass market local circuit switching nationwide." *Id.* ¶ 199.**
- **"[T]he disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, justify a nationwide bar on such unbundling." *Id.* ¶ 204.**
- **"[T]he continued availability of unbundled mass market switching would impose significant costs in the form of decreased investment incentives, and we therefore determine not to unbundle that network element." *Id.* ¶ 210.**

26. The FCC likewise established that competitive LECs are no longer "permit[ted]" to place new orders for loops and transport in circumstances where, under the FCC's decision,

[14] CLECs also suggest that a state commission could countermand the FCC's no-new-adds directive by requiring unbundling of local circuit switching under state law. *See* AT&T Updated Amendment, § 3.5.1.1. That claim is plainly incorrect for the reasons discussed in Issue 1 above and in Verizon's opening brief.

those facilities are not available as UNEs. *Id.* ¶ 142 (FCC plan "do[es] not permit competitive LECs to add new [loops] pursuant to section 251(c)(3) where the Commission determines that no . . . unbundling requirement exists"); *id.* ¶ 190 (same for transport).

27. The FCC's order is clear and it binds this Commission. Indeed, consistent with the *TRRO*'s explicit ban on new UNE-P orders, a number of state commissions have already denied various CLEC "emergency" motions seeking to delay the effective date of the *TRRO* and, in particular, to sidestep its prohibition on new UNE-P orders. For example, on March 16, 2005, the New York Public Service Commission ("NYPSC") approved Verizon's tariff implementing the *TRRO*, including the UNE-P ban, finding that "[t]he changes Verizon has made to its tariff implement the FCC's designated transition periods and price structures for dedicated transport, high capacity loops, and local circuit switching.[15] Finding Verizon's tariff revisions "reasonable," the NYPSC rejected the notion that the change of law provisions of interconnection agreements could override "the express directive in *TRRO* ¶ 227 that no new UNE-P customers be added."[16]

28. Other commissions are in accord. As Verizon noted in its opening brief, the Indiana Utility Regulatory Commission refused to order SBC to accept orders for new UNE-P customers after March 10, 2005, finding that:

> [W]e cannot reasonably conclude that the specific provision of the TRRO to eliminate UNE-P, which includes a specific date after which CLECs will not be allowed to add new customers using UNE-P, was also meant to have

[15] Order Implementing *TRRO* Changes, *Ordinary Tariff Filing of Verizon New York Inc. to Comply with the FCC's Triennial Review Order on Remand*, Case No. 05-C-0203, at 13 (N.Y. PSC Mar. 16, 2005) ("New York Order").

[16] *Id.* at 13, 26.

no applicability unless and until such time as carriers had completed the change of law processes in their interconnection agreements.[17]

29. Similarly, the Maine commission definitively held:

> We find that the FCC intended that its new rules de-listing certain UNEs be implemented immediately rather than be the subject of interconnection agreement amendment negotiations before becoming effective. We further find that it is in the best interests of all parties to implement the changes required by the *TRRO* immediately and move forward on the pending litigation of other contested issues. The decisions set forth in the *TRRO* come after years of seemingly endless litigation involving the FCC and federal courts; delaying the implementation of the new rules will only delay the inevitable.[18]

30. On March 11, 2005, the New Jersey commission unanimously denied the petition of various CLECS to require Verizon to continue accepting UNE-P orders.[19] Similarly, on March 8, 2005, the Rhode Island Public Utilities Commission unanimously adopted on an interim basis Verizon's tariff revision implementing the *TRRO*'s "no new UNE-P" directive, rejecting CLEC requests to ignore that FCC mandate.[20] And the state commissions in Maryland[21] and Massachusetts[22] have rejected CLEC attempts to transform implementation of the *TRRO* into an emergency requiring intervention from state commissions.

---

[17] Order, *Complaint of Indiana Bell Telephone Company for Expedited Review of a Dispute with Certain CLECs Regarding Adoption of an Amendment to Commission-Approved Interconnection Agreements*, Cause No. 42749, at 7 (Ind. URC Mar. 9, 2005) ("Indiana Mar. 2005 Order").

[18] Order, *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)*, Docket No. 2002-682, at 4 (Maine PUC Mar. 17, 2005) (attached hereto as Exh. A).

[19] Open Hearing, *In re Implementation of the FCC's Triennial Review Order,* Docket No. TO03090705 (N.J. BPU Mar. 11, 2005).

[20] Open Meeting, *Verizon RI Tariff filing to implement the FCC's new unbundled (UNE) rules regarding as set forth in the TRO Remand Order issued February 4, 2005*, Docket 3662 (R.I. PUC Mar. 8, 2005), at http://www.ripuc.org/eventsactions/docket/3662page.html.

[21] *See* Letter, *Emergency Petition from MCI for a Commission Order Directing Verizon to Continue to Accept New Unbundled Network Element Platform Orders*, ML# 96341, at 2 (Md. PSC Mar. 10, 2005) (emphasizing that CLECs should file "individualized petitions based upon their particular interconnection agreements and specific provisions of the *Triennial Review Remand Order*" and reminding parties that

31. In California,[23] Ohio,[24] Texas,[25] Delaware,[26] Michigan,[27] and Kansas,[28] the state commissions also declined to require incumbent LECs to accept UNE-P orders for new customers. As the California Public Utilities Commission stated:

> [S]ince there is no obligation and a national bar on the provision of UNE-P, we conclude that "new arrangements" refers to any new UNE-P arrangement, whether to provide service for new customers or to provide a new arrangement to existing services. The TRRO clearly bars both.
>
> * * *
>
> Indeed, common sense indicates that it would more disruptive to provide a service to a new customer that would only be withdrawn in 12 months than to refrain from providing such a service that will be discontinued.

"the rights of all parties shall be determined by the parties' interconnection agreements and the FCC's applicable rules").

[22] *See* Briefing Questions to Additional Parties, *Petition of Verizon New England, Inc. for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers Pursuant to Section 252 and the Triennial Review Order*, D.T.E. 04-33, at 2 (Mass. DTE Mar. 10, 2005) (declining to take emergency action to block implementation of *TRRO*'s ban on new UNE-P orders on March 11, 2005).

[23] Assigned Commissioner's Ruling Granting in Part Motion for Emergency Order Granting Status Quo for UNE-P Orders, *Petition of Verizon California Inc. (U 1002 C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 and the Triennial Review Order,* App. No. 04-03-014, at 8 (Ca. PUC Mar. 11, 2005) ("Calif. Assigned Commissioner's Ruling"). On March 17, 2005, the California Public Utility Commission voted to adopt the Assigned Commissioner's ruling in its entirety.On March 17, 2005, the California Public Utility Commission voted to adopt the Assigned Commissioner's ruling in its entirety.

[24] *See* Entry, *Emergency Petition of LDMI Telecomms., Inc., et al. for a Declaratory Ruling,* Case No. 05-298-TP-UNC & 05-299-TP-UNC, at 3 (Ohio PUC Mar. 9, 2005).

[25] *See* Proposed Order on Clarification, Approved as Written, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement,* Docket No. 28821, at 1 (Tex. PUC Mar. 9, 2005).

[26] Open Meeting, *Complaint of A.R.C. Networks, Inc.Against Verizon Delaware Inc., for Emergency Declaratory Relief,* Docket No. 334-05 (De. PSC Mar. 22, 2005).

[27] Order, *Application of Competitive Local Exchange Carriers to Initiate a Commission Investigation*, Case No. U-14303, at 9 (Mich. PSC Mar. 29, 2005) (attached hereto as Exh. B).

[28] *See* Order Granting in Part and Denying in Part Formal Complaint and Motion for an Expedited Order, *General Investigation to Establish a Successor Standard Agreement to the Kansas 271 Interconnection Agreement,* Docket No. 04-SWBT-763-GIT, at 4 (Kan. SSC March 10, 2005) ("Kansas Order").

> In summary, the only reasonable interpretation of the prohibition of "new service arrangements" is that this term embraces any to any arrangements to provide UNE-P services to any customer after March 11, 2005.[29]

32. The Kansas commission similarly concluded that "the FCC is clear in that as of March 11, 2005, the mass market local circuit switching...[is] no longer available to CLECs on an unbundled basis for new customers" and therefore, "the sooner the FCC's new rules can be implemented, the sooner rules held to be illegal can be abrogated."[30]

33. Finally, the arbitrator cannot ignore the actions of this Commission. Earlier this week, the Commission permitted Verizon's tariff revisions intended to implement the *TRRO*. Advice No. 3138, Docket No. UT-050313. While Verizon's amendments to the tariff make plain that interconnection agreements control over that tariff, the Commission's Staff noted that the terms of the tariff revision "mirror" the terms of the *TRRO*. Docket UT-050313, Staff Recommendation. Thus, the generally applicable tariff now in force in this state makes clear that CLECs "may not obtain" the de-listed UNEs "as an unbundled element after March 11, 2005." WN U-21, Sec. 2, Original Sheets 2 and 3, *passim*.

34. CLECs argue that, in paragraph 233 of the *TRRO*, the FCC required carriers to amend their interconnection agreements before the no-new-add directive would become effective. As an initial matter, CLECs made this precise objection in the course of opposing Verizon's *TRRO* tariff revision. Docket UT-050313, Staff Recommendation, at 2. The Commission nonetheless permitted Verizon's tariff to go into effect.

35. The Commission was correct to reject the CLECs' attempt to use paragraph 233 of the *TRRO* as yet another delaying tactic to the implementation of the no-new-adds directive, because in Fact the FCC said no such thing. Paragraph 233 applies only to "[u]nbundling

---

[29] Calif. Assigned Commissioner's Ruling at 7-8.

[30] Kansas Order at 4-5.

determinations" – that is, to FCC rules imposing unbundling obligations under section 251(c)(3). But the issue here does not involve unbundling determinations; it relates to the actions parties should take when a facility should *not* be unbundled. Even beyond that, by its terms, paragraph 233 simply requires that parties "implement changes to their interconnection agreements *consistent with our conclusions in this Order*." *TRRO* ¶ 233 (emphasis added). The paragraph thus requires the use of an agreement amendment process where the FCC's decision otherwise contemplates such a process, as with the 12-month transition for the embedded base, but not to stop provisioning new UNE Platform orders.

36. Indeed, that result is required by the express language of paragraph 233. A key "conclusion[] in this Order" is that competitive LECs may not "obtain" the facilities at issue here. 47 C.F.R. § 51.319(d)(2)(iii). Paragraph 233 is intended to be "consistent" with such requirements. By reading paragraph 233 to allow indefinite expansion of the UNE Platform, the CLECs render the *Order on Remand* hopelessly *in*consistent and self-contradictory, saying in one breath that competitive LECs cannot obtain certain facilities and in the next that they can obtain them indefinitely. For these reasons, the Indiana commission rejected this argument. It explained that "we cannot reasonably conclude that the specific provision of the TRRO to eliminate UNE-P, which includes a specific date after which CLECs will not be allowed to add new customers using UNE-P, was also meant to have no applicability unless and until such time as carriers had completed the change of law processes in their interconnection agreements." Ind. March 2005 Order at 7. The New York PSC reached the same result, noting that "[a]lthough TRRO ¶ 233 refers to interconnection agreements as the vehicle for implementing the TRRO, had the FCC intended to use this process for new customers, we believe it would have done so

more clearly. Paragraph 233 must be read together with the FCC directives that UNE-P obligations for new customers are eliminated as of March 11, 2005." *New York Order* at 26.

37. **B.** Some CLECs seek a ruling that "any UNE-P line added, moved, or changed by a competitive carrier, at the request of a [pre-existing customer] is within the competitive carrier's 'embedded customer base.'" CCG Br. at 7; *see also id.* at 10 (same); *id.* at 13 (same). As an initial matter, numerous CLECs, including parties to this proceeding, have filed petitions for reconsideration of the *TRRO* on precisely this issue. This Commission should therefore await the FCC's dispositive resolution. *See, e.g.*, Petition for Reconsideration of CTC Communications Corp. *et al.*, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, at 21-22 (FCC filed Mar. 29, 2005) (attached hereto as Exh. C).

38. In any event, the terms of the *TRRO* already make clear that CLECs are not allowed to add new lines for existing customers or to obtain de-listed UNEs when existing customers move to different locations. Adding new lines for existing customers or adding new lines at a different location falls within the plain terms of the FCC's prohibition on new adds after March 11, 2005. As discussed above, the FCC held that as of March 11, 2005, the *TRRO* "does not permit competitive LECs to add *new UNE-P arrangements* using unbundled access to local circuit switching." *TRRO* ¶ 227 (emphasis added). Any new UNE-P arrangement – even if used to serve an existing customer – would fall within the terms of this prohibition.

39. **C.** The specific language proposed by AT&T regarding local circuit switching is objectionable for additional reasons. AT&T proposes that "Verizon shall not assess any of the transition rates set forth below for mass market local circuit switching and associated shared transport and correlated databases, DS1 Loops, DS3 Loops and Dark Fiber Loops, or for

DS1 Dedicated Transport, DS3 Dedicated Transport and Dark Fiber Transport unless it has fully complied with Section 3.7 herein, and permits AT&T to commingle UNEs and UNE Combinations without restriction." *Id.* This condition is without basis in federal law. The FCC transitional rules governing UNE-P arrangements are not conditional: rather, those transitional prices reflect the fact that all of the UNE-P arrangements that CLECs have ordered have been unlawfully imposed. The Commission has no authority to prevent implementation of these new federally mandated rates for the embedded base of UNE-P arrangements.

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?**

Relevant Provisions: Verizon Amendment 1, §§ 3.1, 4.7.3; AT&T Amendment, §§ 3.2.1, 3.2.2.

40. As with mass market switching, Verizon's obligations with regard to high-capacity and dark fiber loops are established in the *TRRO*. In that order, the FCC (1) eliminated dark fiber loops as a UNE and established non-impairment criteria for high-capacity DS1 and DS3 loops, (2) barred CLECs from ordering any new dark-fiber loops or other high-capacity loops that are not subject to unbundling after March 11, 2005, and (3) adopted a transition plan that requires CLECs to compensate ILECs at a higher rate for existing high-capacity loop arrangements that are no longer subject to unbundling and to replace those arrangements with lawful alternatives by March 11, 2006. As noted in Verizon's initial brief, Verizon's Amendment 1 already effectively incorporates any and all requirements of federal law, including the *TRRO*'s ban on new adds for any customers served by high-capacity loops that meet the non-impairment criteria, and the *TRRO*'s transition period for the embedded customer base in such circumstances. Contrary to AT&T's arguments (*see* Br. at 15), there is no need to incorporate more specific language into the parties' agreements in this regard.

41. As with unbundled local circuit switching, the FCC's no-new-adds directive for de-listed high capacity facilities is immediately effective. CLECs' claims to the contrary (*see, e.g.*, CCG Br. at 10) are incorrect: as with mass market switching, the FCC has made clear that its transition rules "do not permit competitive LECs to add new high-capacity loop UNEs pursuant to section 251(c)(3) where the Commission has determined that no section 251(c) unbundling requirement exists." *TRRO* ¶ 195. Thus, CLECs are no longer permitted to add dark fiber loops, either to serve new customers or for purposes of adding facilities to serve existing customers. CLECs are likewise barred from ordered DS1 and DS3 loops from qualifying wire centers.

42. CLEC arguments that the interconnection agreement should "include a comprehensive list of the Verizon wire centers that satisfy the non-impairment criteria" in the *TRRO* should be rejected. CCG Br. at 8; *see also id.* at 11 (same). Verizon has not taken the position that any of its wire centers in Washington meet the non-impairment thresholds for DS1 and DS3 loops under the FCC's current rules. In any event, however, the FCC already established, in the *TRRO*, the process that parties should follow to implement limitations on unbundling of high-capacity facilities. *See TRRO* ¶ 234. Under that process, it is the responsibility of the CLEC to undertake "a reasonably diligent inquiry" in order to certify that it is entitled to unbundled access to the facility under the *TRRO* criteria. If the request "indicates that the UNE meets the relevant factual criteria," the ILEC must process the request. To the extent that an incumbent LEC seeks to challenge a particular CLEC request, *the ILEC* must bring the dispute "before a state commission or other appropriate authority." *Id.*

43. In light of this, there is no reason to litigate in advance any issues regarding Verizon's eligibility for unbundling relief for high-capacity loops under the *TRRO*. Verizon has

not challenged any CLEC order for DS1 or DS3 loops in Washington, so there is nothing for the Commission to do. There are enough issues for the Commission to resolve in this arbitration without trying to address hypothetical disputes. If Verizon wishes to challenge a future order from a CLEC for high-capacity loops or transport, then Verizon will raise that dispute in the manner the FCC prescribed in the *TRRO*, not in this arbitration.

44. AT&T also argues that any list of wire centers subject to the FCC's unbundling criteria "should be established and remain set for the life of the interconnection agreement." AT&T Br. at 19; *see also* AT&T Updated Amendment, § 3.9.3. Such a requirement would be contrary to the FCC's express determination in the *TRRO*. In the first instance, the FCC explicitly recognized that some facilities "not currently subject to the non-impairment thresholds established in this Order may meet those thresholds in the future" and required parties to put in place mechanisms to convert de-listed facilities to lawful arrangements. *TRRO* ¶ 142 n.399.[31] Verizon's proposed amendment – which requires that Verizon provide notice that particular facilities are no longer subject to unbundling and which provides for transition to alternative arrangements – is thus consistent with the *TRRO*; AT&T's proposal is not.

45. The Joint CLECs argue that whenever "additional Verizon wire centers satisfy the criteria" for non-impairment, the *TRRO*'s transition periods should apply. Joint CLEC Br. at 18. But the FCC did *not* apply its 12-month transition periods to future changes in the characteristics of wire centers. Accordingly, there is no basis in federal law for a CLEC to maintain a de-listed UNE in place beyond the time provided by federal law. Accordingly, it is perfectly reasonable for the ordinary notice provisions in the agreement – which provide for 90 days' notice before

[31] Notably, the FCC also held that a "dynamic market" should not result in the "reimposition of unbundling obligations," and that "once a wire center satisfies the standard . . . , the incumbent LEC shall not be required in the future to unbundle [DS1 or DS3] loops in that wire center." *TRRO* ¶ 167 n.466.

discontinuance – to apply. There is no need for any longer transition period, because the CLEC will not be required to select alternative arrangements for any customers other than those in the particular wire center. (If any wire centers should qualify for relief before the end of the FCC's 12-month transition period, Verizon has no objection to extending the notice period in such cases to March 11, 2006.)

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?**

Relevant Provisions: Verizon Amendment 1, §§ 3.1, 4.7.3; AT&T Amendment, §§ 3.6.2, 3.6.3

46. Verizon's discussions with regard to Issue 3 and especially Issue 4 above apply as well to Issue 5. In the *TRRO*, the FCC (1) eliminated dark fiber transport as a UNE and established non-impairment criteria for high-capacity DS1 and DS3 transport (2) barred CLECs from ordering any new dark-fiber transport or other high-capacity transport not subject to unbundling after March 11, 2005 and (3) adopted a transition plan that requires CLECs to compensate ILECs at a higher rate for existing high-capacity transport arrangements that are no longer subject to unbundling and to replace those arrangements with lawful alternatives by March 11, 2006. As noted in Verizon's initial brief and above, Verizon's Amendment 1 already effectively incorporates any and all requirements of federal law, including the *TRRO*'s ban on new adds for any customers served by high-capacity transport that meet the non-impairment criteria, and the *TRRO*'s transition period for the embedded customer base in such circumstances.

47. As with high-capacity facilities, the principal areas of disagreement are (1) the effectiveness of the FCC's no-new-adds directive (*see* CCG Br. at 13) and (2) the administrative

procedures for identifying wire centers that meet the FCC's non-impairment criteria (*see id.* at 11-12; AT&T Br. at 22-25). As to the first issue, the *TRRO* is clear: the FCC's rules "do not permit competitive LECs to add new dedicated transport UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists." *TRRO* ¶ 142.

48. As to the second issue, in response to the request of the Chief of the FCC's Common Carrier Bureau, all the RBOCs, including Verizon, filed lists of wire centers that satisfy the *TRRO* criteria with regard to unbundling of high-capacity loops and transport. *See* Ex Parte Letter from Suzanne A. Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 98-141, 98-184, and 01-338, WC Docket No. 04-313 (FCC filed Feb. 18, 2005). That filing identifies the two wire centers in Washington that meet the FCC's non-impairment criteria.[32] Verizon's website also provides a public list of all wire centers in the United States that fit the FCC's criteria.[33]

49. AT&T complains that Verizon "did not provide verifiable information in its FCC filing," AT&T Br. at 19. Thus, it argues that it is "essential that the Commission verify the [new unbundling criteria], because Verizon may claim that additional wire centers may meet the thresholds for non-impairment in the future." *Id.* at 18; AT&T Updated Amendment, § 3.9.2 (requiring state commission verification). AT&T's argument is a non-sequitur. Where Verizon has certified that a particular wire center meets the FCC's criteria for loop or transport

[32] Because one of those offices is a "Tier 1" office and one is a "Tier 2" office, Verizon's unbundling relief under the FCC's current non-impairment criteria is limited to DS3 transport between those two offices.

[33] *See* http://www22.verizon.com/wholesale/local/order/1,19410,,00.html.

unbundling relief, and where a CLEC requests Verizon's back-up data, Verizon will provide it upon execution of an appropriate non-disclosure agreement.

50. This option should answer AT&T's concern about the verifiability of the data in Verizon's FCC filing. Moreover, it should enable AT&T and other CLECs to comply with their obligation to "self-certify" that the UNEs they order are indeed subject to unbundling. *See TRRO* ¶ 234. But there is no reason to resolve hypothetical disputes over data in this proceeding. It is Verizon's obligation – not the CLECs' – to bring any dispute over particular UNE orders to this Commission for resolution. Until Verizon does so, litigation of any dispute would be premature and wasteful of the parties' and the Commission's resources.

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?

Relevant Provisions: Verizon Amendment 1, §§ 3.2, 3.3; Verizon Amendment 2, § 2.5; AT&T Amendment, § 3.9.5; MCI Amendment, § 8.2.3; WilTel Amendment, §§ 2.3, 3.5

51. As Verizon has pointed out, when a particular network element or arrangement is no longer subject to unbundling under § 251(c)(3), the FCC has held that the rates, terms, and conditions for such elements are not subject to the standards set forth in sections 251 and 252. *See, e.g., Qwest Declaratory Ruling*,[34] 17 FCC Rcd at 19341, ¶ 8 n.26 (holding that the various provisions of § 252 apply to "only those agreements that contain an ongoing obligation relating to section 251(b) or (c)"). To the extent Verizon continues to provide such facilities to CLECs, it will do so through access tariffs or through separate, commercial agreements that will be negotiated between the parties outside of the § 252 process.

[34] Memorandum Opinion and Order, *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty To File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, 17 FCC Rcd 19337 (2002) ("*Qwest Declaratory Ruling*").

52. MCI claims that Verizon should not be allowed to engage in unilateral "interpretation of how any new rates or rate increases are to be applied," and that Verizon should therefore "follow the change of law process" before being allowed to charge any new FCC-prescribed rates. MCI Br. at 6. MCI also complains that Verizon's language does not "contain a notice provision" that might allow MCI "to seek dispute resolution . . . before the new rates go into effect." *Id.*

53. MCI's complaints are contrary to the *TRRO*. As outlined in Verizon's initial brief, the FCC prescribed very specific rates to apply during the transition periods that begin on March 11, 2005. For example, for pre-existing customers served by mass market switches, the FCC required that "unbundled access to local circuit switching during the transition period be priced at the higher of (1) the rate at which the requesting carrier leased UNE-P on June 15, 2004 plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of this Order, for UNE-P plus one dollar." *TRRO* ¶ 228. The *TRRO* provides equally detailed pricing provisions for de-listed high-capacity facilities. *See id.* ¶¶ 145, 198. MCI already has perfectly adequate notice of the FCC's prescribed rates, and should not be heard to complain that Verizon has failed to keep it informed of FCC obligations.

54. The CCG claims that the *TRRO* forbids all termination or non-recurring charges related to de-listed UNEs. CCG Br. at 14. But the *TRRO* says no such thing, and the CCG provides no citation for its position.

55. Finally, AT&T insists that "Verizon may only 're-price' de-listed elements in accordance with the terms of the *TRRO*," and that Verizon should not "serve as judge and jury of what is required by federal law." AT&T Br. at 26. This is rhetoric without substance. The

TRRO transitional periods and rates apply under Verizon's Amendments already, and Verizon will charge any transitional rates according to the FCC's prescriptions.

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?**

Relevant Provisions: Verizon Amendment 1, § 3.1; AT&T Amendment, § 3.9.1; MCI Amendment, § 3.1; WilTel Amendment, §§ 2.1, 3.1, 3.2.

56. No party disputes that the notice that Verizon has already provided of discontinuance of elements de-listed in the *TRO* is adequate. There is accordingly no dispute on this issue.

57. CLEC comments are instead limited to three points. First, the CCG claims that the *TRRO* "expressly precludes any effort by Verizon to circumvent the change in law process . . . by providing notice of discontinuance of any network element in advance of the date on which such agreements are properly amended." CCG Br. at 15; *see also* AT&T Br. at 27. But the *TRRO* did not address what notice might be required before discontinuance of UNEs that were eliminated by the *TRO* at all. And, with regard to UNEs de-listed by the *TRRO*, the FCC established both a firm no-new-add rule – effective on March 11, 2005 – and a specific transition rule requiring CLECs to convert existing arrangements by March 11, 2006. *See supra* Issues 3-5.

58. Second, while MCI agrees that Verizon may properly give 90 days' notice to "discontinue the provisioning of Discontinued Elements," MCI Br. at 7, MCI takes issue with the same notice provision with regard to any elements that the FCC may de-list in the future. *Id.* at 8. As explained earlier, and at length in Verizon's initial brief, that provision properly reflects

the requirements of federal law and is in no way inconsistent with the parties' existing change-of-law procedures.

59. Third, AT&T briefly argues that Verizon should be required to "identify[] the specific circuits being discontinued" in its notice. AT&T Br. at 27. The Commission should reject this proposal, which would simply delay implementation of federal law. Once Verizon provides notice that a particular UNE has been discontinued, individual parties can work out any details of implementation with regard to particular facilities.

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

Relevant Provisions: Verizon Amendment 2, §§ 3.4.2.4, 3.4.2.5; AT&T Amendment, § 3.7.2.2; CCC Amendment, § 2.3; MCI Amendment, § 5.3.

60. Some CLECs urge that when a UNE is disconnected because the FCC has changed the requirements of federal law, Verizon is the "cost causer." CCG Br. at 16; *see also* AT&T Br. at 28 (same term); Focal Br. at 3. Thus, the CLECs argue that any costs related to disconnection or transfer of UNE services must be borne by Verizon. The claim is nonsense.

61. CLECs have no general right to access Verizon's network at cut-rate prices; when they choose to do so, any costs incurred – including the costs of terminating arrangements that are no longer mandated under federal law – are caused by the CLECs, not by Verizon. Thus, if there are additional costs incurred in setting up an alternative service – such as a service order – Verizon may legitimately recover those costs. As Verizon pointed out in its initial brief, this Commission has already approved several instances in which Verizon assesses a non-recurring charge for disconnect orders on existing lines. *See* Dockets UT-960369, UT-960370, UT-970371. Those charges are reflected in Verizon's approved UNE tariff, WN U-21, Section 5,

passim. None of the CLECs present a valid reason for this Commission to abandon this longstanding practice.

62. In addition, some CLECs speculate that there is no work involved in any instance where Verizon converts a de-listed UNE arrangement to a replacement service. *See, e.g.*, Focal Br. at 3 (claiming that "there is no technical work involved" beyond a "billing change"); Joint CLEC Br. at 7 (arguing that Verizon will incur only "minimal administrative costs"); *id.* at 15 ("A conversion is nothing more than a billing change."); AT&T Br. at 37 ("[C]onversions are essentially a mere billing change . . . ."). The Commission cannot decide at this time to deny Verizon recovery of any costs it might seek to charge in the future, simply on the basis of speculation that there are no costs associated with any of the activities Verizon might undertake to convert UNEs to a replacement service. If and when Verizon proposes specific charges for the Commission's approval, the CLECs will have the opportunity to challenge Verizon's proposed charges. But there is no reason to include language in the amendment prohibiting Verizon from recovering any legitimate costs it may incur.

63. Finally, MCI argues that "existing Verizon loop disconnect charges" are geared towards normal "customer churn," whereas there would be "scale and [s]cope economies" in the "batch hot cut[s]" that would occur in the wake of the *TRRO*. MCI Br. at 10. MCI thus urges the Commission to "determine new and lower 'batch' hot cut rates." *Id.*; *see also* MCI Updated Amendment, § 8.1.3. But this change-in-law proceeding is not the occasion to determine new "batch hot cut" rates.

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

64. In virtually every instance, CLECs fail to defend any specific definitions; instead, they make the blanket statement that their definitions should be adopted. *See, e.g.*, CCG Br. at

16; MCI Br. at 10-11; AT&T Br. at 29-31. Verizon therefore incorporates by reference pages 38-65 of its initial brief for an exhaustive analysis of the definitions at issue in this case.

65. Focal specifically addresses two definitions: "Commingling" and "Conversion." Focal Br. at 4. In all respects, Focal's definitions are identical to the definitions proposed by the CCC, as addressed in Verizon's initial brief at 56 (¶¶ 118-120) and 63 (¶ 142). As Verizon explained there, Focal's definitions are erroneous in that they both refer to "Section 271 Network Elements" as potential subjects for commingling or conversions. *See also* Focal Br. at 7-8 (claiming that "Verizon is required to offer § 271 network elements"). Section 271 does not apply to Verizon in Washington, *see* Verizon Initial Br. at 27 n.36, and the definitions are incorrect for that reason alone. In addition, Focal claims that the Amendment should "permit commingling of unbundled network elements made available" under the *Bell Atlantic/GTE Merger Order*.[35] Focal Br. at 7. As Verizon already explained, this Commission already found in this very docket that any unbundling obligations imposed by the *Bell Atlantic/GTE Merger Order* have expired.[36] *See* Verizon Initial Br. at 18-19, ¶ 35. Focal presents no reason or argument that would undermine that decision, which remains the law of the case.

66. AT&T points out a few definitions as examples, but its analysis highlights its errors. For example, AT&T contends that the "definition of Fiber-to-the-home ("FTTH") loops proposed by AT&T at section 2.19 reflects that those facilities do not include intermediate fiber in the loop architectures such as fiber-to-the building or fiber-to-the node." AT&T Br. at 29; *see also id.* at 39-40 (same position on substantive unbundling obligation). But, as Verizon has explained, *see* Verizon Initial Br. at 47, ¶¶ 91-93, the FCC has explicitly held that "fiber-to-the-

[35] Memorandum Opinion and Order, *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control*, 15 FCC Rcd 14032 (2000) ("*Merger Order*").

[36] *See* Order Denying Motions to Dismiss; Granting Joint CLECs' Motion; Requiring Verizon to Maintain Status Quo, Order No. 5, ¶ 42 (Wash. PUC June 15, 2004) ("Order No. 5").

curb" architectures *are* exempt from unbundling requirements,[37] and the current version of Rule 51.319 classifies "fiber-to-the-curb" and "fiber-to-the-home" together. *See* 47 C.F.R. § 51.319(a)(3)(i). AT&T ignores these developments.

67. AT&T also reiterates the complaint that Verizon's definition of "Discontinued Facility" allows declassification "if, in the future, Verizon determines that additional network elements should be declassified." AT&T Br. at 29-30. But it is not Verizon that "determines that additional network elements should be declassified." It is the *FCC* that makes such determinations. As stated above under Issue 1, Verizon's language is simply geared towards preventing the CLECs from ignoring such binding determinations in the future.

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?

(a) Relevant Provisions: AT&T Amendment, § 3.1.12

68. **A.** Verizon explained in its opening brief, and has further explained above, that the FCC's determinations in the *TRRO* – its no-new-adds order and its transition rules – do not depend for their implementation on the language of any particular interconnection agreement. The CLECs' contrary arguments are without merit for the reasons set forth previously.

69. With regard to those elements that were de-listed in the *TRO*, the FCC has held that the parties should implement the provisions of the *TRO* through the change-of-law mechanisms in their interconnection agreements, where necessary. *See* Verizon Br. at 67, ¶ 153.

---

[37] *See* Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 20293 (2004).

Verizon believes the Commission has already determined that this is the appropriate proceeding to do just that. *See id.* at 67-68, ¶¶ 154-55 (citing Order No. 5).

70. With regard to elements that may be eliminated in the future, Verizon's proposed amendment properly provides – for the reasons discussed above with reference to Issue 2 – that Verizon's unbundling obligations are limited to those imposed under federal law. The Joint CLECs argue that if Verizon stops providing an element that it has no obligation to provide, "such action threatens major disruption to the services that CLECs provide." Joint CLEC Br. at 8. The claim is wrong for two principal reasons. First, the fact that a particular facility is no longer available as a UNE will usually not affect a CLEC's ability to provide service – in general, there are off-the-shelf alternative arrangements available, such as resale and tariffed services including special access, as well as the ability to enter into commercial arrangements. All the CLEC loses is a price break that is – by definition – anti-competitive or otherwise contrary to the public interest. Second, to the extent the FCC determines that a transition is appropriate, the FCC can adopt one – as it has recently done in the case of some UNEs (for example, UNE-P) and not in the case of others (for example, entrance facilities). To attempt to override the FCC's considered judgments in this regard by building delay into the implementation of federal law – as the CLECs attempt to do – is inconsistent with the letter and spirit of federal law.

71. **B.** With regard to the additional unbundling obligations contained in the *TRO*, the FCC determined that such new obligations should be implemented through contractual processes, as appropriate, and Verizon's Amendment 2 would achieve that. If additional unbundling obligations are imposed in the future (an unlikely scenario), Verizon's Amendment 1

provides an appropriate process for incorporation of those obligations into existing agreements. *See supra* Issue 2. The Commission should adopt Verizon's proposals.

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

Relevant Provisions: Verizon Amendment 1, § 3.5; AT&T Amendment, § 3.9.5

72. No CLEC identifies any substantive error in Verizon's Amendments as to the implementation of FCC-prescribed rate changes. As noted in Verizon's initial brief, Verizon's existing interconnection agreements typically already give automatic effect to any FCC-ordered rate increases. Section 3.5 of Amendment 1 reflects the fact that the FCC may prescribe rate increases or new charges – as it did when it established a transitional regime for line-sharing in the *Triennial Review Order*, and as it has now done with regard to the embedded base of mass market switching and various high-capacity loops and transport in the *TRRO*. While AT&T claims that "proposed Amendments are not consistent with the process established by the FCC in the TRRO for implementing rate cha[n]ges," AT&T Br. at 32, it points to no inconsistency, and, in fact, there is none.

Issue 12: Should the interconnection agreements be amended to address changes arising from the *Triennial Review Order* with respect to commingling of UNEs with wholesale services, EELs, and other combinations? If so, how?

Relevant Provisions: Verizon Amendment 2, § 3.4; MCI Amendment, § 4; AT&T Amendment, § 3.7; CCC Amendment, § 2.

73. The Joint CLECs dispute Verizon's language insofar as it "limits the availability of commingling to 'Qualifying UNEs.'" Joint CLEC Br. at 10. But the Joint CLECs appear to misunderstand Verizon's proposal, which specifically allows commingling between "Qualifying UNEs" and "Qualifying Wholesale Services" (*i.e.*, "wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement"). Verizon Amendment 2, §

3.4.1.1. Verizon's language thus correctly reflets the FCC's determination that commingling consists of (a) "UNEs and combinations of UNEs" and (b) "switched and special access services offered pursuant to tariff." *Triennial Review Order*, 18 FCC Rcd at 17342, ¶ 579.

74. CLECs also urge that Verizon should not be allowed to recover any costs incurred with commingling other than an "order processing charge." Joint CLEC Br. at 10. While Verizon has not proposed specific rates for commingling, it would be inappropriate to foreclose the possibility of such charges if they are appropriately justified: if and when Verizon proposes such charges, then the Commission can rule on their legality.

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

75. This question is fully addressed below under Issue 21.

Issue 14: Should the ICAs be amended to address changes, if any, arising from the *TRO* with respect to:
a) Line splitting;
b) Newly built FTTP, FTTH, or FTTC loops;
c) Overbuilt FTTP, FTTH, or FTTC loops;
d) Access to hybrid loops for the provision of broadband services;
e) Access to hybrid loops for the provision of narrowband services;
f) Retirement of copper loops;
g) Line conditioning;
h) Packet switching;
i) Network Interface Devices (NIDs);
j) Line sharing?

76. For the most part, the CLECs do not present any arguments on this issue. MCI, for example, states only that its position is "set forth" in its proposed Amendment. MCI Br. at 12-13. Focal's brief does not address Issue 14 at all. The Joint CLECs' response to Issue 14 consists of a single sentence urging that "[a]ll of these changes of law should be incorporated into the Amendment." Joint CLEC Br. at 11. The CCG's brief on Issue 14 contains one

paragraph, stating that the "Amendment should expressly incorporate the requirements of the *Triennial Review Order*." CCG Br. at 20.

77. Only AT&T addresses a few of the specific sub-issues here. Verizon responds below.

b) Newly built FTTP loops / c) Overbuilt FTTP loops

Relevant Provisions: Verizon Amendment 2, § 3.1; AT&T Amendment, §§ 3.2.2.1, 3.2.2.2; MCI Amendment, § 7.1; CCC Amendment, § 1.3

78. AT&T here urges that the acronym "FTTH" be used instead of "FTTP." Verizon has already answered that assertion under Issue 9, *supra*.

g) Line conditioning

Relevant Provisions: AT&T Amendment, § 3.3(B); MCI Amendment, § 7.4

79. AT&T describes the general federal rules regarding line conditioning, but does not dispute that – as Verizon pointed out in its initial brief – the FCC did not adopt any new rules related to line conditioning. Instead, the FCC simply "readopt[ed] the . . . line and loop conditioning rules for the reasons set forth in the *UNE Remand Order*." *Triennial Review Order*, 18 FCC Rcd at 17378-79, ¶ 642 (citing *UNE Remand Order*, 15 FCC Rcd at 3775, ¶ 172).

80. AT&T also disputes Verizon's rates for line conditioning, *see* AT&T Br. at 41-42, but again ignores the fact that this Commission has already addressed loop conditioning by Verizon under the FCC's rules. *See, e.g.*, Forty-Fifth Supplemental Order Approving Compliance Tariff Filing, *Continued Costing and Pricing Proceeding for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale*, Docket No. UT-003013, 2003 Wash UTC LEXIS 2, at *5 (Wash. UTC Jan. 7, 2003) (specifically finding that "Verizon's proposed rate structure [for loop conditioning] in its compliance filing is consistent with

Commission orders."). AT&T provides no basis for the Commission to revisit that settled issue in this proceeding.

h) Packet Switching

Relevant Provisions: Verizon Amendment 2, § 3.2.1; CCC Amendment, § 1.4.1; AT&T Amendment, §§ 2.21, 2.24

81. AT&T concedes that the FCC has now eliminated any unbundling obligation as to packet switching. *See* AT&T Br. at 41. Nonetheless, it claims that "the main disagreement between AT&T and Verizon on this issue involves the situation in which AT&T's UNE-P customers are served off of a Verizon switch that has both packet switching and circuit switching capability." *Id.* In such circumstances, AT&T claims that Verizon "should be required to continue to provide AT&T with circuit switching capability to serve its UNE-P customers during the twelve-month transition period established in the TRRO, until such time as Verizon is no longer required to provide UNE-P," and that such a result is required by "the Commission's recent decision prohibiting Verizon from abandoning existing obligations to provide UNE-P by replacing a circuit switch with an alleged packet switch." *Id.* (citing *Joint Petition for Enforcement of Interconnection Agreements with Verizon Northwest, Inc.,* Order No. 3, Docket No. UT-041127 (filed Feb. 22, 2005)). Verizon disagrees with the Commission's decision and has sought reconsideration. In all events, because the FCC has ruled that incumbents have no obligation to unbundle circuit switching and has required CLECs to convert UNE-P arrangements to lawful arrangements, there is no basis for requiring Verizon to provide unbundled access to packet switching under any circumstances. *See* Verizon Br. 83-85, ¶¶ 188-91.

i) Network Interface Devices (NIDs)

Relevant Provisions: AT&T Amendment, § 3.4.9

82. AT&T claims that the NID issue should be incorporated to "avoid any doubt or future dispute concerning Verizon's obligations." AT&T Br. at 43. But, as Verizon has pointed out, the *Triennial Review Order* did not alter the rules governing unbundling of NIDs: "We conclude that the NID should remain available as an UNE as the means to enable a competitive LEC to connect its loop to customer premises inside wiring." 18 FCC Rcd at 17196, ¶ 356. In addition, this Commission has considered Verizon's rates for NIDs (as included in subloops), *see, e.g.*, Thirty-Eighth Supplemental Order, *Continued Costing and Pricing Proceeding of Unbundled Network Elements, Transport and Termination*, Docket No. UT-003013, 2002 Wash UTC LEXIS 370 (Wash. UTC Sept. 23, 2002), and Verizon's model ICA in Washington already includes terms and conditions for access to the NID. Because Verizon's contracts already address the current NID requirements, which did not change with the *TRO*, there is no reason to address them in this proceeding.

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

Relevant Provisions: Verizon Amendment 1, Preamble; Verizon Amendment 2, Preamble; CCC Amendment, §§ 2.1, 2.3, 2.3.4.4; AT&T Amendment, § 3.7.1

83. MCI agrees with Verizon that the effective date should be "the date the Commission issues its final order approving the signed amendment." MCI Br. at 13. Several CLECs, however, would require a different effective date—specifically, the *TRO*'s October 2, 2003 effective date – for implementation of the *TRO*'s provisions as to routine network modifications, commingling, and conversions. *See, e.g.*, CCG Br. at 19 (commingling should take place "immediately"); AT&T Br. at 34; *id.* at 37 (conversions should be done "retroactively as allowed by the *TRO*"); Joint CLEC Br. at 1 (claiming that Verizon should have begun commingling and conversions "without a written amendment to the ICAs"); *id.* at 11-12.

84. Nothing in the *Triennial Review Order* or the FCC's rules requires Verizon to provide retroactive pricing for any of these services. None of these CLECs can explain why they alone should be entitled to retroactive implementation of selected requirements of the *Triennial Review Order* even while they have successfully delayed implementation of the unbundling limitations of the *Triennial Review Order* for 18 months. The CLECs have no basis to claim entitlement to any retroactive pricing adjustments.

85. The Joint CLECs also err in claiming that none of these obligations were new in the *Triennial Review Order*. Joint CLEC Br. at 11-12. For instance, the Joint CLECs claim that the routine network modification requirement "was not a change in law," but merely "clarified" a pre-existing obligation. *Id.* This is incorrect: The *Triennial Review* NPRM had specifically asked "about the extent to which incumbent LECs have an obligation to modify their existing networks in order to provide access to network elements," *Triennial Review Order*, 18 FCC Rcd at 17371, ¶ 631, and the FCC then concluded that "[t]he routine modification requirement *that we adopt today* resolves a controversial competitive issue that has arisen repeatedly." *Id.* at 17372, ¶ 632 (emphasis added). In short, the FCC made clear that it had first considered, and then adopted, a new requirement.

86. By the same token, the Joint CLECs attempt to claim that the *Triennial Review Order* merely "lifted a prohibition on commingling and conversions; it did not impose new obligations on Verizon." Joint CLEC Br. at 11-12. This too is incorrect. As the FCC said in introducing the subject of commingling, "We therefore *modify our rules* to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g., switched and special access services offered pursuant to tariff), and to *require incumbent LECs* to perform the necessary functions to effectuate such commingling upon request." *Triennial Review Order*,

18 FCC Rcd at 17342, ¶ 579 (emphasis added). Similarly, the FCC introduced the subject of conversions by noting, "We conclude that carriers may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations." *Id.* at 17348, ¶ 586. For both commingling and conversions, the *Triennial Review Order* clearly established new and affirmative obligations for ILECs, and it is misleading to characterize the FCC's action as merely "lift[ing] a prohibition."

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?

Relevant Provisions: Verizon Amendment 2, § 3.2.4; AT&T Amendment, § 3.2.4; MCI Amendment, § 7.2.2; CCC Amendment, § 1.4.4; Sprint Amendment, § 3.3.4

87. In the *Triennial Review Order*, the FCC stated that ILECs must "provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems," that "in most cases this will be either through a spare copper facility or through the availability of Universal DLC systems," and that "even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access." 18 FCC Rcd at 17154, ¶ 297.

88. AT&T complains that Verizon's language fails to comply with the *Triennial Review Order* requirements. AT&T Br. at 45-46. The main focus of AT&T's complaint is that Verizon has proposed that where neither a copper loop nor a UDLC loop is available, Verizon will construct a new copper loop. AT&T claims that Verizon's only reason for such a proposal is "to inflate the costs and delay the provisioning of a loop ordered by AT&T," *id.* at 46, and that "[t]he Commission thus should reject Verizon's costly, time consuming and discriminatory

proposal to require that AT&T pay to construct facilities to obtain access to an unbundled loop to its customer presently served by a Verizon IDLC system." *Id.* at 47.

89. But Verizon has not proposed to make AT&T or any other CLEC pay for a new copper loop *unless the CLEC requests such new construction. See* Verizon Amendment 2, § 3.2.4.2 ("If neither a copper Loop nor a Loop served by UDLC is available, Verizon shall, *upon request of [the CLEC]*, construct the necessary copper Loop or UDLC facilities.") (emphasis added). While certain CLEC proposals still appear to imply incorrectly that Verizon could be forced to construct a new copper loop at the CLEC's request for free, *see* CCG Br. at 21, nothing in the *Triennial Review Order* (or anything else) requires incumbents to construct a brand new copper loop for a CLEC for free, and the Amendment should definitively eliminate any basis for the CLECs to argue that they are entitled to free loop construction. Verizon is entitled to recover its costs of providing facilities and services to CLECs, and Verizon's proposal to charge for loop construction is appropriate.[38]

Issue 17: Should Verizon be subject to standard provisioning intervals or performance measurements and potential remedy payments, if any, in the underlying Agreement or elsewhere, in connection with its provision of

a) unbundled loops in response to CLEC requests for access to IDLC-served hybrid loops;

Relevant Provisions: Verizon Amendment 2, § 3.2.4.3; AT&T Amendment, §§ 3.2.4, 3.2.8; MCI Amendment, § 7.2.

[38] AT&T cites a footnote in the FCC's *Triennial Review Order* for the proposition that "[f]requently, unbundled access to Integrated DLC-fed loops can be provided through the use of cross-connect equipment," *Triennial Review Order*, 18 FCC Rcd at 17154-55, ¶ 297 n.855, and for the proposition that *Verizon* "typically uses central office terminations and cross connects," *id.* In fact, the FCC found that "a one-for-one transmission path between an incumbent's central office and the customer premises may not exist at all times" – in other words, it may not be possible to provide an unbundled loop over IDLC systems. *Id.* ¶ 297. That is exactly what Verizon told the FCC. *See* Verizon Ex Parte, CC Docket Nos. 01-338 *et al.*, at 3 (July 18, 2002).

b) commingled arrangements;

Relevant Provisions: Verizon Amendment 2, § 3.4.1.1; MCI Amendment, § 4.1;

c) conversion of access circuits to UNEs;

Relevant Provisions: Verizon Amendment 2, § 3.4.2.6; MCI Amendment, § 5.5

d) Loops or Transport (including Dark Fiber Transport and Loops) for which Routine Network Modifications are required;

Relevant Provisions: Verizon Amendment 2, § 3.5.2; AT&T Amendment, § 3.8.2; CCC Amendment, § 3.1.1

e) batch hot cut, large job hot cut and individual hot cut processes;

Relevant Provisions: AT&T Amendment, § 3.10.2; CCC Amendment, § 1.9.2

90. As Verizon pointed out in its initial brief, the provisioning metrics in effect in Washington expired as of May 2004, and were created by the California Public Utilities Commission in the first instance. There is no basis in this proceeding to establish "provisioning intervals or performance measurements," as some CLECs suggest. CCG Br. at 22; Focal Br. at 8. (The Joint CLECs agree that this issue "is largely theoretical in Washington." Joint CLEC Br. at 12.)[39] If and when new performance metrics are developed, the parties will be able to determine what types of provisioning should be subject to measurements and penalties. For now, the Commission should simply recognize the principle that non-standard orders should not be subject to standard intervals.

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

[39] AT&T claims that "[a]t a minimum the commingled arrangements that CLECs order include UNEs that already are subject to such metrics and remedies." AT&T Br. at 37. This is incorrect as to Washington.

Relevant Provisions: Verizon Amendment 2, §§ 3.3.1, 3.3.2; AT&T Amendment, §§ 3.2.3.3, 3.4; CCC Amendment, §§ 1.6, 1.7; Sprint Amendment, § 3.4

91. In Washington, Verizon does not own inside wire subloops. Therefore, the FCC's new rules governing the provisioning of such subloops as UNEs are inapplicable here – as is AT&T's and CCG's discussion of this issue (*see* AT&T Br. at 48-52; CCG Br. at 24) – and Verizon's Amendment 2 does not include terms relating to such subloops.

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?

Relevant Provisions: AT&T Amendment, §§ 2.5(B), 2.7

92. Verizon reiterates that to the best of its knowledge, there is no instance in Washington where it owns "local switching equipment" installed at a CLEC premise, nor does Verizon intend to establish any such arrangement in Washington at this time. No CLEC has identified any such situation, and it therefore remains unnecessary for either of the Amendments to address this hypothetical issue.

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?

Relevant Provisions: CCC Amendment, § 1.8; AT&T Amendment, § 3.6.2.2

93. The CLECs argue that while ILECs are not required to "unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic," *Triennial Review Order*, 18 FCC Rcd at 17202-04, ¶¶ 365-366, CLECs may still obtain such facilities when "they require them to interconnect with the incumbent LEC's network." *TRRO* ¶ 140. Thus, the argument runs, the Amendment should make clear that

interconnection trunks between a Verizon wire center and a CLEC wire center should be made available at TELRIC rates when used for interconnection rather than for "backhauling traffic." CCG Br. at 26; AT&T Br. at 53-54; Joint CLEC Br. at 14.

94. Verizon's objection to this language is primarily procedural: because the issue of interconnection trunks was not affected or changed by either the *Triennial Review Order* or the *TRRO, see* Verizon Initial Br. at 97, ¶ 215, the Commission should not entertain this issue in this proceeding. CLECs' existing interconnection agreements already typically contain terms regarding interconnection architecture, which reflect the obligations imposed under current federal law.

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

95. The Joint CLECs urge that Verizon should not be allowed to refer to its "conversion guidelines." Joint CLEC Br. at 11 (quoting Verizon Amendment 2, § 3.4.2.6 ("All requests for conversions will be handled in accordance with Verizon's 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.'" *Id.* But the Joint CLECs do not propose any alternative language to cover the supposedly relevant "terms and conditions," and it is common for operational matters – which do not affect underlying legal obligations and which are subject to minor modification to reflect evolving circumstances and technology – to be covered in ancillary documents. If any CLEC were to raise an objection to any provision of Verizon's guidelines, the Commission could address it in due course.

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?

96. As noted in Verizon's initial brief, Verizon's amendment language mirrors the FCC's requirements. *Compare* Verizon Amendment 2, § 3.4.2.3 *with Triennial Review Order*, 18 FCC Rcd at 17356-60, ¶¶ 602-610. Some CLECs complain that it would be unduly onerous to provide the level of detail described in Verizon's Amendment 2 and in the *Triennial Review Order*. Instead, they argue that they should be entitled simply to assert that their EEL requests meet the FCC's conditions without providing any of the supporting information. *See, e.g.*, Focal Br. at 10; AT&T Br. at 34-35, 59-60; *id.* at 61 (claiming that a CLEC should not have to make any "showing" regarding collocation, but merely to self-certify that collocation has occurred).

97. But the FCC clearly did not suggest that a CLEC's self-certification could consist of a completely unsubstantiated single sentence (*e.g.*, "[The CLEC] hereby certifies that it meets the criteria."). The FCC, in fact, specified that it "expect[ed] that requesting carriers will maintain the appropriate documentation to support their certifications" and held that demonstrating compliance with each of the eligibility criteria would not "impos[e] undue burdens upon" CLECs. *Triennial Review Order*, 18 FCC Rcd at 17368, 17370, ¶¶ 622, 629. If a CLEC indeed has the "appropriate documentation," it should be no burden upon that CLEC simply to send a letter describing how it meets the EEL criteria.[40] Indeed, if CLECs were permitted to provide self-certifications without supporting information, resort to the more expensive and cumbersome audit procedure would be far more common. Providing the background information in the initial certification would minimize the need to resolve

[40] Contrary to AT&T's assertion, Verizon's language does not demand the level of detail or proof that would amount to a "pre-audit," AT&T Br. at 61. Instead, Verizon merely requests that a certification letter should contain the information specified by the FCC.

compliance issues through costly and inefficient audits and dispute resolution proceedings that may follow.

98. AT&T contests certain certification requirements, such as Verizon's language requiring the CLEC to provide "the local number assigned to each DS1 circuit or DS1 equivalent," and "the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it)." Verizon Amendment 2, § 3.4.2.3. AT&T claims that it should have to certify only "that the DS1 EEL circuit or the 28 DS1-equivalent circuits of a DS3 EEL has a local telephone number assigned and the date established in the 911 or E911 database," but that it should "not be required to provide the specific telephone number or the date that the telephone number was established in the 911/E911 database." AT&T Br. at 60. In cases where a CLEC has not yet assigned numbers to a particular circuit, it may be reasonable for a CLEC simply to certify that a telephone number will be assigned, *see Triennial Review Order* ¶ 602, but where a telephone number has been assigned, it imposes no burden to require that it be identified – indeed, AT&T provides no coherent reason for its reluctance to provide the information.

99. AT&T also argues that "there is no requirement in the FCC's rule that AT&T provide the 'interconnection trunk circuit identification number' for each DS1 EEL or DS1-equivalent of a DS3 EEL. Rather, the eligibility criteria simply require that AT&T self-certify that each DS1 or DS1-equivalent circuit will be served by an interconnection trunk that 'will transmit the calling party's number in connection with calls exchanged over the trunk.'" AT&T Br. at 61. But Verizon's request for the "circuit identification number" is a reasonable means of determining that the CLEC has met the FCC's requirement that "each EEL circuit must be served by an interconnection trunk in the same LATA as the customer premises served by the EEL, and that for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at

least one active DS1 interconnection trunk for the exchange of local voice traffic." *Triennial Review Order*, 18 FCC Rcd at 17358, ¶ 607. The Commission should adopt it.

100. AT&T reiterates its contention that CLECs should not be required to certify, on a circuit-by-circuit basis, that any combined facilities satisfy the eligibility criteria that the FCC established in the *TRO* and reaffirmed in the *TRRO*. *See* AT&T Br. at 35-36; Focal Br. at 8 (same). But as Verizon has already pointed out, the FCC directly held that "[w]e apply the service eligibility requirements *on a circuit-by-circuit basis*, so *each DS1 EEL* (or combination of DS1 loop with DS3 transport) *must satisfy the service eligibility criteria*." *Triennial Review Order*, 18 FCC Rcd at 17355, ¶ 599 (emphases added). Verizon's language exactly tracks the *Triennial Review Order*.

101. The Joint CLECs argue that the FCC has "abandoned the TRO's service eligibility criteria" in the *TRRO*, Joint CLEC Br. at 14, because the FCC stated, "[w]e 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. But the portion of the *TRRO* that the Joint CLECs quote has nothing to do with EEL eligibility criteria.[41] Instead, the FCC decided – at the D.C. Circuit's behest – to reject its previous "qualifying services" test by which "access to UNEs was provided only for the provision of services competing with 'core' incumbent LEC offerings." *Id.* ¶ 29. As the FCC held, "we abandon our previous interpretation of section 251(d)(2), and subject all telecommunications services to our unbundling framework." *Id.* ¶ 34. This meant that whereas CLECs were

[41] AT&T, for its part, acknowledges this point: "[T]he EEL's eligibility requirements have been in place since the effective date of the *TRO*, and they have not been changed by either the *USTA II* decision or the FCC in the *TRRO*." AT&T Br. at 56.

formerly subject to "prequalification" for *all* UNEs, they no longer have to demonstrate that they intend to use any UNE in part to provide "qualifying services."

102. None of this has anything to do with *EEL* qualification by any particular CLEC, as the FCC made clear on several occasions. *See, e.g., id.* ¶ 85 n.244 ("We . . . do not disturb the EELs eligibility criteria established in the *Triennial Review Order*, and upheld by the *USTA II* decision . . . ."); *id.* ¶ 234 n.659 ("[W]e retain our existing certification and auditing rules governing access to EELs."). The Joint CLECs' claim that these statements are simply "inconsistenc[ies]" that can be ignored, Joint CLEC Br. at 15, is wrong: the FCC has clearly retained EEL eligibility requirements, and the Commission should enforce the plain terms of federal law. But there is no inconsistency here in the first place, and this Commission should certainly not take the Joint CLECs' invitation to overrule the FCC's regulations.

103. Focal argues that because Verizon's Amendment 2, § 3.4.2.1, requires EEL certification for "each DS1 circuit or DS1 equivalent," this means that "Verizon's language contemplates applying the eligibility criteria to non-UNEs despite the fact that the rules do not apply to them." Focal Br. at 22. But the very beginning of Verizon's § 3.4.2 makes clear that its EEL obligations – and hence the certification criteria – "shall not apply" "until such time as, and then only to the extent, the DS1 Loop, DS3 Loop, DS1 Dedicated Transport, or DS3 Dedicated Transport becomes a Qualifying UNE." Verizon Amendment 2, § 3.4.2. In other words, unless at least one of the components of loop/transport is a UNE, the combination is not an EEL in the first place. Thus, Focal's concern is without merit.

104. Focal also proposes that a CLEC may certify "by electronic notification," and "any limitation in this regard 'would impose an undue gating mechanism that could delay the initiation of the ordering or conversion process.'" Focal Br. at 23; *see also* AT&T Br. at 34

(contemplating electronic notification). In fact, Verizon already asks CLECs to self-certify via the ASR (access service request), which is an electronic medium. This is the most efficient means of certification, particularly given the FCC's circuit-specific criteria.

b) Conversion of existing circuits/services to EELs:

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

Relevant Provisions: CCC Amendment, § 2.3.2; AT&T Amendment, § 3.7.2.4

105. Verizon's Amendment does not provide for separation or other physical alteration of existing facilities when a CLEC requests an EEL conversion. While Verizon would not expect a standard conversion to require any physical alteration of the facilities used for wholesale services that may be converted to UNEs, a uniform prohibition on all alterations might preclude those that could be necessary to convert wholesale services to UNEs in particular instances. Removing the parties' flexibility to address situations that depart from the norm would likely just delay requested conversions, thereby actually frustrating the CLECs' desire for a "seamless" migration of service, *see, e.g.*, Focal Br. at 11; Joint CLEC Br. at 15-16; AT&T Br. at 62-63.

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?

Relevant Provisions: Verizon Amendment 2, §§ 3.4.1.1, 3.4.2.4, 3.4.2.5; AT&T Amendment, § 3.7.2.2; CCC Amendment, § 2.3; MCI Amendment, § 5.3.

106. The CLECs generally believe that Verizon should be prohibited from assessing any and all charges for conversions. Focal argues, for example, that under the *Triennial Review Order*, ILECs are prohibited from assessing "termination charges, re-connect and disconnect

fees, or non-recurring charges." Focal Br. at 6 (quoting *Triennial Review Order*, 18 FCC Rcd at 17349, ¶ 587); *see also id.* at 12 (same); Joint CLEC Br. at 11, 16 (same); AT&T Br. at 35, 62-63 (same). But as Verizon already pointed out, the FCC's true concern was that ILECs might impose "wasteful and unnecessary charges," *Triennial Review Order*, 18 FCC Rcd at 17349, ¶ 587, and it did not hold that ILECs are barred from recovering legitimate expenses.

107. Contrary to AT&T's argument (*see* AT&T Br. at 35, 63), a "retag fee" is an example of a legitimate expense, as it compensates Verizon for the cost of physically retagging a circuit that a CLEC requests to convert from special access to UNEs. In any event, as Verizon pointed out in its initial brief, it is no longer proposing new rates for conversions at this stage. It reserves the right to do so later upon submission of a cost study, and nothing in the *TRO* Amendment should foreclose Verizon from seeking to assess new non-recurring charges in the future.

3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the FCC's service eligibility criteria?

Relevant provisions: Verizon Amendment 2, § 3.4.2.1.

108. Various CLECs propose deleting Verizon's language requiring re-certification in accordance with the new standards imposed by the *Triennial Review Order*. AT&T, for example, argues that "AT&T's eligibility for these [pre-October 2, 2003] circuits has already been established, and forcing AT&T—or any other CLEC—to go through this process will unnecessarily increase costs." AT&T Br. at 35. But this view is incorrect: the FCC established new EEL eligibility criteria in the *Triennial Review Order* (*see* 18 FCC Rcd at 17350-55, ¶¶ 590-600). There is no guarantee that an EEL that met the old criteria will still meet the new criteria, as it is required to do. *See, e.g., id.* at 17355, ¶ 599 ("We apply the service eligibility

requirements on a circuit-by-circuit basis, so *each DS1 EEL* (or combination of DS1 loop with DS3 transport) *must satisfy the service eligibility criteria.*") (emphases added).

109. Focal argues that there is a "dual-track EEL qualification system," under which those EELs procured prior to October 2, 2003, would still be subject to the criteria in effect before the *Triennial Review Order*. Focal Br. at 13. Indeed, Focal believes that CLECs are entitled to "lock in" the pre-*TRO* EELs in perpetuity. *Id.* This position is based on a misinterpretation of the FCC's decision to "decline to require retroactive billing to any time before the effective date of this Order." *Triennial Review Order*, 18 FCC Rcd at 17350, ¶ 589. The FCC's determination that no retroactive charges could be imposed for past EELs says nothing whatsoever about the pricing – much less the eligibility criteria – for EELs *after* October 2, 2003. To the contrary, the FCC explicitly held that "[t]he eligibility criteria we adopt in this Order supersede the safe harbors that applied to EEL conversions in the past." *Id.* If the new criteria "supersede" the old criteria, then by definition any pre-existing EELs must meet the new criteria – otherwise, they are not subject to unbundling and must be converted to lawful arrangements.[42]

4) For conversion requests submitted by a CLEC prior to the effective date of the amendment, should CLECs be entitled to

[42] Contrary to Focal's claims, applying the new criteria to all EELs in no way violates the "'*ex post facto*' prohibition." Focal Br at 13. For one thing, the Ex Post Facto clause of the Constitution applies only in the criminal context, *not* in administrative proceedings. *See Eastern Enters. v. Apfel*, 524 U.S. 498 (1998). For another, Verizon is not seeking to apply the new criteria to a time period before the *Triennial Review Order* actually took effect. There is therefore nothing retroactive about Verizon's proposal at all. In any event, if Focal wished to challenge the FCC's new criteria, the place to do that was on direct review of the *Triennial Review Order*, not by making a collateral attack in a state proceeding. *See* 28 U.S.C. §§ 2342, 2344; *ICC v. Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 285-86 (1987) (stating that a claim that the ICC's order was unlawful "should have been sought many months earlier, by an appeal from the original order"); *U.S. West Communications v. MFS Intelent, Inc.*, 193 F.3d 1112, 1120 (9th Cir. 1999) ("The FCC order is not subject to collateral attack in this proceeding. The Hobbs Act grants exclusive jurisdiction to courts of appeals to determine the validity of all final orders of the FCC. An aggrieved party may invoke this jurisdiction only by filing a petition for review of the FCC's final order in a court of appeals naming the United States as a party") (citations omitted).

EELs/UNE pricing effective as of the date the CLEC submitted the request (but not earlier than October 2, 2003)?

Relevant provisions: AT&T Amendment, § 3.7.1; CCC Amendment, § 2.1, 2.3, 2.3.4.4

110. Several CLECs argue that the *TRO*'s new conversion obligation should take effect retroactively to the October 2, 2003 effective date of the *TRO*, rather than upon the effective date of the Amendment, as all other provisions will. CCG Br. at 20-21; AT&T Br. at 34, 44; Focal Br. at 6-7, 14-16. The CLECs claim that Verizon was obligated to perform conversions immediately.

111. The *Triennial Review Order* created no such immediate obligation. Indeed, the FCC expressly declined to override existing contracts, or to order automatic implementation of its rules as of a date certain (as it subsequently did with the *TRRO*). Instead, it required carriers to amend their agreements, where necessary, to implement the *TRO* rulings: "[T]o the extent our decision in this Order changes carriers' obligations under section 251, we decline the request . . . that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions." 18 FCC Rcd at 17404, ¶ 701.[43]

112. As Verizon has explained, the CLECs' retroactive billing proposal would impose a substantial, unanticipated, and unjustified liability for Verizon. It would also be inequitable to allow the CLECs to implement rates favorable to them back to October 2, 2003, but not to give Verizon the benefit of access or other non-section-251 rates for UNEs that the *TRO* eliminated effective as of October 2, 2003.

[43] It is therefore erroneous to argue, as does Focal, that an "amendment requirement" is equivalent of imposing illegal "conversion charges." Focal Br. at 15. To the contrary, it was the FCC that required the parties to follow any applicable change of law process to implement the *TRO*'s new obligations.

113. The Commission should also reject Focal's proposal that, if a CLEC specifically requests that Verizon "perform physical alterations to the facilities being converted," the order should be "deemed completed upon the earlier of (a) the date on which Verizon completes the requested work or (b) the standard interval for completing such work (in no even to exceed 30 days), regardless of whether Verizon has in fact completed such work." Focal Br. at 17 (citing Focal Amendment § 2.3.4.2). This 30-day requirement has no basis in the *Triennial Review Order* or in federal regulations, and this Commission should not adopt it.

114. Focal also proposes that Verizon bill the CLEC "pro rata" for the facility, and that this billing adjustment "should appear on the bill for the first complete month after the date on which the Conversion is deemed effective," and that the CLEC can "withhold payment" if that first month's bill has not been adjusted. Focal Br. at 17 (citing Focal Amendment § 2.3.4.3). There is no disagreement that Verizon is entitled to bill for the facilities and services that it actually provides; however, there is no reason to adjust the generally applicable billing dispute provisions already contained in the parties' agreement. Accordingly, the Commission should reject Focal's proposal.

c) What are Verizon's rights to obtain audits of CLEC compliance with the FCC's service eligibility criteria?

Relevant Provisions: Verizon Amendment 2, § 3.4.2.7; AT&T Amendment, § 3.7.2.8; CCC Amendment, § 2.2.3; Sprint Amendment, § 3.5.2.1.

115. Verizon's language is fair to both sides, in that it requires Verizon to pay for an audit that the CLEC passes, while requiring the CLEC to pay for an audit that it fails. The CLECs attempt to convert this symmetrical obligation into a one-sided requirement that Verizon must pay for all audits unless the CLEC fails the audit "in all respects," CCG Br. at 30. The Commission should reject this proposal: if an audit reveals that a CLEC failed to comply with

any of the FCC's requirements such that the CLEC is ineligible for the EEL at issue, then the CLEC has by definition "failed" the audit, whether or not it failed "in all respects."

116. Some CLECs also complain that Verizon has failed to specify that the CLEC must reimburse Verizon for the cost of the audit only if the CLEC "failed to comply *in all material respects*." Focal Br. at 19 (quoting *Triennial Review Order*, 18 FCC Rcd at 17370, ¶ 627) (emphasis added); AT&T Br. at 36-37, 64 (same).[44] The disagreement here is likely semantic: Verizon's position is simply that if a CLEC has ordered an EEL for which it was not eligible, it should be liable for the costs of an audit: indeed, there can be no serious dispute that such a discrepancy would be material. To the extent AT&T argues that Verizon should bear the costs of an audit that uncovers any such incorrect certification of eligibility, its position is wrong and should be rejected; Verizon's proposed language is clearer in this regard and therefore should be adopted.

117. Like the Joint CLECs, Focal believes that Verizon should be limited to one audit per 12-month period, rather than one per calendar year, and that the CLEC should not have to retain its records for 18 months. Verizon has already addressed these points thoroughly in its initial brief. Verizon Initial Br. at 107-08, ¶¶ 236-238.

118. Focal claims that Verizon's language regarding the conversion of a noncompliant circuit (Verizon Amendment 2, § 3.4.2.2) "has no legal basis," as the *Triennial Review Order* specifies that the *CLEC* must "convert all noncompliant circuits" if the "independent auditor's report" finds that the CLEC failed the audit. Focal Br. at 20-21. Again, the point appears to be

[44] AT&T claims, for example, that it "certainly should not be required to bear the entire cost of an audit in the event of a few inadvertent mistakes, or something less than a material misrepresentation that affects more than a de minimis number of circuits." AT&T Br. at 37. But in such an event, it might be unlikely that AT&T would have "failed to comply with the service eligibility criteria," as specified in Verizon's Amendment 2, § 3.4.2.7.

semantic: there is no dispute that such noncompliant circuits must be converted to legal arrangements, and Verizon's proposed Amendment provides for such conversions. This does not constitute "self-help" as Focal argues (*id.* at 21), but an appropriate contractual mechanism for enforcement of the plain requirements of federal law.

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?**

Relevant Provisions: Verizon Amendment 2, § 3.5; AT&T Amendment, § 3.8; CCC Amendment, § 3; Sprint Amendment, § 3.6.

119. AT&T argues that "[t]here should be no need to amend the ICA to reflect Verizon's obligation to provide routine network modifications because that requirement *pre-dated* the

120. *TRO*. . . . Thus, there has been no 'change in law' that would necessitate an amendment to the ICA." AT&T Br. at 65. But, as noted above, the *Triennial Review* NPRM had specifically asked whether "incumbent LECs have an obligation to modify their existing networks in order to provide access to network elements," *Triennial Review Order*, 18 FCC Rcd at 17371, ¶ 631, and the FCC then concluded that "[t]he routine modification requirement *that we adopt today* resolves a controversial competitive issue that has arisen repeatedly." *Id.* at 17372, ¶ 632 (emphasis added). The FCC thus made clear that it had first considered, and then adopted, a new requirement.

121. AT&T also argues that Verizon's language is slightly different from the FCC's requirements. As an example, AT&T claims that "Verizon, in its proposed Paragraph 3.5.1.1, describes routine network modification to include rearranging or splicing of 'in-place' cable at 'existing splice points.' However, there is nothing in the *TRO* or the FCC Rules that limits

modifications to 'in-place' cable or to 'existing splice points.' Such modifications could involve new cable or old cable spliced in a new arrangement. It also may necessitate establishing a new splice point." AT&T Br. at 67. But AT&T's argument here implies that Verizon could be required to lay new cable. That is incorrect: As the FCC held, "We do not find, however, that incumbent LECs are required to trench or place new cables for a requesting carrier." *Triennial Review Order*, 18 FCC Rcd at 17374, ¶ 636. Nor does AT&T cite any requirement that Verizon must establish new splice points.

122. The CLECs continue to maintain that Verizon is already compensated for routine network modifications by its recurring charges for the element in question. *See, e.g.*, Joint CLEC Br. at 16-17; AT&T Br. at 67-71; MCI Br. at 17. As stated in Verizon's initial brief, Verizon has not had sufficient time to prepare thorough cost studies for the many jurisdictions in which *Triennial Review Order* proceedings are underway. Verizon Initial Br. 111-12, ¶ 245. But in any event, Verizon recommends that the Commission adopt the rates specified in Verizon's pricing attachment to Amendment 2, including the routine network modification rates, on an interim basis, pending completion of a pricing proceeding to be held later. To the extent Verizon is required to provide the services covered in Amendment 2, it is also entitled to payment for them. The interim rates will assure cost recovery until the Commission can set permanent rates.

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

Relevant Provisions: Verizon Amendment 1, §§ 2.1, 2.3, 3.1, 3.4, 4.5, 4.7; Verizon Amendment 2, §§ 1, 2.1, 2.3, 2.4, 3.1, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.1, 3.4.1.2.2, 3.4.2, 3.5.3, 4.5, 4.7; AT&T Amendment, §§ 1.1, 2, 3.2.2.3, 3.2.3.1, 3.2.3.2, 3.2.3.3, 3.2.4, 3.3, 3.6.2, 3.6.3, 3.7.1; MCI Amendment, §§ 3.1, 3.4; WilTel Amendment, § 3.4.

123. With regard to matters not addressed by the proposed amendments, the CCG agrees that "the parties should retain their pre-Amendment rights under the Agreement, tariffs and SGATs." CCG Br. at 31. As well, the Joint CLECs agree that "[t]he parties should retain all of their pre-Amendment rights that are not expressly modified by the Amendment." Joint CLEC Br. at 17. MCI, however, argues that the Agreement, as amended here, is "the exclusive source for determining the parties' contract rights." MCI Br. at 15; *see also* Focal Br. at 8. To the extent that MCI is proposing that the Amendment somehow supersedes valid legal requirements that are not addressed therein, its proposal is without legal basis. The Commission should therefore adopt Verizon's proposal.

124. AT&T claims that Verizon's proposed language making clear that the Amendment applies "[n]otwithstanding any other provision of this Agreement, this Amendment, or any Verizon tariff," Verizon Amendment, § 2.1, 3.1, is "vague and ambiguous language" that could "cause confusion as to the parties' rights and obligations." AT&T Br. at 71. To the contrary, the challenged language makes clear that the Amendment defines the parties' obligations with regard to provision of UNEs notwithstanding *any* other provisions in other regulatory instruments. The provision should be adopted.

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

Relevant Provisions: AT&T Amendment, § 3.9; MCI Amendment, § 8.

125. As noted in Verizon's initial brief, Verizon's transition processes (which apply only where the FCC has not prescribed its own transition period) are fair and equitable. Verizon will give at least 90-days' notice of a UNE discontinuation, Verizon Amendment 1, § 3.1, during which time the CLEC has the ability to obtain access to the UNE in question while deciding how

to transition to an alternate arrangement. Only after the 90-day period can Verizon reprice the discontinued UNE. In turn, the CLECs can take any measures that they deem appropriate to protect their own ability to serve their customers, perhaps even by maintaining and operating their own switches or other equipment. In many situations, of course, the FCC's transition rules provide CLECs with a defined period to prepare for the eventual discontinuation of access to mass-market switches, and certain high-capacity loops and transport. In no event will Verizon disconnect a CLEC unless the CLEC chooses that option.

126. Though the CCG urges that the Commission must ensure that "loss of service to a CLEC's customers does not result from Verizon's discontinuance of that particular UNE," CCG Br. at 31; *see also* Joint CLEC Br. at 8; AT&T Br. at 71-72, neither the *Triennial Review Order* nor the *TRRO* conditions unbundling relief on assurances that no CLEC's customer will lose service. The impact of elimination of particular UNEs on a CLEC's customers depends entirely on the CLEC's own actions. The CLECs know that the transition of UNE-P and de-listed high-capacity facilities must be completed within the next year – that is what the *TRRO* says. CLECs have every opportunity to work with Verizon to ensure that their customers suffer no disruption – as dozens of CLECs nationwide have already done.

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?

Relevant Provisions:

127. The Joint CLECs here repeat the claim that the *TRRO* eliminated the FCC's rules regarding EEL eligibility criteria, despite the FCC's explicit contrary holding. Verizon has refuted that claim in Issue 21 above.

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?**

Relevant Provisions: Sprint Amendment 2, § 3.5.2.2

128. No CLEC provides a substantive argument on this issue.

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

Relevant Provisions: None

129. Verizon continues to object to this issue on the grounds that the *Triennial Review Order* did not change the rules with respect to testing, maintaining, or repairing copper loops, and existing contracts already address these matters, to the extent parties deemed necessary when the agreements were negotiated and/or arbitrated.

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?**

Relevant Provisions: Verizon Amendment 1, § 3.1; MCI Amendment, § 8; WilTel Amendment, §§ 2.1, 2.3, 3.1, 3.2.

130. This Issue has been addressed under Issues 1 and 2; those responses apply here, as well.

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?**

Relevant Provisions: None

131. See Verizon's response to Issues 2 and 6 above.

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?

Relevant Provisions: None

132. See Issues 2-5 above.

Issue 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?

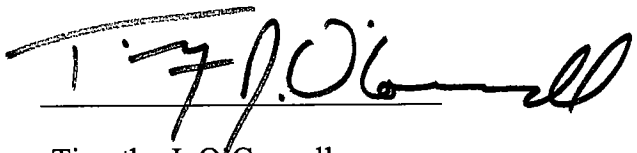
Relevant Provisions: AT&T Amendment, § 3.1.7.

133. AT&T continues to maintain that it is entitled to order new UNEs, even those that the FCC de-listed, for its pre-existing customers. *See* AT&T Br. at 74-75. That position is wrong, for the reasons discussed above under Issue 3 and in Verizon's opening brief.

IV. CONCLUSION

134. The Commission should adopt Verizon's proposed amendment.

Respectfully submitted,



Timothy J. O'Connell
John H. Ridge
STOEL RIVES, LLP
One Union Square
600 University St., Suite 3600
Seattle, WA 98101
(206) 624-0900
(206) 386-7500 (fax)

Kimberly Caswell
Associate General Counsel, Verizon Corp.
201 N. Franklin St.
Tampa, FL 33601
(727) 360-3241
(727) 367-0901 (fax)

Aaron M. Panner
Scott H. Angstreich
Stuart Buck
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(202) 326-7999 (fax)
apanner@khhte.com
sangstreich@khhte.com
sbuck@khhte.com

April 1, 2005.

Index of Exhibits

A. Order, *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)*, Docket No. 2002-682, at 4 (Maine PUC Mar. 17, 2005).

B. Order, *Application of Competitive Local Exchange Carriers to Initiate a Commission Investigation*, Case No. U-14303, at 9 (Mich. PSC Mar. 29, 2005).

C. Petition for Reconsideration of CTC Communications Corp. *et al., Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, at 21-22 (FCC filed Mar. 29, 2005).